Papers relating to the foreign relations of the United States, 1926. Volume II 1926

United States Department of State
Washington, D.C.: U.S. Government Printing Office, 1926

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Foreign Relations of the United States

1926

Volume II

Department of State
Washington

U.S. Dept. of State.

Papers Relating to the Foreign Relations of the United States

1926

(In Two Volumes)

Volume II

United States
Government Printing Office
157512 Washington : 1941

DEPARTMENT OF STATE
PUBLICATION 1647

For sale by the
Superintendent of Documents, Washington, D. C.
Price $2.00 (Buckram)

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1925 Jan. 13 (1299)	*To the Ambassador in France* Instructions to advise French Government that in order to reestablish reciprocal vessel inspection relations, it will only be necessary that French Government accept American legislation on this subject and agree to recognize the inspection certificates issued to American vessels by the U. S. Government. Further instructions to furnish information to the Foreign Office (substance printed) which will enable French Government to recognize the American Bureau of Shipping.	123

FRANCE

EFFORTS TO REACH AN UNDERSTANDING WITH FRANCE FOR RECIPROCAL RECOGNITION OF AMERICAN AND FRENCH LEGISLATION REGARDING INSPECTION OF VESSELS—Continued

Date and number	Subject	Page
1925 June 22 (5319)	*From the Ambassador in France* Foreign Office request for copies of American laws concerning security of navigation and hygiene on board commercial vessels, and its advice that American Bureau of Shipping cannot be accorded recognition until an agreement has been concluded as to the equivalence of U. S. and French legislation.	126
Nov. 5 (5682)	*From the Ambassador in France* Assurance by Foreign Office that, pending agreement concerning the equivalence of U. S. and French navigation certificates, American ships calling at French ports will experience no difficulties.	127
1926 July 28 (1979)	*To the Ambassador in France* Instructions to advise French Government that since the vessel inspection laws of France approximate those of the United States, the U. S. Government desires to enter into a new reciprocal agreement, and expects as a consequence of such agreement that recognition of the American Bureau of Shipping will be readily effected. (Footnote: Information that no further action in this matter was taken until 1930.)	127

EXEMPTION OF AMERICAN BUSINESS FIRMS IN MADAGASCAR FROM PAYMENT OF SPECIAL TAXES

1926 Aug. 14 (1063)	*From the Consul at Tananarive* Unsuccessful efforts of consul to secure the removal of discriminations in Madagascar against American citizens with respect to purchase of domanial concessions, right to possess real estate, and imposition of certain taxes.	129
Oct. 12 (2052)	*To the Chargé in France* Instructions to express to Foreign Office the hope that Madagascar discriminations against American citizens will be removed, in view of article 7 of the consular convention of 1853 with France.	130
Nov. 5 (1084)	*From the Vice Consul in Charge at Tananarive* Removal by Madagascar of discriminatory tax against American citizens of 5 percent on the amount of trading and revenue licenses.	132
1927 Feb. 10 (7147)	*From the Ambassador in France* Foreign Office note, February 8 (text printed), stating that article 7 of the convention of 1853 refers to the "States of the Union" and to "France", and that therefore the convention is inapplicable to colonies of either country.	133

FRANCE

PRECAUTIONS BY THE UNITED STATES FOR THE SAFETY OF AMERICANS DURING THE SYRIAN INSURRECTION

Date and number	Subject	Page
1926 Feb. 17	*From the Consul at Beirut (tel.)* Report that situation in Damascus is deplorable, with looting and kidnapping by the rebels, and no apparent hope of a peaceful settlement between the French mandatory authorities and rebels.	134
Feb. 20	*From the Consul at Beirut (tel.)* Telegram to consul at Damascus, February 20 (text printed), urging departure of all Americans because of dangerous conditions and threatened kidnappings of Americans for ransom.	135
Feb. 23	*To the Consul at Beirut (tel.)* Instructions to inform French mandatory authorities that the United States holds them responsible for the safety of Americans in Damascus.	135
Mar. 3 (329)	*From the Consul at Damascus* Transmittal of pertinent documents (texts printed) setting forth efforts by U. S. consul and dean of consular corps at Damascus to secure assurances from the French authorities for the protection of foreign nationals.	136
Mar. 9 (2118)	*From the Consul at Beirut* Transmittal of pertinent documents (texts printed) setting forth representations to the French authorities as to lack of protection of American nationals in Damascus and French assurances of adequate military protection for foreigners.	142
May 7	*To the Consul at Beirut* Approval of action of consuls at Beirut and Damascus in protecting American citizens and in making representations to the French authorities.	146
May 18 (378)	*From the Consul at Damascus* Transmittal of pertinent documents (texts printed), relating to successful efforts by consul to secure assurances from French mandatory authorities that advance notice of coercive military measures against native sections of Damascus and nearby districts will be given to consular corps in order that their nationals may be removed from the threatened areas.	147
July 19	*To the Consul at Damascus* Instructions that the repeated failure of French authorities to keep promise to notify consular corps in advance of contemplated military action should not preclude further representations to those authorities in this connection.	152
July 26	*From the Consul at Beirut (tel.)* Continued military action of French and rebels in Damascus region.	152
Dec. 8 (450)	*From the Vice Consul in Charge at Damascus* Improvement in general situation in Damascus and outlying districts, with fighting on a large scale apparently finished, but conditions far from peaceful and possibility of further rebel outbreaks.	153

GERMANY

INSISTENCE OF THE UNITED STATES ON ITS RIGHTS TO PRIORITY PAYMENTS FOR COSTS OF ARMY OF OCCUPATION UNDER THE AGREEMENT OF JANUARY 14, 1925

Date and number	Subject	Page
1926		
May 12 (185)	*From the Ambassador in France (tel.)* From Hill: Request for authorization to attend meetings of committee representing Allied Governments and United States to allocate the costs in future of armies of occupation, Inter-allied Rhineland Commission, and Military Mission of Control in Germany, as provided under Dawes annuities.	156
May 19 (132)	*To the Ambassador in France (tel.)* For Hill: Authorization to attend meetings; information that British Ambassador's note, May 13 (substance printed), suggests that the committee also settle any other outstanding questions arising under Dawes annuities.	156
May 21 (204)	*From the Ambassador in France (tel.)* From Hill: Suggestion that U. S. Government might wish to reconsider its representation at meetings if other than the original questions are to be brought up; request to be informed if discussions as to allotments for army costs should be limited to the third annuity.	157
May 25 (144)	*To the Ambassador in France (tel.)* For Hill: Instructions not to participate in any controversy regarding allotments for armies of occupation unless changes contemplated would have a disadvantageous effect on U. S. share of the annuities; Department's preference that discussion of allotments for army costs be limited to the third annuity, as there is a possibility of such costs being reduced in subsequent years.	159
June 5 (229)	*From the Ambassador in France (tel.)* From Hill: Request for opinion on the possibility, if there were a substantial reduction in army costs, of extending the agreement beyond the third annuity year, on the condition that the question would be reconsidered in the event of further reduction of army costs.	160
June 14 (173)	*To the Ambassador in France (tel.)* For Hill: Consent to proposition set forth in Ambassador's telegram No. 229, June 5.	161
Sept. 28	*From the Agent General for Reparation Payments* Transfer Committee's resolution, September 18, to begin liquidation of U. S. priority in Dawes annuities on account of army costs in arrears, by the payment of monthly installments commencing September 1, 1926, such installments to represent substantially the same proportion of the monthly income available in the annuities, and not to exceed the annual amount of 55 million gold marks provided in the agreement of January 14, 1925.	161
Oct. 15	*To the Agent General for Reparation Payments* Secretary's understanding that Transfer Committee's resolution will not in any way prejudice U. S. priority rights in the event that additional cash transfers should be authorized, and declaration that the United States in no way waives its rights under the agreement of January 14, 1925.	162

GERMANY

INSISTENCE OF THE UNITED STATES ON ITS RIGHTS TO PRIORITY PAYMENTS FOR COSTS OF ARMY OF OCCUPATION—Continued

Date and number	Subject	Page
1926 Nov. 19	*From the Agent General for Reparation Payments* Assurance that Transfer Committee does not intend to prejudice U. S. priority rights in the event that additional cash transfers should be authorized, and information that Secretary's letter of October 15 has been referred to the Reparation Commission because that body is responsible for the distribution of the amounts available each month.	163

REJECTION BY ARBITRATORS OF CLAIM OF THE STANDARD OIL COMPANY TO THE D. A. P. G. TANKERS

1926 Aug. 13	*From the Unofficial Representative on the Reparation Commission* Transmittal of majority award of arbitrators, rejecting Standard Oil Co.'s claim to the five D. A. P. G. tankers and awarding them to the Reparation Commission, and of dissenting opinion of minority arbitrator (texts printed).	166
Oct. 2 (371)	*From the Chargé in France (tel.)* From Hill: Decision of Reparation Commission to award tankers to Great Britain.	195
Nov. 10 (286)	*To the Ambassador in France (tel.)* For Hill: U. S. readiness to release tanker fleet upon assurance that expenditures incurred for repairs to two of the vessels during U. S. management of the fleet will be reimbursed from operating proceeds of the entire fleet.	196
Nov. 17 (430)	*From the Ambassador in France (tel.)* From Hill: Contention of British and Finance Service that expenditures incurred for the two vessels should not be reimbursed from the earnings of the entire fleet; French suggestion that the two vessels be sold immediately and proceeds of sale be disposed of by Reparation Commission.	197
Nov. 24 (294)	*To the Ambassador in France (tel.)* For Hill: Instructions to affirm U. S. position with regard to reimbursement of expenses from earnings of entire fleet, to insist on surrender of the vessels to Reparation Commission, to state U. S. readiness to make immediate substantial payment from net operating fund prior to final accounting, and to recommend that the two vessels be sold at public sale.	198
Nov. 29 (445)	*From the Ambassador in France (tel.)* From Hill: Decision of Legal Service that United States is entitled to reimbursement of expenses incurred for tankers out of earnings of entire fleet.	199
Dec. 3 (457)	*From the Ambassador in France (tel.)* From Hill: Acceptance by Reparation Commission of U. S. suggestions set forth in telegram No. 294, November 24.	200
Dec. 4 (461)	*From the Ambassador in France (tel.)* From Hill: Advice that tankers may now be delivered to British under authorization from Reparation Commission; Commission's request that substantial part of tanker earnings be paid immediately to Reparations account in New York bank.	200

GERMANY

REJECTION BY ARBITRATORS OF CLAIM OF THE STANDARD OIL COMPANY TO THE D. A. P. G. TANKERS—Continued

Date and number	Subject	Page
1926 Dec. 20 (337)	*To the Ambassador in France (tel.)* For Hill: Notification that Standard Oil Co. made $400,000 payment to Reparation Commission's account December 20.	201

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

1926 Feb. 8 (6)	*To the Ambassador in Germany (tel.)* Instructions to cable comments on loans to German states and municipalities floated in the United States in 1924 and 1925, with particular reference to the control exercised by German Council for Foreign Credits.	201
Feb. 12 (23)	*From the Ambassador in Germany (tel.)* Opinion that few applications for loans have been submitted to Council recently because of German feeling that public corporations should cease borrowing from abroad for the time being.	202
Mar. 5 (36)	*From the Ambassador in Germany (tel.)* From Gilbert: Belief that Council does not exercise effective control and that Department should not change its attitude toward German loans in American market; suggestion that special care should be taken in regard to proposed loans to Prussian State and Reichspost because of possible difficulties under Treaty of Versailles.	203
Sept. 1	*From Harris, Forbes & Company* Inquiry as to possible objection by Department to flotation in the United States of bonds of the Prussian State.	203
Sept. 2	*To Harris, Forbes & Company* Information that there are no questions of Government policy which would justify objection by Department. Suggestion, however, that bankers should consider the fact that under Treaty of Versailles the first charge on assets and revenues of Prussia is created in favor of reparation and other treaty payments.	204

OBJECTION BY THE DEPARTMENT OF STATE TO PROPOSED LOAN BY LEE, HIGGINSON & COMPANY TO THE GERMAN POTASH SYNDICATE

1925 Nov. 23	*Memorandum by the Economic Adviser, Department of State* Conclusion that Department should object to proposed loan by Lee, Higginson & Co. to the German Potash Syndicate, on the ground that the syndicate contemplates a monopoly on potash which will adversely affect American consumers.	205
Nov. 28	*To the Secretary of Commerce* Request for opinion as to the desirability of inquiring what assurances the German syndicate is prepared to give against restriction of production or other actions likely to raise the price of potash marketed in the United States.	207

GERMANY

OBJECTION BY THE DEPARTMENT OF STATE TO PROPOSED LOAN BY LEE, HIGGINSON & COMPANY TO THE GERMAN POTASH SYNDICATE—Continued

Date and number	Subject	Page
1925 Nov. 28	*From the Secretary of Commerce* Belief that no present encouragement to loan should be given, but that the inquiry suggested would be useful; opinion that Potash Syndicate is a vicious governmental monopoly.	207
Nov. 30	*To Lee, Higginson & Company* Inquiry as to what assurances Potash Syndicate will give against restricting production or taking other measures with a view to regulating the price of potash in the United States.	208
Dec. 2	*From Lee, Higginson & Company* Withdrawal of request for Department's comment on proposed loan, as European bankers have decided to proceed with the financing.	209
1926 Jan. 22	*Memorandum by the Secretary of State* Record of conversation with official of Potash Importing Corp. of America, in which the Secretary stated disinclination of the U. S. Government to reconsider decision on the potash loan at the present time.	210
Feb. 26	*Memorandum by the Assistant Secretary of State of a Conversation With Messrs. Gray and Simpson of J. Henry Schroder & Co.* Willingness of Department to study statement offered by Lee, Higginson & Co. (text printed) that it is not the intention of Potash Syndicate to restrict production or to raise prices to the detriment of American consumers.	211
Mar. 23	*Memorandum by the Assistant Secretary of State* Information that it had been decided that U. S. policy with regard to the potash loan should remain unchanged, and that Lee, Higginson & Co. have been so advised.	213

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918

1925 Nov. 3 (344)	*From the Ambassador in Great Britain (tel.)* Foreign Office concern over possibility that United States might soon ask payment for claims arising from British naval blockade prior to U. S. entry into the war of 1914–1918.	214
Nov. 4	*Memorandum by the Secretary of State* Conversation in which British Ambassador protested against possible U. S. presentation of blockade claims, and Secretary stated that the exact nature of all outstanding claims would not be known until the Department's survey was completed.	215
Nov. 24	*Memorandum by the Assistant Secretary of State* Conversation with British Ambassador, in which Assistant Secretary stated that as far as he knew the Department had always intended to present the blockade claims.	216

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918—Continued

Date and number	Subject	Page
1926		
Feb. 4	*Memorandum by the Secretary of State* Conversation with British Ambassador, during which Ambassador left *aide-mémoire* dated February 4, and in which Secretary stated that in his opinion all the claims should be taken up.	217
Feb. 4	*From the British Embassy* *Aide-mémoire* agreeing to U. S. proposal of October 27, 1925, that claims arising out of U. S. and British naval operations during period April 6, 1917, to March 3, 1921, be settled by correspondence between Navy Department and Admiralty. Suggestion that all intergovernmental claims arising out of the war be settled by direct negotiation between the U. S. and British departments concerned.	218
Mar. 16 (186)	*From the British Ambassador* Request for appointment for purpose of ascertaining Department's contemplated action on Senator Borah's resolution introduced into Senate March 15 inquiring what steps have been taken to negotiate conventions with Great Britain and France covering blockade claims arising during the period August 1, 1914, to April 6, 1917.	219
Mar. 20 (62)	*From the Chargé in Great Britain (tel.)* Unfavorable reaction of British press to news that the United States might present the blockade claims.	220
Mar. 25	*Memorandum by the Secretary of State* Conversation in which British Ambassador agreed to ask instructions of his Government as to Secretary's proposal that each Government appoint commissions to study all the claims of both Governments, to settle those on which they could agree, and to submit the remainder to arbitration.	221
Mar. 29	*Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Conversation between the Secretary of State and the British Ambassador, in which the Ambassador stated that he could not recommend to his Government consideration of the blockade claims; reiteration of Department's desire to consider all claims at the same time; suggestion by Secretary that settlement of the whole matter might be facilitated by maintaining negotiations on an informal basis, without publicity, and that records in Washington and London be studied by representatives of the two Governments, who would settle such cases as they could.	222
Apr. 7	*To the British Embassy* *Aide-mémoire* outlining the procedure suggested by the Secretary March 29.	224
Apr. 14 (73)	*From the Ambassador in Great Britain (tel.)* Willingness of Chamberlain, British Foreign Secretary, to have informal investigation of claims situation, if carried on in Washington and without publicity.	226

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918—Continued

Date and number	Subject	Page
1926 Apr. 29	*Memorandum by the Secretary of State* Conversation with officials of British Embassy, in which agreement was reached that Mr. Phenix and Mr. Broderick would begin joint examination of the claims in Washington on behalf of their respective Governments.	227
May 14 (73)	*To the Ambassador in Great Britain (tel.)* Instructions to inform Chamberlain of contents of note of May 14 to the British Ambassador (extract printed) which advises the Ambassador of the Secretary's intention to send Mr. Phenix to London in June to secure further data from prize court and other records.	227
June 1 (86)	*To the Ambassador in Great Britain (tel.)* Instructions to endeavor to secure Chamberlain's consent to proposed examination of British records.	229
June 4 (116)	*From the Ambassador in Great Britain (tel.)* Chamberlain's reluctance to approve proposed visit, especially in view of change in plan for having a U. S. naval delegation in London at the same time; his willingness to reconsider his answer if the Secretary, after reading the U. S. Ambassador's cable and hearing from the British Ambassador, still wishes Mr. Phenix to go to London.	230
June 5 (89)	*To the Ambassador in Great Britain (tel.)* Displeasure of Secretary at Chamberlain's attitude; transmittal of note to be read to Chamberlain (text printed) stating that since British Government has refused cooperation in bringing about a settlement by informal negotiation, Secretary feels free to proceed in any appropriate manner.	230
June 5 (90)	*To the Ambassador in Great Britain (tel.)* Instructions to withhold action on telegram No. 89 at request of British Ambassador, who is cabling recommendation that the proposed examination be agreed to and that Mr. Broderick be authorized to accompany Mr. Phenix to London later in the summer.	232
June 7 (117)	*From the Ambassador in Great Britain (tel.)* Explanation that interview with Chamberlain June 4 had been carried on in a friendly spirit, but that Chamberlain was much concerned as to the exact object of Mr. Phenix's proposed visit.	233
June 10 (93)	*To the Ambassador in Great Britain (tel.)* Résumé of situation, with instructions to convey to Chamberlain, if approached, the exact nature of Mr. Phenix's proposed visit, and the position of the United States.	233
June 15 (128)	*From the Ambassador in Great Britain (tel.)* Suggestion that U. S. Ambassador be authorized to tell Chamberlain that if visit is not agreed to, it will be necessary to circularize claimants to ascertain the facts; and to repeat that many American claims had no connection with the blockade.	236

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918—Continued

Date and number	Subject	Page
1926		
June 16 (131)	*From the Ambassador in Great Britain (tel.)* Chamberlain's telegram to British Ambassador consenting to visit of Mr. Phenix, if accompanied by the naval delegation; his statement in interview with U. S. Ambassador that he would not object if Mr. Phenix came without the naval delegation, and suggestion that September would be a desirable time.	237
June 16 (103)	*To the Ambassador in Great Britain (tel.)* Secretary's surprise that Borah resolution (text printed) passed Senate June 15; instructions to state informally to Chamberlain that Secretary's response to resolution depends on Chamberlain's attitude toward Mr. Phenix's investigation of the claims in London.	238
June 17 (413)	*From the British Ambassador* Assurances that Chamberlain now fully appreciates and reciprocates the friendly spirit of the Secretary in approaching the difficult matter of the claims situation; advice that Chamberlain still prefers that Mr. Phenix's visit coincide with that of the naval delegation, and that British attitude regarding consideration of blockade claims remains the same.	238
June 19	*To the British Ambassador* Statement that Chamberlain told U. S. Ambassador that he would raise no objection if Mr. Phenix came to London, even if unaccompanied by the naval delegation; information that Secretary of Navy is being approached on subject of sending a naval mission not later than September 1; Secretary's feeling that question of consideration of so-called "blockade claims" should be dealt with after consideration of governmental claims.	240
June 21 (108)	*To the Ambassador in Great Britain (tel.)* Cancelation of instructions in telegram No. 89, June 5; opinion that the United States should break off the September negotiations at first sign of obstructive tactics or lack of cooperation on part of British Government.	242
July 12	*To the British Ambassador* Plans of Navy Department to send mission to London in September to discuss claims between that department and the British departments concerned.	243
July 15	*From the British Ambassador* Agreement of British Government to consider plans for the proposed naval claims meeting as soon as formally notified by U. S. naval attaché in London. Receipt of authorization for Mr. Broderick to meet Mr. Phenix in London September 1.	244
July 20	*To the Assistant Secretary of State* Instructions to proceed to London about September 18 and in the light of the Phenix-Broderick report to obtain Chamberlain's approval of some definite procedure for formal consideration by the British Government of meritorious claims.	244
Sept. 23	*From the Assistant Secretary of State* Preliminary results of London negotiations; memorandum of conversation with Sir William Tyrrel of the Foreign Office, September 21 (text printed), stating optimistic attitude of both parties toward arriving at a prompt solution.	245

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918—Continued

Date and number	Subject	Page
1926 Nov. 9	*From Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Report on the subject of claims and complaints against the British Government lodged with the Department of State since August 18, 1910 (text printed); opinion that only 11 of the 2,658 cases studied possess conspicuous merit.	250
Nov. 13	*From Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Information that a study of American claims presented directly to British Government confirms opinion expressed in report November 9 that only 11 cases possess conspicuous merit. List of formal claims against British Government which have been filed, with disposition recommended in each case.	287
Dec. 8	*Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Report of conferences December 5 and 7 between representatives of the U. S. and British Governments for the purpose of agreeing upon a formula for settlement of claims; and annexes consisting of suggested formulas of November 18 and December 5 and statement of account of December 8 (texts printed).	294
Dec. 14	*Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Report of conferences December 10–13, during which agreement was reached upon text of note to be sent by Department to British Embassy, incorporating text of formula for settlement of claims (texts printed). (Footnote: Information that the exchange of notes took place May 19, 1927.)	303
Dec. 21	*Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Conversation December 20 between Assistant Secretary of State Olds, Mr. Phenix, and Mr. Broderick, in which the latter advised that Foreign Office had telegraphed approval of proposed note, with a minor change.	306
Dec. 22	*Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds* Conversation December 21 between Mr. Phenix and Mr. Broderick, in which U. S. agreement to changes incorporated in draft text of note received from British Ambassador was expressed.	308

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

1924 May 16 (124)	*To the Ambassador in Great Britain (tel.)* Instructions to inform Foreign Office of U. S. desire to begin negotiations to adjust Standard Oil Co.'s claim against the British Government for the destruction of oil properties of its subsidiary in Rumania in 1916.	308

GREAT BRITAIN

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

Date and number	Subject	Page
1924 Oct. 10 (779)	*From the Ambassador in Great Britain* Foreign Office note, June 23, 1924 (text printed), disavowing responsibility of British Government to compensate either British or foreign companies, and declaring the responsibility to belong to Rumanian Government, because it assumed that obligation when it yielded to Allies' urging that the oil wells be destroyed to prevent their falling into German hands. Foreign Secretary's note, October 6, 1924 (text printed), endorsing the views of Foreign Office note of June 23, 1924.	309
1925 Jan. 31	*To the Ambassador in Great Britain* Memorandum by the Solicitor of the Department of State (text printed), to be submitted to the Foreign Office, answering the arguments of Foreign Secretary's note of October 6, 1924, and proposing arbitration by an international tribunal.	315
1926 Sept. 10 (1340)	*From the Ambassador in Great Britain* Foreign Secretary's reply, April 15, 1926 (text printed), to Ambassador's representations based on memorandum of January 31, 1925, affirming that the Rumanian Government alone is responsible for compensating the oil companies' claims, and stating opinion that the Standard Oil Co.'s claim does not lend itself to arbitration between the U. S. and British Governments.	322
Dec. 6 (766)	*To the Ambassador in Great Britain* Instructions to deliver note to Foreign Office (text printed), presenting arguments to uphold U. S. contention that British Government is responsible either for adjusting the claim or submitting the question of liability or amount of damage to arbitration. (Footnote: Information that a note based on this instruction was presented to the Foreign Office May 2, 1927.)	326

COOPERATION OF THE BRITISH GOVERNMENT WITH THE AMERICAN GOVERNMENT TO PREVENT LIQUOR SMUGGLING INTO THE UNITED STATES

1925 Dec. 2	*Memorandum by Mr. William R. Vallance, Assistant to the Solicitor of the Department of State* Conference of State, Treasury, and Justice Department officials with the British Ambassador and other British Embassy representatives, regarding the presence of U. S. Coast Guard vessels in Bahaman waters without prior permission of British authorities, and seizures by Coast Guard of liquor ships under the U. S.-British liquor smuggling convention of 1924.	336

GREAT BRITAIN

Cooperation of the British Government With the American Government To Prevent Liquor Smuggling Into the United States—Continued

Date and number	Subject	Page
1926 Mar. 27	*From the British Embassy* Administrative measures British Government is prepared to adopt to assist in the prevention of smuggling of liquor into the United States from the sea, and invitation to hold discussions in London on the subject.	346
Apr. 26	*To the British Ambassador* Expression of appreciation for British offer of cooperation, and acceptance of invitation to hold discussions in London.	348
July 31 (1245)	*From the Ambassador in Great Britain* Joint report, July 27 (text printed), of discussions between U. S. and British officials, containing suggestions for administrative measures to prevent the smuggling of liquor into the United States.	349
Sept. 16	*To the British Ambassador* U. S. acceptance of suggestions submitted in report of London discussions.	354
Sept. 29 (560)	*From the British Chargé* British acceptance of suggestions, with information that they will be considered in effect as of September 29, 1926; inquiry whether United States may not desire cooperation of British consular officers in ports additional to those mentioned in report of London conference.	355
Oct. 4	*To the British Chargé* Expression of appreciation for additional offer of cooperation by British consular officers.	356
Oct. 28	*To the British Chargé* Communication of list of additional European, U. S., and Central and South American ports in which the cooperation of British consular officers is desired.	356
Dec. 8 (792)	*From the British Chargé* Information that consular officials at the ports mentioned in Secretary's note of October 28 have been notified to extend cooperation to U. S. authorities.	357
Dec. 17	*To the British Chargé* Expression of appreciation for British Government's cooperation.	358

Efforts by the United States To Obtain for American Rubber Manufacturers Relief From British Restrictions on the Export of Raw Rubber

1926 Apr. 7 (918)	*From the Chargé in Great Britain* Foreign Office note of April 6 (text printed), stating that British Government would welcome an understanding with the U. S. Government to the effect that both Governments would avoid action calculated to foster and encourage price fixing; information that British Government exercises no control over the issue of loans in the London market.	358

GREAT BRITAIN

CONTINUED NEGOTIATIONS TO ENSURE RECOGNITION OF THE PRINCIPLE OF THE OPEN DOOR IN THE TURKISH PETROLEUM COMPANY'S CONCESSION IN IRAQ

Date and number	Subject	Page
1926		
Jan. 8 (5)	*From the Ambassador in Great Britain (tel.)* Opinion that, in view of reported willingness of Gulbenkian, a minority stockholder, to arbitrate his claims to pre-war oil concessions of Turkish Petroleum Co., a refusal on the part of American interests to arbitrate will mean either an attempt to force British Government to deny Gulbenkian his legal rights or an intention to withdraw from the negotiations entirely.	362
Jan. 14 (5)	*To the Ambassador in Great Britain (tel.)* Contradictory opinion, with suggestion that an arbitration might possibly result in unfavorable terms to American interests if they chose to participate; reiteration of previous position that Gulbenkian's claim based on pre-war concession is invalid.	363
Jan. 23 (9)	*To the Ambassador in Great Britain (tel.)* Belief of American group that Ambassador's representations have caused British Foreign Office to exert pressure on British group to prepare the way for American group to take up its participation. Exchange of cables between heads of Dutch and American groups (extracts printed) expressing opinion that British Government should disregard the welfare of the individual and take action to benefit the entire enterprise.	364
Jan. 27 (15)	*From the Ambassador in Great Britain (tel.)* Willingness of Gulbenkian to settle on American terms, if the desired guarantees are given; possibility that American group is employing U. S. Government to use its influence with British Foreign Office to force Gulbenkian to lower his terms.	365
Jan. 28 (17)	*From the Ambassador in Great Britain (tel.)* Summary of facts in Gulbenkian's case; opinion that American group has requested Department to use influence with Foreign Office to assist it in bargaining with Gulbenkian.	366
Feb. 10 (20)	*To the Ambassador in Great Britain (tel.)* Opinion that the international point of view must be considered, and that the United States would have grounds for representations against Great Britain, if by adhering to validity of pre-war concessions of Turkish Petroleum Co., Great Britain tried to prevent American participation in the enterprise on a fair basis.	367
Feb. 12 (30)	*From the Ambassador in Great Britain (tel.)* Agreement that the United States should maintain its right to participate on an equal basis, but should cease its efforts when equal participation has been accorded to American nationals, and should not be concerned with the conditions offered to its nationals.	368
Apr. 1	*To the French Embassy* Memorandum stating that the United States, in order to maintain the principle of the Open Door and equality of opportunity in the development of economic resources of mandate territories, feels justified in supporting efforts of American companies to secure participation.	368

GREAT BRITAIN

CONTINUED NEGOTIATIONS TO ENSURE RECOGNITION OF THE PRINCIPLE OF THE OPEN DOOR IN THE TURKISH PETROLEUM COMPANY'S CONCESSION IN IRAQ—Continued

Date and number	Subject	Page
1926 Apr. 6 (69)	*From the Chargé in Great Britain (tel.)* Information that Gulbenkian has agreed to settlement satisfactory to the two English groups and the American group, and that details of the settlement are to be submitted to French group for its approval.	369
July 26	*From the Counselor of Embassy at London to Mr. Allen W. Dulles* Request to inform Department that agreement has not yet been concluded, but that American group's representative believes progress has been made and that matter will soon be settled to the satisfaction of all parties.	370

GREECE

REFUSAL OF THE UNITED STATES TO JOIN IN REPRESENTATIONS TO GREECE REGARDING ALLEGED VIOLATIONS OF THE LOAN AGREEMENT OF FEBRUARY 10, 1918

1925 Nov. 23 (1007)	*From the British Ambassador* Desire that the United States and France join Great Britain in representations to Greece because the latter concluded contracts with Foundation Co. of New York for drainage of Salonica plain and with Société Commerciale de Belgique for railway material, and, by pledging securities to cover the loans without securing approval of the three Governments, has violated the loan agreement of February 10, 1918.	371
Dec. 12	*To the British Ambassador* Opinion that no grounds exist at present for protesting Greek action, because 1918 agreement will not have been violated until the actual loan flotation and pledging of securities therefor.	372
1926 Aug. 23 (512)	*From the British Ambassador* Suggestion that the United States, France, and Great Britain make a joint protest to Greek Government because of supplementary contract concluded with Foundation Co., increasing the temporary loan and pledging additional security therefor.	373
Sept. 1	*To the British Ambassador* Inquiry as to British Government's reasons for suggesting a joint protest at this time and basing protest specifically on the Foundation Co. case, when Greece has made other financial arrangements recently in violation of the 1918 agreement.	374
Nov. 25	*From the British Embassy* British motives for not protesting the various Greek loans, and feeling that the present Foundation Co. case should be objected to for the reason that steps should be taken to bolster the effectiveness of the 1918 agreement.	375
Dec. 27	*To the British Embassy* U. S. position that the representations desired by the British Government would serve no useful purpose at the present time, since U. S. protest to Greece in July in reference to Swedish Match Co. was ineffectual, and in consideration of the humanitarian nature of the Foundation Co. project.	378

GREECE

REPRESENTATIONS BY THE UNITED STATES AGAINST THE NONEXEMPTION OF AMERICAN CONSULAR OFFICERS IN GREECE FROM THE PROVISIONS OF THE FORCED LOAN OF 1926

Date and number	Subject	Page
1926		
Jan. 24 (6)	*From the Minister in Greece (tel.)* Issuance of decree imposing forced loan on bank notes; Foreign Office announcement of nonexemption of foreigners.	380
Jan. 25 (7)	*From the Minister in Greece (tel.)* Advice that Minister formally communicated to Foreign Office provisional reservation against application of the decree to American citizens, pending instructions from the Department.	380
Jan. 27 (4)	*To the Minister in Greece (tel.)* Instructions to insist on equality of treatment for American nationals if exemption is granted to nationals of countries having treaties with Greece exempting them from forced loans.	381
Feb. 25 (521)	*From the Minister in Greece* Greek *note verbale*, January 30 (text printed), advising exemption only of foreign diplomatic personnel and Government funds in cash boxes of legations and consulates; subsequent correspondence between U. S. Minister and Foreign Minister (texts printed), in which the former repeated his previous reservations as to the rights of the United States and its citizens.	381
July 2 (328)	*To the Chargé in Greece* Instructions to protest if Greek Government should attempt to apply forced loan decree to American consular officers of career, basing protest on favored-nation-provision of article 2 of consular convention with Greece of 1902 if consular officers of another Government are granted exemption, or on article 3, which provides for exemption of consuls from direct taxes.	385
July 22 (606)	*From the Chargé in Greece* Representations to Greek Government (text printed), based on articles 2 and 3 of consular convention.	387
Aug. 25 (345)	*To the Chargé in Greece* Instructions to supplement representations by oral protest emphasizing application of article 3, as reference to article 2 was not precisely applicable.	389
Sept. 13 (629)	*From the Chargé in Greece* Admission by Foreign Office that forced loan was in contravention of article 3, and request that Minister ascertain if Department would be satisfied with statement that the specific instance of collection of forced loan from Consul Fernald would not be considered a precedent establishing right of Greek Government to levy forced loan on an American consular officer of career.	390
Oct. 28 (357)	*To the Chargé in Greece* Instructions to make representations to Foreign Office that the United States cannot agree to any exceptions to the principle that American consular officers of career in Greece are exempt from such forms of taxation as the forced loan, and that it expects the Greek Government to reimburse such officers for any payments under forced loan, upon notification of the amounts involved.	391
Nov. 19 (669)	*From the Chargé in Greece* Advice that the prescribed representations were made to Foreign Office, and that Mr. Fernald was the only consular officer affected by collection of the forced loan.	392

GUATEMALA

Proposed Treaty of Friendship, Commerce and Consular Rights Between the United States and Guatemala

Date and number	Subject	Page
1926		
July 17	*To the Guatemalan Minister* Advice that the United States is now ready to enter into negotiation of the proposed treaty of friendship, commerce and consular rights, and will be glad to submit a draft treaty. (Footnote: Information that Guatemalan note, December 28, 1923, requested submittal of draft treaty suggested by the Secretary of State, but that negotiations were suspended while the Senate had under consideration the treaty signed with Germany, December 8, 1923.)	393
Aug. 27	*From the Guatemalan Minister* Request for submittal of draft treaty.	393
Sept. 20	*To the Guatemalan Minister* Transmittal of draft treaty.	394
Sept. 22	*From the Guatemalan Minister* Information that draft treaty has been forwarded to Foreign Office. (Footnote: Information that the negotiations did not result in the conclusion of any treaty.)	395

HAITI

Temporary Withdrawal of United States War Vessels From Haitian Waters Because of Presidential Election

1926		
Jan. 7 (2)	*From the High Commissioner in Haiti (tel.)* Request of President Borno that U. S. war vessels be withdrawn from Haitian waters for a few months preceding the presidential elections.	396
Jan. 15 (2)	*To the Chargé in Haiti (tel.)* For General Russell: Information that Navy Department has ordered withdrawal of vessels.	396
Apr. 12 (37)	*From the High Commissioner in Haiti (tel.)* Reelection of President Borno.	396
May 19 (304)	*To the High Commissioner in Haiti* Inquiry by Navy Department as to Haitian Government's attitude toward return of U. S. warships to Haitian waters.	397
May 27 (825)	*From the Chargé in Haiti* Despatch of General Russell, May 14 (extract printed), reporting that President Borno has no objection to return of U. S. vessels to Haitian waters.	397

Visit of President Borno of Haiti to the United States

1926		
Apr. 17 (787)	*From the High Commissioner in Haiti* Desire of President Borno to visit the United States in June.	398
May 20 (34)	*To the Chargé in Haiti (tel.)* Assurance that President Borno will be cordially welcomed.	399

HAITI

VISIT OF PRESIDENT BORNO OF HAITI TO THE UNITED STATES—Continued

Date and number	Subject	Page
1926 May 28 (60)	*From the Chargé in Haiti (tel.)* Tentative itinerary of President, with request for information as to details of arrival in New York and transportation to Washington.	399
June 4 (42)	*To the Chargé in Haiti (tel.)* Plans for reception of President in New York and schedule of Washington visit.	400
July 6 (70)	*From the Chargé in Haiti (tel.)* Return of President to Haiti; his statement of increased desire to cooperate in concluding treaty with the United States.	400

AGREEMENT BETWEEN THE UNITED STATES AND HAITI ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED JULY 8, 1926

1925 Aug. 10 (649)	*To the Chargé in Haiti* Instructions to address note to Foreign Office suggesting conclusion of a commercial *modus vivendi*, to be followed by a general treaty of friendship, commerce and consular rights providing unconditional most-favored-nation treatment; suggestion that Haiti might wish to terminate commercial convention of 1907 with France.	401
Aug. 31 (48)	*From the Chargé in Haiti (tel.)* Opinion that suggestion of concluding *modus vivendi* now, with coincident necessity for termination of Franco-Haitian convention, would not be favorably received by President Borno, because such termination would meet with popular opposition before December.	402
Sept. 4 (35)	*To the Chargé in Haiti (tel.)* Instructions to ascertain President's views on the proposed *modus vivendi*, and, if he is seriously opposed, not to pursue the matter.	402
1926 May 7 (48)	*From the High Commissioner in Haiti (tel.)* Consent of Haitian Government to *modus vivendi*, with desire to except Dominican Republic; High Commissioner's request for authority to include exception of Dominican Republic and to fix effective date as July 27, 1926, in the text of *modus vivendi*; information that Franco-Haitian agreement will not be in effect after July 26.	402
June 29 (692)	*To the Chargé in Haiti* Willingness of United States to except Dominican Republic, and request that exchange of notes take place immediately, with effective date October 1, 1926.	403
July 8 (172)	*From the American Chargé to the Haitian Secretary of State for Foreign Affairs* Submittal of *modus vivendi*.	403
July 8	*From the Haitian Secretary of State for Foreign Affairs to the American Chargé* Acceptance of *modus vivendi*.	405

HAITI

COMMERCIAL CONVENTION BETWEEN FRANCE AND HAITI, SIGNED JULY 29, 1926

Date and number	Subject	Page
1926 May 3 (802)	*From the High Commissioner in Haiti* Information that Haitian Government has sent a note to French Chargé abrogating Franco-Haitian commercial convention of 1907, as of July 27, 1926.	407
May 6	*From the French Ambassador* Expression of French Government's surprise that it was not advised of contemplated modifications in Haitian commercial relations; opinion that Department's assurances to Ambassador's predecessors in 1916 and 1925 to effect that due consideration of requests pertaining to modification of present customs duties would be afforded by American Financial Adviser have been disregarded; desire that Financial Adviser be instructed to maintain the present *status quo* during any possible negotiations between France and Haiti.	407
June 28	*To the French Chargé* Lack of evidence that Financial Adviser has failed to consider any requests for modification; advice that the original action toward terminating the Franco-Haitian agreement was taken by France in 1919 when it denounced the convention with the provision that it might be prolonged by tacit agreement every 3 months; inability of United States to request maintenance of *status quo*, as that is for decision by Haitian Government.	408
July 14 (193)	*To the Ambassador in France (tel.)* Instructions to endeavor to prevent the discrimination which the French Government intends to apply against Haitian imports unless Haiti continues the privileged position of certain French imports.	410
July 26 (76)	*From the Chargé in Haiti (tel.)* Recommendation for Department's approval of convention under negotiation by France and Haiti, providing for (1) the entrance into France of all principal Haitian products at minimum duties, and the entrance into Haiti of certain specified French products at one-third reduction of prospective duties, and (2) termination of convention after 3 years unless renewed by mutual consent. Information that the tariff preferences would apply equally to similar products from the United States.	411
July 27 (51)	*To the Chargé in Haiti (tel.)* Department's disposition not to offer objection to the proposed convention.	412
July 29 (300)	*From the Ambassador in France (tel.)* Information from Foreign Office that negotiations are being held to conclude new commercial treaty with Haiti; French position that they are not asking for discrimination against other countries in their favor and that they understand reductions in rates extended to certain articles would be extended to other countries which have most-favored-nation treaties with Haiti. (Footnote: Information that the convention was signed July 29, 1926.)	412

HAITI

PROMISE BY THE UNITED STATES NOT TO RAISE CERTAIN OBJECTIONS TO THE CLAIMS AGREEMENT BETWEEN FRANCE AND HAITI, SIGNED JUNE 12, 1925

Date and number	Subject	Page
1925 Oct. 5 (628)	*From the High Commissioner in Haiti* Agreements between Haiti and France, signed August 11, 1923, and June 12, 1925 (text of latter printed), for the settlement of French claims, and High Commissioner's note to Foreign Office, October 5, 1925 (text printed), setting forth provisions of those agreements which conflict with treaty of 1915 and protocol of 1919 between the United States and Haiti.	413
Dec. 9 (76)	*From the High Commissioner in Haiti (tel.)* Foreign Office statement that 1925 agreement makes only slight changes in 1923 agreement, which was approved by Department; opinion of legal adviser to High Commissioner that 1925 agreement conflicts with protocol of 1919, and that modifications in protocol can only be made by the United States becoming a party to the agreement, which would have to be approved by Haitian Council of State.	421
1926 Jan. 18 (3)	*To the Chargé in Haiti (tel.)* For General Russell: Request for comments on observations Department contemplates making to Haitian Minister concerning the agreement.	422
Jan. 21 (8)	*From the High Commissioner in Haiti (tel.)* Approval of Department's contemplated observations; suggestion that French Legation in Haiti officially present a complete list of French claims to Claims Commission before February 1.	423
Jan. 26 (6)	*To the Chargé in Haiti (tel.)* For General Russell: Information that memorandum has been sent to Haitian Minister setting forth Department's observations and enclosing a draft of proposed exchange of notes; instructions to endeavor to secure Foreign Office acceptance of the suggested alterations and explanations.	423
Jan. 30 (11)	*From the High Commissioner in Haiti (tel.)* Foreign Minister's acceptance of suggested alterations.	424
Feb. 3 (8)	*To the Chargé in Haiti (tel.)* For General Russell: Advisability of naming date for hearing French claims; possibility of proceeding under Franco-Haitian agreement of 1923 pending solution of present difficulties.	424
Feb. 5	*From the Haitian Minister* Note setting forth provisions of Franco-Haitian agreement of 1925 and requesting that United States agree not to object to certain specified provisions which conflict with protocol of 1919.	424
Feb. 9	*To the Haitian Minister* U. S. consent, with understandings, to Haitian request in note of February 5.	426
Feb. 11	*To the French Ambassador* Assurance that French claims will be heard by Claims Commission after February 15.	428

HAITI

PROMISE BY THE UNITED STATES NOT TO RAISE CERTAIN OBJECTIONS TO THE CLAIMS AGREEMENT BETWEEN FRANCE AND HAITI, SIGNED JUNE 12, 1925—Continued

Date and number	Subject	Page
1926 Feb. 23 (718)	*From the High Commissioner in Haiti* Information that Franco-Haitian agreement of 1925 was formally notified to Claims Commission, and ratified by the National Assembly.	428

SUPPORT BY THE UNITED STATES OF HAITIAN REFUSAL TO ARBITRATE WITH FRANCE THE QUESTION OF PAYING INTEREST IN GOLD ON GOLD LOAN OF 1910

1926 Feb. 16	*From the French Ambassador* Renewal of request that U. S. Government induce Haitian Government to agree to proposition of the Bank of the Parisian Union that the question of redemption in gold of Haitian gold loan of 1910 be sent to arbitration.	429
Mar. 26	*To the French Ambassador* Inability of U. S. Government to advise Haitian Government to agree to the desired arbitration, because it believes the loan is payable in francs of current circulation and not in gold, and because it does not find provision in the loan contract which would entitle the bank to invoke arbitration on this subject.	429
Apr. 1 (298)	*To the High Commissioner in Haiti* Information that a note was communicated to the French Ambassador, March 26.	431
June 28	*From the French Chargé* Presentation of further arguments for arbitration.	431
July 31	*To the French Chargé* U. S. adherence to decision of March 26.	432
Dec. 23	*From the French Chargé* Adherence of French Government to its position, with proposal that the question as to whether under the loan contract there is occasion for arbitration, be referred to an arbitrator.	432
1927 Feb. 1	*To the French Chargé* Inability of U. S. Government to accede to French proposal of December 23, 1926.	433

HONDURAS

AMENDS BY THE GOVERNMENT OF HONDURAS FOR VIOLATION OF THE AMERICAN CONSULAR PREMISES AT CEIBA

1926 Oct. 28	*From the Vice Consul at Ceiba (tel.)* Request for despatch of U. S. war vessel to Ceiba to protect American lives and property endangered by armed outbreaks; suggestion that strong measures be taken to obtain satisfaction from Honduran Government for deliberate affront to the U. S. Government by the *mayor de plaza*, who not only was personally insolent but who also ordered his troops to an insulting show of force which menaced safety of the consular premises. (Repeated to the Minister in Honduras.)	435

HONDURAS

AMENDS BY THE GOVERNMENT OF HONDURAS FOR VIOLATION OF THE AMERICAN CONSULAR PREMISES AT CEIBA—Continued

Date and number	Subject	Page
1926 Oct. 29 (65)	*From the Minister in Honduras (tel.)* Honduran President's expression of regret over incident; information that he gave orders that *mayor* and troops are to salute American flag at consulate and that *mayor* is to make public apology to vice consul, after which *mayor* is to be court-martialed. (Repeated to vice consul at Ceiba.)	436
Oct. 29	*To the Vice Consul at Ceiba (tel.)* Information that Navy has been requested to despatch vessel; instructions to lodge strong formal protest with Governor of Ceiba against action of *mayor* in violating the consular premises. (Communicated to the Minister in Honduras.)	436
Oct. 30	*To the Vice Consul at Ceiba (tel.)* Advice that U. S. destroyer will arrive at Ceiba November 1; instructions to repeat to Minister in Honduras.	437
Oct. 30 (66)	*From the Minister in Honduras (tel.)* Information from Honduran President that due to the unusual conditions at Ceiba, the carrying out of his orders of October 29 cannot be effected, but that Minister of War is being sent to Ceiba at once. (Repeated to vice consul at Ceiba.)	437
Nov. 6	*From the Vice Consul at Ceiba (tel.)* Recommendation that, in view of precarious local conditions, U. S. Government accept statement by Governor of Ceiba (extract printed), declaring that the incident is regretted, that the *mayor* will receive disciplinary punishment for having acted on his own initiative and contrary to orders of his superiors, and that there was no intention of offending the U. S. consular representative. (Repeated to the Minister in Honduras.)	437
Nov. 10	*To the Vice Consul at Ceiba (tel.)* Acceptance of vice consul's recommendation that the incident be considered terminated with receipt of Governor's statement of November 6; insistence on publication of the statement in Ceiba press to make Honduran Government's apology generally known.	438
Nov. 14	*From the Vice Consul at Ceiba (tel.)* Publication of Governor's statement in Ceiba press November 13, and infliction of disciplinary punishment upon *mayor de plaza.*	438

ITALY

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

1926 Mar. 10	*From the Italian Ambassador* Inquiry as to whether royal decree of March 4, 1926 (text printed), providing for exemption of American shipping interests from Italian income tax, satisfies the equivalent exemption provisions of section 213 (b) (8) of the Revenue Act of 1921.	439

ITALY

ARRANGEMENT BETWEEN THE UNITED STATES AND ITALY GRANTING RELIEF FROM DOUBLE INCOME TAX ON SHIPPING PROFITS—Continued

Date and number	Subject	Page
1926 May 5	*To the Italian Ambassador* Information that decree satisfies the equivalent exemption provisions of the Revenue Acts of 1921, 1924, and 1926; agreement that the earnings of Italian shipping interests in American ports will be exempt from income tax.	440

RIGHT OF AMERICAN CITIZENS WHEN ARRESTED TO COMMUNICATE WITH AMERICAN CONSULAR OFFICERS

1926 Aug. 20 (965)	*From the Ambassador in Italy* Information that Naples police authorities had been reprimanded for failure to notify U. S. consul general of the arrest and detention of three American citizens, October 16, 1925; transmittal of copy of Ambassador's *aide-mémoire* of July 8, 1926, making representations to Foreign Office (text printed); transmittal of Foreign Minister's *aide-mémoire* of August 18 (text printed), stating that (1) no obligation to notify consular officers exists either by virtue of treaties between the United States and Italy or international usage, (2) no obligation to allow prisoners to communicate with consular officers exists, and (3) that the Naples authorities had no intention to offend consul general by their attitude.	440
Nov. 9 (651)	*To the Chargé in Italy* Instructions to discuss matter further with Foreign Office with a view to establishing the principle that American citizens have the right to communicate with American consular officers upon arrest by Italian authorities, and that Italian citizens have the corresponding right to communicate with Italian consular officers upon arrest by American authorities. (Footnote: Information that no record of further negotiations has been found in Department files.)	443

PERMISSION FOR FLIGHT OVER TERRITORY OF THE UNITED STATES BY AN ITALIAN NAVAL HYDROPLANE

1926 June 10	*From the Italian Ambassador* Request that permission be granted for flight by Italian naval hydroplane over U. S. territory.	445
Oct. 28	*To the Italian Ambassador* Consent to proposed flight granted by Federal departments and Governors of the States concerned. (Footnote: Information that upon receipt of revised itinerary dated February 1, 1927, the Department notified the appropriate Federal and State authorities and communicated permission to the Italian Ambassador.)	446

JAPAN

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

Date and number	Subject	Page
1923		
Mar. 21	*From the Japanese Ambassador* Inquiry as to whether U. S. Government is granting exemption from income tax to earnings of foreign ships operating in U. S. ports in compliance with section 213 (*b*) (8) of the Revenue Act of 1921.	448
Apr. 18	*To the Japanese Ambassador* Reply that exemption is granted to countries which satisfy the equivalent exemption provisions of the Revenue Act of 1921, and that the Japanese case is being studied.	448
June 9	*To the Japanese Ambassador* Information that Japanese legislation does not satisfy the equivalent exemption provisions because it imposes tax on earnings of U. S. vessels if the owner, though not a resident of Japan, does business in Japan or maintains an office or place of business therein.	449
1924		
Jan. 23 (229–E)	*From the Chargé in Japan* Efforts of Japanese shipowners to secure revision of Japanese law in order that they may take advantage of U. S. exemption.	450
June 26	*To the Japanese Ambassador* Japanese Ambassador's note, May 27 (extract printed), requesting information as to the requirements necessary to establish reciprocity, and Treasury Department reply, June 18 (extract printed); observation that Treasury reply has been made in the light of the Revenue Act of 1924 which is now applicable.	451
Aug. 4 (73)	*From the Japanese Chargé* Promulgation of law, July 18, providing for exemption from income tax on shipping profits to foreigners or foreign corporations having no domicile in Japan, on condition of reciprocal treatment from the other country.	452
Oct. 14	*To the Japanese Chargé* Request for statement from Japanese Government as to whether an American citizen or corporation having an office, place of business, or agent in Japan will be exempt.	453
1925		
Feb. 12 (17)	*From the Japanese Chargé* Japanese interpretation of law that exemption will apply to a foreigner or foreign corporation which maintains an office, place of business, or agency in Japan.	455
Mar. 27	*To the Japanese Ambassador* Conclusion by Treasury Department that Japan now satisfies exemption requirements of Revenue Act of 1924.	455
May 6	*To the Japanese Ambassador* Treasury Department note (extract printed), stating that its previous correspondence has been corrected to show date of promulgation of Japanese law as July 18, 1924, instead of July 17 as inadvertently stated in a note from the Japanese Embassy, September 13, 1924.	456
June 18 (72)	*From the Japanese Ambassador* Outline of methods suggested for adoption by both countries in computing exemptions for the year 1924; Japanese intention to put law into effect in its possessions and territories, and desire that the United States do likewise.	457

JAPAN

ARRANGEMENT BETWEEN THE UNITED STATES AND JAPAN GRANTING RELIEF FROM DOUBLE INCOME TAX ON SHIPPING PROFITS—Continued

Date and number	Subject	Page
1925		
Sept. 1	*To the Japanese Ambassador* Inability of Treasury Department to accept Japanese suggestions for computing exemptions for the year 1924, and its insistence that reciprocal exemption be carried out from and including July 18, 1924, the date of promulgation; information that Revenue Act of 1924 is not in force in all possessions of United States.	458
1926		
Mar. 31 (41)	*From the Japanese Ambassador* Willingness of Japanese Government to agree with Treasury Department views expressed in State Department's note, September 1, 1925.	461
June 8	*To the Japanese Ambassador* Information that effect was given to the reciprocal arrangement on part of the United States by issuance of Treasury decision 3812.	461

PROPOSAL BY JAPAN THAT A CONFERENCE BE CALLED TO REVISE THE FUR SEALS CONVENTION, SIGNED JULY 7, 1911

1926		
Jan. 5	*Memorandum by the Under Secretary of State* Conversation in which Japanese Ambassador stated that identic notes are being delivered to the United States, Great Britain, and Soviet Russia requesting that a conference be held to amend the convention for the protection of fur seals, signed at Washington, July 7, 1911.	462
Jan. 5 (1)	*From the Japanese Ambassador* Japanese Government's desire that a conference be held to amend the convention.	462
Jan. 20	*Memorandum by the Under Secretary of State* Conversation in which Japanese Ambassador stated that his Government desired less stringent regulations protecting fur seals, because the seals were damaging the fishing industry; Under Secretary's opinion that it would be difficult for the U. S. Government to participate in a conference and sign a convention with representatives of the Soviet Russian regime which the United States had not recognized.	463
Mar. 1	*Memorandum by the Under Secretary of State* Conversation with the Counselor of the Japanese Embassy, in which Under Secretary suggested that a conference would not be desirable at present because of nonrecognition of the Soviet regime by the United States, and proposed that if the Japanese Government would advise exactly what modifications it desired in the convention and the reasons therefor, the U. S. Government would endeavor to find a way of achieving the modifications by other means than amending the convention.	464
Mar. 18 (192)	*From the British Ambassador* Inquiry as to whether the U. S. Government has been approached by Japan in the fur seals matter and if so what attitude the United States intends to take toward the proposed conference.	465

JAPAN

PROPOSAL BY JAPAN THAT A CONFERENCE BE CALLED TO REVISE THE FUR SEALS CONVENTION, SIGNED JULY 7, 1911—Continued

Date and number	Subject	Page
1926 Undated [Rec'd Mar. 20]	*From the Japanese Embassy* Reluctance to postpone conference because of urgent need to remove danger to fishing industry; desire to have the United States participate in the conference under either of two suggested arrangements: (1) U. S. signature to treaty without regard to recognition of Soviet regime, or (2) separate treaties among the United States, Great Britain, and Japan on the one hand, and Great Britain, Soviet Russia, and Japan on the other.	466
May 4	*Memorandum by the Under Secretary of State* Conversation in which Mr. Balfour of the British Embassy commented that the action taken by the United States in asking for the exact modifications Japan desired to have made in the convention was similar to the action taken by his Government.	467
Undated [Rec'd July 20]	*From the Japanese Ambassador* Renewal of suggestion that separate treaties be signed; statement of the modifications which Japan desires.	469
Aug. 13	*Memorandum by the Chief of the Division of Far Eastern Affairs* Conversation in which Counselor of Japanese Embassy read a telegram from his Government (substance printed), refusing at the present time to furnish the data on which it based its contention that almost all the seals in Japanese waters belong to the American herds of the Pribilof Islands.	471
Nov. 29	*Memorandum by the Under Secretary of State* Conversation with the Japanese Ambassador, in which the Under Secretary restated the U. S. Government's position that it would be glad to consider any suggestions by Japanese Government to improve the fur seals situation by administrative regulations rather than new treaty provisions.	472
Undated	*Memorandum by the Chief of the Division of Far Eastern Affairs* Statement of U. S. position in regard to suggestions contained in the Japanese note which was left with the Under Secretary of State on July 20. (Footnote: Information that this memorandum was handed to the Japanese Ambassador by the Under Secretary of State on November 29.)	473

SUITS IN JAPANESE COURTS AGAINST UNITED STATES SHIPPING BOARD

1926 Aug. 11	*From the Chairman of the United States Shipping Board* Request that instructions be issued to Ambassador in Japan to claim immunity of U. S. Shipping Board in suits brought against it by two Japanese banks.	478
Aug. 18 (75)	*To the Ambassador in Japan (tel.)* Instructions to telegraph Shipping Board attorney in Japan to plead Board's immunity.	481

JAPAN

SUITS IN JAPANESE COURTS AGAINST UNITED STATES SHIPPING BOARD—Continued

Date and number	Subject	Page
1927 Apr. 11 (203)	*To the Ambassador in Japan* Instructions to endeavor informally to convince Foreign Office of the legal grounds in support of Shipping Board's plea of immunity; arguments in favor of U. S. position as expressed in letter from Chairman of Shipping Board, February 7 (text printed). (Footnote: Information that Shipping Board Emergency Fleet Corporation advised Department, June 26, 1928, that the question of immunity had not yet been determined; further information that Shipping Board advised, January 22, 1929, that it had recently reached a settlement with the Japanese banks in regard to the cases in question.)	481

LATVIA

PROVISIONAL COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND LATVIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 1, 1926

1924 July 29 (35)	*To the Minister in Latvia (tel.)* Instructions to advise Foreign Office of U. S. desire to enter immediately into *modus vivendi* with Latvia for mutual unconditional most-favored-nation treatment in commercial matters by means of an exchange of notes (draft printed).	488
Aug. 2 (122)	*From the Minister in Latvia (tel.)* Foreign Minister's acceptance of proposal, with exception that arrangement be in form of a provisional agreement instead of exchange of notes.	490
Aug. 23 (42)	*To the Minister in Latvia (tel.)* Authority to conclude arrangement in form of *procès-verbal* (text printed).	491
Sept. 20 (151)	*From the Chargé in Latvia (tel.)* Information that Foreign Office desires change in title of *procès-verbal* to "provisional agreement" and addition of Finland to list of countries excluded from operation of agreement.	492
Sept. 23 (153)	*From the Chargé in Latvia (tel.)* Opposition of Latvian commercial interests to conclusion of any arrangement other than a permanent treaty.	493
Oct. 25 (166)	*From the Chargé in Latvia (tel.)* Preference of Foreign Minister to wait for conclusion of formal commercial treaty instead of proceeding with provisional agreement; Foreign Minister's assurance that in case the contingency arose that new maximum tariffs would be applied to the United States, Latvia would unquestionably sign a temporary agreement.	493

LATVIA

PROVISIONAL COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND LATVIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 1, 1926—Continued

Date and number	Subject	Page
1925 Aug. 4 (39)	*To the Minister in Latvia (tel.)* Instructions to endeavor to secure signature of provisional commercial agreement based on draft transmitted in Department's telegram No. 42, August 23, 1924, with change of title to "provisional agreement" and a minor change in phraseology. (Footnote: Information that on April 16, 1925, the Minister in Latvia reported desire of Foreign Minister to enter into treaty of commerce and friendship with the United States.)	494
Aug. 6 (68)	*From the Minister in Latvia (tel.)* Suggestion that U. S. assurance of intention to reopen negotiations for formal commercial treaty may influence Foreign Minister to sign proposed provisional agreement; inquiry as to Department's attitude toward concluding formal treaty now.	494
Aug. 11 (41)	*To the Chargé in Latvia (tel.)* Instructions to press for prompt conclusion of provisional agreement; advice that Latvian Minister is recommending signature to his Government; information that Department intends to reopen treaty negotiations upon completion of study of Latvian counterproposals which was suspended during the period of Senate consideration of treaty with Germany.	495
Aug. 12 (73)	*From the Chargé in Latvia (tel.)* Foreign Minister's doubt that Diet will ratify proposed provisional agreement, and his reiteration of desire to conclude treaty.	495
Aug. 18 (74)	*From the Chargé in Latvia (tel.)* Inquiry whether instructions of August 11 to press for prompt conclusion of provisional agreement are still in effect, in view of information contained in Chargé's telegram of August 12.	496
Aug. 19 (43)	*To the Chargé in Latvia (tel.)* Confirmation of instructions of August 11.	496
Sept. 15 (81)	*From the Minister in Latvia (tel.)* Impossibility of proceeding with negotiations for provisional agreement until general elections take place October 4 and the new government is formed.	497
Oct. 22 (53)	*To the Minister in Latvia (tel.)* Latvian Minister's intention of renewing recommendation to his Government for conclusion of provisional agreement, in view of assurance that the United States will soon reopen negotiations for permanent treaty; instructions to make tactful efforts after elections to arrange the provisional agreement.	497

LATVIA

PROVISIONAL COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND LATVIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 1, 1926—Continued

Date and number	Subject	Page
1925		
Nov. 23 (96)	*From the Minister in Latvia (tel.)* Inquiry whether Department would object to adding Finland to list of countries excluded from operation of provisional agreement; advice that signature of agreement is now likely.	498
Nov. 24 (59)	*To the Minister in Latvia (tel.)* Authority to include Finland in list of excluded countries and to proceed to signature of agreement.	498
Dec. 18 (61)	*To the Minister in Latvia (tel.)* Instructions to make certain clarifying changes in phraseology of agreement.	498
Dec. 23 (107)	*From the Minister in Latvia (tel.)* Report that progress of negotiations is slow because new government has not yet been formed. (Footnote: Information from Minister in Latvia, January 4, 1926, that the new Cabinet was accepted by the Latvian Diet on December 22, 1925.)	499
1926		
Jan. 28 (10)	*From the Minister in Latvia (tel.)* Inquiry whether Department has any objection to substituting the words "Union of Soviet Socialist Republics" for "Russia" in the agreement, and to inserting the provision that agreement will come into force upon ratification by Latvian Diet and notice to that effect.	499
Jan. 28 (7)	*To the Minister in Latvia (tel.)* Disapproval of suggested substitution of "Union of Soviet Socialist Republics"; approval of proposed provision with regard to effective date.	499
Feb. 2 (11)	*From the Minister in Latvia (tel.)* Information that provisional agreement was signed February 1, and will be approved by Cabinet February 2; Minister's expectation that ratification will take place within 2 weeks after submission to Diet on February 5.	500
Feb. 1	*Agreement Between the United States of America and Latvia* Provisional commercial agreement. (Footnote: Information that ratification by the Latvian Diet was notified to the United States on April 30, 1926.)	500

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN

1926		
Jan. 12	*From the Chief of the Division of Western European Affairs* Suggestion that Department notify bankers that it perceives no objection to terms of loan to Liberia, subject to an agreed modification regarding pledging of revenues, and that the U. S. Government is ready to assume functions assigned under loan agreement and the Firestone rubber agreements of September 16 and 17, 1925, upon request of the Liberian Government.	503

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926		
Jan. 23 (Dip. No. 324)	*From the Chargé in Liberia* Objections of President King of Liberia to loan agreement in its present terms; probability that rubber agreements, with textual modifications agreed upon by Liberian Government and Firestone representative in Liberia, will be ratified by legislature, and that loan agreement will be passed, with authority granted to the President to ratify, subject to certain modifications submitted.	505
Jan. 28 (4)	*From the Chargé in Liberia (tel.)* Ratification by legislature of loan and rubber agreements.	507
Jan. 28	*Joint Resolution Passed by the Liberian Legislature* Approving the loan agreement concluded between the Government of Liberia and the Finance Corporation of America, January 1, 1926.	507
Jan. 30	*Joint Resolution Passed by the Liberian Legislature* Approving the agreements concluded between the Government of Liberia and the Firestone Plantations Company, September 16 and 17, 1925.	516
Jan. 31 (5)	*From the Chargé in Liberia (tel.)* Summary of principal modifications made by Liberian Legislature in texts of loan and rubber agreements.	517
Feb. 3 (5)	*To the Chargé in Liberia (tel.)* Inacceptability to bankers and Firestone of loan agreement as modified by legislature; Firestone's intention to withdraw if Liberian Government maintains the position indicated by its modifications.	518
Feb. 5 (6)	*To the Chargé in Liberia (tel.)* Firestone's insistence that the agreements signed by him and the Liberian Secretary of State in September 1925 are binding contracts and may not be modified, it being understood that the Liberian Secretary of State had been empowered to commit his Government by an act of the legislature in January 1925; concurrence of Department in Firestone's opinion, and instructions to communicate this position to Liberian Government.	518
Feb. 7 (8)	*From the Chargé in Liberia (tel.)* Opinion that while Liberian Government might adjust the minor modifications in loan agreement, it will adhere to its position regarding major modifications which are matters of principle, such as assigning of revenues.	519
Feb. 12 (Dip. No. 334)	*From the Chargé in Liberia* Report of conferences with Liberian President and Secretary of State in which Liberian modifications in loan agreement were discussed and Executive agreed to resubmit agreement to legislature for ratification in substantially its original form, but still with certain of the modifications insisted upon by Liberia.	519

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926 Feb. 13 (11)	*From the Chargé in Liberia (tel.)* Summary of latest modifications in loan agreement; Liberian opinion that modifications in rubber agreements, with exception of arbitration clause, are merely those agreed upon with Firestone representative; inquiry as to whether Department can secure provisional assent of American interests because Firestone's statement that he might remove enterprise elsewhere may discourage Liberia from taking any further action to adjust matters.	523
Feb. 16 (12)	*From the Chargé in Liberia (tel.)* Information that loan agreement was ratified with modifications summarized in Legation's telegram No. 11, February 13.	524
Feb. 16	*Joint Resolution Passed by the Liberian Legislature* Supplementary to the joint resolution of January 28, 1926, approving the loan agreement between the Government of Liberia and the Finance Corporation of America.	524
Feb. 17	*To Mr. Harvey S. Firestone (tel.)* Department's disappointment at present unfavorable state of negotiations and hope that some satisfactory arrangement can eventually be reached.	528
Feb. 17 (13)	*From the Chargé in Liberia (tel.)* Information that statement in Department's telegram No. 6, February 5, with regard to binding character of the September 1925 agreements is incorrect, because Liberian act of January 1925 applied only to ratification by Secretary of State of certain original draft agreements which Firestone refused to sign and which were withdrawn; probability that operation of objectionable modifications could be set aside by Executive power if absolutely essential to Firestone.	528
Feb. 17 (9)	*To the Chargé in Liberia (tel.)* From Castle: Firestone's insistence on binding character of rubber agreements and indication that he may withdraw except for agreement covering Mount Barclay plantation; information that Department cannot intervene in matter of modifications because those points of disagreement are business negotiations and must be settled between the interested parties.	529
Feb. 18	*From Mr. Harvey S. Firestone (tel.)* Suspension of Firestone business activities under way with regard to Liberia; declaration that Liberia must accept agreements without change if Firestone is to go ahead, otherwise no alternative except to withdraw with exception of Mount Barclay.	530
Feb. 24 (Dip. No. 336)	*From the Chargé in Liberia* Opinion that loan and rubber agreements should be accepted; attitude of Government that unless Firestone accepts entire proposition he cannot go ahead with Mount Barclay; economic advantages to the United States of Firestone operations in Liberia; information that Legation was obliged to act in situation because Firestone representative had been instructed not to interfere and bankers had no representative.	531

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926 Feb. 26 (10)	*To the Chargé in Liberia (tel.)* Instructions to make no communication which could be considered as participation in business negotiations unless authorized by Department; advice that situation cannot properly be considered until ratification texts are received; understanding that in the interval Firestone operations will not be discontinued.	536
Mar. 2 (Dip. No. 339)	*From the Chargé in Liberia* Assurance that no communication has been made to Liberian Government which could be interpreted as interference in business negotiations.	537
Mar. 6 (19)	*From the Chargé in Liberia (tel.)* Departure for the United States of Financial Adviser of Liberia to clear up misunderstandings and consummate negotiations.	538
Mar. 9 (Dip. No. 346)	*From the Chargé in Liberia* Note from Liberian Secretary of State to the Chargé, March 4 (text printed), advising of Financial Adviser's mission, and letter of authorization of March 4 (text printed), instructing Financial Adviser to conclude loan agreement and explain modifications in loan and rubber agreements.	538
Mar. 11	*Memorandum by the Assistant Chief of the Division of Western European Affairs* Conversation with Firestone officials in which statement was made that Firestone's greatest objection to modifications in rubber agreements is the arbitration clause; intimation that Mr. Hines, representing Firestone interests, will go to Liberia with liberal powers to bring about adjustment of situation.	539
Mar. 13 (Dip. No. 348)	*From the Chargé in Liberia* Further explanation of Liberian Government's contention that its modifications in rubber agreements were merely interpretations based on mutual understanding except the clause regarding arbitration, and were needed to assure ratification by legislature.	541
Apr. 23 (377/ M. F.)	*From the Liberian Secretary of State* Statement of Liberian Government's position with regard to the whole situation.	543
Aug. 19 (25)	*To the Chargé in Liberia (tel.)* For Bussell from Castle: Information that Firestone will not accept rubber agreements in form ratified by legislature and that Harvey Firestone, Jr., is going immediately to Liberia with the hope of making satisfactory adjustments.	546
Sept. 25	*From Mr. Guy Cary of Shearman & Sterling* Draft of revised loan agreement (extracts printed), to be handed to Liberian Government by Firestone, Jr.	546
Sept. 30 (35)	*From the Chargé in Liberia (tel.)* Information that Firestone, Jr., and President King have settled questions under rubber agreement, and that amended agreement containing revised arbitration clause will be submitted to legislature.	555

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926 Oct. 20 (27)	*To the Chargé in Liberia (tel.)* Disinclination of Department to offer any suggestions as to phrasing of revised arbitration clause as it is not a party to the agreement.	556
Oct. 24 (38)	*From the Chargé in Liberia (tel.)* For Castle: Inacceptability of new draft loan agreement to Liberian Government; information that Government has heard that because maximum rubber prices were fixed at London in August the bankers are not inclined to make loan except on onerous terms.	556
Oct. 25 (39)	*From the Chargé in Liberia (tel.)* For Castle: Information that entire question of loan hinges on the alleged London agreement; report from Liberian Minister at London that Firestone, Jr., agreed at London conference that in consideration of rubber prices conceded by Dutch and British producers, Firestone would limit operations in Liberia to present holdings and make terms of loan impossible of acceptance by Liberia; Liberian Government's instructions to Financial Adviser to advise bankers that while Government will not agree to assign all its revenues, it will consent not to issue second half of loan before acceptance of such issue.	557
Oct. 26	*From the Financial Adviser of Liberia to the National City Bank of New York (tel.)* For Hoffman: Information that critical situation has developed as result of departure from conditions laid down by Government as to basis for loan.	557
Oct. 27 (28)	*To the Chargé in Liberia (tel.)* Instructions to furnish additional information on alleged London agreement.	558
Oct. 28 (1013/L)	*From the Liberian Secretary of State to the General Receiver of Customs of Liberia* Inacceptability of proposed loan agreement; authorization to ascertain if Finance Corporation sees any possibility of reconciling its point of view and that of Liberian Government.	558
Oct. 28	*From the National City Bank of New York to the Financial Adviser of Liberia (tel.)* From Finance Corporation of America: Acceptance of Liberian stipulations with regard to assignment of revenues and issuance of second half of the loan.	559
Nov. 1 (29)	*To the Chargé in Liberia (tel.)* Information that bankers have cabled Financial Adviser accepting Liberian stipulations.	560
Nov. 2 (30)	*To the Chargé in Liberia (tel.)* Finance Corporation's ignorance of alleged London conference on rubber prices.	560
Nov. 10 (42)	*From the Chargé in Liberia (tel.)* Ratification of planting agreements by legislature; President's consideration of remaining points of difference in loan agreement.	560

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926 Nov. 10	*An Act Passed by the Liberian Legislature* Approving the agreement concluded between the Government of Liberia and the Firestone Plantations Company, October 2, 1926 (text printed).	561
Nov. 12	*From the Assistant Chief of the Division of Western European Affairs* Information from bankers' representative that Liberian Government insists on new wording of arbitration clause (text printed) in loan agreement to provide that third arbitrator will be of different nationality than the other arbitrators.	568
Nov. 12	*Memorandum by the Assistant Chief of the Division of Western European Affairs* Information that telephonic reply was made to bankers, stating that if they would accept the amended arbitration clause the Department could see no objection thereto.	569
Nov. 20	*From the Chargé in Liberia (tel.)* Personal message from President King to Secretary of State Kellogg (text printed), requesting good offices to secure consideration of Liberian desire for revision of article 15 to limit Financial Adviser's power to block negotiation of new loans and for revision of article 25 to provide arbitration clause similar to the one in rubber agreements.	569
Nov. 24 (34)	*To the Chargé in Liberia (tel.)* Information that Finance Corporation hopes that revised articles 15 and 25 (texts printed) will meet the objections raised by Liberian Government.	570
Nov. 28 (44)	*From the Chargé in Liberia (tel.)* For Castle: President King's declination to accept Finance Corporation's draft of article 15 because of proviso that refunding loan may not be negotiated until after 25 years.	572
Nov. 29 (35)	*To the Chargé in Liberia (tel.)* Willingness of Finance Corporation to revise article 15 by reducing refunding period from 25 to 20 years.	572
Dec. 8 (45)	*From the Chargé in Liberia (tel.)* Information that legislature ratified loan agreement in agreed form.	573
Dec. 9 (1199/ M. F.)	*From the Liberian Secretary of State* Transmittal of joint resolution passed by Liberian Legislature, December 7, 1926 (text printed), ratifying and incorporating text of loan agreement between the Government of Liberia, the Finance Corporation of America, and the National City Bank of New York (dated, for convenience, as of September 1, 1926), with request of Liberian Government that Department undertake the obligations imposed upon it by the agreement.	573
Dec. 14 (36)	*To the Chargé in Liberia (tel.)* Instructions to convey to President King expression of Department's hope that with conclusion of Firestone negotiations and ratification of loan agreement Liberia will enter upon new era of prosperity; commendation of Legation's activities throughout the entire negotiations.	596

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN—Continued

Date and number	Subject	Page
1926 Dec. 20 (Dip. No. 422)	*From the Chargé in Liberia* Note from President King, December 16 (text printed), asking Chargé to convey thanks to Secretary of State for his message of good will.	596

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND LIBERIA, SIGNED FEBRUARY 10, 1926

1926 Feb. 10	*Convention Between the United States of America and Liberia* For the settlement of differences by arbitration.	597
Feb. 10	*From the American Chargé to the Liberian Secretary of State* Understanding that Liberia will not be averse to considering modification of convention of arbitration, or making of separate agreement, under which disputes could be referred to the Permanent Court of International Justice, in the event of U. S. adherence to the protocol of December 16, 1920.	599
Feb. 10	*From the Liberian Secretary of State to the American Chargé* Confirmation of U. S. understanding.	599

STEPS TAKEN TOWARD COMPLETING THE DELIMITATION OF THE FRANCO-LIBERIAN BOUNDARY

1926 Feb. 8 (Dip. No. 330)	*From the Chargé in Liberia* Appointment by France and Liberia of commissions to proceed to delimitation of Franco-Liberian boundary; assurance that Chargé will do his utmost to guard against any responsibility to the United States which might arise because of Liberian Government's inclusion of two Americans in its commission.	600
Mar. 1	*From the Ambassador in France* Memorandum of conversation between the second secretary of the American Embassy at Paris and the Liberian Minister in France, February 26 (text printed), in which recent developments regarding delimitation of the Franco-Liberian boundary were discussed and information given by Minister that French commission was en route to Liberia; Minister's statement that French Foreign Office hoped to submit to Liberian Government by March 4 a draft of an arbitration treaty.	601

MEXICO

REPRESENTATIONS BY THE UNITED STATES AGAINST MEXICAN AGRARIAN AND PETROLEUM LEGISLATION

Date and number	Subject	Page
1926		
Jan. 21 (1674)	*From the Ambassador in Mexico* Note from Mexican Foreign Minister, handed to Ambassador January 20 (text printed), presenting specific arguments on which Government bases its contention that the recently enacted petroleum and alien land laws are not retroactive and confiscatory in effect, and declaring that their administration will be regulated by the Executive in accordance with principles of international law.	605
Jan. 30 (760)	*To the Ambassador in Mexico* Note for Foreign Minister, dated January 28 (text printed), presenting U. S. views on the Mexican contentions of January 20 and asking for information as to the exact nature of the regulations the President intends to issue.	613
Feb. 12 (1679)	*From the Mexican Minister for Foreign Affairs* Reply stating that the President proposes to issue regulations which will take into consideration and define all the points which have been under discussion and which will conform to the principles of international law.	622
Mar. 2 (804)	*To the Ambassador in Mexico* Note for Foreign Minister, dated March 1 (text printed), requesting information as to the practical application of the alien land law in reference to certain hypothetical cases.	631
Mar. 27	*From the Mexican Minister for Foreign Affairs* Explanation of Executive's views on questions set forth in Secretary's note of March 1.	637
July 30	*To the Ambassador in Mexico* Note for Foreign Minister, dated July 31 (text printed), summarizing situation as it now appears to the United States, concluding that the points of difference between the U. S. and Mexican Governments lie in the practical interpretation and specific application of several basic principles upon which the two Governments agree.	642
Oct. 7	*From the Mexican Minister for Foreign Affairs* Reservations of Mexican Government with reference to the basic principles upon which it and the U. S. Government were said to be in agreement, and suggestion that since the points of difference raised are so unlikely to cause injury to American citizens, it will be sufficient to leave to the Mexican courts the responsibility for deciding any cases which might arise; belief that the consideration of hypothetical cases is not as worth while as the consideration of concrete cases.	653

MEXICO

REPRESENTATIONS BY THE UNITED STATES AGAINST MEXICAN AGRARIAN AND PETROLEUM LEGISLATION—Continued

Date and number	Subject	Page
1926 Oct. 30	*To the Chargé in Mexico* Note for Foreign Minister (text printed) stating that the U. S. Government's purpose in engaging in correspondence was to define the issues clearly, and reiterating the position that it expects Mexican Government to respect acquired property rights of Americans in Mexico and to take no action under the laws in question or the regulations issued thereunder which would operate to the disadvantage of American nationals.	669
Nov. 17	*From the Mexican Minister for Foreign Affairs* Expectation that U. S. Government will indicate any concrete cases in which recognized principles of international law have been violated or will be violated in disregard of legitimate interests of American citizens, as Mexican Government would make indemnity for such violations.	671
Dec. 22 (516)	*From the Ambassador in Mexico (tel.)* Report of a conference with Foreign Minister, December 21, from which Ambassador gathered the impression that Mexican Government might yield to the firm position of the U. S. Government as expressed in note of October 30.	672
Dec. 26 (376)	*To the Ambassador in Mexico (tel.)* Instructions to ascertain from Foreign Office, if Ambassador deems advisable, whether Mexican Government will grant oil companies' desire for extension of time for the filing of applications for confirmatory concessions.	673
Dec. 27 (522)	*From the Ambassador in Mexico (tel.)* Belief that it would be unwise to discuss matter with Foreign Office at present, and that it would be preferable to wait until the companies' request has been made.	673
Dec. 27	*From the Director of the Association of Producers of Petroleum in Mexico (tel.)* Telegram to Mexican President and Secretary of Industry, Commerce, and Labor (text printed), requesting extension of time for filing applications for confirmatory concessions.	674
Dec. 28 (377)	*To the Ambassador in Mexico (tel.)* Approval of course outlined in telegram No. 522, December 27.	675
1927 Jan. 3	*From the Director of the Association of Producers of Petroleum in Mexico* Telegram from the Mexican Secretary of Industry, Commerce, and Labor, December 29, 1926 (text printed), incorporating text of President's refusal of oil companies' request of December 27.	675

MEXICO

REPRESENTATIONS BY THE UNITED STATES AGAINST THE ORDERS OF JUNE 8 AND AUGUST 24, 1926, RELATIVE TO PROVISIONAL PERMITS TO DRILL OIL WELLS

Date and number	Subject	Page
1926		
June 15 (272)	*From the Ambassador in Mexico (tel.)* Issuance by Department of Industry, Commerce, and Labor of order, June 8, prescribing special conditions governing issuance of provisional permits for drilling oil wells on lands to which the applicants have not fully proven their acquired rights; suggestion that order may have possible confiscatory effect; advice that majority of oil producers will protest because order jeopardizes their rights.	676
June 16 (2401)	*From the Ambassador in Mexico* Information that the order (text printed) has been circularized among oil companies but not made public, and that Oil Producers' Association intends to make protest after securing adhesion of independent producers; opinion of oil company representative that order is further evidence of Mexican Government's intention to confiscate foreign oil properties.	677
June 21 (212)	*To the Ambassador in Mexico (tel.)* Instructions to make representations to Foreign Office asking for prompt reply as to: (1) under what authority of law the order was issued; (2) what proof of acquired rights is required; (3) whether order is intended to apply to lands on which permits have previously been issued and titles approved; and requesting that order be withdrawn until matter can be further considered.	679
July 16 (315)	*From the Ambassador in Mexico (tel.)* Suggestion that further representations be made to secure satisfactory reply to representations already made; information that order has been neither withdrawn nor modified and that petroleum companies decline to negotiate because Government will not concede any compromise except with regard to amount of bond to be furnished by applicant.	679
July 19 (317)	*From the Ambassador in Mexico (tel.)* Failure of Foreign Office note of July 17 (extract printed), to answer the questions contained in Embassy's representations; information that while a few oil companies will accept the prescribed conditions and apply for concessions, the others are firmly opposed.	680
July 20 (241)	*To the Ambassador in Mexico (tel.)* Instructions to press for a prompt reply supplementing Foreign Office note of July 17.	680
July 23 (319)	*From the Ambassador in Mexico (tel.)* Correction indicating that all the companies referred to in telegram No. 317, July 19, are firmly opposed to order.	681
July 23 (2568)	*From the Ambassador in Mexico* Intention of British Minister to present to Foreign Office a memorandum of protest from British-owned oil company.	681

MEXICO

REPRESENTATIONS BY THE UNITED STATES AGAINST THE ORDERS OF JUNE 8 AND AUGUST 24, 1926, RELATIVE TO PROVISIONAL PERMITS TO DRILL OIL WELLS—Continued

Date and number	Subject	Page
1926		
Aug. 6 (329)	*From the Ambassador in Mexico (tel.)* Information that two British oil companies are presenting modified memorandum which they understand will be accepted and will in effect nullify order of June 8; belief of the companies that changed Mexican attitude is due to U. S. representations.	682
Aug. 19 (348)	*From the Chargé in Mexico (tel.)* Recent indications to oil companies' representatives by Secretary of Industry that he will not agree to any modification other than amount of bond; Chargé's suggestion that Embassy delay making another request for reply to its representations because Government may soon announce its decision.	682
Sept. 15 (2830)	*From the Chargé in Mexico* Observation that Executive decree of August 24, 1926 (text printed), modifying order of June 8, does not satisfy the objections set forth in U. S. representations.	683
Sept. 25 (1035)	*To the Chargé in Mexico* Instructions to press for detailed reply to U. S. representations and to advise Department of companies' attitude toward the new order.	685
Oct. 1 (2912)	*From the Chargé in Mexico* Reply that Embassy sent note to Foreign Office October 1 and is proceeding to ascertain companies' attitude.	685
Dec. 23 (3417)	*From the Ambassador in Mexico* Information that no reply has been received to note of October 1; official statement issued by Department of Industry, Commerce, and Labor and published in Mexican press (text printed), purporting to clarify the orders of June 8 and August 24, in response to written request of certain of the companies.	686

RESERVATION BY THE UNITED STATES OF THE RIGHTS OF AMERICAN CITIZENS WHICH MAY BE AFFECTED BY THE MEXICAN LAW OF COLONIZATION OF APRIL 5, 1926

1926		
May 20 (2264)	*From the Ambassador in Mexico* Mexican law of colonization of April 5, 1926 (text printed).	688
June 11 (928)	*To the Ambassador in Mexico* Instructions to make representations to Mexican Government, inviting attention to objectionable features of colonization law and reserving the rights of American citizens which may be unfavorably affected thereby.	692

MEXICO

RESERVATION BY THE UNITED STATES OF THE RIGHTS OF AMERICAN CITIZENS WHICH MAY BE AFFECTED BY THE MEXICAN DECREE OF APRIL 8, 1926, REGARDING THE RESTITUTION AND DOTATION OF WATERS

Date and number	Subject	Page
1926		
May 12 (2217)	*From the Ambassador in Mexico* Executive decree of April 8, 1926, regulating the functioning of agrarian authorities in the matter of restitution and dotation of waters (text printed).	693
June 22 (936)	*To the Ambassador in Mexico* Instructions to make representations to Mexican Government, inviting attention to objectionable features of decree and reserving the rights of American citizens which may be injuriously affected thereby. (Footnote: Information that Ambassador sent note to Foreign Minister June 29 and received a reply July 10 stating that the matter had been referred to the appropriate authorities for consideration.)	701

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN CITIZENS ADVERSELY AFFECTED BY MEXICAN RELIGIOUS LEGISLATION

1926		
Mar. 2	*To the Chairman of the House of Representatives Committee on Foreign Affairs* Data, in compliance with resolution passed by House of Representatives (text printed), regarding Americans ordered expelled from Mexico on account of their religious beliefs; assumption that the ground of expulsion is teaching in violation of Mexican religious legislation.	702
Mar. 9	*Press Release Issued by the Department of State* Information that Ambassador in Mexico was instructed to use his good offices in behalf of American citizens to prevent undue hardship or injury because of the sudden and rigorous enforcement of religious legislation and that the case of the Reverend Mr. Krill had been satisfactorily settled.	703
May 18	*To the General Secretary of the National Catholic Welfare Conference* Regret that intercession of Ambassador with Mexican Foreign Office and representations of Department to Mexican Embassy at Washington have been unsuccessful in preventing the expulsion of Archbishop Caruana.	704
Aug. 25 (995)	*To the Chargé in Mexico* Summary of conversation with Mexican Ambassador August 13, in which Secretary stated that while Mexican Government was probably within its legal rights in expelling certain Americans, he would continue to protest any invasion of personal or property rights in violation of either Mexican or international law, and the Ambassador stated that he was aware of U. S. sentiment on the Mexican religious situation and thought the matter would be adjusted.	705

MEXICO

RENEWED NEGOTIATIONS FOR A SETTLEMENT OF THE DISPUTE OVER THE RIO GRANDE BOUNDARY

Date and number	Subject	Page
1926		
Apr. 22 (148)	*To the Ambassador in Mexico (tel.)* Instructions to secure confirmation of proposal by Mexican Commissioner on International Boundary Commission that American Commissioner join with him in settling the pending banco cases, as they constitute the only obstacle to commencement of defense plan and rectification in the Rio Grande.	706
May 28 (2317)	*From the Ambassador in Mexico* Foreign Office note, May 28 (text printed), confirming Mexican Commissioner's proposal and adding that Government would favor the undertaking of the rectification works as a whole.	707
June 12 (197)	*To the Ambassador in Mexico (tel.)* Instructions to advise Mexican Government that its Commissioner apparently misinterpreted instructions when he stated that pending banco cases were the only obstacle to general rectification, and that because general rectification would involve much preliminary work leading to conclusion of treaty, thereby delaying urgent flood control measures, it would be more expedient if Mexican Government would approve Minute No. 61 of Boundary Commission recommending cuts in El Paso-Juarez section and providing that jurisdiction over segregated lands will remain as it is until otherwise agreed between the two Governments; also that upon approval of Minute No. 61 the American Commissioner would be instructed to proceed to decision of the banco cases.	708
July 16 (2534)	*From the Ambassador in Mexico* Foreign Office note, July 10 (text printed), stating willingness to carry out provisions of Minute No. 61, with understanding that the two Governments discuss the elimination of bancos and that efforts will be made to carry out as soon as possible the general plan for rectification from El Paso to Fort Quitman.	709
Sept. 20 (1026)	*To the Chargé in Mexico* Instructions to propose to Foreign Office, in view of impracticability of carrying out recommendations of Minute No. 61, that the two Governments appoint a joint commission to prepare a convention covering a general plan for elimination of bancos and rectification of the Rio Grande from El Paso to Fort Quitman or farther if necessary and also dealing with the status of lands segregated from one country or the other by the contemplated works.	711
Oct. 28 (3073)	*From the Chargé in Mexico* Foreign Office note, October 27 (text printed), accepting in principle the idea of concluding proposed convention but with the understanding that it be drafted by International Boundary Commission which is empowered by convention of 1889 to decide all questions with relation to the boundary line formed by the river.	713

MOROCCO

ATTITUDE OF THE UNITED STATES TOWARD PROPOSED CHANGES IN THE STATUS OF TANGIER

Date and number	Subject	Page
1926		
Feb. 12 (67)	*From the Diplomatic Agent and Consul General at Tangier* Receipt of identical communications from Belgian, British, French, Netherlands, and Spanish consuls general proposing that direct official contact be created between American consular court and Mixed Court constituted as of June 1, 1925, by Statute of Tangier (Belgian note of January 30, printed), and reply thereto (note of February 6 to Belgian consul general printed) stating opinion that adequate contact already exists because jurisdiction and procedure of American court are independent of and unmodified by Statute of Tangier, to which the United States has not adhered.	716
Mar. 25 (379)	*To the Diplomatic Agent and Consul General at Tangier* Approval of position outlined in note to Belgian consul general.	720
May 4 (95)	*From the Diplomatic Agent and Consul General at Tangier* Verbal representations to Spanish colleague in advance of any claims which may arise in connection with duties levied on goods of American citizens and protégés passing into Spanish sphere of influence from International Zone of Tangier, such action in demanding duty in addition to duty already paid upon entrance into Tangier Zone being in violation of the treaties concerning American rights; possibility that Tangier Statute signatories will succeed in urging Spain to be reasonable.	720
June 5 (106)	*From the Diplomatic Agent and Consul General at Tangier* Information that situation is aggravated because Spanish authorities are now levying export as well as import duties; suggestion that in the absence of the expected modifications, American Embassy in Spain make representations, also reminding Spanish Government that U. S. Government has made no formal recognition of Spanish authorities in Morocco.	722
July 2 (53)	*To the Ambassador in Spain* Instructions to advise Spanish Government informally that application of customs barrier to American citizens or protégés would be an invasion of American rights, expressing hope that authorities will refrain from action which would necessitate a formal protest.	723
July 6 (100)	*From the Ambassador in Spain* Report of press interview given by Gen. Primo de Rivera (extract printed), in which statement was made that international conference to settle Moroccan situation would not be feasible until tribes were disarmed, and that it was desired to include Tangier in Spanish Zone.	724
Aug. 15 (60)	*From the Ambassador in Spain (tel.)* Foreign Minister's request that Spain's desire to secure control of International Zone through agreement by the interested Governments be communicated to Department for its acquiescence, inasmuch as the United States is a party to Treaty of Algeciras, which would have to be modified if Spain's hopes for possession of the Zone are realized. (Copies mailed to London, Paris, Rome, and Tangier.)	725

MOROCCO

ATTITUDE OF THE UNITED STATES TOWARD PROPOSED CHANGES IN THE STATUS OF TANGIER—Continued

Date and number	Subject	Page
1926		
Aug. 16 (5)	*To the Diplomatic Agent and Consul General at Tangier (tel.)* Instructions to report any American claims involving Spanish sphere of influence which U. S. Government would require settled and any other prerequisites to U. S. recognition of existing Spanish protectorate; warning that information that Spain has approached the United States should not be divulged.	726
Aug. 16 (136)	*From the Ambassador in Spain* Foreign Office note, August 15 (text printed), setting forth the bases on which Tangier would be incorporated in Spanish protectorate.	726
Aug. 17 (129)	*From the Diplomatic Agent and Consul General at Tangier* Advice that agreement between Spanish and Tangier Zone authorities, signed July 25, removes levy of duplicate customs duties; recommendation that Department advise Spanish Government in sense of draft note (text printed) that it will make formal protest if agreement should be denounced, unless provisions are made to protect rights of American citizens.	727
Aug. 18	*From the Diplomatic Agent and Consul General at Tangier (tel.)* Suggestion that, after satisfactory adjustment of pending American claims, if any formal recognition of Spanish Zone is to be extended, it should be preceded by an understanding based on certain principles relating to American rights which were established at time of U. S. recognition of French protectorate. (Copy sent to Embassy at Madrid.)	729
Aug. 20 (98)	*From the Ambassador in Italy (tel.)* Opinion that in spite of Foreign Office attitude that Italy is no more concerned with Tangier question than the United States, Italy is quite interested but is leaving the burden of controversy for the present with Spain and Great Britain as against France.	730
Aug. 25 (62)	*From the Ambassador in Spain (tel.)* Information that Foreign Office has issued invitations to United States, France, Great Britain, Italy, and all States adhering to Statute of Tangier, to participate in conference at Geneva, September 1, with reference to Spain's desire to incorporate International Zone. (Repeated to London, Paris, and Rome.)	730
Aug. 25 (40)	*To the Ambassador in Spain (tel.)* Incapacity of U. S. Government to reply to Spanish Government's request for acquiescence in its desire to incorporate International Zone; information that if other signatories to Treaty of Algeciras proceed to consider suggestion, United States will do likewise.	731
Aug. 26 (63)	*From the Ambassador in Spain (tel.)* Opinion that Spanish attempt to promote conference at Geneva, as expressed in invitation of August 23 (text printed), indicates connection between Tangier aspirations and desire for permanent seat on League Council. (Repeated by mail to London, Paris, Rome, and Tangier.)	731

MOROCCO

ATTITUDE OF THE UNITED STATES TOWARD PROPOSED CHANGES IN THE STATUS OF TANGIER—Continued

Date and number	Subject	Page
1926		
Aug. 26 (103)	*From the Ambassador in Italy (tel.)* Italian position that it would participate if conference were held at Lausanne instead of Geneva, in order that clear distinction be made between Tangier question and matters to be discussed at League meetings. (Repeated to London, Madrid, and Paris.)	733
Aug. 27	*To President Coolidge* Request for permission to instruct Mr. Hugh Gibson to attend conference at Geneva to insure that U. S. interests, especially all rights acquired under Treaty of Algeciras, will be safeguarded; assurance that U. S. participation will be on basis of its economic interests as opposed to any desire for political interference. (Footnote: Information that the President's approval was received on August 28.)	734
Aug. 28 (66)	*From the Ambassador in Spain (tel.)* Information given to press by Foreign Minister that Spain desires favorable solution of Tangier question before League Assembly meets.	737
Aug. 28	*From the Diplomatic Agent and Consul General at Tangier (tel.)* Suggestion that it would be impolitic to participate in international conference until U. S. recognition of Spanish Zone had been extended; information that Italian Embassy at Washington advised its Government that it adhered to U. S. attitude that Tangier question would have to be settled on basis of Treaty of Algeciras. (Copies sent to interested Embassies.)	737
Aug. 31 (44)	*To the Ambassador in Spain (tel.)* Instructions to inform Spanish Government that U. S. Government would participate in conference to discuss Tangier question if all the major powers interested in Morocco should be present.	739
Sept. 1 (66)	*From the Ambassador in Spain (tel.)* Information that, in response to a note in sense of Department's telegram No. 44, Foreign Minister replied that Spain would continue efforts to bring about a conference of the signatories to Treaty of Algeciras, and that because Spain will dissociate herself from League when it convenes in September, there is no longer any connection between Spain's interest in Tangier question and League aspirations. (Copies sent by mail to London, Paris, Rome, and Tangier.)	739
Sept. 14 (157)	*From the Ambassador in Spain* Foreign Office note, September 7 (text printed), stating that Great Britain and France have invited Spain to participate in preliminary conversations with regard to Moroccan situation as it appears under Statute of Tangier.	740
Oct. 1 (91)	*To the Ambassador in Spain* Instructions to advise Spanish Government that U. S. Government will be interested to hear results of preliminary conversations and that its policy as to Tangier question is still that all the major powers interested in Morocco should participate in any proposed conference.	741

MOROCCO

ATTITUDE OF THE UNITED STATES TOWARD PROPOSED CHANGES IN THE STATUS OF TANGIER—Continued

Date and number	Subject	Page
1926 Oct. 14 (401)	*To the Diplomatic Agent and Consul General at Tangier* Instructions to make representations to Spanish colleague and notify Department and Embassy in Spain should agreement of July 25 be denounced and customs barrier thereby reestablished; opinion that as the United States is not signatory to Tangier Statute, its rights remain intact, and its position has already been made sufficiently clear to Spanish Government. (Copy sent to Embassy in Spain with instructions to take appropriate action if agreement is abrogated.)	742

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO PROPOSED CHANGES IN THE ADMINISTRATION OF CAPE SPARTEL LIGHT

1926 Mar. 11 (76)	*From the Diplomatic Agent and Consul General at Tangier* Receipt of circular from president of International Commission of Cape Spartel Lighthouse, calling meeting to consider Shereefian Government's announcement, February 22 (text printed), of intention to undertake improvements and maintenance of light; reconsideration by American Diplomatic Agent, upon assurance that Shereefian note would not be brought up, of refusal to attend meeting, such refusal having been based on fact that the action proposed contravenes provisions of the international convention of 1865 reserving those functions to the signatory powers; comments on political significance of lighthouse proposal as regards French influence in Tangier.	743
Mar. 17 (79)	*From the Diplomatic Agent and Consul General at Tangier* Request for approval of schedule of contemplated improvements submitted by Shereefian Government at request of Commission; suggestion that, as Shereefian Government intends to assume all costs, and no derogation to administrative and controlling authority of Commission appears to be attempted at present, no occasion seems to exist for objections by Department.	747
Apr. 13 (3)	*To the Diplomatic Agent and Consul General at Tangier (tel.)* Approval of attitude with respect to attendance at meeting; information that, subject to acquiescence of the other signatory powers and without prejudice to the convention of 1865, the United States will not object to the proposed modernization.	748
Apr. 24 (92)	*From the Diplomatic Agent and Consul General at Tangier* Request for telegraphic instructions as to suggestion that note be sent to Commission, accepting contemplated improvements, and at the same time making general reservations of principle under convention and informally objecting to the restriction of bidders to a specified few concerns; request for Department's choice of a sound signal.	748
May 17 (4)	*To the Diplomatic Agent and Consul General at Tangier (tel.)* Approval of proposed note and selection of "Siren" sound signal.	752

MOROCCO

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO PROPOSED CHANGES IN THE ADMINISTRATION OF CAPE SPARTEL LIGHT—Continued

Date and number	Subject	Page
1926 June 7 (107)	*From the Diplomatic Agent and Consul General at Tangier* Note to president of International Commission, June 3 (text printed), based on despatch No. 92, April 24, as confirmed by Department's telegram No. 4, May 17.	753
1927 Jan. 20 (155)	*From the Diplomatic Agent and Consul General at Tangier* Acceptance by Commission of similar reservations of principle embodied in U. S., Italian, and Spanish notes; suggestion that affirmative reply might be made to Shereefian memorandum, providing that technical details be settled by engineer in chief of lighthouses in France with corresponding officials in the other signatory countries, and final results submitted to Commission.	754
Feb. 8 (1)	*To the Diplomatic Agent and Consul General at Tangier (tel.)* Instructions to approve suggested procedure, with due regard to the general reservations of principle.	756

DISCONTINUANCE OF THE EXTRAORDINARY FRENCH AND SPANISH JOINT NAVAL VIGILANCE OFF THE COAST OF MOROCCO

1926 Aug. 3 (6542)	*From the Ambassador in France* Foreign Office note, July 29, enclosing memorandum, July 20 (texts printed), canceling note of July 2, 1925, with respect to joint naval vigilance of France and Spain off Moroccan coast, and providing that effective August 1, 1926, each nation shall patrol its respective zone, with exception of specified area where they shall patrol jointly. (Footnote: Telegram No. 38, August 7, instructing Ambassador in Spain to reply, in his discretion, to similar notification from Spanish Government, by stating that U. S. position remains the same as set forth in telegram No. 43, July 31, 1925 [i. e., refusal to recognize right of either country to interfere with U. S. vessels outside 3-mile limit, or with such vessels within 3-mile limit except as provided for in Act of Algeciras].)	757

NETHERLANDS

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

1926 Sept. 13	*To the Netherlands Chargé* Information that Treasury Department has stated that draft of proposed Netherlands decree (text printed) to prevent double taxation on income derived exclusively from the operation of ships, meets the equivalent exemption requirements of the U. S. Revenue Acts of 1921, 1924, and 1926; request that date of issuance of decree be furnished.	759
Oct. 19 (3219)	*From the Netherlands Chargé* Reply that decree in form submitted was promulgated October 1 and published October 8.	760

NETHERLANDS

ARRANGEMENT BETWEEN THE UNITED STATES AND THE NETHERLANDS GRANTING RELIEF FROM DOUBLE INCOME TAX ON SHIPPING PROFITS—Continued

Date and number	Subject	Page
1926 Nov. 27	*To the Netherlands Chargé* Treasury Department letter, November 8 (extract printed), declaring exemption of earnings of Netherlands ships from U. S. income taxes, as a consequence of the promulgation of decree.	761

PROPOSAL TO ALLOCATE TO THE NETHERLANDS GOVERNMENT THE FORMER GERMAN YAP–MENADO CABLE

1922 Mar. 25	*Memorandum by the Under Secretary of State* Record of informal meeting of U. S., British, French, Italian, Japanese, and Netherlands representatives, December 31, 1921, in which tentative arrangement reached by Secretary of State and the Japanese Ambassador for allocation of the former German cables radiating from Yap (text printed) was presented for discussion; unofficial assent of British and French representatives; inability of Italian representative to comment until receipt of instructions from his Government.	762
Feb. 25 (540)	*From the Netherlands Chargé* Acceptance by Netherlands Government of Yap–Menado cable as assigned by the tentative agreement.	764
1923 July 12	*To the French Ambassador* Inquiry as to French views on adoption of plan submitted on March 6, 1922, by Mr. Henry P. Fletcher, member of the U. S. delegation and chairman of First Subcommittee of International Conference on Electrical Communications, for distribution of former German cables. (Footnote: Information that the Fletcher plan provided for equal distribution among the United States, France, Great Britain, and Italy of the estimated value of the former German cables in the Atlantic Ocean.)	765
Sept. 10	*From the French Chargé* *Aide-mémoire* (text printed) setting forth French objections to Fletcher plan and emphasizing the fact that the Pacific cables should be considered along with the Atlantic cables.	765
1925 Sept. 15	*To the French Ambassador* Inquiry whether French Government is ready to resume meetings of the First Committee of the Electrical Communications Conference of 1920 in order to reach agreement respecting final allocation of former German cables in the Atlantic, and request to be notified whether November 2 would be convenient, and name of the French representative.	770
Nov. 3	*From the French Ambassador* Opinion that the suggested meetings would be of little value unless opportunity is first given to examine any U. S. propositions, because of French objections to Fletcher plan; assurance that no further reservations will be made with respect to allotment of Yap–Menado cable to the Netherlands, inasmuch as Germany agrees that value of that cable be not credited to her account.	771

NETHERLANDS

PROPOSAL TO ALLOCATE TO THE NETHERLANDS GOVERNMENT THE FORMER GERMAN YAP–MENADO CABLE—Continued

Date and number	Subject	Page
1925 Nov. 13	*From the German Ambassador* Inquiry as to impediments preventing ratification of Washington agreement providing for transfer of Yap–Menado cable to the Netherlands, with expression of desire that transfer be accomplished as soon as possible in order that a pending compromise arrangement between the German-Netherlands Telegraph Co. and its Netherlands creditors may be effected.	771
Dec. 2	*To the German Ambassador* Inquiry as to whether there is any objection to Department's transmitting copy of German note of November 13 to the interested Governments for their consideration. (Footnote: Information that Department was advised December 5 that there was no objection.)	773
Dec. 12	*To the British Ambassador* Transmittal of copy of German note of November 13, with request that British Government furnish a statement of views as to definitive conclusion of the Washington arrangement relating to former German cables in the Pacific. (Similar communications addressed to French, Italian, and Japanese Ambassadors.)	774
Dec. 28	*From the French Ambassador* Reiteration of statement of November 3, that France no longer makes any reservation to allotment of Yap–Menado cable to Netherlands; declination to participate in any further conferences regarding allotment of former German cables unless it is understood that France will retain Brest–Azores–New York cable.	775
Dec. 29 (1100)	*From the British Chargé* Information that Foreign Secretary replied to direct note from German Ambassador at London to the effect that British Government agrees to immediate transfer of Yap-Menado cable provided the United States, French, Italian, and Japanese Governments concur.	775
1926 Jan. 8 (5)	*From the Japanese Ambassador* Desire of Japanese Government that the Washington arrangement of 1921 be definitively concluded as soon as possible and that Japan share in any equal distribution of total estimated value of the German cables which might be formulated at forthcoming meetings of the First Committee, but that it has no intention of claiming any cable other than the Yap–Shanghai line allotted to it by the arrangement.	776
Feb. 13 (643 A 12)	*From the Italian Ambassador* Assent to immediate transfer of Yap–Menado cable to Netherlands, in line with earlier Italian acceptance of Fletcher plan.	778
Mar. 18	*Memorandum by the Assistant Secretary of State of a Conversation With the Netherlands Minister* Assurance by Assistant Secretary that he would do everything possible to hasten a final favorable action on the Yap–Menado cable transfer, but that certain details remained to be settled in view of the replies of the interested Governments which were favorable in principle.	778

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA

Date and number	Subject	Page
1926 Jan. 7	*To the American Missions in Costa Rica, Guatemala, Honduras, and Salvador (cir. tel.)* Expression of hope that signatories of General Treaty of Peace and Amity of 1923 will refuse to recognize the government of General Chamorro, should he assume Presidency of Nicaragua during current presidential term, advising him of this attitude before January 11 and making their statement public.	780
Jan. 8 (5)	*From the Chargé in Salvador (tel.)* Salvadoran President's instructions to Foreign Minister to make desired representations to Nicaraguan Foreign Office. (Repeated to Managua.)	781
Jan. 9 (1)	*From the Minister in Guatemala (tel.)* Telegraphic instructions from Guatemalan Government to its representative at Managua to make desired representations. (Repeated to Central American Missions.)	782
Jan. 10 (3)	*From the Minister in Honduras (tel.)* Telegraphic instructions by Honduran Government to its representative at Managua to make desired representations, but not to make the statement public at the present time; Minister's opinion that Government is anxious to avoid any act which might alienate Nicaraguan sympathy and support, in view of menacing revolutionary movements from Salvador and Guatemala. (Repeated to Managua.)	782
Jan. 11 (9)	*From the Minister in Nicaragua (tel.)* Determination of Chamorro to assume Presidency not later than January 13 and to conduct such a government that the United States will be forced to recognize him; Minister's request for instructions as to possible departure from Nicaragua and plans for care of Legation.	782
Jan. 12 (4)	*To the Minister in Nicaragua (tel.)* Instructions, in event Chamorro assumes Presidency, to remain at post to protect American interests, making it clear that the United States does not recognize Chamorro or his government; detailed instructions as to conduct of U. S. affairs.	783
Jan. 13 (10)	*From the Minister in Nicaragua (tel.)* Information that on January 12 Congress declared Vice Presidency vacant and sentenced Sacasa to 2 years' banishment from Nicaragua.	784
Jan. 15 (6)	*From the Minister in Costa Rica (tel.)* Advice that Costa Rican President informed Nicaraguan Chargé that his Government will not recognize Chamorro if he assumes Presidency. (Repeated to Central American Missions.)	784

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926 Jan. 22 (11)	*To the Minister in Nicaragua (tel.)* Receipt of formal note from Nicaraguan Minister dated January 19, advising that Chamorro took charge of the Executive power January 17, and informal reply by the Secretary January 22 (text printed), stating nonrecognition of Chamorro government. Instructions to send copy of Secretary's note in informal letter to Foreign Minister and to make Secretary's note public, telegraphing Department so that it may be released to American press also. (Footnote: Information that the note was given to Nicaraguan press January 25.)	784
May 5 (23)	*From the Chargé in Costa Rica (tel.)* Refusal by Costa Rica to permit Nicaraguan troops to pass through its territory en route to Bluefields, Nicaragua. Foreign Minister's desire for presence of U. S. warship near Colorado Bar.	785
May 7 (9)	*To the Chargé in Costa Rica (tel.)* Instructions to assure Costa Rican Government of U. S. Government's moral support in its decision to maintain strict neutrality; despatch of *Cleveland* to Bluefields to protect American lives and property; doubt that despatch of a warship to Colorado Bar would be advisable at present.	786
May 8	*From the Consul at Bluefields (tel.)* Information that situation at Bluefields has eased since arrival of *Cleveland* May 6, landing of marines, and declaration that the town is a neutral zone.	786
May 15	*To the Consul at Bluefields (tel.)* Desire that American forces maintain strict neutrality between contending factions. (Instructions to repeat to Managua.)	787
June 8	*Press Release Issued by the Department of State* Statement that departure from Managua June 7 of Minister Eberhardt is for leave of absence in the United States and has no political significance, and that Mr. Lawrence Dennis will remain as Chargé.	787
Aug. 23	*From the Consul at Bluefields (tel.)* Urgent request for warship to protect American lives and property, in view of increasingly dangerous conditions; telegram of Chinese at Bluefields to Chinese Minister at Washington (text printed) requesting efforts to obtain U. S. protection of Chinese colony.	788
Aug. 26 (61)	*To the Chargé in Nicaragua (tel.)* Despatch of *Tulsa* to Corinto and *Galveston* to Bluefields.	788
Aug. 27 (63)	*To the Chargé in Nicaragua (tel.)* Instructions to deliver to Chamorro copy of Secretary's statement to Nicaraguan Minister August 27 (text printed), which suggests that a conference of all important Nicaraguan leaders might be held as a first step toward the restoration of order; statement that Department would have no objection to the holding of such conference on board a U. S. war vessel, if the Nicaraguans should advance the suggestion.	788

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926 Aug. 29 (116)	*From the Chargé in Nicaragua (tel.)* Chamorro's decision, after reading Secretary's statement, to maintain his position against all Nicaraguans; expression of willingness to turn over government to American forces, and Charge's reply that the United States did not desire such a solution. Anticipated arrival of Chamorro's representative for conferences.	790
Aug. 29	*From the Consul at Bluefields (tel.)* Arrival of *Galveston* and satisfactory situation at Bluefields with naval force in charge; critical situation in outlying districts.	790
Sept. 10 (130)	*From the Chargé in Nicaragua (tel.)* Letter from Chamorro (text printed) asking Chargé to use his good offices to the end that conferences may be held between Conservative and Liberal leaders to discuss a settlement of the situation on the substantial basis of Chamorro's withdrawal from the Presidency and replacement by a Conservative elected by National Assembly, and declaring, in the event of lack of agreement at the conferences, his intention to resign in favor of a Conservative elected by National Assembly; request for instructions as to reply, with observation that prompt peace is impossible without good offices of the United States.	791
Sept. 11 (72)	*To the Chargé in Nicaragua (tel.)* Authorization to use friendly good offices to obtain a truce and bring about conferences to be held on U. S. warship, provided all contending factions express such a desire; instructions to indicate clearly that Legation is exercising its good offices merely to aid in the restoration of peace and that it cannot become a party to any agreements reached among the contending factions.	792
Sept. 13 (134)	*From the Chargé in Nicaragua (tel.)* Information that, in response to Chargé's reply based on Department's telegram No. 72, September 11, Chamorro will submit details and list of Liberals and Liberal Republicans he wishes to invite to conferences; request for authorization to have naval forces maintain neutral zone at Corinto in which conferences may be held, if so requested.	793
Sept. 16 (17)	*To the Minister in Costa Rica (tel.)* Instructions to notify Costa Rican Government of a proclamation by the President of the United States, September 15, 1926, placing an embargo on exports of arms and munitions of war to Nicaragua, and to suggest to Foreign Minister that his Government consider taking similar action. (Footnote: Information that the same telegram was sent to the American Missions in Guatemala, Honduras, and Salvador, and that a similar telegram was sent to the Embassy in Mexico.)	793
Sept. 17 (137)	*From the Chargé in Nicaragua (tel.)* Desire for immediate reply to Chamorro's written request that neutral zone be maintained around wharf and hotel at Corinto.	794

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EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926 Sept. 23	*From the Consul at Bluefields (tel.)* Agreement by contending factions for a 15 days' armistice beginning September 23, for purpose of holding conferences, with possible extension of time if necessary; information that Admiral Latimer is to act as arbitrator.	794
Sept. 24 (142)	*From the Chargé in Nicaragua (tel.)* Approval by Liberals of plans for conferences, and sending of a Liberal mission to Guatemala to consult Sacasa; probability that conferences will be held first or second week in October.	794
Oct. 10 (162)	*From the Chargé in Nicaragua (tel.)* Establishment of neutral zone at Corinto by captain of the *Denver*.	795
Oct. 18 (165)	*From the Chargé in Nicaragua (tel.)* Acceptance by Chargé of conference secretariat's request that he act as presiding officer, on understanding that he would incur no responsibility nor sign any final agreement; information that the October 17 sessions were harmonious.	795
Undated [Rec'd Oct. 18]	*From the Secretary of the Conservative Delegation and the Secretary of the Liberal Delegation at the Corinto Conference (tel.)* Message of good will, expressing the hope that under the friendly offices of the United States peace will be restored.	796
Oct. 19 (93)	*To the Chargé in Nicaragua (tel.)* For the Secretaries of the Conservative and Liberal Delegations: Acknowledgment of message of good will.	796
Oct. 19 (167)	*From the Chargé in Nicaragua (tel.)* Deadlock of conference over formula for "reestablishment of peace on basis of constitutionality and the treaty of Washington;" Chargé's desire for forceful statement from Department with respect to continuing the revolution with the aid of other governments, in view of Liberal threat on record to go ahead with revolution, counting on aid of Mexican and other governments, if Sacasa is not accepted.	796
Oct. 20 (168)	*From the Chargé in Nicaragua (tel.)* Proposal of Liberal delegation that the question whether the reestablishment of Nicaraguan Government on the basis of constitutionality and the Washington treaties must be made with Sacasa as Executive or whether it is possible to constitute a legal government without taking account of him, be submitted to arbitration by U. S. Secretary of State and the four other Central American Governments, and Chargé's reply that proposal is not a matter for arbitration but a domestic political problem to be settled by Nicaraguans.	797
Oct. 21 (173)	*From the Chargé in Nicaragua (tel.)* Request for instructions, in view of Conservative refusal to accept arbitration proposal, possible failure of conference, and the preparation by both sides for resumption of hostilities.	798
Oct. 22 (50)	*To the Chargé in Guatemala (tel.)* Instructions to secure a personal interview with Sacasa, informing him that U. S. Government would firmly oppose any Nicaraguan party which solicited or accepted assistance from any other nation. (Substance cabled to Chargé in Nicaragua.)	799

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926		
Oct. 23 (95)	*From the Chargé in Guatemala (tel.)* Report of interview with Sacasa, who explained that he had received no information from Liberals at conference and did not know whether they considered it best to continue the revolution, and refused to discuss Mexican or Central American participation, although not denying their intervention on behalf of Liberals in Nicaragua.	801
Oct. 23 (176)	*From the Chargé in Nicaragua (tel.)* Decision of both delegations to close conference October 24 because of failure to reach agreement; intention of Chamorro to deposit Presidency within a week in Diaz or other Conservative who will form provisional government which will hold constituent election, make new constitution, and elect new President and Congress. Extension of armistice until 3 days after close of conference.	801
Oct. 25 (178)	*From the Chargé in Nicaragua (tel.)* Inquiry by Admiral Latimer as to use of term "belligerents", and Chargé's request for instructions as to his own understanding that the United States does not recognize belligerency but insurgency in respect of contending factions on east coast of Nicaragua. (Repeated to Admiral.)	802
Oct. 28 (101)	*To the Chargé in Nicaragua (tel.)* Confirmation of Chargé's understanding.	802
Oct. 30 (181)	*From the Chargé in Nicaragua (tel.)* Deposit by Chamorro of Presidency in Senator Uriza, October 30; intention of Conservative Party to reinstate excluded members of Congress under Solorzano government and secure designation of Adolfo Diaz as designate to receive Presidency within 15 days if possible.	803
Nov. 2 (103)	*To the Chargé in Nicaragua (tel.)* Authorization to Chargé to advise political leaders informally, if he deems it judicious, of Department's feeling that the United States might properly recognize a new *designado* chosen by Congress and that it considers Diaz a wise choice.	803
Nov. 6 (106)	*To the Chargé in Nicaragua (tel.)* Assurance of Department's careful consideration of the recognition as constitutional President of Nicaragua of a *designado* chosen by a duly constituted Congress; inability of Department to consider any government which might be subsequently established by Sacasa as anything but a revolutionary government. Imminent return of Minister Eberhardt to Nicaragua.	804
Nov. 9 (194)	*From the Chargé in Nicaragua (tel.)* Details of Conservative plan to convoke the Congress and to designate Diaz, probably November 15 or sooner. Chargé's request for authorization to attend Diaz inauguration.	805
Nov. 11 (108)	*To the Chargé in Nicaragua (tel.)* Willingness of Department, if the reported plans are carried out, to give favorable consideration to recognizing new President, and to authorize Chargé to attend the inauguration.	805

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926		
Nov. 11 (196)	*From the Chargé in Nicaragua (tel.)* Designation of Diaz by Congress, after the withdrawal of Liberal members with the statement that they intended to present memorial declaring they consider Sacasa President; Chargé's plan to attend inauguration November 14. (Repeated to Central American Missions.)	806
Nov. 14 (200)	*From the Chargé in Nicaragua (tel.)* Information that Diaz took oath of office November 14.	806
Nov. 17	*Press Release Issued by the Department of State* Explanatory remarks by the Secretary of State as to the Nicaraguan situation, in supplement to his announcement that the Chargé in Nicaragua, acting under instructions, had accorded formal recognition to the Diaz regime.	807
Dec. 1	*From Doctor Rodolfo Espinosa (tel.)* Announcement that Sacasa assumed Presidency of Nicaragua in Puerto Cabezas December 1 and organized his Cabinet; arguments in support of Liberal contention that Sacasa government is the only legally constituted government, and inference that Department, in spite of recognition of Diaz through its misinterpretation of the law, will be obliged to recognize Sacasa; notification that army has pledged support to Sacasa and that he proposes to subdue the opposition.	808
Dec. 8	*From the Chargé in Nicaragua (tel.)* Note from President Diaz to Chargé, November 15 (text printed), requesting him to solicit support of Department in preventing further Mexican hostilities and invasions.	809
Dec. 8 (503)	*From the Ambassador in Mexico (tel.)* Press reports of Mexican recognition of Sacasa regime December 7.	810
Dec. 8 (131)	*To the Chargé in Nicaragua (tel.)* Instructions to state plainly to Diaz, in the event he indicates he expects armed assistance from the United States, that the U. S. Government can go no further than its customary policy of lending encouragement and moral support to constitutional governments when they are threatened by revolutionary movements.	810
Dec. 15 (239)	*From the Minister in Nicaragua (tel.)* Desire of Foreign Minister that U. S. Minister forward to Department the Diaz government note soliciting U. S. aid to protect lives and property of Americans and foreigners, to defend independence of Nicaragua against Mexico, and to restore peace.	811
Dec. 16 (240)	*From the Minister in Nicaragua (tel.)* Departure of Chamorro from Managua for Corinto, en route to Europe on a diplomatic mission.	811
Dec. 18 (140)	*To the Minister in Nicaragua (tel.)* Instructions to telegraph certain data as to present situation; information that the United States will grant requests for licenses to export arms to the Diaz government, and that naval forces have been instructed to afford all proper protection on east coast of Nicaragua to American lives and property and to land forces if necessary.	812

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1926		
Dec. 19 (246)	*From the Minister in Nicaragua (tel.)* Information that Liberals have repeatedly refused to accept Diaz peace terms; data as to Government military strength; opinion that contemplated offer of mediation by Costa Rica would serve no useful purpose so long as Liberals receive Mexican aid; belief that Chamorro's departure will ease situation only by giving Diaz a free hand to offer satisfactory peace terms.	813
Dec. 24	*From Doctor Rodolfo Espinosa* Protest by Sacasa government against the landing of U. S. forces in Puerto Cabezas and Rio Grande and the declaration of those places as neutral zones.	814
Dec. 26 (254)	*From the Minister in Nicaragua (tel.)* Recommendation that U. S. Navy carry out Diaz' wish to have Rama declared a neutral zone, thus completing neutralization of important centers on east coast; information that Diaz government is in full control of west coast.	818
Dec. 28	*Draft Letter From the Secretary of State to the Secretary of the Navy* Belief that earlier orders to Admiral Latimer should be supplemented by instructions not to declare neutral zones except where absolutely essential to protect lives and property of American and foreign citizens, to confine all activities to the maintenance of such protection, and not to endeavor to control landing of munitions except if illegally exported from the United States. (Footnote: Information, in a memorandum by the Chief of the Division of Latin American Affairs, December 29, that the letter was prepared but not sent, and that after consultation with the President and Secretary of the Navy, a telegram embodying the main points of the letter was despatched to Admiral Latimer the night of December 28.)	818
Dec. 29 (S. C. 117–24)	*From the Secretary of the Navy* Instructions to Admiral Latimer (text printed), in line with the suggestions contained in the draft letter of December 28.	819
Dec. 29 (147)	*To the Minister in Nicaragua (tel.)* Instructions to advise Diaz informally that Department replied favorably to Costa Rican President's inquiry as to approval of his intention to offer mediation.	820
Dec. 30 (148)	*To the Minister in Nicaragua (tel.)* Instructions to report views of President Diaz as to accepting Costa Rican President's offer of mediation which has formally been made to Diaz and Sacasa.	820
Dec. 31 (257)	*From the Minister in Nicaragua (tel.)* Inability of President Diaz to consider Costa Rican offer of mediation because of commencement of conversations with Guatemala with reference to its offer of mediation received the previous day; prejudice against Costa Rican mediation because of numerous actions indicating partiality and active support to Liberal Party.	821

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA—Continued

Date and number	Subject	Page
1927 Jan. 3 (1)	*From the Minister in Costa Rica (tel.)* Message from Costa Rican President to President Diaz and Sacasa, December 29, 1926, offering mediation; Sacasa's acceptance; and President Diaz' declination in view of consideration of earlier Guatemalan offer (texts printed). (Repeated to Nicaragua and Guatemala.)	822

NORWAY

STATEMENT BY NORWAY OF ITS PARAMOUNT INTEREST IN THE ISLAND OF JAN MAYEN IN THE ARCTIC OCEAN

1924 Sept. 23 (489)	*From the Minister in Norway* Note from Foreign Minister, September 15 (text printed), referring to newspaper reports of sale by a Norwegian citizen to an American citizen of his alleged rights to the Island of Jan Mayen and belief of the two parties that the island is now considered as American, and pointing out that the Norwegian Meteorological Institute, a Government institution, annexed the main portion of the island in 1921 with a view to permanent occupation.	824
1926 May 17	*From the Norwegian Minister* Information that the Meteorological Institute has, with a view to permanent occupation, extended its annexation on Jan Mayen, so that its annexation now comprises the entire island.	825
Aug. 25 (297)	*To the Chargé in Norway* Instructions to make informal inquiries as to whether the Norwegian Government considers that the Meteorological Institute's recent activities have changed the political status of Jan Mayen from its previous status as a *terra nullius*.	826
Oct. 1 (870)	*From the Minister in Norway* Foreign Office note, September 23 (text printed), advising that while the Meteorological Institute's activities have greatly increased Norwegian interests on Jan Mayen, no occupation by the Norwegian Government has taken place.	827

PANAMA

UNPERFECTED TREATY BETWEEN THE UNITED STATES AND PANAMA FOR SETTLEMENT OF POINTS OF DIFFERENCE, SIGNED JULY 28, 1926

1926 July 27	*Minutes of the Twenty-third Meeting of the American and Panaman Commissions* Final consideration of draft treaty.	828
Aug. 4 (433)	*To the Minister in Panama* Transmission, for confidential information, of copy of treaty between the United States of America and the Republic of Panama, signed at Washington, July 28, 1926 (text printed), and copies of the five exchanges of notes made at the same time (texts printed). (Footnote: Information that the treaty was not perfected.)	833

PANAMA

PROPOSALS BY PANAMA TO MODIFY THE UNPERFECTED TREATY BETWEEN THE UNITED STATES AND PANAMA, SIGNED JULY 28, 1926

Date and number	Subject	Page
1926 Oct. 14	*From the Panaman Legation* Suggestion that Panama and the United States jointly undertake the proposed road construction north of Alhajuela, Panama contributing the $1,250,000 to be paid her by the United States for transfer of jurisdiction over a portion of the city of Colon and the United States covering the balance of the cost, instead of fulfilling that provision of article II of the treaty signed July 28, 1926, which stipulates that the United States shall construct the roads and Panama shall reimburse her for all costs in excess of $1,250,000.	854
Undated	*Procès-Verbal of a Conversation Held on December 8, 1926, Between the Panaman Minister, Representing the Government of Panama, and the Chief of the Division of Latin American Affairs and Mr. Stokeley Morgan, of the Same Division, Representing the Department of State* Inability of the United States to accede to the suggested modification of article II, and suggestion that it might be possible to add a protocol providing that the United States will expend $1,250,000 on such roads as Panama specifies or will deposit that sum to Panama's credit to be used for construction of such roads or public works as Panama desires.	859
Dec. 17 (D–369)	*From the Panaman Minister* Suggestion that Panama would transfer to the United States jurisdiction over the portion of Colon specified, without requiring the $1,250,000 payment, if the U. S. Government would make or arrange that there be made to Panama a $30,000,000 loan, covering not less than a 50-year term, at interest not greater than 4 percent, the proceeds to be used to redeem its external debt and carry out construction of roads and other public works.	861
Dec. 18 (D–370)	*From the Panaman Minister* Formal inquiry as to what provisions Panama must take to reimburse the United States for the costs of construction of the roads north of Alhajuela in excess of $1,250,000, in accordance with article II.	862
Dec. 21	*To the Panaman Minister* Inability of the United States to consider Panaman loan suggestion.	862
Dec. 23	*To the Panaman Minister* Proposal to undertake as soon as possible after ratification of the treaty by both parties construction of the Colon-Porto Bello or the Colon-Alhajuela road, whichever Panama prefers, expending thereon the sum of $1,250,000, and continuing such construction as soon as the Panaman Government deposits funds to the credit of the Panama Canal, using those funds as they accrue until the road program is completed.	863
Dec. 30 (D–387)	*From the Panaman Minister* Unwillingness to accept U. S. proposal of December 23, and further inquiry as to what measures by Panama for reimbursement would be satisfactory to the U. S. Government.	864

PANAMA

CLAIMS CONVENTION BETWEEN THE UNITED STATES AND PANAMA, SIGNED JULY 28, 1926

Date and number	Subject	Page
1926 July 28	*Treaty Between the United States of America and Panama* For the settlement of claims.	865

PARAGUAY

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND PARAGUAY

1926 Aug. 26 (332)	*To the Minister in Paraguay* Instructions to inquire as to Paraguay's disposition to conclude with the United States a general treaty of friendship, commerce and consular rights, providing for unconditional most-favored-nation treatment.	871
Oct. 5 (12)	*From the Minister in Paraguay (tel.)* Foreign Minister's favorable disposition and request for copy of draft treaty immediately.	873
Oct. 20 (13)	*To the Minister in Paraguay (tel.)* Information that Department is preparing instructions and draft treaty to go forward shortly.	873
1927 Jan. 20 (227)	*From the Minister in Paraguay* Regret that late arrival of draft treaty will result in the entrance into the negotiations of active opposition from the Paraguay National Chamber of Commerce, which that day publicly urged the Government to refuse to enter into any treaties incorporating the most-favored-nation clause. (Footnote: Information that no draft treaty was presented to the Paraguayan Government and that negotiations were discontinued.)	874

PERSIA

DECISION THAT WHEN CHANGE OF REGIME NECESSITATES NEW CREDENTIALS, PRECEDENCE OF DIPLOMATS OF SAME RANK IS DETERMINED BY DATE OF ORIGINAL RECEPTION

1926 Feb. 7 (22)	*From the Minister in Persia* Request for instructions as to whether, in view of the recent change of regime in Persia, precedence of the foreign diplomatic representatives remains the same as under the previous regime, or is determined by the date of presentation of credentials to the new regime.	875
Mar. 13 (461)	*To the Minister in Persia* Arguments based on international law and Department's action in the past, including instructions to the Minister in Peru, May 27, 1886 (text printed), in support of the theory that a change of regime necessitating the presentation of new credentials does not disturb the original precedence of diplomats of the same rank as determined by the date of first presentation of credentials.	877

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS

Date and number	Subject	Page
1924		
June 13 (842)	*From the Minister in Portugal* Information that Portuguese decree No. 9761, June 3, 1924, provides that Portuguese holders of the various issues of internal and external debt bonds will be paid principal and interest in paper escudos instead of gold or its equivalent as specified in the original contracts, limits the time in which foreign holders may apply for their payments to July 30, 1924, and discriminates against the other foreign bondholders by making special provision for British holders; request for instructions.	880
Aug. 6 (32)	*To the Minister in Portugal (tel.)* Instructions to request that American holders be granted equality with respect to British holders in regard to the right to receive payment in sterling at London. (Footnote: Information that a note in this sense was presented to the Foreign Minister, August 14.)	881
Oct. 14 (37)	*To the Chargé in Portugal (tel.)* Instructions to continue representations with a view to securing early and favorable decision, and to advise whether decree 9761 provides that the actual amount of sterling specified on the coupons will be paid to British holders.	882
Oct. 17 (51)	*From the Chargé in Portugal (tel.)* Reply that British bondholders will receive the actual amount of sterling specified on the coupons.	882
Oct. 30 (39)	*To the Chargé in Portugal (tel.)* Instructions to present note to Foreign Minister (text printed) expressing U. S. desire that decree 9761 be amended to permit American holders of tobacco monopoly bonds to receive payment pursuant to the terms of the contract and in terms equally favorable to those enjoyed by bondholders of any other nationality.	882
1925		
Feb. 3 (5)	*From the Minister in Portugal (tel.)* Request for telegraphic reply, in response to Foreign Minister's inquiry on behalf of the Portuguese Treasury, as to the number of tobacco bonds of 1891 and 1896 held by Americans.	883
Feb. 7 (6)	*To the Minister in Portugal (tel.)* Advice that, while the Department will furnish the requested data as soon as available, the extent of American holdings has no bearing on the situation. (Footnote: Information that on March 20 the Department advised the Minister that Americans held tobacco bonds of 1891 in the amount of 300,000 francs, and that no tobacco bonds of 1896 appeared to have been placed in the United States.)	883

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS—Continued

Date and number	Subject	Page
1925		
June 4 (1094)	*From the Minister in Portugal* Memorandum of a conversation with the Director General of the Treasury, May 30 (extracts printed), in which that official stated that as soon as he learned the extent of French holdings, an important consideration because of a French group's control of the tobacco monopoly, he would arrange for bonds held by foreigners in Portugal and the colonies to be stamped in the same manner as bonds held by foreigners outside of Portugal and the colonies. (Footnote: Information that in order to prevent the bonds of the external loan from passing out of the hands of Portuguese nationals, it had been determined that all bonds should be stamped in either London or Paris.)	884
Aug. 31 (678)	*To the Minister in Portugal* Instructions to renew oral and written representations on behalf of American bondholders. (Footnote: Information that a note based on this instruction was presented to the Foreign Minister, September 21.)	885
Dec. 2 (1272)	*From the Minister in Portugal* Information that decree No. 11289, published in *Diario do Governo* of November 28, authorizes the Minister of Finance to carry out the immediate liquidation of the tobacco loan of 1891 and 1896.	886
Dec. 11 (45)	*From the Minister in Portugal (tel.)* Request for reply to inquiry of Foreign Minister as to the number of tobacco bonds held by Americans, their value in sterling, and where deposited; information that U. S. Minister called attention to statements in Department's telegram No. 6, February 7, 1925. (Footnote: Information that the Department referred the Minister to its telegram No. 6 of February 7.)	886
1926		
Jan. 8 (1)	*To the Minister in Portugal (tel.)* Instructions to advise the newly established Government in Portugal of the Department's continued interest in the tobacco bond situation, and if no satisfactory reply is received within a reasonable time, to present the note of September 21 in its original unaltered form. (Footnote: Information that the original note presented September 21 had been somewhat altered in phraseology at the request of the Permanent Secretary General of the Foreign Ministry.)	887
Jan. 12 (2)	*From the Minister in Portugal (tel.)* Information from Foreign Minister that decree will be issued opening a credit for the repurchase of tobacco bonds; assurance that American Minister will carry out instructions in Department's telegram No. 1, January 8, as developments indicate to be best.	888

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS—Continued

Date and number	Subject	Page
1926		
Jan. 13 (3)	*From the Minister in Portugal (tel.)* Foreign Office inquiry as to possibility of placing all American-held tobacco bonds in one bank in America and one in London, so that Portuguese Government could immediately pay both principal and arrears of interest in sterling, and its intention to send note quoting text of the decree which will open necessary credit and provide for payment in sterling of principal and interest and stating that the principal and interest of American-held tobacco bonds will be paid in sterling or its equivalent.	888
Jan. 15 (2)	*To the Minister in Portugal (tel.)* Inability of Department to take any action on Foreign Office suggestion as to concentration of American-held tobacco bonds until it has studied the decree to determine whether it safeguards American interests, and until decree has been published.	888
Jan. 19 (4)	*From the Minister in Portugal (tel.)* Additional note from Foreign Office, January 12, stating that decree No. 11388 (extract printed) was published January 8, and emphasizing Government's need for certain data as to names of bondholders, etc.; Minister's opinion that decree is of a general nature, placing the Government in funds, but not stating specifically what will be done for American bondholders.	889
Jan. 21 (5)	*From the Minister in Portugal (tel.)* Receipt of Foreign Office note dated January 19, stating that payment of principal and interest will be made in sterling; Minister's observation that by failing to state a place, date, and period for making payment, treatment equivalent to that accorded to British is not being accorded to Americans.	889
Jan. 22 (3)	*To the Minister in Portugal (tel.)* Reply to telegram No. 4, January 19, stating that Department will not be satisfied until Portuguese Government gives assurance that the credit will be applied to American-held tobacco bonds, and instructing Minister to suggest to Portuguese Government that it designate a bank in America or Europe where American-held bonds could be presented within an adequate period of time and paid as to principal and arrears of interest, and that it make that fact public.	890
Jan. 23 (4)	*To the Minister in Portugal (tel.)* Assumption, from telegram No. 5, January 21, that the Portuguese Government will soon promulgate a decree designating place for payment and period of time within which American-held bonds may be presented.	890
Feb. 3 (5)	*To the Minister in Portugal (tel.)* Instructions to cable present status of tobacco bond situation.	890
Feb. 14 (10)	*From the Minister in Portugal (tel.)* Proposed procedure of Portuguese Government to set forth an agreement for purchase of bonds at a New York bank during a specified period, in the form of an official note instead of a decree, and Portuguese request that if this procedure be satisfactory, the note of September 21 be not presented.	891

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS—Continued

Date and number	Subject	Page
1926		
Feb. 19 (9)	*To the Minister in Portugal (tel.)* Willingness of U. S. Government to accept the proposed note in lieu of a decree, intention to give suitable publicity to the arrangement, and agreeability to suggestion that note of September 21 be withdrawn.	892
Feb. 20 (12)	*From the Minister in Portugal (tel.)* Information that the contemplated note has been received, and that it complies with all U. S. demands, specifying redemption through Baring Brothers, London Bankers, and requesting that the matter not be divulged until public announcement of settlement with all bondholders which will probably be made before April 5.	893
Feb. 20	*From the Portuguese Minister for Foreign Affairs to the American Minister* Official note with regard to the American-held tobacco bonds.	893
Mar. 22 (12)	*To the Minister in Portugal (tel.)* Information that Portuguese note is fairly satisfactory, but that the U. S. Government desires further assurances; authorization to withdraw note of September 21 if Portuguese Government furnishes such assurances.	894
Apr. 7 (19)	*From the Minister in Portugal (tel.)* Verbal agreement of Director General of Treasury to the suggestions in Department's telegram No. 12, March 22, and expression of Portuguese desire to make payments to American holders in three installments, as agreed with all other bondholders.	895
May 13 (13)	*To the Minister in Portugal (tel.)* Desire that Portuguese Government or Baring Brothers designate an agency in the United States where Americans can deposit their bonds and receive proper receipts; instructions that, upon Portuguese Government's advice of such designation, the Minister may withdraw note of September 21.	895
June 10 (18)	*To the Minister in Portugal (tel.)* Inquiry as to whether Portuguese Government has taken the requisite action and information that American holdings amount to around £12,000 but that the number of holders is not known.	896
June 15 (32)	*From the Minister in Portugal (tel.)* Information that, although the matter has been delayed by revolution and a vacancy in Finance Portfolio, the requisite action has been promised within the week.	896
July 16 (1559)	*From the Minister in Portugal* Information that Baring Brothers have designated Kidder, Peabody & Co., New York, to act as receiving agent; suggestion that Portuguese Government's London agent might instruct the New York agent not only to receive the bonds but also to pay them.	896

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS—Continued

Date and number	Subject	Page
1926 Aug. 4 (23)	*To the Minister in Portugal (tel.)* Instructions to press for prompt action in view of delay on part of Portuguese Government, and to report when such action has been taken.	897
Aug. 9 (43)	*From the Chargé in Portugal (tel.)* Receipt, August 8, of Foreign Office note dated August 1 (text printed), stating that instructions had been given to Baring Brothers in regard to Minister's wishes with regard to the tobacco bonds. (Footnote: Information that on November 2, 1926, the Department notified the Minister in Portugal, that it had been advised, under date of October 25, 1926, by Kidder, Peabody & Co., of the procedure whereby American holders might secure payment, and that the Department now regarded the matter as closed.)	897

RUMANIA

AGREEMENT BETWEEN THE UNITED STATES AND RUMANIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 26, 1926

1926 Mar. 1 (145)	*From the Minister in Rumania* Notes exchanged February 26, 1926, between the American Minister and the Rumanian Foreign Minister, providing for mutual unconditional most-favored-nation treatment in customs matters (texts printed).	898

REPRESENTATIONS BY THE UNITED STATES AGAINST RUMANIAN LEGISLATION REGARDING SUBSOIL RIGHTS IN LANDS HELD IN PERPETUAL LEASE

1926 Jan. 9 (108)	*From the Minister in Rumania* Note No. 152, dated January 6 (text printed), to the Foreign Minister, making representations against the enactment of proposed legislation passed by the Rumanian Senate and pending before the Chamber of Deputies to declare that the subsoil of lands held in perpetual lease belongs to the State; Minister's request for Department's confirmation of his position.	901
Feb. 13 (6)	*To the Minister in Rumania (tel.)* Approval of position, and instructions to supplement representations with a statement that the U. S. Government would view with concern any action by the Rumanian authorities which would prejudice American interests in subsoil rights acquired in accordance with the laws of Rumania and in good faith.	903
Feb. 18 (138)	*From the Minister in Rumania* Note No. 13, dated February 15, to the Foreign Minister (text printed), making supplementary representations; information that agriculture and commerce ministries are discussing matter and will reply soon, and that action by the Chamber of Deputies is expected before the end of the month.	904

RUMANIA

REPRESENTATIONS BY THE UNITED STATES AGAINST RUMANIAN LEGISLATION REGARDING SUBSOIL RIGHTS IN LANDS HELD IN PERPETUAL LEASE—Con.

Date and number	Subject	Page
1926 Apr. 6 (171)	*From the Minister in Rumania* Information that the legislation was enacted without debate and without notice of any kind to the Legation or to the parties interested, and that Minister has made no further representations because of a change in the Rumanian Government and the possibility that the law will be interpreted so as not to affect existing contracts.	905

RUSSIA

DISAPPROVAL OF FLOTATION IN THE UNITED STATES OF GERMAN LOANS TO BE USED TO ADVANCE CREDITS TO THE SOVIET REGIME

1926 Mar. 17	*From Messrs. Davis, Polk, Wardwell, Gardiner & Reed* Inquiry as to whether Department has any objection to the flotation in the United States by American bankers of a 25 to 35 million dollar loan to a proposed German export company, the proceeds of the loan to be used to extend credit to German industrials in order to sell goods in Russia.	906
Apr. 2	*To Messrs. Davis, Polk, Wardwell, Gardiner & Reed* Disapproval of the proposed loan flotation because the transaction would be in effect an advance to the Soviet regime, which has repudiated Russia's obligations to the United States and American nationals.	907
July 10	*From the New York Trust Company* Outline of proposed arrangement whereby American banks would rediscount certain Russian obligations for German banks; request for Department's opinion as to whether these terms would make any fundamental difference in its attitude toward permitting Russian credit.	907
July 15	*To the New York Trust Company* Disapproval of the proposed arrangement.	910

REFUSAL OF VISA FOR APPOINTED SOVIET MINISTER TO MEXICO TO ENTER THE UNITED STATES EN ROUTE TO HER POST

1926 Oct. 20	*From the Consul General at Berlin (tel.)* Request of Madame Alexandra Kollontay, appointed Soviet Minister to Mexico, that consul general ascertain whether Department will grant her a passport visa to cross the United States en route to her post.	910
Nov. 2	*To the Consul General at Berlin (tel.)* Instructions that no visa or transit certificate may be issued to Madame Kollontay because of her inadmissibility to the United States under the law.	911
Nov. 4	*Press Release Issued by the Department of State* Information that visa was denied Madame Kollontay because of her active association with the International Communist movement.	911

SALVADOR

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SALVADOR, SIGNED FEBRUARY 22, 1926

Date and number	Subject	Page
1923		
Sept. 20 (26)	*To the Minister in Salvador (tel.)* Instructions to ascertain if Salvador would be disposed to enter into negotiations for a general treaty of amity, commerce and consular rights.	912
1924		
Mar. 26 (14)	*To the Minister in Salvador (tel.)* Instructions, in view of Department's desire to await the outcome of Senate action on commercial treaty with Germany before proceeding to the negotiation of any similar treaties, to ascertain if Salvador would be disposed to effect a *modus vivendi* by exchange of notes providing for mutual unconditional most-favored-nation treatment with respect to customs duties.	912
Apr. 7 (514)	*From the Minister in Salvador* Opinion by Foreign Minister that there may be difficulty in negotiating the proposed exchange of notes; his willingness, however, to exchange the notes if it is found possible to conclude matter to the Department's satisfaction.	913
Aug. 28 (125)	*To the Chargé in Salvador* Instructions to renew discussions as to conclusion of *modus vivendi* and to present draft note to be exchanged (text printed) if Salvadoran Government is in favor of proposal.	914
Sept. 26 (576)	*From the Chargé in Salvador* Advice that matter is still undecided, and that Foreign Minister has informally advanced certain objections.	916
Oct. 20 (41)	*To the Minister in Salvador (tel.)* Information that Department, although preferring indefinite term, will accede to Salvadoran suggestion that *modus vivendi* be for 2-year term, thereafter ending 6 months following notice of termination by either party, will agree to effective date as 30 or 60 days after signature if Salvador so suggests, but will insist on U. S. exception of Cuba because of U. S.-Cuba reciprocity treaty; instructions to point out that the most-favored-nation treatment the United States already accords to Salvador is conditioned upon reciprocal treatment.	917
1925		
Jan. 2 (622)	*From the Minister in Salvador* Intention of pressing the matter again within a few days, in view of nonreceipt of any definite answer from the Salvadoran Government.	919
Jan. 14 (2)	*From the Minister in Salvador (tel.)* Transmittal, at request of Foreign Minister, of suggestion that the United States grant Salvadoran and preferably all Central American sugar the same rates as now granted Cuban sugar.	919
Jan. 17 (2)	*To the Minister in Salvador (tel.)* Inability of Department to accede to Salvadoran suggestion because treaty with Cuba makes U. S. concessions to Cuba exclusive.	920
Apr. 24 (14)	*To the Chargé in Salvador (tel.)* Suggestion that Salvador, if unwilling to accept proposed exchange of notes, might be willing to proceed to the signature and ratification of a general treaty.	920

SALVADOR

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SALVADOR, SIGNED FEBRUARY 22, 1926—Continued

Date and number	Subject	Page
1925 Apr. 28 (15)	*From the Chargé in Salvador (tel.)* Information that Salvador will not exchange notes unless more tangible advantages are granted; suggestion that Department await Legation's report of further conferences in which Finance Minister will participate.	921
May 9 (18)	*From the Chargé in Salvador (tel.)* Opinion that, since further conferences have indicated that Salvadoran opposition is not likely to be overcome, a most desirable manner of beginning negotiations for a general treaty might be a formal note couched in broad terms and a reference to Salvadoran note of July 19, 1922. (Footnote: Information that the note of July 19, 1922, set forth Salvador's desire to conclude a treaty of friendship, commerce, and navigation with the United States.)	921
June 25 (25)	*To the Chargé in Salvador (tel.)* Instructions to abandon *modus vivendi* plans and to proceed to negotiation of a general treaty of friendship, commerce and consular rights, informing Salvadoran Government that delay in Department's program of negotiating similar treaties with a number of Central and South American and European countries has been ended by Senate approval of the treaty with Germany.	922
July 1 (36)	*From the Chargé in Salvador (tel.)* Information that President and Foreign Minister stated their willingness to open negotiations but observed that fiscal and customs questions had best be dealt with in general terms; President's suggestion that two treaties be signed, one of friendship and the other of commerce and consular rights.	922
July 3 (27)	*To the Chargé in Salvador (tel.)* Instructions to present draft treaty of commerce and consular rights which Department will forward shortly, before discussing a separate treaty of friendship.	923
July 7 (808)	*From the Chargé in Salvador* Receipt from Foreign Office of written confirmation of verbal assurances that Salvadoran Government is ready to proceed to the study and discussion of a treaty of friendship, commerce and consular rights.	923
Aug. 6 (189)	*To the Chargé in Salvador* Transmittal of draft treaty (extracts printed), with instructions to present it to Foreign Office, and explanation of U. S. Government's position with regard to both general features and specific provisions of the treaty.	924
Aug. 25 (61)	*From the Chargé in Salvador (tel.)* Submittal of draft treaty to Foreign Office; Chargé's request for information as to principal grounds on which Department bases desire for most-favored-nation treatment, in order that he may use it discreetly in conversation without committing the Department.	932
Sept. 5 (39)	*To the Chargé in Salvador (tel.)* Reasons for desire that unconditional most-favored-nation clause be included; instructions to base informal written communication on this information if it is thought advisable.	933

SALVADOR

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SALVADOR, SIGNED FEBRUARY 22, 1926—Continued

Date and number	Subject	Page
1925		
Oct. 5 (76)	*From the Chargé in Salvador (tel.)* Information that among other difficulties the principal one is most-favored-nation treatment; request for advice as to whether Department has already officially admitted the right of Salvador or other Central American countries to favor neighboring countries; inquiry whether article 7 covers special privileges granted by Salvador to other foreigners or only privileges granted by treaty.	934
Oct. 22 (44)	*To the Chargé in Salvador (tel.)* Information that appropriate exceptions of neighboring countries have been made in exchanges of notes with Nicaragua and Guatemala according most-favored-nation treatment, and that Department is willing that Salvador except Costa Rica, Guatemala, Honduras, and Nicaragua; advice that article 7 refers to commercial privileges originating in domestic legislation, Executive decree, regulations or otherwise as well as privileges originating in treaties.	934
1926		
Jan. 19 (960G)	*From the Chargé in Salvador* Report that negotiations for the treaty of friendship, commerce and consular rights have been steadily progressing and are now practically concluded.	935
Feb. 20 (986G)	*From the Chargé in Salvador* Report that complete agreement has been reached and that treaty will be signed February 22.	936
Apr. 4 (1020G)	*From the Chargé in Salvador* Report that treaty was signed February 22.	937
May 7 (1046G)	*From the Chargé in Salvador* Report that opposition to ratification of the treaty had developed in National Assembly, which had referred it to Supreme Court for report on judicial and technical questions involved.	938
May 24 (68)	*From the Chargé in Salvador (tel.)* Information that the National Assembly is opposed to ratification of treaty before it has been ratified by the U. S. Senate.	939
May 29 (50)	*To the Chargé in Salvador (tel.)* Ratification of treaty by Senate May 28.	939
May 31 (72)	*From the Chargé in Salvador (tel.)* Ratification by National Assembly May 31. (Footnote: Information that because ratification was subject to six amendments, the United States did not proceed to exchange of ratifications, and that a second submission of treaty to National Assembly resulted in ratification June 30, 1927, subject to two amendments; further information that in instruction No. 65, December 18, 1929, the Chargé was instructed to effect the exchange of ratifications and to include the National Assembly's declarations in the protocol of exchange, and that the ratifications were exchanged at San Salvador on September 5, 1930.)	939

SALVADOR

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SALVADOR, SIGNED FEBRUARY 22, 1926—Continued

Date and number	Subject	Page
1926 Feb. 22	*Treaty Between the United States of America and the Republic of Salvador* Of friendship, commerce and consular rights.	940
1930 Sept. 5	*Protocol* Of exchange. (Footnote: Text of understandings set forth in the protocol of exchange, as incorporated in legislative decree of June 30, 1927, by the National Assembly.)	954

SPAIN

CONVENTION BETWEEN THE UNITED STATES AND SPAIN FOR THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS, SIGNED FEBRUARY 10, 1926

1924 July 12 (370)	*From the Ambassador in Spain* Receipt of note from Foreign Office enclosing a draft convention between Spain and the United States for the prevention of smuggling of intoxicating liquors into the United States and stating that while Spanish Government accepts the U. S. convention in principle, it objects to certain provisions; Ambassador's request for text agreeable to Department. (Footnote: Information that the U. S. text referred to was a confirmation copy of text transmitted to Ambassador in Spain in telegram No. 27, June 9, 1923.)	956
Dec. 5	*Memorandum by the Under Secretary of State* Conversation with Spanish Ambassador, in which Under Secretary restated Department's desire that the final conclusion of the liquor treaty coincide with an exchange of notes providing for mutual unconditional most-favored-nation treatment in regard to customs duties, and handed Ambassador copy of recent U. S.-Italian liquor treaty which the United States would be willing to conclude with Spain exactly as it stands.	957
1925 Oct. 16 (74–18)	*From the Spanish Ambassador* Submittal of Ambassador's full powers to sign a liquor smuggling convention and a tentative draft of Spanish text of convention.	958
Dec. 1	*To the Spanish Ambassador* Acceptability of full powers and tentative draft, with comments on certain objectionable provisions; submission of amended English translation of Spanish draft text.	959
1926 Jan. 20 (63–05)	*From the Spanish Ambassador* Information that Spanish Government has accepted Department's changes and has authorized Ambassador to sign the convention.	960
Feb. 8	*To the Spanish Ambassador* Suggestion that the convention be signed February 10.	961

SPAIN

CONVENTION BETWEEN THE UNITED STATES AND SPAIN FOR THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS, SIGNED FEBRUARY 10, 1926—Continued

Date and number	Subject	Page
1926 Feb. 10	*Convention Between the United States of America and Spain* For the prevention of smuggling of intoxicating liquors.	962
Aug. 27 (67–19)	*From the Spanish Chargé* Request that Department issue appropriate instructions to customs and prohibition authorities at specified U. S. and Porto Rican ports in order that Spanish vessels calling at those ports will be accorded the treatment provided for in the convention.	965
Sept. 9	*To the Spanish Chargé* Information that the U. S. Government cannot grant the Spanish Government's request at present because the convention will not go into effect until the ratifications are exchanged. (Footnote: Information that the ratifications were exchanged in Washington November 17, 1926, and the convention was proclaimed by the President the same day.)	965

SWITZERLAND

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SWITZERLAND

1925 July 15	*Memorandum by Mr. Prentiss B. Gilbert of the Division of Western European Affairs* Outline of previous correspondence with reference to a proposed treaty of amity, commerce and consular rights with Switzerland, indicating that in October 1923 Switzerland favored such a treaty, but that negotiations were suspended by the Department pending Senate action on a similar treaty with Germany.	967
July 23 (83)	*To the Chargé in Switzerland (tel.)* Instructions to inquire whether Switzerland is still favorable to entering into negotiations for a treaty of friendship, commerce and consular rights.	968
Nov. 4 (119)	*From the Minister in Switzerland (tel.)* Information that, upon presentation of a draft treaty to Swiss political authorities, reply was received that treaty must be carefully studied and that answer would probably not be ready for at least a month. (Footnote: Information that further negotiations failed to lead to conclusion of a treaty.)	968

SWITZERLAND

TERMINATION OF REPRESENTATION OF SWISS INTERESTS IN EGYPT BY AMERICAN DIPLOMATIC AND CONSULAR OFFICERS

Date and number	Subject	Page
1926		
Jan. 18 (745)	*From the Minister in Egypt* *Aide-mémoire* from British Residency in Egypt, January 15 (text printed), advising that in view of U. S. desire to be relieved from representation of Swiss interests in Egypt, the Swiss Government approached the British Government as to its willingness to assume that representation, and stating that British Government is favorably disposed but would like to have U. S. observations on the subject.	969
Feb. 12 (2)	*To the Minister in Egypt (tel.)* Instructions to inform British High Commissioner that the United States will be pleased to relinquish the representation of Swiss interests in Egypt, if the Swiss Government so requests.	970
July 7 (276)	*To the Chargé in Egypt* Instructions, in view of note from Swiss Federal Political Department to the American Legation in Switzerland, June 3 (text printed), stating that arrangements had been made for relieving U. S. Government of representation of Swiss interests in Egypt by transfer of that function to British and Italian officials, to inform American Consulates and report to Department whether any Swiss property is in Legation's or Consulates' possession.	970
Aug. 20 (18)	*To the Minister in Egypt (tel.)* Instructions to report what action has been taken on instruction No. 276, July 7, and whether arrangements have been made with British Residency for formal transfer of Swiss interests.	972
Aug. 21 (29)	*From the Chargé in Egypt (tel.)* Information that Department's instructions have been followed literally, that notice has been sent to registered Swiss, and that British Residency expressed satisfaction August 10; reference to action of Egyptian Foreign Office reported in despatch No. 860, August 3. (Footnote: Information that despatch No. 860 transmitted Egyptian Foreign Office official communiqué (extract printed) stating the new arrangements for protection of Swiss interests.)	972
Nov. 2 (907)	*From the Minister in Egypt* Advice that official U. S. representation of Swiss interests ceased by Legation on August 5, by Cairo consulate on August 7, and by Alexandria and Port Said consulates on August 31.	972

TURKEY

EFFORTS BY THE DEPARTMENT OF STATE TO OBTAIN RATIFICATION OF THE GENERAL TREATY BETWEEN THE UNITED STATES AND TURKEY, SIGNED AT LAUSANNE, AUGUST 6, 1923

Date and number	Subject	Page
1926 Jan. 14	*From the American Men's and Women's Clubs of Constantinople (tel.)* Desire for prompt U. S. ratification of treaty with Turkey signed at Lausanne. (Footnote: Information that a copy of this telegram was mailed to Senator Borah, Chairman of the Senate Committee on Foreign Relations, January 18.)	974
Feb. 24 (12)	*To the High Commissioner in Turkey (tel.)* Information that canvass of Senate indicates that at present there are not sufficient votes to secure ratification, and that any additional representations by Americans in Turkey as to the importance of ratification might be helpful in eventually securing the necessary votes.	974
Mar. 27 (18)	*To the High Commissioner in Turkey (tel.)* Likelihood that Senate will soon take up treaty, and information that proposed resolution of ratification (text printed) contains certain reservations.	975
Apr. 20 (26)	*To the High Commissioner in Turkey (tel.)* Remarks by the Secretary of State in speech at New York, April 20 (extract printed), with reference to U. S. policy regarding Turkey.	975
May 8 (31)	*To the High Commissioner in Turkey (tel.)* Instructions, in view of Senator Borah's intention to bring up treaty in spite of uncertainty regarding ratification, to send views on various phases of the present and future situation in Turkey.	976
May 15 (35)	*From the High Commissioner in Turkey (tel.)* Detailed reply to Department's telegram No. 31, May 8. Opinion that ratification is essential to protection and expansion of American interests, but that treaty should not be brought up for a vote unless it is felt that ratification can be secured.	977
May 20	*To Senator Charles Curtis* Transmittal, in response to request, of a statement (text printed) giving the outstanding reasons why the Turkish treaty should be ratified.	979
June 24 (43)	*To the High Commissioner in Turkey (tel.)* Instructions, to be carried out the day following adjournment of U. S. Congress, for meeting situation which will be created by failure of Senate to act on treaty.	981
June 26 (59)	*From the High Commissioner in Turkey (tel.)* Belief that informal endeavors to prepare Turkish official opinion for possible delay in U. S. action on the treaty have met with some measure of understanding. Opinion that although there is only slight possibility of extending scope of commercial *modus vivendi*, renewal for a longer term than provided by law might be secured.	983

TURKEY

EFFORTS BY THE DEPARTMENT OF STATE TO OBTAIN RATIFICATION OF THE GENERAL TREATY BETWEEN THE UNITED STATES AND TURKEY, SIGNED AT LAUSANNE, AUGUST 6, 1923—Continued

Date and number	Subject	Page
1926 July 3 (46)	*To the High Commissioner in Turkey (tel.)* Adjournment of Congress July 3, and Senate consent to take up treaty in January 1927; Department's feeling that it would be wise to discuss immediately the renewal of the *modus vivendi* but no other modifications; commendation for efforts to prepare Turkish officials for the further postponement of action on the treaty. (Footnote: Information that *modus vivendi* was renewed on July 20 for a further period of 6 months dating from August 20, 1926.)	984
Dec. 23 (108)	*From the High Commissioner in Turkey (tel.)* Press statement by Foreign Minister (extract printed) summarizing reasons for his expectation that National Assembly will ratify treaty.	985
Dec. 29	*To Senator William E. Borah* Information and comments on questions regarding Turkish treaty as set forth in resolution introduced by Senator King, December 22; enclosure of letter from President Harding's secretary to the Chairman of the American Committee for Independence of Armenia, November 10, 1922, with regard to U. S. attitude toward the protection of Armenians (text printed).	986
Dec. 31 (111)	*From the High Commissioner in Turkey (tel.)* Press statement by president of Foreign Relations Committee (text printed), expressing belief that prompt Turkish ratification of treaty will benefit both Turkey and the United States and that committee will present treaty to Assembly immediately.	991

AGREEMENTS BETWEEN THE UNITED STATES AND TURKEY ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 18 AND JULY 20, 1926

1925 Mar. 14 (30)	*To the High Commissioner in Turkey (tel.)* Instructions to telegraph Turkish reaction to news of Senate delay in ratification of Turkish treaty and High Commissioner's opinion as to the proper course to be followed within the next few months.	992
Mar. 17 (33)	*From the High Commissioner in Turkey (tel.)* Declaration by Turkish Foreign Office official that orders had been issued to apply most-favored-nation treatment to American merchandise, but that if treaty ratification were delayed, such treatment would be withdrawn; High Commissioner's observation that he did not inform the official of the news contained in Department's telegram No. 30, March 14.	992

TURKEY

AGREEMENTS BETWEEN THE UNITED STATES AND TURKEY ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 18 AND JULY 20, 1926—Continued

Date and number	Subject	Page
1926		
Jan. 5 (1)	*From the High Commissioner in Turkey (tel.)* Information that representations were made against provisions of new Turkish tariff law increasing duties on goods imported into Turkey from countries with which it does not have commercial treaties.	993
Jan. 9 (1)	*To the High Commissioner in Turkey (tel.)* Approval of representations and instructions to keep Department informed by telegraph.	993
Jan. 19 (4)	*From the High Commissioner in Turkey (tel.)* Information from Foreign Minister that new tariff law was not intended to apply to the United States because an understanding had been reached in the treaty and subsequently, that pending treaty ratifications Turkey will extend benefits of her treaties with other countries to American merchandise, but that a provisional arrangement will be required in the meantime; request for instructions as to effecting a provisional arrangement by written confirmation of the *modus vivendi* already existing.	994
Feb. 4 (8)	*From the High Commissioner in Turkey (tel.)* Request for authorization to take up at once the arrangement of a *modus vivendi* for a 6-month period, pending treaty ratification, whereby the United States will agree with Turkey to observe provisions of articles 11, 12, and 13 of the treaty.	994
Feb. 5 (9)	*To the High Commissioner in Turkey (tel.)* Preference of Department that agreement proposed in telegram No. 4, January 19, be detailed in character, contain definite provisions for its termination, and be effected by exchange of notes.	995
Feb. 5 (10)	*To the High Commissioner in Turkey (tel.)* Replying to telegram No. 8, Department's disapproval of any arrangement whereby the United States would be obligated to observe specific stipulations of an unratified treaty, and observation that the same purpose would be accomplished by the exchange of notes proposed in Department's telegram No. 9, February 5.	996
Feb. 8 (10)	*From the High Commissioner in Turkey (tel.)* Fear that suggested procedure would entail long-drawn-out negotiations which would be distasteful to Turkey and that effective date for application of new duties would arrive before negotiations could be concluded; recommendation of note (text printed) which will safeguard American interests and satisfy Turkey.	996
Feb. 14	*From the High Commissioner in Turkey (tel.)* Submittal of draft note as modified by Foreign Office (text printed), with request for instructions.	997
Feb. 16	*To the High Commissioner in Turkey (tel.)* Approval of draft note with a modification in phraseology and instructions to effect the understanding either by exchange of notes, *procès-verbal*, or declaration.	998

TURKEY

AGREEMENTS BETWEEN THE UNITED STATES AND TURKEY ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 18 AND JULY 20, 1926—Continued

Date and number	Subject	Page
1926 Mar. 1 (1803)	*From the High Commissioner in Turkey* Notes exchanged February 18 between American High Commissioner and Turkish Foreign Minister (texts printed), with respect to according mutual most-favored-nation treatment in customs matters pending ratification of the treaty.	999
July 30 (2008)	*From the High Commissioner in Turkey* Information that American High Commissioner and Foreign Minister exchanged notes July 20 to extend the commercial *modus vivendi* for 6 months dating from August 20.	1000

PARTICIPATION OF THE HIGH COMMISSIONER IN TURKEY IN COLLECTIVE NOTE REQUESTING EXEMPTION OF DIPLOMATIC AND CONSULAR OFFICERS FROM CONSUMPTION AND OTHER SPECIAL TAXES

1926 June 22 (55)	*From the High Commissioner in Turkey (tel.)* Request for permission to join diplomatic body in signing collective note to the Turkish Government requesting exemption of diplomatic and consular officers from payment of consumption and other special taxes recently enacted.	1001
June 25 (44)	*To the High Commissioner in Turkey (tel.)* Permission to sign collective note if High Commissioner thinks this the best method of protecting American interests, considering the difference between his status and that of his colleagues.	1001
July 7 (1973)	*From the High Commissioner in Turkey* Information that High Commissioner signed note, believing that it would carry more weight with Turkish authorities than any other course open to him.	1001
Aug. 18 (2035)	*From the Chargé in Turkey* Information that as late as August 9, Foreign Office had received no reply to its favorable recommendation to Council of Ministers on action requested by diplomatic corps.	1002

COLOMBIA

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND COLOMBIA

711.212/2a

The Acting Secretary of State to the Minister in Colombia (Piles)

No. 905 WASHINGTON, *August 28, 1926.*

SIR: The Government has, as you are aware, entered upon the policy of negotiating with other countries general treaties of friendship, commerce and consular rights, of which the central principle in respect of commerce is an unconditional most-favored-nation clause governing customs and related matters.[1] This policy was inaugurated pursuant to the principles underlying Section 317 of the Tariff Act of 1922;[2] it seeks assurances that equality of treatment for American commerce will be maintained in all countries. Besides the provisions relating to commerce these treaties include provisions relating to rights of nationals of each country in the other country, protection of property, and rights and immunities of consuls. This Government now desires to enter into such a treaty with Colombia.

The first treaty to become effective expressing the present policy of this Government was the Treaty of Friendship, Commerce and Consular Rights with Germany, signed December 8, 1923,[3] ratifications of which were exchanged October 14, 1925. Similar treaties have been signed by the United States with Hungary, Esthonia[4] and Salvador,[5] of which the one with Esthonia has been brought into force by exchange of ratifications.

Treaties containing the unconditional most-favored-nation clause were signed with Turkey on August 6, 1923,[6] and with Panama on July 28, 1926.[7] Several others are in process of negotiation. *Modi vivendi* based upon the same principle, entered into with the following countries are in force—Brazil, Czechoslovakia, Dominican Re-

[1] See *Foreign Relations*, 1923, vol. I, pp. 121 ff.
[2] 42 Stat. 858, 944.
[3] *Foreign Relations*, 1923, vol. II, p. 29.
[4] *Ibid.*, 1925, vol. II, pp. 341 and 70, respectively.
[5] *Post*, p. 931.
[6] *Foreign Relations*, 1923, vol. II, p. 1153.
[7] *Post*, p. 833. The treaty of July 28, 1926, with Panama does not, however, contain the unconditional most-favored-nation clause.

public, Finland,[8] Greece, Guatemala,[9] Latvia,[10] Lithuania, Nicaragua, Poland (including Danzig),[11] Rumania and Turkey.[12] A similar agreement entered into with Haiti on July 8, 1926, becomes by its terms operative October 1, 1926.[13]

Two copies of the treaty of December 8, 1923, with Germany are enclosed. You are requested, unless you perceive objection, to inquire whether it would be agreeable to the Government of Colombia to proceed to the negotiation with the United States of a similar treaty. A special draft will, of course, be prepared for presentation to Colombia if this proposal is acceptable to the Colombian Government. It is probable that certain departures from the text of the German treaty should be made either in the special text to be submitted to the Government of Colombia or, on behalf of either party, during the course of negotiations. For instance, in view of the fact that on August 4, 1922, the United States and Colombia signed a Convention to facilitate the Work of Traveling Salesmen, though the Convention has not been brought into force,[14] it seems probable that Articles XIV and XV of the treaty with Germany would not be included in a treaty with Colombia.

It may be useful for you to bear in mind that in adopting the unconditional in place of the conditional most-favored-nation clause the United States has brought its commercial policy into accord with that prevailing among important commercial countries. It would be gratifying if, among its early treaties embodying this principle, the United States could celebrate a general commercial treaty with Colombia. The Treaty of Peace, Amity, Navigation and Commerce, concluded December 12, 1846,[15] is out of date in important respects and this Government hopes that a comprehensive modern agreement may now be entered into. You will of course keep in mind in this connection that a most-favored-nation clause with a condition, such as that contained in the first sentence of Article II of the treaty of 1846, would not now be acceptable to the United States. But in view of the important provisions contained in Articles XV and fol-

[8] See *Foreign Relations*, 1923, vol. I, pp. 453 ff.; *ibid.*, 1924, vol. I, pp. 615 ff. and 666 ff.; and *ibid.*, 1925, vol. II, pp. 86 ff.

[9] See *ibid.*, 1924, vol. II, pp. 273 ff. and pp. 290 ff.

[10] See pp. 500 ff.

[11] See *Foreign Relations*, 1925, vol. II, pp. 500 ff.; *ibid.*, 1924, vol. II, pp. 510 ff.; and *ibid.*, 1925, vol. II, pp. 692 ff., respectively.

[12] See pp. 900 ff. and pp. 1000 ff.

[13] See pp. 405 ff.

[14] Convention not printed. Ratification advised by the Senate, Jan. 5, 1923; ratified by the President, May 12, 1924; unratified by Colombia; filed as Unperfected Treaty No. V–5, June 7, 1927. For similar text, see *Foreign Relations*, 1919, vol. I, p. 45.

[15] Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America*, vol. 5, p. 115.

lowing of the treaty of 1846, there seems to be much reason for leaving that treaty in force except as superseded by the new treaty.

Though the Department, in proposing a treaty with Colombia is influenced chiefly by its policy of concluding with other countries generally treaties containing the unconditional most-favored-nation clause, you are nevertheless desired to use especial diligence in seeking a favorable response from the Colombian Government in order to forestall any efforts that other countries may be planning to make for the purpose of interposing in South America arrangements based upon special privilege—a policy wholly antagonistic to the policy of equality of treatment which the United States is undertaking to promote. You may recall in this connection that in 1923 this Government renounced the preferential customs treatment which certain American products had been receiving in Brazil and requested instead a pledge of equal footing with other countries in the Brazilian market.

For your strictly confidential information and guidance the Department has been informed of a movement on the part of Spain to seek from the countries of Latin America special commercial concessions in return for certain advantages to be accorded to their commerce in Spain. In this connection see the Department's circular instruction dated April 19, 1926.[16]

The Department either has transmitted or expects at an early date to transmit instructions, similar to the present instruction, to the American missions in the other South American capitals except that of Panama, with which country as stated a treaty has recently been signed, and that of Ecuador, the political regime now functioning in which is not recognized by the United States.

I am [etc.] JOSEPH C. GREW

711.212/5

The Minister in Colombia (Piles) to the Secretary of State

No. 971 BOGOTÁ, *November 8, 1926.*

[Received November 29.]

SIR: Referring to my despatch No. 964 of October 18 and my telegram No. 33 of the 6th instant,[17] I have the honor to enclose herewith copy and translation of the reply of the Minister for Foreign Affairs to my note of October 14th with respect to entering into a Treaty of Friendship, Commerce and Consular Rights between the United States and Colombia, from which it will be seen that the proposal has found favor with the Colombian Government. (Copies

[16] Not printed.
[17] Neither printed.

of this despatch and the enclosures thereto will be forwarded in the pouch leaving here today.)

Future developments concerning the subject will be promptly reported.

I have [etc.] SAMUEL H. PILES

[Enclosure—Translation]

The Colombian Minister for Foreign Affairs (Gomez) to the American Minister (Piles)

BOGOTÁ, *November 3, 1926.*

MR. MINISTER: I have the honor to refer to Your Excellency's courteous note of October 14, last, bearing No. 598, with which Your Excellency sent me a copy of a treaty concluded between the United States and Germany on December 8, 1923.

Your Excellency expresses in said note the desire of the Government of the United States to conclude a similar treaty with Colombia, with the idea "of doing all it can to continue and strengthen the friendly relations existing between Colombia and the United States;" and Your Excellency also states that treaties of this nature have been signed by your country with various other nations.

In reply, I am pleased to inform Your Excellency that the Government of Colombia is disposed to begin the study and bring about the completion of a pact of such importance with all the more reason because, as Your Excellency well knows, Colombia gives the greatest attention to everything which may contribute to strengthen its good relations with the United States.[18]

I am [etc.] ANTONIO GOMEZ RESTREPO

STATEMENT BY THE COLOMBIAN GOVERNMENT THAT IT COULD NOT BECOME A PARTY TO AN ARBITRATION OF THE COLON FIRE CLAIMS

411.19/13

The Colombian Minister (Olaya) to the Secretary of State

[Translation [19]]

No. 1226 WASHINGTON, *November 4, 1926.*

SIR: In compliance with instructions from my Government, I have the honor to enclose with this note a memorandum concerning infor-

[18] In a memorandum of the Treaty Division, dated Jan. 21, 1931, it was stated that: "On August 28, 1926, instructions were sent to the American Legation at Bogotá requesting the Legation to inquire whether the Government of Colombia was disposed to conclude a treaty of Friendship, Commerce and Consular Rights (711.212/2A). An affirmative reply was reported by the American Legation on November 6, 1926 (711.212/3). Instructions and a draft treaty were prepared, but never sent." (File No. 711.212/10.)

[19] File translation revised.

mation of an official character published by the press regarding a claims convention signed by the Governments of the United States of America and Panama on July 28, last.[20]

I avail myself [etc.] ENRIQUE OLAYA

[Enclosure—Translation [21]]

The Government of Colombia to the Government of the United States

MEMORANDUM

The Government of Colombia has been informed by its Legation in Washington that the Department of State gave official information to the press concerning the conventions signed with the Government of Panama in July, last. According to this information one of the conventions contained the following stipulations:[22]

"The United States and the Republic of Panama have concluded a General Claims Convention providing for the arbitration with certain exceptions, hereinafter noted, of all claims against the respective Governments, which when they arose were those of citizens of the other Government. The exceptions referred to are:

"(1) The claims for losses suffered by American citizens as the result of a fire in the city of Colon in 1885, as to which Panama agrees in principle to arbitration under a Convention to which the Republic of Colombia shall be invited to become a party."

The Government of Colombia is animated by a desire to avoid the unnecessary reopening of those incidents in its relations with the Government of the United States which long since have been closed; and it will not attempt to discuss the reasons which have previously been alleged in support of the right to present claims on account of the Colon fire. The Government of Colombia expressed its opinion regarding these claims at that time. It deems it necessary most cordially and frankly to state to the Government of the United States that these claims have ceased to concern the Government of Colombia, and consequently, have not been a subject of possible discussion or dispute from the day when the Republic of Panama was proclaimed in November, 1903, and recognized in the manner and terms it was by the United States.[23] The territory of the Isthmus of Panama was placed under the sovereignty of, and became the property of, the new Republic; and the United States by its categoric and solemn declarations assigned all the rights and obligations that were derived, or could be derived, from the treaty of 1846,[24] or which, from it, with

[20] *Post*, p. 865.

[21] File translation revised.

[22] The following quotation, transmitted in English, is from a Department of State press release of Aug. 3, 1926.

[23] See *Foreign Relations*, 1903, pp. 132–349, 689–691; *ibid.*, 1904, pp. 543–655.

[24] Miller, *Treaties*, vol. 5, p. 115.

or without basis, could be alleged. All questions relating to the Isthmus of Panama or to the treaty of 1846 which since 1903 could have been pending between the United States and Colombia were studied and discussed by the two Governments during the negotiations which led to the signing of the treaty of April 6, 1914,[25] and all these were definitely and wholly resolved when the ratifications of this treaty were exchanged on March 1, 1922.[26] In no event, therefore, could the Government of Colombia accept an invitation to take part in disputes with the United States which, because of the facts mentioned in this memorandum, have ceased to concern it.

All causes for a misunderstanding between the two Republics over the Isthmus of Panama or treaties relating thereto have been eliminated, and in making the above declaration to the United States the Government of Colombia wishes to record that not the least of its reasons for this declaration is its earnest desire that its friendship should continue to develop on the firm basis which has served so efficaciously in latter years in their diplomatic, economic, and commercial relations.

WASHINGTON, *November 4, 1926.*

411.19/13

The Secretary of State to the Colombian Minister (Olaya)

WASHINGTON, *November 26, 1926.*

SIR: I have the honor to acknowledge the receipt of your note of November 4, 1926, with which, under instructions from your Government, you transmitted a memorandum concerning a report published in the press regarding the Claims Convention signed by the Governments of the United States and of Panama on July 28, 1926.

In view of the fact that this Convention has not been ratified by either of the signatory Powers, and is therefore not yet in effect, I do not see that any good purpose would be served by a discussion at this time of its provisions. Accordingly, I venture to suggest that if your Government has any views to express with respect to the Convention of July 28, 1926, it await the ratification of the Convention and the receipt of the invitation which under the terms thereof may be extended to it for the purpose of securing a joint consideration by the Governments of Colombia, of Panama and of the United States of the specific claims in question.

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[25] *Foreign Relations*, 1914, p. 163.

[26] See *ibid.*, 1922, vol. I, pp. 974 ff.

Pending the receipt of such further communication as your Government may deem appropriate in the light of the foregoing suggestion, I shall make no comment on the points raised in the memorandum accompanying your note under acknowledgment.

Accept [etc.]

For the Secretary of State:
ROBERT E. OLDS

411.19/16

The Colombian Minister (Olaya) to the Secretary of State

No. 1439 WASHINGTON, *December 21, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of the Department's note of November 26, 1926, in reply to my communication of November 4th, regarding the Claims Convention signed by the Governments of the United States and Panama on July 28, 1926. In the note under acknowledgement, the Department states that in view of the fact that this Convention has not been ratified by either of the signatory powers and is, therefore, not yet in effect, it does not see that any good purpose would be served by a discussion at this time of its provisions, and, accordingly, suggests that any expression of views by my Government await the ratification of the Convention and the receipt of the invitation therein provided for in regard to the arbitration of the claims arising out of the Colon fire in 1885.

In reply I have the honor to state that my Government has no wish to initiate a discussion of the arbitration of these claims at the present time or at any time, as it has long considered that the circumstance upon which these claims are predicated is a closed incident between the Government of the United States and the Government of Colombia. The only intention of my Government in sending you the memorandum of November 4th, was frankly and sincerely to advise Your Excellency, in advance of the ratification of the Convention of July 28, 1926, of the point of view of my Government regarding the article in the Convention which provides that the Republic of Colombia should be invited to become a party to a proposed Convention between the United States and Panama for the arbitration of the Colon fire claims. Having obtained knowledge through the press of this intended invitation, the Government of Colombia considers that it would be wanting in that frankness and goodwill with which it always deals with everything that may become a cause of difference between our Governments, if it did not inform Your Excellency of its position in regard to the proposed invitation, in order to avoid a diplomatic discussion after the Convention had been ratified regard-

ing a question which for many years has ceased to exist so far as Colombia is concerned. Therefore, my Government does not consider this matter a subject for arbitration and feels that to discuss it would serve no useful purpose.

Accept [etc.] ENRIQUE OLAYA

BOUNDARY DISPUTE WITH PERU

(See volume I, pages 534 ff.)

COSTA RICA

BOUNDARY DISPUTE WITH PANAMA

(See volume I, pages 539 ff.)

CUBA

PROPOSAL BY CUBA THAT THE COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED DECEMBER 11, 1902, BE REVISED[1]

611.3731/185

The Ambassador in Cuba (Crowder) to the Secretary of State

No. 1390 HABANA, *April 8, 1926.*

[Received April 13.]

SIR: I have the honor to invite attention to the second paragraph of my personal letter to Mr. White of October 30, 1925,[2] reading as follows:

"Every once in a while Doctor Céspedes[3] refers to the necessity for revision of the Reciprocity Treaty. Quite recently there was presented to General Machado[4] by an entity known as "The Association of Representatives of Foreign Firms" a Memorial recommending a revision of this Treaty. It was alleged in the Memorial that the Treaty negotiated in 1903 did not take into consideration many facts which are material and relevant today. There is no doubt that the present Government of Cuba feels that it has a just claim for reconsideration. Doctor Céspedes asked me whether the matter of revision would be suggested by our Government, in which case the negotiations would be here, or by Cuba, in which case the negotiations would be in Washington. I replied that I was without advice in the premises but that as soon as I finished with the present Treaties, I would communicate with my Government on the subject."

I had an interview of more than two hours duration with the President on March 30th last, and another protracted interview with him on the 6th instant. I asked him whether the views of the Secretary respecting opening up of negotiations for the revision of the Reciprocity Treaty upon the completion of the Consular Treaty[4a] were likewise his views. He replied that he would be very glad to have such negotiations entered upon but that he did not wish to embarrass the Administration of President Coolidge. There fol-

[1] For text of convention, see *Foreign Relations*, 1903, p. 375. The convention is usually referred to as the Reciprocity Treaty—sometimes of 1902 and sometimes of 1903.

[2] Letter not printed. Francis White was Chief of the Division of Latin American Affairs, Department of State.

[3] Dr. Carlos Manuel de Céspedes, Cuban Secretary of State.

[4] Gen. Gerardo Machado, President of Cuba.

[4a] *Post*, p. 27.

lowed a long discussion of the remedies to be adopted to meet the existing industrial crisis in Cuba, due mainly to the continuance of the extremely low price of sugar—below the cost of production. We discussed tentatively the following remedies:

1. A revision of Cuba's preferential upward leaving the United States tariff on sugar unchanged; or
2. Revision of the United States tariff on sugar downward, leaving the preferential unchanged; or
3. A combination of No. 1 and No. 2; he observed that in the event of failure to secure revision of the preferential or of the tariff, there remained only,—
4. A curtailment of the Cuban crop as provided in sub-paragraph (*h*) Article III. (See my despatch No. 1355 of March 2, 1926 [5] transmitting project of the Cortina Sugar Defense Bill).

In respect of this fourth proposition he explained that he was fully aware that Cuba furnished probably more than 50% of the World's export surplus of sugar but remarked that it would seem unjust that the total curtailment necessary for stabilizing prices should fall exclusively upon Cuba to be followed, in all probability, by expansion of production elsewhere.

He then referred to the advisability of a general revision of the Reciprocity Treaty which has been in force for nearly twenty-three years, not only as to Cuba's 20% preferential in the markets of the United States but also as to the preferential of from 20% to 40% given to the products of the soil of the United States in the markets of Cuba.

The history of the negotiations which led up to the existing Reciprocity Treaty show conclusively that it was intended to favor Cuba in the trade relation between the two countries but to be discriminatory in favor of the United States as to the remainder of Cuba's trade to the extent of giving the United States almost the exclusive market in Cuba as to articles where there was competition. It is a widespread belief in Cuba that the Treaty operates in favor of the United States and no lesser authority than Doctor Taussig [6] seems to take the view that at times the Treaty has operated in favor of Cuba and at other times in favor of the United States. If the proposed negotiations accomplish nothing more than the settlement of this question, they would seem to be justified.

While I have not committed myself in regard to the question of revision, I am of the opinion that such a request from the President of Cuba ought to be complied with and beg to suggest that an oppor-

[5] Not printed.

[6] Dr. Frank William Taussig, Henry Lee professor, Harvard University; Chairman of the U. S. Tariff Commission, 1917–19.

tune moment for commencing negotiations would be after the adjournment of the present session of the United States Congress without any indicated attitude toward the question of the revision of the tariff on sugar.

I await the advice of the Department as to whether I may indicate to the President that a request of the character mentioned above, to be presented through the Cuban Embassy at Washington to the State Department, will be favorably regarded.

I have [etc.] E. H. CROWDER

611.3731/185

The Secretary of State to the Ambassador in Cuba (Crowder)

No. 692 WASHINGTON, *April 30, 1926.*

SIR: The Department has received your despatch No. 1390 dated April 8, 1926, regarding a belief which you say is wide-spread in Cuba that the Reciprocity Treaty between the United States and Cuba is relatively more advantageous to the former than to the latter and that it should therefore be revised.

Careful consideration is being given to the subject in consultation with the Department of Commerce and the Tariff Commission. Until you shall be more specifically instructed the Department desires you to refrain carefully from any expression of opinion whether the question of a revision of the treaty should be opened.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

611.3731/192

The Ambassador in Cuba (Crowder) to the Secretary of State

No. 1416 HABANA, *May 7, 1926.*
[Received May 11.]

SIR: I have the honor to acknowledge the Department's instruction No. 692 of April 30, 1926, in relation to the desire of the Cuban Government to enter into negotiation for the modification of the Reciprocity Treaty between the two countries. The Department states that careful consideration is being given to the subject in consultation with the Department of Commerce and the Tariff Commission and desires me, pending further instructions, to refrain from an expression of opinion whether the question of revision of the Treaty should be opened.

It is true that I have listened during the past year to the observations of the President and Foreign Office in regard to the necessity of a revision of the Reciprocity Treaty, at the same time desisting from expressing my own views on the subject. From these conversations, as heretofore stated, it is the evident wish of the Cuban Government to obtain modification of the Treaty in such manner as to permit of the adjustment of the preferential in favor of both countries. I of course understand the Department's desire that pending a decision in the matter the subject should not be discussed and I shall carefully observe the request. Nevertheless, while refraining from comment on the question to officials and others in Cuba I feel it my duty to bring certain subsequent developments to the Department's attention in order that all the facts may be available for consideration.

On May 5th a meeting of the Cabinet was held at which it was decided that inquiry should be made of the Government of the United States whether it is disposed to open negotiations with the Government of Cuba for the modification of the Treaty under reference. It was also agreed that information should be furnished the Cuban Secretary of State concerning the modifications which it is deemed essential to introduce.

Pursuant to the sense of the meeting of the Cabinet the Secretary of State of Cuba on the same date addressed to me a note, copies and translation of which are enclosed, in which, after reviewing the relations between the two countries so far as they are affected by the Reciprocity Treaty at present in force, I am requested to inquire of my Government whether it would be agreeable to it to open negotiations directed towards revision of the Treaty. I have acknowledged the note without other comment than that it is being referred to my Government for consideration and that when I am informed of the Department's decision in the matter I shall again communicate with the Foreign Office.

Meanwhile it is advisable to refer once more to the deep seated feeling prevailing in Cuba that changing conditions have rendered the Reciprocity Treaty incompatible with present needs and to the enthusiastic public response to the President's statements on the subject. This impression is borne out by speeches in Congress and by the almost uniform opinion expressed in the principal journalistic organs of the country looking towards revision of the present agreement. If further proof were needed that the nation attaches fundamental importance to the conduct of the proposed negotiations and is prepared to support the Administration in its efforts to that end, it may be found in a Resolution, of which a copy and translation are

attached hereto,[7] presented to the Senate on May 3rd by Clemente Vazquez Bello, President of the Senate. The document is a strong one enunciating the complete concord of the Senate with the President's intention and assuring the President in advance that any modifications to the Treaty which he may see fit to effect will be ratified by that body. The Resolution has not yet been acted on due to lack of a quorum but there is every reason to believe that it will be promptly passed. The reaction of the House of Representatives to the Senate's action is exemplified in the attached report from *El Sol* of May 6th [7] of interviews with House leaders.

I submit the above data that the Department may appreciate how vitally the issue is here regarded and that in considering whether negotiations may profitably be opened it may weigh the profoundly unfavorable effect, both political and commercial, which an adverse decision would be likely to induce in view of the firm conviction in Cuba that the peculiarly intimate relations of the two countries, with their attendant responsibilities, dictate a frank discussion of the alleged deficiencies in the Reciprocity Treaty.

I have [etc.] E. H. CROWDER

[Enclosure—Translation]

The Cuban Secretary of State (Céspedes) to the American Ambassador (Crowder)

HABANA, *May 5, 1926.*

MR. AMBASSADOR: I have the honor to address Your Excellency today with the purpose of bringing up a matter of very much interest for both our countries, which has been repeated many times by us during our conversations as a problem which at the proper time it would be convenient to discuss with a cordial spirit of coöperation between the two Governments.

I refer to the commercial relations between Cuba and the United States, which, having always been intensive and important, it is sure will at all times be worthy of the most friendly and solicitous attention of the high interested parties to conserve them with the same character with which they were established by the Treaty of Commercial Reciprocity ratified in 1904 [*sic*] and since then in force between our two countries.

The Government of Your Excellency acknowledged in official correspondence during the year 1911 [8] that the conditions existing at the time the Treaty was concerted had already changed and that it was then willing to comply with the request of the Cuban Government

[7] Not printed.
[8] *Foreign Relations*, 1911, pp. 94–100.

of negotiating a new convention of commercial reciprocity for the purpose of adjusting the original Treaty to the conditions which had arisen after the year 1904.

Had it not been for the profound disturbance created by the world war in the economic situation of almost all the nations, also producing in the United States and in Cuba very abnormal conditions during said contest and after its termination which have subsisted in a great part to the present moment, it is logical to suppose that before the present time we would have reached the stage of negotiation between our two Governments and due to reasons substantially the same, to a revision of the aforementioned Treaty in order to more effectively adapt it to the ends and principles expressed in its preamble.

But even disregarding those exceptional circumstances, the period of twenty-two years which has elapsed since the Treaty was put into effect has been of itself long enough to have caused, as really has happened, economic changes of great importance in both nations which it was not possible to foresee when said Treaty was concerted. The transcendental magnitude of these changes which reflected in the volume and character of commerce between the two nations, in the growing investments of American capital in Cuba, in the establishment of a great number of industrial enterprises, banking and commercial enterprises of the United States in our Republic, is well known to Your Excellency, as well as in many other acts which have taken place after the Treaty was in force.

In the opinion of my Government the vital changes which have taken place in that long period of time in the economic life of Cuba, in that of the United States, in the situation of the sugar industry and in world commerce, as well as in the Customs Tariffs of the United States have had the effect in practice to modify both in the United States as well as in Cuba the results brought about by our Treaty of Commercial Reciprocity during the first few years of its enforcement.

The Government of Cuba has tried to form, without prejudice and without partiality, an opinion with regard to the advantages which are derived at the present time by each of the two countries, to the said Treaty, and has noted with interest that there has already been undertaken by the Tariff Commission of the United States, as it has stated in its last report, a complete study of the influence which said Treaty has exercised during the whole life thereof upon the development of commerce between both nations. The time seems propitious, therefore, to reach important conclusions in this connection from the study made by both interested parties.

On the other hand, and to add to the reasons for the examination of these matters, the Government of Cuba, as Your Excellency is aware, is carrying on at the present time a revision of its Customs Tariffs which are acknowledged to be inadequate for its economic life, and has under consideration measures to improve its commercial relations with several foreign nations in order that its products be afforded the just and equitable treatment which they are entitled to in the markets of the world. Of not less importance is the action which the Cuban Government is now developing, in conformity with the sugar interests of the Nation, to coöperate, through legislative and administrative measures, towards the avoidance of the overproduction of sugar which temporarily exists, and to place a part of the agricultural activities of the nation in line with more remunerative products than sugar-cane is at the present time. In addition thereto, we are about to commence the magnificent task of furnishing the Republic with a Central Highway and a secondary net-work of roads which will powerfully contribute to the reality of the diversification of crops and of the economic wealth of the nation, allowing other sources of wealth as advantageous as sugar-cane to arise and perhaps subject to more limited risks and chances.

Moved by these high purposes, and by other not less beneficial results for the progress of the nation, my Government could not possibly omit from its well studied program of economic reconstruction, as fundamental an aspect of the same as the improvement and intensification of the commercial relations with the United States of America which constitutes at all times, but with a greater reason at the present time, a desire of the people and Government of Cuba.

It is not the intention of my Government to pretend that Cuba shall obtain from the United States benefits or favors of a commercial nature which Cuba shall not duly compensate through concessions of an equivalent value, nor preferences of such a nature as to result incompatible with the policy of an adequate protection by the United States of its own industry. My Government understands that the Government of Your Excellency, on its part, likewise desires that there be no injustice or lack of equity for either of the two nations in the operation of the Treaty.

By reason of what I have stated I pray Your Excellency to enquire of your Government whether it is disposed to open negotiations with the Government of Cuba for the modification of the present Reciprocity Treaty in order to assure to both countries greater facilities and advantages in their commercial interchange, thus strengthening and tightening the important relations which so fortunately bind them.

I take [etc.] CARLOS MANUEL DE CÉSPEDES

611.3731/198 : Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

[Paraphrase]

HABANA, *May 17, 1926—4 p. m.*

[Received 8:35 p. m.]

84. From a source close to President Machado I have received the following reliable information:

(1) That President Machado sent the note transmitted with my despatch No. 1416, May 7, out of deference to an almost unanimous public opinion in Cuba on the matter;

(2) That the Government of Cuba would appreciate as an act of courtesy Department's prompt expression, in most general terms, of its willingness, when a convenient time may offer itself, to enter upon a discussion of trade relations between the United States and Cuba with view to render them truly reciprocal, even though such discussion should lead to no result;

(3) That Department's unwillingness to enter into such a discussion as suggested above would seriously impair prestige of the present administration.

I have expressed no opinion as to what Department's decision might be.

CROWDER

611.3731/202

The Acting Secretary of State to the Ambassador in Cuba (Crowder)

No. 781 WASHINGTON, *August 21, 1926.*

SIR: The Department refers to your despatches No. 1416 of May 7, 1926, and No. 1462 of June 10, 1926,[9] relating to the proposal of the Cuban Government for a revision of the Reciprocity Convention of 1902.

The Department has received from the United States Tariff Commission a letter dated June 12, 1926,[10] enclosing a memorandum on the subject. Two copies of this memorandum are enclosed.[11] There would seem to be no objection to your handing a copy informally to an appropriate official of the Cuban Government should you at any time deem such action advisable.

The Department has not yet received final replies from the Departments of Commerce and Agriculture with which it has communicated on this subject. Meantime the proposals of the Cuban Government

[9] Latter not printed.

[10] Not printed.

[11] Not printed. The final report of the Tariff Commission was printed as *The Effects of the Cuban Reciprocity Treaty of 1902* (Washington, Government Printing Office, 1929).

continue to receive careful consideration. It is desired that facts and arguments on both sides which throw light upon the question whether the convention of 1902 is indeed reciprocal in its actual operation be examined in the most cordial spirit by the two Governments concerned.

I am [etc.] LELAND HARRISON

CONVENTION BETWEEN THE UNITED STATES AND CUBA FOR THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS, SIGNED MARCH 4, 1926 [12]

Treaty Series No. 738

Convention Between the United States of America and the Republic of Cuba, Signed at Habana, March 4, 1926 [13]

The United States of America and the Republic of Cuba, being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States of America on the subject of alcoholic beverages, have decided to conclude a Convention for that purpose and have appointed as their respective Plenipotentiaries:

The President of the United States of America, Mister Enoch H. Crowder, Ambassador Extraordinary and Plenipotentiary of the United States of America in Cuba and

The President of the Republic of Cuba, Mister Carlos Manuel de Céspedes y de Quesada, Secretary of State of the Republic of Cuba,

Who, having communicated to each other their respective full powers, which were found to be in good and proper form, have agreed to the following articles:

ARTICLE I

The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low-water mark constitute the proper limits of territorial waters.

ARTICLE II

The Republic of Cuba agrees:

1) That it will raise no objection to the boarding of private vessels under the Cuban flag outside the limits of territorial waters by the

[12] For correspondence relating to the negotiation of this convention, see *Foreign Relations*, 1925, vol. II, pp. 14 ff.

[13] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, Apr. 9, 1926; ratified by the President, Apr. 15, 1926; ratified by Cuba, June 17, 1926; ratifications exchanged at Habana, June 18, 1926; proclaimed by the President, June 19, 1926.

authorities of the United States, its territories or possessions, in order that inquiries may be adressed [*sic*] to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions, in violation of the laws there in force. When such inquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions, prohibiting the importatition [*sic*] of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions, for adjudication in accordance with such laws.

3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense.—In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

Article III

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions, on board Cuban vessels voyaging to or from ports of the United States, its territories or possessions, or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panamá Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

Article IV

Any claim by a Cuban vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this Convention

or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Permanent Court of Arbitration at The Hague described in the Convention for the Pacific Settlement of International Disputes, concluded at The Hague, October 18, 1907. The Arbitral Tribunal shall be constituted in accordance with Article 87 (Chapter IV) and with Article 59 (Chapter III) of the said Convention. The proceedings shall be regulated by so much of Chapter IV of the said Convention and of Chapter III thereof (special regard being had for Articles 70 and 74, but excepting Articles 53 and 54) as the Tribunal may consider to be applicable and to be consistent with the provisions of this agreement.

All sums of money which may be awarded by the Tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction, save as hereafter specified.

Each Government shall bear its own expense. The expenses of the Tribunal shall be defrayed by a ratable deduction of the amount of the sums awarded by it, at a rate of five per centum on such sums, or at such lower rate as may be agreed upon between the two Governments; the deficiency, if any, shall be defrayed in equal moieties by the two Governments.

Article V

This Convention shall be subject to ratification and shall remain in force for a period of one year from the date of exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the Convention.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the Convention shall lapse.

If no notice is given on either side of the desire to propose modifications, the Convention shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the Convention, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the Convention shall lapse.

ARTICLE VI

In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present Convention the said Convention shall automatically lapse, and, on such lapse or whenever this Convention shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this Convention not been concluded.

The present Convention shall be duly ratified by the High Contracting Parties in accordance with their respective laws; and the ratifications shall be exchanged at the City of Habana as soon as possible.

In witness whereof the Plenipotentiaries above mentioned have signed the two originals of the present Convention, and have affixed their respective seals thereto.

Done in two copies of the same text and legal force in the English and Spanish languages in the City of Habana, on this fourth day of March, nineteen hundred and twenty-six.

[SEAL] ENOCH H. CROWDER
[SEAL] CARLOS MANUEL DE CÉSPEDES

711.379/78

The Cuban Secretary of State (Céspedes) to the American Ambassador (Crowder)[14]

No. 185 HABANA, *March 4, 1926.*

MR. AMBASSADOR: With reference to the Convention signed today between the Republic of Cuba and the United States of America to obviate the occurrence of difficulties between both countries arising out of the application of the laws in force in the United States of America relating to alcoholic beverages, and as supplementary to the said Convention and to the negotiations and correspondence which we have had on this subject, I have the honor to advise Your Excellency that the Government of the Republic of Cuba understands that in the event of the adherence of the United States of America to the Protocol of December 16, 1920,[15] which created the Permanent Court of International Justice at The Hague, the Government of the United States will not refuse to consider modifying the aforementioned Convention, or the conclusion of a separate agreement, in which it shall be stipulated that the claims mentioned in Article IV of the said

[14] Transmitted to the Department by the Ambassador as an enclosure to his despatch No. 1361, Mar. 5, 1926.

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

Convention, which may not be settled in the manner indicated in the first paragraph of the said article, shall be submitted to the Permanent Court of International Justice instead of to the Permanent Court of Arbitration.

The Government of the Republic of Cuba likewise understands that each time that the authorities of the United States seize any Cuban vessel in conformity with the stipulations contained in Article II of the Convention above referred to, the said authorities of the United States shall be obliged to communicate very promptly a notification of what has occurred to the diplomatic representative of the Republic of Cuba in Washington giving the name of the vessel, the place of the occurrence, the circumstances of the case and the reasons therefor.

I hope to have the pleasure of receiving from Your Excellency in the name and on behalf of the Government of the United States of America confirmation of this understanding.

I avail myself [etc.] CARLOS MANUEL DE CÉSPEDES

711.379/78

The American Ambassador (Crowder) to the Cuban Secretary of State (Céspedes)[16]

No. 675 HABANA, *March 4, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of today's date, in which you were so good as to inform me in connection with the signing this day of the Convention between the United States and Cuba to aid in the prevention of the smuggling of intoxicating liquors into the United States that the Government of Cuba understands: (1) That in the event of the adhesion by the Government of the United States to the Protocol of December 16, 1920, under which the Permanent Court of International Justice has been created at The Hague, the Government of the United States will not be averse to considering a modification of the said Convention, or the making of a separate Agreement, providing that claims mentioned in Article IV of that Convention which can not be settled in the way indicated in the first paragraph of that Article shall be referred to the Permanent Court of International Justice instead of to the Permanent Court of Arbitration; and (2) that in case Cuban vessels are seized by the authorities of the United States under the provisions of Article II of this Convention, a notification thereof shall be promptly transmitted to the diplomatic representative of

[16] Transmitted by the Ambassador as an enclosure to his despatch No. 1361, Mar. 5, 1926.

Cuba at Washington, giving the name of the vessel, the place of seizure and a brief statement of the grounds therefor.

Complying with your request for confirmation of these understandings I have the honor to state that the Cuban Government's understanding of the attitude of the Government of the United States in this respect is correct, and that in the event of the adhesion by the United States to the Protocol of December 16, 1920, under which the Permanent Court of International Justice has been created at The Hague, the Government of the United States will not be averse to considering a modification of the Convention this day signed, or the making of a separate Agreement, providing for the reference of claims mentioned in Article IV of the Convention which can not be settled in the way indicated in the first paragraph of that Article, to the Permanent Court of International Justice instead of to the Permanent Court of Arbitration.

I also confirm your understanding regarding the notification that is to be given to the diplomatic representative of the Cuban Government at Washington in case Cuban vessels are seized by the authorities of the United States.

Accept [etc.] E. H. CROWDER

CONVENTION BETWEEN THE UNITED STATES AND CUBA FOR THE SUPPRESSION OF SMUGGLING, SIGNED MARCH 11, 1926[17]

Treaty Series No. 739

Convention Between the United States of America and the Republic of Cuba, Signed at Habana, March 11, 1926[18]

The United States of America and the Republic of Cuba, being desirous of aiding each other in the suppression of smuggling from the territory of one state to the other, have agreed to enter into the present Convention and for this purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Mr. Enoch H. Crowder, Ambassador Extraordinary and Plenipotentiary of the United States of America in Cuba, and

The President of the Republic of Cuba, Mr. Carlos Manuel de Céspedes y de Quesada, Secretary of State of the Republic of Cuba,

Who, having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon the following articles:

[17] For correspondence relating to the negotiation of this convention, see *Foreign Relations*, 1925, vol. II, pp. 14 ff.

[18] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, Apr. 16, 1926 (Legislative day of Apr. 5, 1926); ratified by the President, Apr. 20, 1926; ratified by Cuba, June 17, 1926; ratifications exchanged at Habana, June 18, 1926; proclaimed by the President, June 19, 1926.

ARTICLE I

The High Contracting Parties agree to aid each other mutually in the manner provided in this Convention in the prevention, discovery and punishment of violations of their respective laws, decrees or regulations with respect to the importation of narcotics, intoxicating liquors and other merchandise and the entry and departure of aliens.

ARTICLE II

The High Contracting Parties agree that clearance of shipments of merchandise by water, air, or land, from any of the ports of either country to a port of entry of the other country, shall be denied when such shipment comprises articles the importation of which is prohibited or restricted in the country to which such shipment is destined, unless in this last case there has been a compliance with the requisites demanded by the laws of both countries.

The High Contracting Parties likewise bind themselves to prevent by all means possible, in accordance with the laws of their respective countries, the clearance of any vessel or vehicle laden with merchandise or having on board aliens destined to any port or place, when it is evident by reason of the tonnage, size, type of vessel, or vehicle, length of the voyage, perils or conditions of navigation or transportation, that it is impossible for it to transport said merchandise or persons to the place of destination mentioned in the request for clearance, or when the repetition of alleged accidents in prior voyages or the antecedents of or information concerning the vessel or vehicle furnish evidence that said merchandise or any part of the same or any person, whatever the ostensible point of destination thereof might be, is intended to be illegally introduced into the territory of the other High Contracting Party.

When one of the High Contracting Parties gives notice to the other that it suspects that a specified vessel in a port of the other High Contracting Party, although ostensibly destined to a port in a third country, is likely to attempt to introduce unlawfully into its territory merchandise or persons whose entry is prohibited or restricted, the other High Contracting Party shall require from the master or person in charge of the vessel—in accordance with the laws in force in the respective countries and such additional arrangements as may be agreed upon and incorporated in regulations by the appropriate authorities of the High Contracting Parties—a bond to produce a duly authenticated landing certificate showing such merchandise or persons actually to have been discharged at the port for which the vessel cleared. If any such vessel fails to produce the certificate in proof of lawful discharge of such merchandise or persons or produces

a false certificate or evidence the bond shall be forfeited and thereafter for a period of five years the vessel shall be denied the right to enter or clear from any port of either of the High Contracting Parties with merchandise or persons of the same nature.

ARTICLE III

The High Contracting Parties agree to employ all reasonable measures—in accordance with the laws of their respective countries—to prevent the departure of persons destined to the territory of either of them who do not effect such departure through the ports of departure and are not destined to a port of entry in the other country.

Persons who are not nationals of either of the High Contracting Parties and who, coming from the territory of one of them, have attempted to enter unlawfully into the territory of the other and are returned to the territory of the High Contracting Party from which they proceeded, shall be returned in accordance with the laws in force in the country from which they are returned and such additional arrangements as may be agreed upon or incorporated in regulations by the appropriate authorities of the High Contracting Parties in order that such persons may be deported to the country of their origin.

ARTICLE IV

Each of the High Contracting Parties agrees with the other that property of all kinds in its possession which, having been stolen in the territory of the other and brought into its territory, is seized by its customs authorities, shall, when the owners are nationals of the other country, be returned to such owners, subject to satisfactory proof of such ownership and the absence of any collusion, and subject moreover to payment of the expenses of the seizure and detention and to the abandonment of any claims by the owners against the customs, or the customs officers, warehousemen or agents, for compensation or damages for the seizure, detention, warehousing or keeping of the property.

ARTICLE V

The High Contracting Parties mutually agree that they will exchange or furnish when requested information concerning:

(*a*) The transportation of cargoes or the shipment of merchandise between said countries,

(*b*) The names and activities of the persons or vessels which are known to be or suspected of being engaged in the violation of the laws, decrees and regulations mentioned in Article I of this Convention,

(*c*) Persons leaving their territories who are destined to the territory of the other High Contracting Party or the activities of any persons in either country, when there are reasonable grounds to believe that said persons are engaged in unlawful migration activities or in conspiracies against the other Government or its institutions, when not incompatible with the public interest,

(*d*) The existence and extent of contagious and infectious diseases of persons, animals, birds, or plants, and the ravages of insect pests and the measures being taken to prevent their spreading, and

(*e*) The study and use of the most effective scientific and administrative methods for the suppression and eradication of said diseases and insect pests.

ARTICLE VI

The officials of the High Contracting Parties whose duty it may be to prevent or report the violation of the laws, decrees and regulations mentioned in Article I of this Convention are obliged, as soon as they have knowledge of preparations to smuggle or that smuggling has been effected, to do everything possible to prevent the same through all the means within their power in the first case, and to bring the matter to the attention of the proper authorities of their own country, in either of the two circumstances.

The appropriate authorities of each of the High Contracting Parties shall notify the appropriate authorities of the other High Contracting Party of violations of the laws, decrees and regulations mentioned in Article I of this Convention which have been communicated to them relative to attempts at smuggling or actual smuggling, and will furnish all information which they may have been able to gather with regard to the facts and circumstances thereof.

Such notification and information may be furnished and received only by appropriate officials who shall be designated by the respective Governments.

ARTICLE VII

It is agreed that the customs and other administrative officials of the respective governments of the United States of America and of the Republic of Cuba shall upon request be directed to attend as witnesses before the courts in the other country and to produce such available records and files or certified copies thereof as may be considered essential to the trial of civil or criminal cases arising out of violation of the laws, decrees or regulations mentioned in Article I of this Convention and as may be produced compatibly with the public interest. It shall be considered in these cases that they appear as agents of their respective governments, to inform the courts on matters upon which questioned, and when they so appear their character as such agents shall be recognized. Original records or docu-

ments produced by said officials shall not be retained by the courts, but legal copies thereof may be taken if necessary.

The cost of transcripts of records, depositions, certificates and letters rogatory in civil or criminal cases, and the cost of first-class transportation both ways, maintenance and other proper expenses involved in the attendance of such witnesses shall be paid by the nation requesting their attendance at the time of their discharge by the court from further attendance at such trial. Letters rogatory and commissions shall be executed with all possible despatch and copies of official records or documents shall be certified promptly by the appropriate officials in accordance with the provisions of the laws of the respective countries.

ARTICLE VIII

This Convention shall be ratified, and the ratifications shall be exchanged in the City of Havana as soon as possible. The Convention shall come into effect at the expiration of ten days from the date of the exchange of ratifications, and it shall remain in force for one year. If upon the expiration of one year no notice is given by either party of a desire to terminate the same, it shall continue in force until thirty days after either party shall have given notice to the other of a desire to terminate it.

In witness whereof, the Plenipotentiaries above mentioned have signed the two originals of the present Convention and have affixed their respective seals thereto.

Done in two copies of the same text and legal force in the English and Spanish languages in the City of Habana, this eleventh day of March in the year one thousand nine hundred and twenty-six.

[SEAL] ENOCH H. CROWDER
[SEAL] CARLOS MANUEL DE CÉSPEDES

CONSULAR CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED APRIL 22, 1926 [19]

Treaty Series No. 750

Convention Between the United States of America and the Republic of Cuba, Signed at Habana, April 22, 1926 [20]

The United States of America and the Republic of Cuba, being desirous of defining the duties, rights, privileges and immunities of

[19] For correspondence relating to the negotiation of this convention, see *Foreign Relations*, 1925, vol. II, pp. 14 ff.

[20] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, June 30, 1926; ratified by the President, July 16, 1926; ratified by Cuba, Nov. 29, 1926; ratifications exchanged at Habana, Dec. 1, 1926; proclaimed by the President, Dec. 2, 1926.

consular officers of the two countries have agreed to conclude a Convention for that purpose and to that end have named as their respective plenipotentiaries:

The President of the United States of America, Mr. Enoch H. Crowder, Ambassador Extraordinary and Plenipotentiary of the United States of America in Cuba, and

The President of the Republic of Cuba, Mr. Carlos Manuel de Céspedes y de Quesada, Secretary of State of the Republic of Cuba, who, having communicated their full powers found in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties agree to receive from each other, consular officers, at the places of their respective territories that they may consider convenient and which are open to consular representatives of any foreign country.

ARTICLE II

Consular officers may not take up the discharge of their duties nor enjoy the corresponding privileges, until after the Government to which they have been appointed shall have granted them their exequatur, except in the case that said Government, at the request of the Embassy of the other, shall have granted them provisional recognition.

The Government of each of the High Contracting Parties shall furnish free of charge the exequatur of such consular officers of the other High Contracting Party as present a regular commission signed by the chief executive of the appointing state and under its Great Seal, and shall issue to a subordinate or substitute consular officer appointed by a superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function.

ARTICLE III

Consular officers to whom the exequatur or other documents referred to in the foregoing article have been issued shall enjoy all the rights, immunities, privileges and exemptions granted by this Convention and those enjoyed by officers of the same grade of the most favored Nation.

ARTICLE IV

As official agents of the State which appoints them, such consular officers shall be entitled to the high consideration of the officials of

the Government and of the local authorities of the State which receives them, they being subject, in so far as regards ceremonial, to the provisions or practices in force in said country.

The consular officers shall exercise their functions obeying the laws and respecting the authorities of the Nation which receives them, and they shall be subject to said authorities in all matters which do not come under the exercise of their functions and within the limits of their jurisdiction, except as otherwise provided in this Convention.

Article V

Consular officers, nationals of the State by which they are appointed, shall be exempt from arrest except when charged with the commission of offenses locally designated as crimes other than misdemeanors and subjecting the individual guilty thereof to punishment.

In criminal cases the attendance at the trial by a consular officer as a witness may be demanded by the prosecution or defense. The demand shall be made with all possible regard for the consular dignity and the duties of the office, and there shall be compliance on the part of the consular officer.

In civil cases consular officers shall be subject to the jurisdiction of the courts, provided, however, that when the officer is a national of the State which appoints him and is engaged in no private occupation for gain his testimony shall be taken orally or in writing at his residence or office and with the consideration due him. The officer must, however, voluntarily give his testimony at the trial whenever it is possible to do so without serious interference with his official duties.

Article VI

Consular officers, including employees in a consulate, nationals of the State by which they are appointed, other than those engaged in private occupations for gain within the State where they exercise their functions, shall be exempt from all taxes, national, state, provincial and municipal levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. Consular officers and employees, nationals of the State appointing them, shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services, as well as from every class of requisitions, billetings or services of a military, naval, administrative or police character.

Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the

legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, national, state, provincial and municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

ARTICLE VII

Consular officers may place over the outer part of their respective offices the arms of their State with an appropriate inscription designating the consular office. Such officers may also hoist the flag of their country on their offices, including those situated in the capital of the country which receives them and over any boat employed in the exercise of the consular function.

The consular offices and archives are inviolable at all times and in no event may the local authorities enter them without the permission of the consular officers, nor examine or seize, under any pretext, any of the documents or objects found within a consular office. Neither shall any consular office be required to produce official archives in court or testify as to their contents.

When a consular officer is engaged in business of any kind within the country which receives him, the archives of the consulate and the documents relative to the same shall be kept in a place entirely apart from his private or business papers.

ARTICLE VIII

Consular offices shall not be used as places of asylum. Consular officers are under the obligation of surrendering to the proper local authorities, which may claim them, persons prosecuted for crime in accordance with the domestic laws of the country which receives them, who have taken refuge in the building occupied by the consular offices.

ARTICLE IX

Upon the death, incapacity or absence of all the consular officers, any of the chancellors or auxiliary employees, whose official character may have previously been made known to the Secretary of State, may temporarily exercise the consular functions, and while so acting shall enjoy all the rights, prerogatives immunities and exemptions belonging to the incumbent.

ARTICLE X

Consular officers, nationals of the state by which they are appointed, may, within their respective consular districts, address the authorities, national, state, provincial or municipal, for purpose of protect-

ing their countrymen in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the appropriate authorities to grant redress or to accord protection may justify recourse to the diplomatic channel.

ARTICLE XI

Consular officers may, in pursuance of the laws of their own country, take at any appropriate place within their respective districts, the depositions of any occupants of vessels of their own country, or of any national of, or of any person having permanent residence within the territories of, their own country. Such officers may draw up, attest, certify and authenticate unilateral acts, deeds and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party. They may draw up, attest, certify and authenticate written instruments of any kind purporting to express or embody the conveyance or encumbrance of property of any kind within the territory of the State by which such officers are appointed, and unilateral acts, deeds, testamentary dispositions, and contracts relating to property situated, or business to be transacted, within the territories of the state by which they are appointed embracing unilateral acts, deeds, testamentary dispositions or contracts executed solely by nationals of the state within which such officers exercise their functions.

Instruments and documents thus executed and copies and translations thereof, when duly authenticated and bearing the official seal of the consular office, shall be received as evidence in the territories of the High Contracting Parties as original documents or authenticated copies, as the case may be, and shall have the same force and effect as if drawn by and executed before a notary or other public officer duly authorized therefor in the country by which the consular officer was appointed, provided always that such documents shall have been drawn and executed in conformity to the laws and regulations of the country where they are designed to take effect.

ARTICLE XII

A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, including controversies which may arise at sea or in port, between the captain, the officers and the crew concerning the enforcement of discipline, provided the vessels and the persons charged with wrongdoing shall have entered a port within his consular district. Such officer shall also have jurisdiction in controversies involving the settlement of wages and the performance of the stipulations reciprocally agreed upon provided the local laws so permit.

When an act committed on board of a merchant vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of the last named State, the consular officer shall not exercise jurisdiction.

A consular officer may freely invoke the assistance of the local police authorities in any matter pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

A consular officer may appear with the officers and crews of vessels under the flag of his country before the judicial authorities of the State to which he is appointed for the purpose of observing the proceedings and rendering assistance.

Article XIII

In case of the death of a national of either High Contracting Party in the territory of the other without having in the territory of his decease any known heirs or testamentary executors, the competent local authorities shall at once inform the nearest consular officer of the State of which the deceased was a national of the fact of his death, in order that information may be forwarded to the parties interested.

In case of the death of a national of either of the High Contracting Parties without will or testament, in the territory of the other High Contracting Party, the consular officer of the State of which the deceased was a national and within whose district the deceased made his home at the time of his death, may take charge of the protection or conservation of the property left by the decedent, pending the appointment of an administrator who may be the consular officer himself, in the discretion of the court competent to take cognizance of the case, provided the laws of the place where the estate is administered permit such action by the consular officer and appointment by the court.

Whenever a consular officer accepts the office of administrator of the estate of a national of the country he represents, he subjects himself as such to the jurisdiction of the tribunal making the appointment for all pertinent purposes to the same extent as a national of the State where he is appointed.

Article XIV

A consular officer of either High Contracting Party may in behalf of the non-resident nationals of the country he represents, receipt for

the shares coming to them in estates or in indemnities accruing under the provisions of so-called workmen's compensation laws or other like statutes provided he remit any funds so received through the appropriate agencies of his Government to the proper distributees, and provided further that he furnish to the authority or agency making distribution through him reasonable evidence of such remission.

Article XV

A consular officer of either High Contracting Party shall have the right to inspect, within the ports of the other High Contracting Party within his consular district, the merchant vessels of any flag destined or about to clear for ports of the country which he represents in order to observe the sanitary conditions and measures taken on board such vessels, and to be enabled thereby to execute intelligently bills of health and other documents required by the laws of his country, and to inform his Government concerning the manner in which its sanitary regulations have been observed at ports of departure by vessels destined to its ports, with a view to facilitating entry of such vessels therein.

Article XVI

The High Contracting Parties agree to permit the entry free of all customs 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 law of either of the High Contracting Parties, may be brought into its territories.

The above mentioned 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 supplies.

Article XVII

All operations relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred.

The local authorities will apprise the consular officers of the occurrence and pending the arrival of the said officers will take the

measures that may be necessary for the protection of the persons and the preservation of the effects that were wrecked. The local authorities shall not interfere otherwise than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked, and to carry into effect the arrangements made for the entry and exportation of the merchandise saved which shall not be subjected to the payment of any custom house duties, unless it be intended for consumption in the country where the wreck took place.

The intervention of the local authorities in these cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

Article XVIII

Consular officers shall cease in the discharge of their functions:

1. By virtue of an official communication from the Government which appointed him addressed to the Government which received him, advising that his functions have ceased, or

2. By virtue of a request of the Government which appointed him that an exequatur be issued to a successor, or

3. By withdrawal of the exequatur granted him by the Government of the Nation in which he discharges his duties.

Article XIX

The present convention shall be ratified by the High Contracting Parties in accordance with their respective laws, and the ratifications thereof shall be exchanged in the City of Havana as soon as possible. It shall take effect from the day of the exchange of ratifications and shall thereafter remain in force until one year after either of the High Contracting Parties has given notice to the other of its desire to terminate it.

In witness whereof, the above mentioned Plenipotentiaries have signed the two originals of the present Convention and have thereunto affixed their seals.

Done in two copies of the same text and legal force, in the English and Spanish languages, in the City of Havana, this twenty second day of April in the year one thousand nine hundred and twenty-six.

[SEAL] Enoch H. Crowder

[SEAL] Carlos Manuel de Céspedes

ADDITIONAL EXTRADITION TREATY BETWEEN THE UNITED STATES AND CUBA, SIGNED JANUARY 14, 1926[21]

Treaty Series No. 737

Treaty Between the United States of America and the Republic of Cuba, Signed at Habana, January 14, 1926 [22]

The United States of America and the Republic of Cuba, being desirous of enlarging the list of crimes on account of which extradition may be granted with regard to criminal acts committed in the United States of America or in the Republic of Cuba under the Treaty concluded between both nations for the extradition of fugitives from justice, signed April 6, 1904,[22a] and the Protocol amending the Spanish text of said Treaty, signed on December 6, 1904,[23] with a view to the better administration of justice and the prevention of crime, have resolved to conclude the present Additional Treaty and have appointed for this purpose as their respective Plenipotentiaries:

The President of the United States of America: Mister Enoch H. Crowder, Ambassador Extraordinary and Plenipotentiary of the United States of America in Cuba; and

The President of the Republic of Cuba: Señor Carlos Manuel de Céspedes y de Quesada, Secretary of State of the Republic of Cuba,

Who, after having communicated to each other their respective full powers, which were found to be in good and proper form, have agreed to the following articles:

ARTICLE I

Number 10 of the list of crimes contained in Article II of the Extradition Treaty concluded between the Republic of Cuba and the United States of America is increased by the addition of the crime of immoral abuses made criminal by the laws of both countries, said number being drafted to read as follows:

10. Rape; bigamy; immoral abuses when made criminal by the laws of both countries.

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[21] For correspondence relating to the negotiation of this treaty see *Foreign Relations*, 1925, vol. II, pp. 14 ff.

[22] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, Mar. 3, 1926; ratified by the President, Mar. 8, 1926; ratified by Cuba, June 17, 1926; ratifications exchanged at Habana, June 18, 1926; proclaimed by the President, June 19, 1926.

[22a] *Foreign Relations*, 1905, p. 280.

[23] William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers*, 1776–1909 (Washington, Government Printing Office, 1910), vol. I, p. 371.

ARTICLE II

The following punishable acts are hereby added to the aforementioned list of crimes:

18. Abortion.

19. Seduction and corruption of minors if made criminal by the laws of both countries.

20. Crimes against bankruptcy and suspension of payment laws if made criminal by the laws of both countries.

21. Crimes against the laws for the suppression of the traffic in narcotic products.

22. Infractions of the customs laws or ordinances which may constitute crimes.

ARTICLE III

The present Treaty shall be considered as an integral part of the aforementioned Extradition Treaty signed April 6, 1904, which shall be read as if the list of crimes therein contained had originally comprised the additional crimes added to it under the numbers which appear in articles I and II of this Treaty.

ARTICLE IV

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective laws, ratifications to be exchanged in the City of Havana, as soon as it may be possible and it shall take effect from the date of the exchange of ratifications and shall remain in force for a period of six months after either of the High Contracting Parties shall have given notice of a desire to terminate it to the other Party.

In Witness Whereof, the Plenipotentiaries above mentioned have signed the two originals of the present Treaty and have affixed their respective seals thereto.

Done in two copies of the same text and legal force in the English and Spanish languages in the City of Havana, on this fourteenth day of January, nineteen hundred and twenty-six.

[SEAL] ENOCH H. CROWDER

[SEAL] CARLOS MANUEL DE CÉSPEDES

DISINCLINATION OF THE UNITED STATES TO CONCLUDE A TRADE MARKS CONVENTION WITH CUBA AS PROPOSED BY THE CUBAN GOVERNMENT

811.54337/–

The Ambassador in Cuba (Crowder) to the Secretary of State

No. 1226 HABANA, *November 3, 1925.*

[Received November 9.]

SIR: I have the honor to transmit herewith copy and translation of Note No. 1102 of October 29, 1925, from the Secretary of State of Cuba,[24] proposing that the American and Cuban Governments enter into negotiations looking toward the conclusion of a "Convention for the Suppression of False Indications of Cuban Origin" and enclosing a draft treaty.

In acknowledging the receipt of Dr. Céspedes' note I informed him that I would transmit his proposals to my Government with the request that they receive prompt and sympathetic consideration.

I have [etc.] E. H. CROWDER

811.54337/3

The Ambassador in Cuba (Crowder) to the Secretary of State

No. 1302 HABANA, *January 15, 1926.*

[Received January 27.]

SIR: I have the honor to refer to my despatch No. 1226 of November 3, 1925, transmitting the proposal of the Cuban Government that negotiations be entered into looking toward the conclusion of a "Convention for the Suppression of False Indications of Cuban Origin" and enclosing a draft Treaty. I likewise beg to refer to my telegram No. 3 of January 3, 1926, 4 P. M.,[24] expressing a hope that the answer to this despatch might be expedited since the Cuban Government had evinced a certain disinclination to proceed with expedition to the signature of the Smuggling Treaties desired by the United States unless prompt consideration were given to the Cuban wishes concerning this Treaty for the Suppression of False Indications of Cuban Origin and the Consular Treaty.

The Embassy in the meantime had occasion to give the subject further study and under date of January 11, 1926, presented note No. 625 to the Cuban Government,[24] setting forth Article VIII of the Convention Concerning the Protection of Trade Marks signed

[24] Not printed.

at Buenos Aires August 20, 1910,[25] and quoting the Act of March 19, 1920 (41 Stat. 534 [*533*]), giving effect to this Article. No reply has as yet been received to this note.

I have [etc.] E. H. CROWDER

811.54337/2

The Secretary of State to the Ambassador in Cuba (Crowder)

No. 641 WASHINGTON, *January 29, 1926.*

SIR: Referring further to your despatch No. 1226 of November 3, 1925 in regard to the desire of the Government of Cuba to enter into negotiations with the United States for the conclusion of a convention for the suppression of false indications of Cuban origin, the Department desires that you communicate with the Minister of Foreign Affairs in the sense of the following:

The competent authorities of the Government of the United States[26] who have carefully considered the proposal of the Cuban Government, are of the opinion that the existing laws of the United States relating to unfair trade practices are adequate to afford effective protection to any Cuban interest which might be injuriously affected by the manufacture or sale in the United States of any commodity falsely represented as of Cuban origin and accordingly there would not appear to be any need for a convention on the subject between the two countries.

With respect to the proposed restriction of the use in the United States of the words "Cuba", "Habana", "Vuelta Abajo" and "any other geographical term of the Republic of Cuba", it may be observed that the use of those words in connection with goods sold in this country seems to be confined principally to manufactured articles which are made of materials actually produced in Cuba. The Department is of the opinion, therefore, that no element of false indication of origin is involved in the use of the words mentioned in connection with such articles and it is believed that this legitimate use of the words under discussion beneficially advertises and creates a greater demand for the Cuban products thereby materially adding to their value by insuring a greater market for their consumption.

It is believed, therefore, that the proposed convention would effect no result favorable to either country but on the contrary would injuriously affect the interests of both countries by interfering with and impairing the business of legitimate organizations in the United States engaged in the manufacture or sale of articles involving the

[25] *Foreign Relations*, 1910, p. 53.

[26] The Departments of Commerce and Agriculture.

use of Cuban products thereby materially reducing the volume of those products imported into the United States with consequent loss to the Cuban producers of those products.

In bringing the foregoing to the attention of the Minister of Foreign Affairs, you are requested to assure him of this Government's desire to cooperate with the Cuban Government for the prevention or elimination of any unfair use in the United States of the words "Cuba", "Habana", "Vuelta Abajo" or "any other geographical term of the Republic of Cuba", and to state that upon receipt of evidence of the existence of unfair practices with respect to the use of those words, this Government will use every available means for the elimination of such practices.

There are transmitted herewith for your information copies of letters from the Secretary of Commerce and the Secretary of Agriculture dated January 13, 1926,[27] expressing their views in regard to the proposal of the Cuban Government and the draft convention submitted by that Government which accompanied your despatch under reference.

If you consider that the imparting to the Cuban Government of the views herein expressed might prejudice the present negotiations regarding smuggling operations [28] you may defer their presentation to that Government unless an expression on the subject is requested as a condition precedent to the conclusion of the present negotiations or the withholding thereof might be regarded as evidence of bad faith on the part of this Government.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[27] Neither printed.
[28] See convention signed Mar. 4, 1926, p. 23.

DOMINICAN REPUBLIC

CONSENT BY THE UNITED STATES TO THE EMISSION OF BOND ISSUE OF $10,000,000 BY THE DOMINICAN GOVERNMENT

839.51/2830

The Dominican Minister (Morales) to the Secretary of State

[Translation]

WASHINGTON, *October 14, 1926.*

MR. SECRETARY OF STATE: The Government of the Dominican Republic in the exercise of the recent powers granted by Congress has decided to float a ten million dollar ($10,000,000) loan; the issue of the bonds will be for forty years bearing interest at the rate of no more than five and one half per cent, redeemable at 101 and the amortization to begin in 1930 at the rate of one million ten thousand pesos a year so as to end in the early part of the year 1940.

The allotment made by Congress for the investment of the funds brought by this loan is as follows:

First.—Improvement in the ports of Santo Domingo, San Pedro de Macorís, and Puerto Plata; Second.—completion of the highways in accordance with the plan mapped out by the Department of Public Works; Third.—the aqueduct for the city of Santo Domingo; Fourth.—colonization and irrigation of the lands in the arid regions of the Republic; Fifth.—the construction of 10 school houses in various cities of the country; Sixth.—contribution to the installation of a banking institution for small farmers.

In accordance with Article 3 of the Convention signed at Washington on December 27, 1924, by the representatives of the Government of the United States and of the Dominican Government,[1] I hereby apply for the approval of the Government of the United States for the flotation of the said loan.

I avail myself [etc.] A. MORALES

[1] For the text of the convention, see *Foreign Relations*, 1924, vol. I, p. 662.

839.51/2834 : Telegram

The Minister in the Dominican Republic (Young) to the Secretary of State

[Paraphrase]

SANTO DOMINGO, *October 25, 1926—7 p. m.*

[Received 9:20 p. m.]

87. Last evening the President and Minister of Finance called to acquaint me informally with a telegraphic report from Morales that the Department suggests the loan be brought out in series and that it is now prepared to give consent to the sale of bonds to the value of 4 to 5 million dollars.

The President stated that he was very desirous of effecting the sale of the entire 10-million-dollar issue now for the following reasons: (1) He has earnestly labored to put through public-works loan project which the country needs greatly, and both Congress and the public at present strongly favor the loan, and from a political standpoint here the time is very opportune to close the entire transaction. (2) That if only a part of the total amount is now emitted, Congress, which is subject to sudden shifts in political alignments, may, if antagonistic to the President later, cancel the authority to dispose of the unemitted part of the bonds. (3) The present bond market is very favorable.

The President emphasized that if the entire amount is now authorized by the Department, the proceeds will be utilized only as the progress on the works necessitates. In this connection, and as an indication of his good faith, he made the suggestion that the matter be arranged so that funds could be withdrawn from the fiscal agent only upon my personal approval, a suggestion which is, of course, impracticable.

The President indicated further that the law authorizing the loan specifies amounts and purposes, and he added that any change therein would be subject to the Department's approval.

After carefully considering all phases of the questions involved, I recommend that the Department give its consent to the sale of bonds to the amount of 10 million dollars, conditioned on the assurances of the Dominican Government that after sale of the bonds 3 million dollars be made available to the Dominican Treasury by the fiscal agent, and that the balance be placed on deposit to the credit of the Government of the Dominican Republic, to be drawn against only as the progress of the work on the undertakings mentioned in the authorizing law warrants. It is my belief that such assurances will be promptly given, and at least will be measurably satisfactorily

complied with. The suggestion of the Department is without question basically preferable, but in view of the attitude of the Government here, if insisted on, will cause extreme irritation and constitute a serious blow to the prestige of the President.

YOUNG

839.51/2838a : Telegram

The Secretary of State to the Minister in the Dominican Republic (Young)

WASHINGTON, *October 26, 1926—8 p. m.*

31. Before approving the proposed Dominican loan in any amount the Department is anxious to feel assured that the money destined for public works will be wisely and efficiently expended. The Department understands that one of the conditions for the bidders on the aqueduct project was that a surety company would execute a performance bond in the sum of $300,000 guaranteeing satisfactory completion of the contract. The Department feels that this was a wise precaution on the part of the Dominican Government and trusts that this condition will be insisted upon. You may informally advise the President of the above and state further that the Department can approve a loan to the Dominican Government for construction of public works only if the Department is satisfied that these works will be undertaken by reliable and experienced companies.

KELLOGG

839.51/2840a : Telegram

The Secretary of State to the Minister in the Dominican Republic (Young)

[Paraphrase]

WASHINGTON, *October 28, 1926—4 p. m.*

32. After having given careful consideration to the matter of the Dominican loan, Department felt that its approval under article III of convention of 1924 could not be given to the loan project as set forth in Dominican Legation's note. Department has two reasons for position taken: (1) The issue of $10,000,000 at this time seems unnecessarily large amount for new Government's first loan; (2) were a smaller loan to be made and the proceeds applied satisfactorily, the credit of the Dominican Government would be materially strengthened and probable attacks and criticisms of misuse of proceeds of a large loan would be minimized.

On October 23 the Dominican Minister was called to the Department and informally advised that Dominican Government's request for approval of loan should be reconsidered; and that for it there should be substituted a request for a loan of $4,000,000, as it was thought that $2,500,000 for the aqueduct, $1,200,000 for road building (understanding being that $100,000 per month is now used for that purpose), and $300,000 for irrigation and agricultural projects now being executed, would be sufficient for year 1927. Unless such a plan were instituted, the Department intimated to Mr. Morales that it could not see its way clear to give the authorization. Mr. Morales is away from Washington at present, and on his return will probably be able to inform the Department officially of the Dominican Government's attitude.

Referring to your telegram No. 87, October 25, 7 p. m., while the Department understands President Vasquez's position and desires to assist the Dominican Republic in every way, it feels that to issue loan for $10,000,000 and then to embark upon a very comprehensive plan of public works is too ambitious and is likely to entail unwise expenditure. The Department thinks that it would be wiser to approve a loan for $4,000,000 for this year and another loan for $4,000,000 next year and the remainder the year after that. If, however, the Dominican Government feels that loan for total amount of $10,000,000 must be issued, the difficulty might be obviated if Mr. Morales, when making request indicated, addresses a note to the Department stating that $3,000,000 is to be used during forthcoming year for certain definite purposes which are set forth and that remainder will be deposited in a New York bank subject to withdrawal by order of a Public Works Board, the latter to consist of one member appointed by the President of the Dominican Republic, one member appointed by the American Minister, and the third member to be the Receiver General of Customs. It also seems that it would be very advisable if the Board above mentioned should exercise some form of control over the expenditures on each project.

Department's principal objection to loan of $10,000,000 is that expenditure of such a large amount of money would offer great temptation for mishandling by political self-seekers with resultant political and economic injury to the country. Please cable your views and give your opinion on how Santo Domingo would regard the proposed Board of Public Works. The Department will make no further suggestions until it has heard from you and from the Dominican Minister.

KELLOGG

839.51/2842 : Telegram

The Minister in the Dominican Republic (Young) to the Secretary of State

[Paraphrase]

SANTO DOMINGO, *October 30, 1926—1 p. m.*
[Received 4:00 p. m.]

91. Department's telegram No. 32, October 28, 4 p. m. It is my belief that Public Works Board such as Department suggested would not be acceptable to Dominican Government; I am certain of this if the board were to include the present General Receiver of Customs.

I feel that only practicable manner of meeting the Department's objections to giving its approval of a $10,000,000 loan is to limit amount of money which may annually be made available to Dominican Government from proceeds of loan and then only for purposes stated in law of authorization; for instance, $4,000,000 could be made available during first year following sale of bonds, $4,000,000 the second, and $2,000,000 the third and last, and assurances could be given by Dominican Government that even with this limitation the funds will not be withdrawn except as needed by the progress of the works. Dominican Government would probably oppose this suggestion as its program calls for $5,000,000 the first year and $5,000,000 the second year, but suggestion would probably be accepted eventually. While not certain that this suggestion, if made effective, will constitute complete safeguard it would without question ensure a wiser and more economical expenditure.

YOUNG

839.51/2852 : Telegram

The Minister in the Dominican Republic (Young) to the Secretary of State

[Paraphrase]

SANTO DOMINGO, *November 8, 1926—1 p. m.*
[Received 6:35 p. m.]

95. Referring to my telegram No. 91, October 30, 1 p. m. I have made a further and exhaustive study of the matter, and I have found no reason to modify in any particular the suggestion set forth in my telegram No. 91 unless there be added the stated condition that the purposes and amounts cannot be changed after the Department has approved the loan, without its acquiescence.

I respectfully submit the following comments:

1. The loan project is not based on political exigencies, though the party in power will naturally be favorably affected by the employment that will be provided.

2. Minor criticisms may be made, but on the whole the program accords with the needs of the country.

3. To guard against improper influences the loan of authorization will set forth both the purposes and the amounts.

4. It is the unanimous opinion of bankers and businessmen that $10,000,000 loan will have very favorable effect upon economic conditions. General Receiver of Customs is strongly of this opinion.

5. I have been unable to find in any quarter here any suggestion that political conditions would be adversely affected.

6. Personal opinion of General Receiver of Customs is that loan should be unconditionally approved.

YOUNG

839.51/2857

The Dominican Minister (Morales) to the Secretary of State

[Translation]

WASHINGTON, *November 11, 1926.*

MR. SECRETARY OF STATE: The Government of the Dominican Republic under the Law No. 516 of October 15, 1926, has decided to float a loan for ten million dollars. The issue of bonds will be for 14 years, paying an interest of not more than 5½ percent, redeemable at 101 and the redemption of which will begin in the year 1930 at the rate of one million ten thousand dollars a year and will be ended at the year 1940.

The Dominican Government will divide the issue into two series. The first series of bonds in the sum of five million dollars will be immediately offered for sale and the second series in the same amount shall be sold after a year, when the first five million dollars have been used, the Government reserving to itself not to sell the second series except under market conditions not less advantageous than the present ones.

The proceeds of the loan will be invested as follows:

(*a*) Two million two hundred forty-five thousand dollars in the construction of an aqueduct, system of sewers, etc., in the city of Santo Domingo.

(*b*) Two million five hundred thousand dollars to carry on the general plan of highways and distributed as follows: Four hundred thousand dollars for the completion of the Santiago-Puerto Plata road; Two hundred fifty thousand dollars for the extension of the Sanchez road as far as the Haytian frontier; One hundred twenty thousand dollars for the completion of the La Romana road until it joins the Mella road; Five hundred thousand dollars to carry on the Moca-Samaná road; One hundred fifty thousand dollars to complete the Azua-Barahona road; Two hundred thousand dollars to extend the Duarte road from Monte-Cristy to Dajobón; One hundred fifty

thousand dollars to continue the Sabana de la Mar-Hato Mayor road; One hundred twenty thousand dollars to complete the San José de Ocoa road to its junction with the Sanchez road; Two hundred fifty thousand dollars for the construction of various bridges on the several roads; Three hundred sixty thousand dollars for the completion of the Bayaguana, Moca-Jamao, Jarabacoa and San José road.

(*c*) Two million dollars for the improvement of the harbors of Santo Domingo, San Pedro de Macorís and Puerto Plata.

(*d*) One million six hundred thousand dollars for the Immigration, Colonization, and Irrigation of wastelands in accordance with the plan of the Department of Agriculture and Immigration now being carried out by it and according to the following allotment:

For irrigation: Baní district, two hundred thousand dollars; Santiago, twenty-four thousand dollars; Monte Cristy, two hundred thousand dollars; San Juan, one hundred seventy-five thousand dollars and Azua, twenty-one thousand dollars. For immigration and colonization: Bonao district, ninety-one thousand dollars; El Valle, one hundred thousand dollars; Monte Cristy, one hundred thousand dollars; Seibo, one hundred thousand dollars; the Dominico-Haitiana frontier, three hundred thousand dollars; Yuma, one hundred thousand dollars; San Francisco de Macorís, one hundred thousand dollars; Baní, fifty thousand dollars; and San Juan, forty thousand dollars.

(*e*) Two hundred thousand dollars for the building of ten school houses in various cities of the country.

(*f*) Five hundred thousand dollars to promote the creation of a Farmers Bank.

In accordance with Article 3 of the Convention signed in Washington on December 27, 1924, by the representatives of the Government of the United States and of the Dominican Republic I earnestly apply for the approval of the Government of the United States of the contracting for such a loan.

I avail myself [etc.] A. MORALES

839.51/2858

The Dominican Minister (Morales) to the Secretary of State

[Translation]

WASHINGTON, *November 12, 1926.*

MR. SECRETARY OF STATE: Referring to the Legation's note dated November 11, 1926, I have the honor to inform Your Excellency that the Dominican Government will make known to the Department of State exactly how the two million dollars intended for the improvement of the ports of Santo Domingo, San Pedro de Macorís and Puerto Plata will be distributed after the preliminary studies, which are now being made by an expert of the Department of Public Works, are completed.

The proceeds of the first series of bonds, a proportion of which is for the execution of those works, will not be used until after the studies are completed and the work is started.

I shall be glad to hope that these additional explanations will make it easier for the Department to answer the above said note.

I avail myself [etc.] A. MORALES

839.51/2858

The Secretary of State to the Dominican Minister (Morales)

WASHINGTON, *November 19, 1926.*

SIR: I am pleased to acknowledge the receipt of your notes of November 11 and 12, stating that the Government of the Dominican Republic, being desirous of contracting a loan of $10,000,000 for certain specified public improvements, requests the agreement of the Government of the United States to this step in accordance with the terms of Article III of the Convention signed on December 27, 1924 at Washington.

In your above mentioned notes it is set forth that the Government of the Dominican Republic desires this loan to run for a period of fourteen years, the bonds to bear interest at the rate of not more than five and one-half percent and to be redeemable at 101, their redemption to begin in 1930 at the rate of one million ten thousand dollars a year and to be completed in 1940; that furthermore the issue will be divided into two series, (A) and (B), the first series amounting to five million dollars to be immediately offered for sale and the second series to be sold at a price not less advantageous than that obtained for the first series one year later after the proceeds of Series (A) have been expended.

It is understood from the information which you have furnished that the proceeds of the loan are to be used as follows:

(*a*) Two million two hundred forty-five thousand dollars in the construction of an aqueduct, system of sewers, etc., in the city of Santo Domingo.

(*b*) Two million five hundred thousand dollars to carry on the general plan of highways and distributed as follows: Four hundred thousand dollars for the completion of the Santiago-Puerto Plata road; Two hundred fifty thousand dollars for the extension of the Sanchez road as far as the Haytian frontier; One hundred twenty thousand dollars for the completion of the La Romana road until it joins the Mella road; Five hundred thousand dollars to carry on the Moca-Samaná road; One hundred fifty thousand dollars to complete the Azua-Barahona road; Two hundred thousand dollars to extend the Duarte road from Monte-Cristy to Dajobón; One hundred fifty thousand dollars to continue the Sabana de la Mar-Hato Mayor road; One hundred twenty thousand dollars to complete the San José de

Ocoa road to its junction with the Sanchez road; Two hundred fifty thousand dollars for the construction of various bridges on the several roads; Three hundred sixty thousand dollars for the completion of the Bayaguana, Moca-Jamao, Jarabacoa and San José road.

(*c*) Two million dollars for the improvement of the harbors of Santo Domingo, San Pedro de Macorís and Puerto Plata.

(*d*) One million six hundred thousand dollars for the Immigration, Colonization, and Irrigation of arid lands in accordance with the plan of the Department of Agriculture and Immigration now being carried out by it and according to the following allotment:

For irrigation: Baní district, two hundred thousand dollars; Santiago, twenty-four thousand dollars; Monte Cristy, two hundred thousand dollars; San Juan, one hundred seventy-five thousand dollars and Azua, twenty-one thousand dollars. For immigration and colonization: Bonao District, ninety-one thousand dollars; El Valle, one hundred thousand dollars; Monte Cristy, one hundred thousand dollars; Seibo, one hundred thousand dollars; the Dominico-Haitiana frontier, three hundred thousand dollars; Yuma, one hundred thousand dollars; San Francisco de Macorís, one hundred thousand dollars; Baní, fifty thousand dollars; and San Juan, forty thousand dollars.

(*e*) Two hundred thousand dollars for the building of ten school houses in various cities of the country.

(*f*) Five hundred thousand dollars to promote the creation of a Farmers Bank.

In reply I desire to inform you that I have given very careful consideration to your communications under acknowledgment, and I have duly noted your statement that your Government will at a later date inform me as to the exact manner in which the two million dollars for the port works at Santo Domingo, San Pedro de Macorís and Puerto Plata will be distributed, and will await this data with interest.

I have the honor to say that it is the understanding of this Government that the bonds of the proposed loan of $10,000,000 are to be issued under the terms of the Convention of 1924, their status with reference to the Receivership being therefore exactly the same as that of the bonds which represent the present outstanding balance of the public debt of the Dominican Republic and as that of any other bonds which may in the future be issued under the terms of the said Convention of 1924. As stated in the exchange of notes which took place between your predecessor and myself on October 24, 1925,[2] the duties and functions of the General Receiver and the Assistant Receivers and other employees of the Receivership, as enumerated and set forth in Article I of the Convention signed December 27, 1924, are intended to continue in force and effect until the payment or retirement not only of the bonds therein specifically mentioned but also of any and all bonds to be issued under the terms of that Convention. The Gov-

[2] See *Foreign Relations*, 1925, vol. II, pp. 55 ff.

ernment of the United States further understands that the Government of the Dominican Republic considers the bonds which are to be issued for the proposed $10,000,000 loan, which is the subject of the present note, as being a part of "the debt" mentioned in Article III of the Convention of 1924 and on the confirmation of these understandings will be glad, as required by the terms of Article III, to agree to the increase in the public debt of the Dominican Republic to the extent of $10,000,000.

Accept [etc.] FRANK B. KELLOGG

839.51/2862

The Dominican Minister (Morales) to the Secretary of State

[Translation]

WASHINGTON, *November 19, 1926.*

MR. SECRETARY OF STATE: In the last paragraph of your note of this same date, replying to my notes of November 11th and 12th, 1926, Your Excellency states that you will be pleased to grant the agreement of which Article III of the Convention of 1924 speaks for the increase of the public debt of the Dominican Republic in the amount of ten million dollars with the understanding that the corresponding bonds will be issued in accord with the terms of the Convention of 1924; that, consequently, the status of these bonds will be exactly the same as that of the bonds which represent the outstanding balance of the public debt of the Dominican Republic and as that of any other bonds which in the future may be issued under the authority of the Convention of 1924; that as set forth in the notes exchanged between Your Excellency and my predecessor on October 24, 1925, the duties and functions of the General Receiver and of the Assistant Receiver and other employees of the Receivership as specified in Article I of the Convention signed on December 27, 1924, will continue in full force and effect until the payment or retirement not only of the bonds to which it particularly refers but also of any other or all bonds which may be issued under the terms of that Convention; and that, finally, the Government of the United States further understands that the Government of the Dominican Republic considers the bonds which are to be issued for the proposed loan of ten million dollars as forming part of "the debt" mentioned in Article III of the Convention of 1924.

In reply, I have the honor to confirm, in the name of my Government, the understandings set out by Your Excellency and specified in the preceding paragraph of the present note.

I avail myself [etc.] A. MORALES

839.51/2862

The Secretary of State to the Dominican Minister (Morales)

WASHINGTON, *November 20, 1926.*

SIR: I have the honor to acknowledge the receipt of your note of November 19, stating that on behalf of the Government of the Dominican Republic you confirm the understandings expressed in my note of that date, in connection with the proposed loan of $10,000,000. and the Convention of 1924.

In reply I have the honor to say that the Government of the United States is therefore pleased to agree to this increase of $10,000,000. in the public debt of the Dominican Republic, in accordance with the terms of the Convention signed on December 27, 1924.

Accept [etc.] FRANK B. KELLOGG

BOUNDARY DISPUTE WITH HAITI

(See volume I, pages 543 ff.)

ECUADOR

GOOD OFFICES OF THE AMERICAN MINISTER ON BEHALF OF CHINESE IN ECUADOR

322.9324/3

The Minister in Ecuador (Bading) to the Secretary of State

No. 656 QUITO, *January 27, 1926.*

[Received February 20.]

SIR: Referring to the Department's telegram No. 7 of January 25th, 7 p. m. and this Legation's reply thereto (No. 5 of January 27th, 10 a. m.)[1] with regard to the proposed deportation of all Chinese from Guayaquil, I have the honor to report that on January 7, 1926 the following telegram was received by the Legation; (translation):

"American Minister, Quito. 48 members of our colony are detained in jail after having had their identification certificates inspected in conformity with an order issued by the chief of police, who informed us that we would be obliged to leave the country. We beg Your Excellency to use your good offices to obtain our liberty. (signed) J. Wah Hing."

On the same day the Legation received a telegram from Chan Santon Taysing, Consul General of China, which was forwarded through the American Consulate General, confirming the above quoted telegram and stating that all the Chinese under arrest were well known merchants, among them being directors of the Chinese Chamber of Commerce of Guayaquil, and all of whom had been arrested without any charge being lodged against them, which of course meant that they were being deprived of their liberty contrary to the guarantees of the constitution of Ecuador and the laws applying to foreigners in this country.

I promptly requested an audience with the Acting Minister of Foreign Relations, Dr. Arizaga L., informing him of the arbitrary action taken by the Chief of Police of Guayaquil and requesting that the Chief be instructed to liberate these Chinese or file proper charges of misconduct, if such there were, against individuals, in accordance with the constitution and the laws of Ecuador.

[1] Neither printed.

The Acting Foreign Minister then assured me that no action contrary to the provisions of Ecuadorian law would be permitted against the Chinese, and that he would see that they received just treatment.

On January 8th a further telegram was received giving names of all Chinese under arrest and calling my attention to an expressed intention of the Chief of Police to deport all Chinese from Guayaquil, his intention being based on an old law, since modified, prohibiting Chinese from entering Ecuadorian territory.

The Chinese Consul General further called my attention to the fact that all places of business belonging to Chinese in Guayaquil had been closed and therefore considerable financial losses were being sustained. Copy of this telegram was transmitted to the Acting Minister of Foreign Relations.

On January 10th the American Consul, Mr. Butrick, telegraphed the Legation that the Consular corps and bankers of Guayaquil would protest to the local authorities because of mistreatment of Chinese and resulting serious situation which was being created.

The change of members of the Junta de Gobierno Provisional having taken place on January 10th, I promptly requested an interview with the newly appointed Acting Minister for Foreign Relations, Dr. Viteri Lafronte, and outlined to him the serious situation which was being created in Guayaquil and called his attention to the fact that this illegal and arbitrary procedure by the Chief of Police of Guayaquil not only was an injustice to the Chinese resident in that city, but also would create financial loss to numerous American exporters and that such financial loss, amounting to thousands of dollars, would very likely, in due course of time, lead to the establishment of diplomatic claims.

Again I was assured that no arbitrary action resulting in deportation would be permitted and that the Governor and Chief of Police of Guayaquil would immediately be instructed to undertake no action contrary to the laws of the country.

On January 11th a telegram was received from the Chinese Consul General informing the Legation that the Chief of Police had issued an order that each individual Chinaman under arrest would be obliged to deposit in a bank five thousand sucres (the sum later being reduced to two thousand sucres) as a guarantee, and when that had been done it was proposed to allow 90 days for them to liquidate their business prior to being expelled from the country.

On the same day another telegram was received stating that by this time there were 136 Chinese under arrest. This telegram was transmitted to the Acting Minister for Foreign Relations with the following note:

"The American Minister presents his compliments to Sr. Dr. Dn. Homero Viteri Lafronte, Member of the Junta de Gobierno Provisional in charge of the Ministry for Foreign Affairs, and has the honor to present to him herewith copy of a telegram received from the Chinese Consul General with reference to the matter under discussion yesterday afternoon.

"The American Minister wishes again respectfully to voice his protest against the arbitrary action taken by the Intendente General of Police of Guayaquil in placing under arrest and detaining in prison, as reported, 136 Chinese contrary to all laws and justice, and expresses the hope that immediate action will be taken to restore to these Chinese their liberty and such rights as are guaranteed to all foreign residents by the Constitution and laws of the Republic of Ecuador.

"G. A. Bading avails himself of this opportunity to extend to Dr. Dn. Homero Viteri Lafronte the assurance of his high consideration and esteem."

"Quito, January 12, 1926."

To which, on January 13th, the following answer was received (translation):

"The Minister of Public Instruction, in charge of the Ministry for Foreign Relations, presents his compliments to His Excellency the Minister of the United States of America, and in reply to His Excellency's *note verbale* of this date, regarding the arrest and imprisonment of 136 Chinese in Guayaquil, takes pleasure in stating that these documents will immediately be brought to the knowledge of the Junta de Gobierno Provisional, in the hope of obtaining a favorable resolution from that body.

"Homero Viteri Lafronte avails himself of this occasion to renew to His Excellency Dr. Gerard A. Bading the assurance of his highest and most distinguished consideration."

"January 12, 1926."

At this same time the French Minister in this city transmitted to this Legation a note in which he called attention to a complaint which had been made to him by what is considered the largest French importing house in Guayaquil, requesting from him information as to who would be responsible for large financial losses which would result in case the Chinese were deported.

The following telegram also had been received from Levy Brothers of Guayaquil, the largest American mercantile establishment there:

"Our firms personal credits to Chinese one hundred thousand sucres, also at least ten thousand dollars our Colgate agency accounts are in danger with latest action against Chinese in Ecuador." (signed) Philip Levy.

On January 13th the Legation received a telegram from Consul General Taysing stating that he expected to arrive in Quito that day. However, he did not arrive until the morning of the following day, notwithstanding the fact that he was traveling by special train.

Immediately upon his arrival he came directly to the Legation from the station.

Mr. Taysing informed me that he had requested a special train to come from Guayaquil on Monday, January 11th and had been denied permission by the Governor and the Chief of Police to leave the city, and that the permission to leave had only been granted to him after vigorous representations by the Dean of the Consular Corps in Guayaquil to the authorities there.

He further informed me that on his stating to the Chief of Police that he desired to proceed to Quito in order to consult the American Minister, who represented Chinese interests in Ecuador, he had been informed that the matter did not in any way concern the American Minister, particularly as the American Government had not recognized the Government of Ecuador, and this alleged statement by the Chief of Police was later confirmed by newspaper reports from Guayaquil.

The Chinese Consul General explained the situation in Guayaquil to me in detail, informing me that he had advised the Chinese who were being detained to refuse to put up the cash bond demanded by the Chief of Police; that he had informed the Chief that he personally would guarantee the appearance before the proper courts of any members of the Chinese colony against whom charges might be filed and had called his attention to the fact that over eight hundred employees of various Chinese merchants and manufacturers had been thrown out of work because of the action of the Chief of Police; that at any time, because of this arbitrary action of the Chief, popular prejudice might be aroused to such an extent as to cause shooting and destruction of property, but to all arguments presented by the Consul General, the Chief of Police gave the assurance that it was his firm intention to have all Chinese deported from Ecuador.

A statement was issued to the press by the Chief of Police in which he stated that now Ecuador is undergoing a period of regeneration and the proper time had arrived to rid the country of all Chinese, who had always been a menace to Ecuadorian commerce and to the morals of the communities on account of their vicious habits.

As Mr. Taysing requested that he be given an opportunity to present the case in person to the Acting Minister for Foreign Relations, I requested the interview, which was promptly granted for that afternoon.

The Acting Foreign Minister, Dr. Viteri Lafronte, again gave every assurance that no action would be permitted contrary to the Constitution and the laws of Ecuador, stating that on orders of the Junta de Gobierno Provisional the action of the Chief of Police had already been modified to the extent that he was willing to place all arrested

members of the colony at liberty on their depositing a cash bond; that furthermore orders had been issued directing all employees of the various merchants to return to their work, and finally he expressed regret that there had been interference with Taysing's proposed journey to Quito.

As a period of eight days had elapsed during which no satisfactory action had been taken, regardless of the representations made by the American Minister, and as the entire attitude of the Acting Minister, though conciliatory, did not insure satisfactory action, I deemed it opportune to voice a most vigorous and emphatic protest, again calling the Minister's attention to the fact that the action taken by the Chief of Police was entirely arbitrary and in disregard of the Constitution and of the laws of Ecuador guaranteeing to all foreigners within the country equal rights with Ecuadorians and that such action could not be tolerated as it jeopardized the liberty and interests of all foreigners.

Thereupon the Acting Minister stated that with the unsettled conditions prevailing in Ecuador at this time such acts were likely to happen and that it was not the intention of the Provisional Government to cause injustice or financial loss to anyone; that the question of politics had entered into the matter, which had made it somewhat difficult for the Junta de Gobierno Provisional satisfactorily to arrange the matter; that however he believed that in due course of time a satisfactory solution might be found. (Major Larrea Alba, the Chief of Police of Guayaquil, took a prominent part in the overthrow of the Córdova Government, and therefore enjoyed prestige in army circles, which the Junta did not dare to oppose.)

I informed Mr. Viteri Lafronte that I could well understand the happening of illegal acts during a disturbed period of the kind now existing in Ecuador, that however, I failed to understand the continuation of an illegal act, such as had been committed by the Chief of Police against the Chinese with the full knowledge of the Provisional Government and therefore, I emphatically requested that all arrested members of the Chinese Colony be given their liberty within twenty-four hours and that the Chief of Police, Major Larrea, be discharged from his position as a man evidently not qualified for the high office which he held, stating that unless I received assurance that my request would be complied with I would notify my Government of the disregard of all law by the authorities of Guayaquil and that I would further call a meeting of the entire Diplomatic Corps, to which body I had already presented a resolution of protest adopted by the entire Consular Corps of Guayaquil, and request from the Diplomatic Corps unanimous action against the position taken not only by the authorities of Guayaquil but apparently also

by the Junta de Gobierno Provisional as a menace to the rights and liberties of all foreigners living in Ecuador.

The Acting Minister then stated that my protest was well founded and that he would immediately again take up the matter with the Junta de Gobierno Provisional, and he assured me that he had no doubt that my request would be complied with and that he would notify me without delay of the action which might be taken by the Junta.

That same evening I was informed by telephone that all Chinese had been unconditionally liberated by seven o'clock. I was likewise informed that the Chief of Police of Guayaquil, Major Larrea A., had promptly resigned his position on receiving the orders of the Junta de Gobierno Provisional, and his resignation was immediately accepted.

The following note was received from the Foreign Office on January 16th (translation):

"Mr. Minister:

Referring to the conversations which I had with Your Excellency in regard to the order of the Chief of Police of Guayaquil for the expulsion of the Chinese citizens who had disregarded the laws of the Republic, I have the honor to transcribe for Your Excellency the communication which was sent to me by the Secretary General of the Junta de Gobierno, as follows:

"To the Minister for Foreign Relations: I am pleased to inform you that the Junta de Gobierno, at today's session, ordered the immediate release of the Chinese detained in Guayaquil, on account of the various antecedents in the case and the information received, and because the Chinese Consul General guarantees their appearance whenever they may be needed for any judgment or infraction of the laws of narcotics, immigration etc."

"I avail myself" etc.

A day later I received the following telegram from the liberated Chinese (translation):

"His Excellency the American Minister:

"Thanks to your good offices we were liberated last night. From the first moment we were placed in prison we have had the conviction that you were our sole hope. Such has been the result that our gratitude to Your Excellency will be eternal." (Then follow a number of signatures of Chinese who had been under arrest.)

We are informed that all Chinese commercial establishments have been reopened for business and that the situation so far as they are concerned has returned to normal. Therefore no further antagonistic action towards the Chinese colony is anticipated.

It is hoped that my action in the matter will meet with the approval of the Department.

I have [etc.] G. A. BADING

322.9324/3

The Secretary of State to the Minister in Ecuador (Bading)

No. 468 WASHINGTON, *March 3, 1926.*

SIR: The Department has received your despatch No. 656 of January 27, 1926, describing the steps taken by you in securing the release of the Chinese merchants who had been arbitrarily arrested in Guayaquil and whose deportation was threatened.

The Department is gratified to learn of the successful results of your good offices on behalf of the Chinese in this case.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

EGYPT

EFFORTS BY THE UNITED STATES TO PROTECT THE INTERESTS OF AMERICAN ARCHEOLOGISTS IN EGYPT[1]

883.927/90c

The Secretary of State to the Minister in Egypt (Howell)

No. 249 WASHINGTON, *February 2, 1926.*

SIR: The Department refers to its instruction No. 227 of August 6, 1925, and to your replies Nos. 691 and 717 of September 30 and December 4, 1925,[2] respectively, regarding the difficulties encountered by certain American archaeological interests in the continuance of their excavation and research work in Egypt as a result of the regulations governing the issuance of excavation permits put into effect in the fall of 1924 by the Egyptian Antiquities Service.

For your further information and guidance, the Department transmits, herewith, copies of its instructions of this date to the Embassies in London and Paris [2a] recapitulating subsequent developments in this matter and directing those missions to ascertain whether the British and French Governments are now willing to associate themselves in making representations in this matter to the Egyptian Government along the lines set forth in a draft note which the Department is prepared to authorize you to present to the Egyptian Government in the event that no circumstances meanwhile develop which would make desirable any modification of the action proposed. A copy of this draft note, providing in general for representations along the lines of those proposed in the Department's earlier instruction, is also enclosed.

The Department desires that you furnish, confidentially, your British and French colleagues with copies of this draft note and ascertain from them whether they are in a position to make representations of a similar character or to support the representations which you propose to make.

In this connection you will note in the enclosed copies of instructions to the American Embassies in London and Paris that these missions are directed to report briefly to the Department by telegraph the results of the further representations which they are to make,

[1] Continued from *Foreign Relations*, 1924, vol. I, pp. 714–723.

[2] None printed.

[2a] *Post*, pp. 63 and 65.

respectively, to the British and French Foreign Offices. Upon the receipt of such telegraphic reports the Department will communicate further with your mission. Pending the receipt of such further communication you will of course withhold presentation to the Egyptian Government of the enclosed draft note, the receipt of which you should, however, acknowledge by telegraph with your comments.

In the meantime and in connection with such discussion of this question as you may be able to hold with your British and French colleagues, the Department would be pleased to have you discuss the text of the enclosed draft note with Doctor Breasted,[3] Mr. Winlock[4] and such other representative American archaeologists in Egypt as you may see fit, impressing upon them, however, the strictly confidential character of such discussions. Representatives of the Metropolitan Museum of Art of New York City have already indicated their full concurrence in the subject matter and form of this proposed note, and other archaeological interests in this country have urged the Department to support the general position set forth therein. The Department would be pleased, therefore, to receive through you any observations or views in this matter which may be expressed by interested American archaeologists in Egypt. You should transmit by telegraph to the Department a brief summary of any such observations together with any comment which you may consider appropriate.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

Draft of Proposed Note To Be Presented to the Egyptian Foreign Office by the American Minister

EXCELLENCY: Your Excellency is no doubt fully conversant with the extent of the interest which, for upwards of twenty-five years, has been taken by a number of important American scientific societies and museums in archaeological research and excavation in Egypt. The results of the work undertaken by the Egyptian expeditions of these American societies are of signal importance to a scientific understanding of the history and humanities of antiquity. The work itself has been rendered possible largely by the generous appropriations of money made by such representative American institutions.

It is my understanding that, from 1912 to 1922, excavations in this country were conducted under the terms of concessions granted in each case by the Egyptian Antiquities Service in accordance with the Antiquities Law of 1912. Article 11 of this Law, in its application

[3] James H. Breasted, of the Oriental Institute of the University of Chicago and the Field Museum.

[4] H. E. Winlock, Associate Curator, and representative in Egypt, of the Metropolitan Museum of Art.

to properly authorized archaeological expeditions, provides that the discoverer of a movable antiquity shall receive as a reward "one-half of the objects so discovered or of their value." Under the régime thus established the Egyptian Antiquities Service, through the many and important objects which it has constantly received from the work of these foreign archaeological expeditions, has profited largely in building up its own national collection, a collection which I would venture to describe as now unquestionably the finest and most representative collection of national antiquities to be found in any country. At the same time the various interested American museums have been enabled to create and develop representative collections illustrating the history and art of ancient Egypt. I may mention in this latter connection that these collections have proved of far-reaching educational value to the schools and universities of the United States, and have been responsible for fostering the increasingly strong interest amongst the American people in both ancient and present-day Egypt, a fact which has led an increasing number of American travellers to visit Egypt each year.

It was the assurance, contained in the law of 1912, that the interested American scientific societies and museums would receive a fair share of the antiquities thus discovered, which, in the opinion of the trustees of those institutions, warranted their appropriating, from the funds at their disposal, the large sums of money necessary for the financing of their Egyptian expeditions.

Under date of October 10, 1922, each of the American concessionaires, then conducting archaeological excavations in Egypt, was informed by the Antiquities Service that the Antiquities Law of 1912 was to be changed and that, after the season 1922–1923, the Service would no longer be bound to divide equally with the concessionaires the results of their excavations, but that, under regulations which had been prepared but not yet put into effect, the Director General would be free to retain everything that he deemed important for the national collections. Your Excellency will recall that these new regulations were put into effect as of the beginning of the 1924–1925 season, following the communication to the interested foreign archaeological interests of the form of excavation permit which they would be required to sign and under which they would be authorized to continue their work. I am not aware that, since that date, any change has been made in the form of permit granted to foreign archaeological expeditions. Article 10 of this form of permit sets forth that "all the antiquities found during the entire duration of the work shall be turned over to the Antiquities Service" and that "with the exception of those which the Service shall decide, in its discretion, to give to the beneficiary, they shall form part of the public domain."

Later, under date of April 1, 1925, in a letter addressed to the President of the Metropolitan Museum of Art, New York City, the Director General of Antiquities stated that in the application of the new regulations the Egyptian Government sought to realize a threefold purpose, as follows:

1. To have freedom to establish, for its own national collections and in conformity with scientific interests in general, complete and logical series of antiquities representing Egyptian civilization as a whole;
2. To recognize the endeavors manifested by learned societies in the discovery, study and publication of documents concerning Egyptian history and civilization;
3. To facilitate the study of Egypt in the university centres of foreign countries, by having the said civilization represented there by objects.

In commenting on this letter, various leading American scientists interested in the question have indicated that, while welcoming the declaration of the Director General, they find it not wholly reassuring in view of the generality of its terms and in view of the fact that, although apparently indicative of the attitude of the Director General, it has never been officially set forth as a declared policy of the Egyptian Government. They feel consequently a natural anxiety that the Egyptian Government should make known officially in public and permanent form its policy regarding the future régime to be applied to foreign archaeological explorations in Egypt. Doubt and uncertainty in this regard, which has existed for the past two years, has already resulted in a curtailment of the archaeological programs of certain of the foreign expeditions and, in the case of one of the largest American expeditions, in a complete suspension of its excavations.

In bringing these matters to the attention of my Government, the interested American institutions have expressed their fullest concurrence in the objects which it is sought to realize as a result of the application of the new regulations governing the issuance and enjoyment of authorizations to undertake archaeological excavations in Egypt, and I am directed by my Government to make clear to Your Excellency that these institutions do not in any way advocate or desire to return to the former inflexible and unscientific basis of equal division of archaeological finds. As already indicated, however, they have, at the same time, expressed the earnest hope that the Egyptian Government will be able to see its way to giving to all foreign archaeological expeditions in Egypt certain important assurances regarding the interpretation of Article 10 of the new form of excavation permit. It should be added also in this connection that, before soliciting the support of the United States Government in this matter, they first entered into detailed discussions with the

Director General of Antiquities, discussions which indicated that there was general agreement in the view that Article 10 of the new form of permit could usefully be supplemented by a statement of principles in the following form:

In explanation of its intentions as thus expressed, the Egyptian Government declares that scientific principles clearly require that the Service des Antiquities shall reserve freely for itself all material which it does not already possess. But this same scientific interest requires equally that it shall give largely in the case of all material which it already possesses.

The Service does not wish to keep material for purposes of sale, a course which would be in all respects unfair to excavators. It wishes only to retain such objects as should definitely form a part of the Egyptian public domain.

Likewise it does not wish to keep duplicates or equivalents already well represented in the national collection, since it is not free to sell them. In the same way it does not wish to keep duplicates in order to form reserves which shall serve to reimburse one excavator with the duplicates found by another.

Under these conditions the Government ought logically to give to excavators all material of which it has no need. This implies: (1) that the Government will give even objects of first importance if it already has the equivalent in its collections (the word equivalent is clearer than the word duplicate); (2) that it will give all objects which it does not wish to keep, whether or not in excess of the half of the objects found.

These principles, as they are here expressed, are in full accord with the position taken in this matter by the interested American scientists and archaeologists. I am therefore directed to express to Your Excellency my Government's hope that appropriate steps will be taken to introduce these principles into the present form of excavation permit, immediately following and in explanation of Article 10, thereby constituting the desired official recognition by Your Excellency's Government of the assurances sought by the American excavators and museums.

In making the foregoing suggestions I am directed further to make known to Your Excellency that, in the opinion of my Government, an opinion it believes Your Excellency's Government will share, the work of American nationals in the field of Egyptian archaeology is of such a character as to merit the friendly encouragement and cordial support of the two Governments, an encouragement and support which may, in part, be evidenced in an interpretation of Article 10 of the present form of excavation permit in accordance with the suggestions set forth above. It is with this belief ever in mind that my Government has directed me to address Your Excellency in this matter.

883.927/90b

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

No. 368 WASHINGTON, *February 2, 1926.*

SIR: The Department refers to its instruction No. 29 of May 28, 1925,[7] regarding the difficulties encountered by certain American archaeological interests in the continuance of their excavation and research work in Egypt as a result of the regulations governing the issuance of excavation permits put into effect in the fall of 1924 by the Egyptian Antiquities Service. You will recall that a copy of this instruction was also sent to the Embassy in Paris to the end that the cooperation of the French as well as of the British Government might be obtained in the proposed representations to the Egyptian Government.

In its reply No. 225 [*255*] of August 8, 1925,[7] the Embassy reported that Mr. Chamberlain had expressed himself as much interested and in sympathy with the proposals of this Government, but that a definite reply from the Foreign Office could not be expected for some time because of the necessity of referring the proposals to the British authorities in Egypt. For your information in this connection, there is enclosed a copy of a letter addressed under date of November 6, 1925[7] to Mr. A. M. Lythgoe, Curator of the Egyptian Expedition of the Metropolitan Museum of Art, New York City, by Sir Frederick Kenyon, Director of the British Museum and Chairman of the Joint Archaeological Committee which, the Department understands, acts in an advisory capacity to the British Foreign Office in all matters relating to archaeological research and exploration. In this letter Sir Frederick states in part:

"I have good reason to believe that our Foreign Office, though unwilling, for reasons which I have explained to you, to make the first move in the matter, is quite ready to support any action that may be taken by your State Department in Cairo."

The Department understands from Mr. Lythgoe that the "reasons" which are referred to as prompting this reported attitude of the Foreign Office, are based on a hesitancy to take up at this time matters affecting Egypt which are not of major political importance to British policy in that country.

With reference to the attitude of the French Government in this matter, you are informed that the Embassy in Paris reported, under date of July 16, 1925,[8]

[7] Not printed.
[8] Despatch No. 5389, not printed.

"that the French Government agrees with the American Government in attaching the greatest value to the continuance of archaeological research in Egypt and that the French representative in Cairo has been requested to inform the Foreign Office as to what he deems the most efficacious means of supporting the proposals of our Government."

Later, under date of September 22, 1925, the Embassy in Paris reported in its despatch No. 5557 of September 23, 1925,[10] a copy of which was furnished your mission, that

"the Minister of Foreign Affairs is willing to join with the American and British Governments in making representations regarding the rights of foreign archaeologists in Egypt."

From the foregoing and as a result of recent conversations with certain interested American archaeologists regarding the desirability of early action in this matter, it now appears to the Department that it may properly proceed with representations along the lines of those proposed in its instruction of May 28, 1925. To this end the Department has prepared and encloses for your information a copy of a draft note [11] which it is submitting to the American Minister at Cairo with a view to its presentation to the Egyptian Government in the event that no circumstances meanwhile develop which would make desirable any modification of the action proposed.

The Department desires, therefore, that the Embassy again discuss this matter with the Foreign Office, furnishing it in confidence with a copy of this draft note and inquiring whether it is willing at this time to instruct its representative at Cairo to support the proposed representations of this Government as set forth therein. In view, however, of the very considerable American interests involved and the importance of securing early consideration by the Egyptian Government of the suggestions contained in the enclosed draft note, the Department would be disposed to instruct the Legation at Cairo to proceed with the proposed representations even though the British Government might not feel that it could directly associate itself with such a move at this time.

In bringing these considerations to the attention of the Foreign Office, the Department desires you to state that a similar inquiry is being made addressed through the American Embassy in Paris to the French Government which, in principle, has already indicated its willingness to join with the British and American Governments in the proposed representations to the Egyptian Government. You should add that the American Minister in Cairo has been directed to furnish his British and French colleagues with copies of the enclosed draft note.

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[10] Not printed.
[11] *Supra.*

A copy of an instruction of even date addressed in this connection to the Embassy in Paris is also enclosed for your information and guidance.[12]

You should report briefly by telegraph the results of the further representations which, in accordance with the foregoing instruction, the Department desires you to make in this matter to the British Foreign Office.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

883.927/90a

The Secretary of State to the Ambassador in France (Herrick)

No. 1851 WASHINGTON, *February 2, 1926.*

SIR: The Department refers to its instruction No. 1522 of May 28, 1925,[13] enclosing a copy of an instruction of even date to the Embassy in London, regarding the difficulties encountered by certain American archaeological interests in the continuance of their excavation and research work in Egypt as a result of the regulations governing the issuance of excavation permits put into effect in the fall of 1924 by the Egyptian Antiquities Service.

For your further information, the Department transmits, herewith, a copy of an instruction of this date to the Embassy in London[14] recapitulating subsequent developments in this matter and directing it to discuss with the British Foreign Office the proposals contained in a draft note which the Department is prepared to direct the American Minister at Cairo to present to the Egyptian Government in the event that no circumstances meanwhile develop which would make desirable any modification of the action proposed. A copy of this draft note, providing, in general, for representations along the lines of those proposed in the Department's instruction of May 28, 1925, is also enclosed.[15]

From your despatches Nos. 5389 and 5557 of July 16 and September 23, 1925,[16] the Department has been pleased to note that the French Government is prepared to associate itself with the representations which this Government proposes to address to the Egyptian Government in this matter. The Department desires, therefore, that you communicate confidentially a copy of this draft note to the French Foreign Office and state that the American Minister in Cairo

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[12] *Infra.*
[13] Not printed.
[14] *Supra.*
[15] Draft note, p. 59.
[16] Neither printed.

has been directed to furnish his French colleague with a copy thereof and that it is hoped that the latter may be authorized either to make representations of a similar character or to support the representations of the American Minister. You may add, also, that similar representations are being made to the British Government through the American Embassy in London.

You should report briefly by telegraph the results of the further negotiations which, in accordance with the foregoing instruction, the Department desires you to conduct in this matter with the French Foreign Office.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

883.927/100 : Telegram

The Minister in Egypt (Howell) to the Secretary of State

[Paraphrase]

CAIRO, *March 13, 1926—10 a. m.*
[Received March 13—8:49 a. m.]

6. Department's instruction No. 249, February 2. I took up with my British and French colleagues proposed note to the Egyptian Foreign Office, but up to the present time neither has committed himself to the proposal. Nevertheless, I believe it reasonably possible now for me independently to get clarifying statement of article 10 written into the contract, which Winlock says will be satisfactory to Metropolitan Museum, to be signed by Egyptian Minister of Public Works. This procedure will obviate the necessity of placing the matter formally before the Cabinet, but it is believed it will be none the less binding. Will send complete report setting forth views of Breasted, Reisner,[17] and Winlock as well as those of myself.

HOWELL

883.927/106 : Telegram

The Chargé in France (Whitehouse) to the Secretary of State

PARIS, *April 6, 1926—11 a. m.*
[Received April 7—5:20 p. m.]

136. Department's instruction number 1851, February 2nd, 1926. Foreign Office informs me that French Government agrees in principle and has invited French representative at Cairo to confer with American Minister and British High Commissioner and to hand the

[17] George A. Reisner, chief representative in Europe of the Harvard–Boston expedition.

Egyptian Government a "note distincte". It adds that it prefers this method to the communication of a "note identique" and that the French Minister reports that British High Commissioner proposes to act similarly.

WHITEHOUSE

883.927/105 : Telegram

The Minister in Egypt (Howell) to the Secretary of State

CAIRO, *April 7, 1926—11 a. m.*
[Received April 7—10:40 a. m.]

11. Your instruction number 249, February 2nd and subsequent correspondence. Am only today advised both British and French representatives approve draft of note. Shall I present draft transmitted by Department? Believe Egyptian Government likely to accede.

HOWELL

883.927/110

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

No. 923 LONDON, *April 9, 1926.*
[Received April 20.]

SIR: I have the honor to refer to my telegram No. 46 of March 5th, 11 a. m.,[18] regarding excavation and research work in Egypt, and in this connection to forward copy of a Foreign Office Note setting forth certain views of Lord Lloyd.[19]

I have [etc.]

For the Chargé d'Affaires
RAY ATHERTON
First Secretary of Embassy

[Enclosure]

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Ambassador (Houghton)

[LONDON,] *7 April, 1926.*

MY DEAR AMBASSADOR: I told you last month that I was consulting Lord Lloyd as to the kind of support which would be best calculated to help the official representations which the State Department propose to instruct the United States Minister in Cairo to address to the Egyptian Government urging some modification in their Antiquities law.

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[18] Not printed.
[19] British High Commissioner for Egypt.

Before replying to my enquiries Lord Lloyd thought it well to make sure that these representations would be viewed sympathetically by the French Director General of the Antiquities Service. He has now telegraphed that, being satisfied on this point, he is prepared to support your Minister's representations and will concert with the French Minister as to the form which their support should take.

Believe me [etc.] AUSTEN CHAMBERLAIN

883.927/105 : Telegram

The Secretary of State to the Minister in Egypt (Howell)

[Paraphrase]

WASHINGTON, *April 12, 1926—6 p. m.*

9. (1) Department understands from your telegram No. 11 of April 7 that you recommend the immediate presentation of American note as drafted. Embassy in France reports that Government of France agrees in principle and has authorized French Minister in Egypt to hand Egyptian Government a *note distincte*. It prefers such a method of communication to a *note identique*. The Department assumes that the British High Commissioner is prepared to take similar action.

(2) In Legation's despatch No. 774 dated March 15 [21] you suggested a delay in the presentation of the note (1) because of the internal Egyptian political situation, and (2) because of the divergent views of American archeologists in Egypt.

(3) In order that the present situation may be clarified you are instructed to report:

(*a*) Whether political situation as reported in your despatch has changed sufficiently to make immediate presentation of note opportune.

(*b*) Whether the divergent views of the archeologists have been reconciled. If the political situation has changed, Breasted's objections to immediate presentation of note appear to fall. Reisner's objections, however, do not appear to result from considerations based on the political situation.

(*c*) Whether, if Reisner maintains his position, any modification should be made in draft of note. According to Lythgoe, Lacau [22] recently expressed to Winlock his hearty approval and support to the measures proposed in the note and suggests that Reisner discuss the matter with Lacau before coming to a final decision. You may indicate to Reisner that the assurances which are requested in the proposed note are in Lacau's phraseology and say that if you are authorized to present note, the Department will instruct you to state orally that the Government of the United States would be pleased

[21] Not printed.

[22] Pierre Lacau, Director General, Antiquities Service.

to receive in reply from the Egyptian Foreign Office a statement informing you that the Egyptian Government adheres to the principles set forth therein. The Department attaches importance to Reisner's views and wishes his concurrence in the presentation of the note, unless he feels that his interests would be seriously prejudiced by so doing.

The original representations to the Department of State which resulted in the draft note were made in 1925 by the Metropolitan Museum of Art, the Universities of Chicago and Pennsylvania, and the National Research Council which represented American scientific opinion regarding the necessity for safeguarding future foreign archeological work in Egypt. Since then, Kelsey,[23] of the University of Michigan has approved text of the proposed note. The Department has been informed that the Rockefeller Committee now states that immediate presentation of note will not prejudice realization of its museum project.

KELLOGG

883.927/126

The American Legation to the Egyptian Ministry for Foreign Affairs [24]

AIDE-MÉMOIRE

[CAIRO,] *April 17, 1926.*

The American Minister took up with the Minister for Foreign Affairs the question of the promulgation of the new Antiquities Regulation of M. Lacau and the circular letter dated July 26, 1924, addressed to all the institutions then holding concessions, with respect thereto.

In this letter he, M. Lacau, expressed his intentions, under the regulations, as follows:

"It has never been a question of keeping everything. . . ."

The Egyptian Government "wishes to be able to establish freely, in conformity with general scientific interests, complete and logical series of documents representing the whole of Egyptian civilization. This duty to science fulfilled the Service of Antiquities will always be pleased to give to scientific institutions authorized to excavate, all categories of objects, even important ones, which shall be sufficiently represented in its own collections. It desires in this way to thank and encourage excavators, whose co-operation is valuable to it, and to facilitate the study of ancient Egypt in foreign university centers."

In a further letter addressed directly to the Trustees of the Metropolitan Museum of New York, dated April 1, 1925, M. Lacau ampli-

[23] Francis W. Kelsey, head of the Near East Research Expedition.

[24] Transmitted to the Department by the Minister in Egypt as an enclosure to his despatch No. 856, July 23, 1926.

fied his intentions in regard to the new regulations in the following language:

"The Egyptian Government seeks to realize a three-fold purpose. It desires:

"(1) To have freedom to establish, for its own national collections and in conformity with scientific interests in general, complete and logical series of antiquities representing Egyptian civilization as a whole;

"(2) To recognize the endeavors manifested by learned societies in the discovery, study and publication of documents concerning Egyptian history and civilization;

"(3) To facilitate the study of Egypt in the university centers of foreign countries, by having the said civilization represented there by objects."

It is believed that the sentiments expressed by the able and scholarly Director of the Service of Antiquities, M. Lacau, in the above letters, are highly commendable and if the regulations were administered in the spirit thus expressed by him no complaint could justly be made by the various expeditions engaged in excavation in Egypt. But the objection is made that this but expresses the personal opinion and sentiment of an individual and that for legal reasons they require the stamp of official approval of the Government, or the Ministry under which he works.

All we ask is that the interpretation put on these regulations by M. Lacau receive official acknowledgment. The American Minister respectfully requests therefore that the substance of M. Lacau's letters be incorporated in Article 10 of the "Autorisation des Fouilles."

The Minister has been creditably informed that M. Lacau is agreeable to this proposal.

It is granted—believed—that under the administration of M. Lacau there is little probability that any object will be taken from an excavator to which he is properly entitled. The Minister here called attention to the fact that acquisitions of the Cairo Museum entered in the *Livre d'Entrée* became part of the Public Domain, but that of recent years it has been the practice to enter many objects in an unofficial catalogue from which they may be removed without any formality and the good intentions of M. Lacau would not be binding on any successor in their present unofficial form.

Article 10 in its original French (translated into English), reads as follows:

"All antiquities found during the entire period of work shall be delivered to the Service of Antiquities. With the exception of those which the said Service shall decide, in its discretion, to give to the beneficiary, they shall form a part of the public domain."

The Minister having referred to Article 10 in its original French, suggested that an enunciation of the following of his (M. Lacau's)

principles would meet the case from the Minister's point of view and that they be incorporated in Article 10 of the Excavation Permit, so as to clarify the article in question.

ENUNCIATED PRINCIPLES TO BE INCORPORATED IN PERMITS ISSUED BY THE EGYPTIAN GOVERNMENT

In explanation of its intentions as thus expressed, the Egyptian Government declares that scientific principles clearly require that the Service des Antiquities shall reserve freely for itself all material which it does not already possess. But this same scientific interest requires equally that it shall give largely in the case of all material which it already possesses.

The service does not wish to keep material for purposes of sale, a course which would be in all respects unfair to excavators. It wishes only to retain such objects as should definitely form a part of the Egyptian public domain.

Likewise it does not wish to keep duplicates or equivalents already well represented in the national collection, since it is not free to sell them. In the same way it does not wish to keep duplicates in order to form reserves which shall serve to reimburse one excavator with the duplicates found by another.

Under these conditions the Government ought logically to give to excavators all material of which it has no need. This implies: (1) that the Government will give even objects of first importance if it already has the equivalent in its collections (the word equivalent is clearer than the word duplicate): (2) that it will give all objects which it does not wish to keep, whether or not in excess of the half of the objects found.

The American Minister expressed the hope—desire—that in due course his Government would be furnished a statement from the Egyptian Foreign Office informing it of the Egyptian Government's adherence to the principles set forth in the *Aide Mémoire*.

883.927/109 : Telegram

The Minister in Egypt (Howell) to the Secretary of State

[Paraphrase]

CAIRO, *April 17, 1926—11 a. m.*

[Received April 17—8:54 a. m.]

15. Department's telegram No. 9, April 12.

(1) The political situation is now favorable to making representations which in my judgment and that of Mr. Winlock will be satisfactory to the Metropolitan interests.

(2) Department's note is objectionable in several days: (*a*) It contains superfluous history and belabors the real points at issue; (*b*) it is objectionable to Doctor Reisner.

(3) Reisner approves *aide-mémoire* in which I request Egyptian Government or Ministry under which Lacau works to approve officially Lacau's interpretation of the spirit of article 10 as expressed in the circular letters which he has sent to the various expeditions.

(4) The language to be used by Egyptian Government in the separate articles to be issued to concessionaires will embody the principles set forth in Department's note. British [and French?] support this proposition.

HOWELL

883.927/109 : Telegram

The Secretary of State to the Minister in Egypt (Howell)

WASHINGTON, *April 23, 1926—6 p. m.*

11. Your 15 April 17, 11 a. m.

(1) Metropolitan Museum has communicated to Department texts of cables from Winlock [25] reporting that British and French have made representations and that you have presented *aide memoire* to Egyptian Foreign Office.[26]

(2) If you have taken reported action you should bear in mind, and if necessary you should orally make it clear to the Egyptian Foreign Office, that this Government hopes that reply to *aide memoire* may contain statement from Foreign Office that the Egyptian Government adheres to the principles set forth on page 7 of the Department's draft note.[27] See Paragraph 3–C of Department's April 12, 6 p. m. Assurances from the ministry under which Lacau works would not be satisfactory.

(3) Report fully by telegraph developments in situation and action taken by you since your April 17, 11 a. m.

KELLOGG

883.927/112 : Telegram

The Minister in Egypt (Howell) to the Secretary of State

CAIRO, *April 25, 1926—11 a. m.*

[Received April 25—10:45 a. m.]

16. Your telegram number 11, April 22 [*23*], 6 p. m.

1. Winlock's cable to Metropolitan reported the facts correctly.

2. Have made it clear Egyptian Foreign Office that my Government desires statement that the Egyptian Government accepts additional clause and principles mentioned in draft of note page 7.

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[25] Covering letter and texts of cables not printed.

[26] *Ante*, p. 69.

[27] *Ante*, p. 62.

3. Aside from discussing the matter fully with the Foreign Minister I have done likewise with the Minister of Public Works and expect official acceptance of our proposal shortly.

HOWELL

883.927/122

The Minister in Egypt (Howell) to the Secretary of State

No. 830 CAIRO, *May 26, 1926.*

[Received June 10.]

SIR: I have the honor to refer to my telegram No. 21 of today, May 26, 1926, 5 p. m.,[28] and apropos of same to herewith enclose a copy of the full text of the Note from the Foreign Office to which the telegram refers, and at the same time a copy of my Note to the Foreign Office of May 17, 1926, with the clarifying statement which I made as a counter proposal to the one submitted by the Legal Adviser of the Foreign Office, which is also enclosed.

The winning of this contest by us has not been, by any means, an easy matter. I think the Metropolitan Museum of Art is to be congratulated on securing this addition to the regulation permits.

I have [etc.] J. MORTON HOWELL

[Enclosure 1]

The American Minister (Howell) to the Egyptian Minister for Foreign Affairs (Ziwer Pasha)

No. 348 CAIRO, *May 17, 1926.*

EXCELLENCY: I have the honor to refer to my *Aide Memoire* of April 17, 1926, on the question of the promulgation of the new Antiquities regulation permits of M. Lacau as they pertain to Article 10.

The *Aide Memoire* clearly sets forth the intentions of M. Lacau as they apply to Article 10; in other words, it sets forth not only the letter but the spirit with which, or by which, M. Lacau proposes Article 10 shall be interpreted as the said Article applies to objects found by concessionaires, and all we have asked is that the salient points of these expressions be embodied in the Excavation Permit following Article 10.

In this prayer we are fully supported both by the British and French Governments.

There may be some redundancy of words which we have asked in the said *Aide Memoire* be put into the clarifying statement of the

[28] Not printed.

Regulation Permit, but now, to eliminate such, insofar as possible, and yet make the declaration of principles as short as is consistent to therein, at the same time, express the full meaning and intent of M. Lacau's statements to the various archaeological expeditions, I have the honor to submit the following, to be made a part of the Excavation Permit of the Egyptian Government.

I profit [etc.] J. MORTON HOWELL

[Subenclosure]

Proposed Clarifying Statement to Article 10

To render more clear the intentions of the Egyptian Antiquities Service with respect to Article 10 of the regulation governing the issuance of Excavation Permits put into effect in the fall of 1924, by the said Service, the Egyptian Government declares:

That scientific principles clearly require that the Service des Antiquités shall reserve freely for itself all material which it does not already possess. But this same scientific interest requires equally that it shall give largely in the case of all material which it already possesses. It proposes only to retain such objects as should definitely form a part of the Egyptian Public Domain.

It does not propose to keep duplicates or equivalents already well represented in the national collections for purposes of sale, or to form reserves which shall serve to reimburse one excavator with the duplicates found by another.

Under these conditions the Egyptian Government proposes to give to excavators even objects of first importance if it already has the equivalent in its collections, whether or not in excess of the half of objects found.

[Enclosure 2—Translation [30]]

The Egyptian Ministry for Foreign Affairs to the American Legation

No. 53.7/1(1317) CAIRO, *May 26, 1926.*

AIDE-MÉMOIRE

Referring to the *aide-mémoire* dated April 17, 1926, and note No. 348 dated May 17, 1926, from the American Legation,[31] the Ministry for Foreign Affairs has the honor to inform the American Legation that the Egyptian Government, desirous of giving assurances of the liberal treatment which it intends to apply to excavators, has no objection to adding to Article 10 of the Excavation Permit, signed annually by excavators, the following note:

[30] File translation revised.

[31] *Ante*, p. 73.

"Scientific principles require that the Service des Antiquités should reserve freely all objects which it considers it requires for its collections. These same principles require equally that it give largely objects even of first importance which it does not need for its collections. Inspired by those principles the Service does not wish either to sell objects found by excavators or to form reserves of them to give to other excavators. On the contrary, the Service is disposed to give to the beneficiary of the Permit all objects which it does not require for the State collections in Cairo as well as in other towns, whatever may be the importance of said objects. It is expressly understood, however, that the Service will form the said collections with entire freedom and that it will decide in its sovereign capacity what it will give as well as the choice of objects which will be given to the holder of the Permit."

The Ministry for Foreign Affairs believes it should point out to the Legation that the formula proposed in the Legation's note dated May 17th contains some expressions incompatible with the freedom which the Egyptian Government has the right to reserve to itself in this matter and which might become sources of difficulty. Thus the Egyptian Government is pleased to hope that the note above reproduced, which is based in the largest measure possible upon the formula contained in the said *aidé-mémoire*, will reassure the scientific institutions which were alarmed over the new form of Permit (in fact, the Museum of New York [32] is the only one which has not undertaken excavations under the new regime) and, consequently, will give full satisfaction to the Legation.

[Enclosure 3—Translation [33]]

Clarifying Statement to Article 10 Proposed by the Egyptian Government

"Not wishing either to sell the objects thus found or to form reserves of them for the purpose of rewarding other excavators, the Service des Antiquités is disposed to give the beneficiary of the Permit all objects which it does not require for the national and local collections, whatever may be the importance of the said objects. It is expressly understood that the Service shall have full liberty to form the said collections and that it will decide finally as regards the grant as well as the choice of objects which shall be given to the beneficiary of the Permit."

CAIRO, *May 16, 1926.*

[32] i. e., the Metropolitan Museum of Art.
[33] File translation revised.

883.927/124

The President of the Metropolitan Museum of Art (De Forest) to the Secretary of State

NEW YORK, *July 26, 1926.*
[Received July 27.]

DEAR MR. KELLOGG: During my absence from New York in June, the Museum received from Mr. G. Howland Shaw, Chief of the Division of Near Eastern Affairs, a copy and translation of the *Aide Memoire* dated May 26, 1926, received by Minister Howell at Cairo from the Egyptian Foreign Office.[84] This *Aide Memoire* concerned the interpretation of Article 10 of the Egyptian antiquities regulations and was in reply to the representations which your Department had made to the Egyptian Government on behalf of this and other American institutions engaged in archaeological work in Egypt.

It gives me great pleasure now to inform you that at a meeting of the Executive Committee of our Trustees which has just been called for the purpose, it was voted to accept the Egyptian Government's assurances of liberal intentions expressed in the said *Aide Memoire*, as a gratifying recognition of the claim of the excavation and, under the modifying clauses to be inserted in Article 10 as there agreed, to again resume the Museum's excavations in Egypt—the continuation of these excavations to be always dependent upon a fair and liberal interpretation of this amended Article 10 by the administration of the Egyptian Service des Antiquites.

I beg to express to you, and through you to Messrs. Shaw, Dulles and Wadsworth of your Department, the gratification and heartiest thanks of our Board for these results which your splendid efforts have gained for us and which we have every hope may prove of lasting benefit to all scientific work in Egypt.

May I further ask you, in communicating with Dr. Howell, to express to him also the fullest appreciation of our Board for all he has done to secure these hopeful concessions and to make it possible for us to look forward to renewing the work in which he has always shown the greatest interest on every side.

Believe me [etc.] ROBERT W. DE FOREST

[84] *Ante*, p. 74.

REPRESENTATIONS BY GREAT BRITAIN AGAINST THE EXERCISE BY AMERICAN CONSULAR COURTS IN EGYPT OF JURISDICTION OVER SEAMEN OF BRITISH NATIONALITY ON AMERICAN VESSELS

176.1/5

The British Ambassador (Geddes) to the Secretary of State

No. 634 WASHINGTON, *27 September, 1920.*

SIR: I have the honour to inform you on instructions from my Government that a report has been received from the Acting British High Commissioner at Cairo, with regard to the case of A. MacClennan, a British seaman, recently serving on board the United States Steamship *Berwin.*

It appears that MacClennan signed on at Barry Dock, South Wales, as a member of the crew of the *Berwin*, for a voyage to India and Egypt and back to the United Kingdom. The *Berwin* foundered at sea, and the crew, including MacClennan, were brought to Alexandria.

It is stated that MacClennan's articles had, by the sinking of the ship, expired. The United States Consular authorities at Alexandria, however, took the view that MacClennan was still subject to their jurisdiction, and required him to work his passage to a port in the United States, i. e. to a port other than his port of discharge. MacClennan objected to this, and was finally sentenced by the United States Consular Court to a period of fourteen days imprisonment.

The action of the United States Consular authorities in this case raises a question of principle of some importance. The vessel in which MacClennan was serving having ceased to exist it was, in the opinion of His Majesty's Government, improper for the United States Consul to assume jurisdiction over MacClennan, who is a British subject. This being the case the Consul had, in the opinion of His Majesty's Government, no legal power either to require MacClennan to work his way to the United States, or to sentence him to a term of imprisonment.

I should be glad if you would be good enough to bring this case to the notice of the Department concerned, informing them of the opinion of His Majesty's Government that the assumption by the United States Consul of jurisdiction over MacClennan was, in the circumstances, unjustifiable. I hope that the United States Government will concur in this view and that they will give instructions to prevent the recurrence of what appears to be an error on the part of the local United States Authorities.

I have [etc.] A. C. GEDDES

176.1/8

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *April 20, 1921.*

EXCELLENCY: I have the honor to refer to Your Excellency's note No. 634 of September 27, 1920, and to subsequent communications concerning the action of the American consular authorities at Alexandria, Egypt, in the case of Alexander MacClennan, a British subject, recently serving on board the American Steamship *Berwyn*. I regret that the necessity of procuring and studying a report from the American Consul at Alexandria has made impossible an earlier reply to your representations.

From the Consul's report it appears that, after the abandonment of the *Berwyn* in the Arabian Sea, MacClennan and the rest of the crew were brought to Alexandria and food and lodging were then given to them by the Consul. It further appears that MacClennan, with several other members of the *Berwyn's* crew, accepted the Consul's offer of transportation to the United States on board another American vessel, the *Dakotan*, with the intention of reshipping at New York for a port in the United Kingdom. Shortly before the *Dakotan* was to sail, MacClennan came on board the vessel in an intoxicated condition, and was informed, in answer to a question, that he would be required to assist in the navigation of the vessel. He immediately expressed vehement objection to the requirement; threatened the American Vice Consul, who was present, with bodily injury; and, urging the other members of his party to resist the directions of the Vice Consul, joined them in surrounding that official and used violent and abusive language and threats of personal violence. He was thereupon placed under arrest, at the instance of the Vice Consul, and was later tried and convicted in the American Consular Court, on a charge of being drunk and disorderly and inciting to disturbance, for which he was sentenced to two weeks' imprisonment.

The Department has not been unmindful of the importance of the principle involved in this case and it has given careful consideration to the observations contained in your note of September 27, 1920. Without stating in detail the considerations which have had weight with the Department, I may observe that it appears to the Department that MacClennan in signing the articles of the *Berwyn* not only became a member of the crew of that vessel but also assumed the status of an American seaman, and as such became entitled to the protection and subject to the jurisdiction of the United States. The loss of the *Berwyn* did not terminate the responsibility of the United States for his safety and welfare but, on the contrary, brought into operation the provision of law requiring American Consuls to give to ship-

wrecked seamen of the United States sufficient subsistence and passage to a port in this country. It also made applicable to MacClennan the statutory provision that a destitute seaman transported to the United States shall, if able, be bound to do duty, according to his ability, on board the transporting vessel. It is believed that MacClennan's acceptance of the relief and transportation offered him in accordance with the statutory provisions above mentioned has an important bearing on the questions of the propriety of the requirement that he assist in the navigation of the *Dakotan* and of his amenability to American jurisdiction at the time of his arrest.

With respect to the requirement of the performance of duty it is to be observed that this requirement is, by statute, one of the conditions on which transportation to the United States is offered to shipwrecked seamen of American vessels. It can hardly be questioned that the United States is at liberty to fix by statute the conditions to which the offer of transportation shall be subject. Indeed, it is understood that the British law on this subject is even broader than that of the United States; since by the British Merchant Shipping Act it is apparently provided that the offer of transportation of shipwrecked seamen of British vessels shall be subject to such conditions as may be fixed by the Board of Trade and that a seaman transported in pursuance of the Act shall, so long as he remains on the ship, be deemed to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he were a member of, and had signed the agreement with, the crew. MacClennan was not obliged to accept the American Consul's offer of transportation on the *Dakotan*, and he would doubtless have been permitted, at any time prior to the sailing of the vessel, to withdraw his acceptance; but, having accepted the offer and having given no indication of an intention to withdraw his acceptance, he could not reasonably expect to avoid the legal consequences of the contract to which he had become a party. His case seems to fall clearly within the decision of the United States Circuit Court for the District of Pennsylvania (*U. S.* v. *Sharp*, 27 Fed. Cas. 1041), in which the following language was used:

"The men received on board at Bordeaux by the master, upon the application of the American consul, were as much seamen of the vessel and belonging to her, as those who had signed the shipping articles. By the 4th section of the Act of Congress of the 28th of February, 1803, the American consuls and vice consuls at foreign ports are required to provide passages for all destitute American seamen, within their districts, to some port of the United States; and to pay for the passage of each seaman a sum not exceeding ten dollars. The master of every American vessel is bound, upon the requisition of the consul, to receive such seamen, not exceeding two in number for every [one hundred] ton[s] of his vessel;[35] and to

[35] These bracketed insertions appear in the Secretary's note.

transport them to the United States, under a penalty; and on the part of such seamen, they are bound to do duty on board such vessel, according to their abilities. Here then is a contract created by the law, which, in consideration of support and transportation by the master, obliges the seamen to perform all the duties of one and creates all the relative obligations and duties of master and servant, which exist in cases of articled seamen."

With respect to the question of MacClennan's amenability to the jurisdiction of the American Consul at the time of his arrest on board the *Dakotan*, it is submitted that the action of this British subject in accepting the American Consul's offers of relief and transportation to the United States was evidence of an intention to continue, for the time being at least, the status of an American seaman which he had assumed upon his enrollment in the crew of the *Berwyn* and which had not been formally dissolved. The continuance of the status resulting from his connection with the *Berwyn* was further confirmed by his practical assimilation to the position of a member of the crew of the *Dakotan*, under the terms of the contract created by law by his acceptance of transportation on the latter vessel. The term "crew", I may state in this relation, has been defined by American Courts as including not only seamen duly shipped and enrolled on board a vessel but also all persons "who are on board her aiding in her navigation, without reference to the arrangement under which they are on board" (*The Bound Brook*, 146 Fed. 160) and without regard to the question "whether the contract is verbal or in writing or for a long or short voyage or period" (*The Marie, D. C.*, 49 Fed. 286). As a member of the crew of the *Dakotan*, MacClennan would seem to have been subject to American jurisdiction in virtue of the principle expressed by Mr. Justice Blackburn in the statement (*Queen* v. *Anderson*, 1 C. C. R., 170) that "where a nation allows a vessel to sail under her flag, and the crew to have the protection of that flag, common sense and justice require that they shall be punishable by the law of the flag." The same principle was recognized and applied by the Supreme Court of the United States in the well-known case of *In re Ross* (140 U. S. 453), in which it was held that a British subject who committed murder in Japan, while a member of the crew of an American vessel, was properly subjected to the jurisdiction of the American Consular Court at Yokohama.

Inasmuch as it appears that the British subject Alexander MacClennan became a seaman of the United States upon his enrollment in the crew of the American Steamship *Berwyn* and that the status so assumed was continued and confirmed by his acceptance of the offer of relief and transportation on the American Steamship *Dakotan* made by the American Consul at Alexandria, under provisions of statutes of the United States, I have to inform you that the Govern-

ment of the United States is of the opinion that the American Consul at Alexandria was fully justified in advising MacClennan that he would be required to assist in the navigation of the *Dakotan* and in subjecting him to the process of the American Consular Court for an offense committed on board that vessel.

Accept [etc.] CHARLES E. HUGHES

176.1/13

The British Ambassador (Geddes) to the Secretary of State

No. 41 WASHINGTON, *January 18, 1922.*

SIR: With reference to the note which you were so good as to address to me on April 20th, 1921, I have the honour, on instructions from my Government, to draw your attention to certain aspects of the case of Alexander MacClennan, a British subject, who was sentenced by the United States Consul at Alexandria to fourteen days' imprisonment. While His Majesty's Government are not desirous that any further action should be taken in this particular case, they feel that it is desirable that some decision should be reached for future reference as to the rights of Consular Officers in such cases.

The real question at issue is whether an American Consular Tribunal in Egypt has properly any jurisdiction to sentence a British subject to imprisonment—a question which is clearly one of Public International Law which cannot be determined by reference to the laws of England or to the laws of the United States. In the case of MacClennan, it is clear that he would be subject to the jurisdiction of the Egyptian Courts for any offence committed in Egypt and that he is taken out of that jurisdiction only by the effect of the Capitulations; that is, by a treaty between Great Britain and Egypt under which a British Consular Court takes the place of the Egyptian Courts as the Tribunal having jurisdiction over British subjects in Egypt. It is not likely to be contended that no [*a*] capitulation or treaty between the United States and Egypt could give to an American Court jurisdiction over a British subject.

It is alleged, however, that MacClennan, though a British subject, had acquired a new status by signing articles for service on an American ship and that he must in consequence be regarded as an American seaman, though not an American citizen. From that the proposition is put forward that American seamen of whatever nationality are justiciable before the American Consular Court in Egypt.

In the opinion of His Majesty's Government there appears to be no support, either in International Law or in the law in practice of the tribunals in Egypt, for the contention that MacClennan was justi-

ciable before the American Consular Tribunal. It does not appear that the American Consul in Alexandria has powers in any way different from the American Consul in Liverpool or in Marseilles in that he cannot try a case himself although he can institute a prosecution before a competent local tribunal. In Alexandria the competent local tribunal for the trial of a British subject is the British Consular Court and the Egyptian Tribunals have never recognised the special status claimed for American seamen as apart from the status of American citizens. Further there does not appear to be any recorded case where a Consular Tribunal has claimed or exercised jurisdiction over the national of another State.

In the opinion of the legal advisers to His Majesty's Government this matter could be tested by an action before the Mixed Tribunals as MacClennan would be entitled to bring an action against the Egyptian Government for unlawful detention on the ground that he was actually detained in an Egyptian Government prison on the warrant of an American Consul and that that warrant was no authority for such detention. His Majesty's Government, however, do not desire that any attempt should be made to obtain a legal decision in this case which might *ipso facto* convict an American Consul of irregular action.

I venture, accordingly, to bring these aspects of the case to your attention in the hope that it may be possible to arrive at a clear decision agreeable both to the United States Government and to His Majesty's Government which will settle the question of jurisdiction for the future.

I have [etc.] A. C. GEDDES

176.1/16

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *June 23, 1926.*

EXCELLENCY: I have the honor to refer again to your note of May 4, 1926, your note of March 2, 1926,[36] and your predecessor's note of January 18, 1922, with reference to the case of Alexander MacClennan, an American seaman of British nationality who was sentenced in 1920 in the American Consular Court at Alexandria, upon a charge of being drunk and disorderly and inciting to disturbance on board the American Steamship *Dakotan.*

It is noted that while His Majesty's Government are not desirous that further action should be taken in this case they feel that it is desirable that some decision should be reached for further reference as to the rights of consular officers in such cases.

[36] Neither printed.

Your Excellency's predecessor stated that the real question at issue is whether an American Consular Tribunal in Egypt has properly any jurisdiction to sentence a British subject to imprisonment. With respect to this question it was observed that MacClennan was exempt from the jurisdiction of the Egyptian courts only in consequence of a capitulation or treaty between Great Britain and Egypt and that it is not likely to be contended that a capitulation or treaty between the United States and Egypt could give to an American Court jurisdiction over a British subject. With reference to the view, previously expressed by this Government, that MacClennan, though a British subject, was, as an American seaman, amenable to the jurisdiction of the American Consular Court at Alexandria, your predecessor remarked that the powers of the American Consul at Alexandria (with respect to the trial of foreign members of an American crew) do not appear to be in any way different from the powers of the American Consul at Liverpool or Marseilles and that the Egyptian tribunals have never recognized "the special status claimed for American seamen as apart from the status of American citizens". Your predecessor further remarked that there does not appear to be any recorded case where a Consular Tribunal has claimed or exercised jurisdiction over the national of another State. In conclusion, your predecessor stated that, while in the opinion of the legal advisers to His Majesty's Government, the regularity of the action of the American Consular Court at Alexandria could be tested, indirectly, by proceedings before the Egyptian Mixed Tribunals against the Egyptian Government on the ground that the warrant of the Consul constituted no authority for the detention of MacClennan in an Egyptian prison, it is not the desire of His Majesty's Government to adopt such a course and that the matter is accordingly presented to this Government in the hope that an agreement may be reached which will settle the question of jurisdiction for the future.

The question raised in the note of January 18, 1922, is in essential respects identical with that which was discussed at length in a communication, under date of June 3, 1881, which Secretary of State Blaine, in behalf of this Government, addressed to Sir Edward Thornton, His Britannic Majesty's Minister at Washington.[37] The case in connection with which the question was discussed was that of John M. Ross, an American seaman of British nationality who was tried in the American Consular Court at Kanagawa, Japan, and convicted of a murder on board the American Steamship *Bullion* in the harbor of Yokohama. In the discussions which preceded the communications of June 3, 1881, and in the argument before the Supreme Court of the

[37] Not printed.

United States concerning the same case some years later (*In re Ross*, 140 U. S. 453), considerations similar to those advanced by the note of January 18, 1922, were put forward.

In the communication of June 3, 1881, above mentioned Secretary Blaine, after calling attention to the embarrassments and complications which would inevitably attend the application of nationality as the sole test of jurisdiction in the Consular Courts, referred to the special status attributed to merchant seamen under British and American law. Disclaiming any desire to conduct the correspondence in a controversial spirit he said:

"My object is to point out that the position taken by the Government of the United States is in entire conformity with the principles of English law as applied to a mercantile service, almost identical with our own in its organization and regulation. That principle is that when a foreigner enters the mercantile marine of any nation and becomes one of the crew of a vessel having undoubtedly a national character, he assumes a temporary allegiance to the flag under which he serves, and in return for the protection afforded him becomes subject to the laws by which that nation in the exercise of an unquestioned authority, governs its vessels and seamen. If, therefore, the Government of the U. S. has by treaty stipulation with Japan acquired the privilege of administering its own laws upon its own vessels and in relation to its own seamen in Japanese territory, then every American vessel and every seaman of its crew are subject to the jurisdiction which by such treaty has been transferred to the Government of the United States.

"If Ross had been a passenger on board of the *Bullion*, or if residing in Yokohama, he had come on board temporarily and had then committed the murder, the question of jurisdiction would have been very different. But, as it was, he was part of the crew, a duly enrolled seaman under American laws, enjoying the protection of this Government to such an extent that he could have been protected from arrest by the British authorities and his subjection to the laws of the U. S. cannot be avoided just at the moment that it suits his convenience to allege foreign citizenship. The law which he violated was the law made by the U. S. for the government of U. S. vessels; the person murdered was one of his own superior officers whom he had bound himself to respect and obey, and it is difficult to see by what authority the British Government can assume the duty or claim the right to vindicate that law, or protect that officer.

"The mercantile service is certainly a national service, although not quite in the sense in which that term would be applied to the national navy. It is an organized service, governed by a special and complex system of law, administered by national officers, such as collectors, harbor masters, shipping masters and Consuls, appointed by national authority. This system of law attaches to the vessel and crew when they leave a national port and accompanies them round the globe, regulating their lives, protecting their persons and punishing their offences. The sailor, like the soldier during his enlistment, knows no other allegiance than to the law and the country under whose flag

he serves. This law may be suspended while he is in the ports of a foreign nation, but where such foreign nation grants to the country which he serves the power to administer its own laws in such foreign territory, then the law under which he enlisted again becomes supreme.

"The Government of the U. S. also feels that its duties in reference to its mercantile marine are more stringent in the ports of the East, than they would be in the political communities of the same civilization. When intercourse was sought with these Powers for the purpose of extending our commerce, and large and unusual authority was asked from them to secure the persons and property which might be employed in such intercourse, the Government of the U. S. thinks that it assumed special responsibility for the maintenance of good order in the ports which it expected to frequent. A conflict of jurisdiction between the nations admitted to these privileges would be not only disastrous to their own commercial interests and dangerous to their own amicable relations, but it would inevitably tend to violence, disorder and crime among seamen, of which these countries would have good reason to complain."

The communication of June 3, 1881, concluded as follows:

"So impressed is this Government with the importance and propriety of these views, that while it will receive with the most respectful consideration, the expression of any different conviction which Her Britannic Majesty's Government may entertain, it will yet feel bound to instruct its Consular and Diplomatic officers in the East, that in China and Japan the judicial authority of the Consuls of the U. S. will be considered as extending over all persons, duly shipped and enrolled upon the articles of any merchant vessel of the U. S., whatever be the nationality of such person. And all offences which would be justiceable by the Consular Courts of the United States, where the persons so offending are native born or naturalized citizens of the United States, employed in the merchant service thereof, are equally justiceable by the same Consular Courts in the case of seamen of foreign nationality."

When, in 1891 [*1890*], the case of Ross came before the Supreme Court of the United States, upon an appeal from the order of the Circuit Court of the United States for the Northern District of New York, denying the prisoner's petition for a writ of habeas corpus, the Supreme Court carefully considered the case on its merits and concluded that the views expressed by Secretary Blaine presented "the true status of the prisoner while an enlisted seaman on the American vessel". In the course of its decision the Court said:

"The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship *Bullion*. By such enlistment he becomes an American seaman—one of an American crew on board of an American vessel—and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities. Although his relations to the British government are not so changed that, after the

expiration of his enlistment on board of the American ship, that government may not enforce his obligation of allegiance, and he on the other hand may not be entitled to invoke its protection as a British subject, that relation was changed during his service of seaman on board of the American ship under his enlistment. He could then insist upon treatment as an American seaman, and invoke for its protection all the power of the United States which could be called into exercise for the protection of seamen who were native born. He owes for that time to the country to which the ship on which he is serving belongs, a temporary allegiance, and must be held to all its responsibilities. . . .[38]

"Reading the treaty and statute together in view of the purpose designed to be accomplished, we are satisfied that it was intended by them to bring within our laws all who are citizens, and also all who, though not strictly citizens, are by their service equally entitled to the care and protection of the government. It is a canon of interpretation to so construe a law or a treaty as to give effect to the object designed, and for that purpose all of its provisions must be examined in the light of attendant and surrounding circumstances. To some terms and expressions a literal meaning will be given, and to others a larger and more extended one. The reports of adjudged cases and approved legal treatises are full of illustrations of the application of this rule. The inquiry in all such cases is as to what was intended in the law by the legislature, and in the treaty by the contracting parties. . . .[38]

"We are satisfied that the true rule of construction in the present case was adopted by the Department of State in the correspondence with the English Government, and that the action of the consular tribunal in taking jurisdiction of the prisoner Ross, though an English subject, for the offence committed, was authorized. While he was an enlisted seaman on the American vessel, which floated the American flag, he was, within the meaning of the statute and the treaty, an American under the protection and subject to the laws of the United States equally with the seaman who was native born. As an American seaman he could have demanded a trial before the consular court as a matter of right, and must therefore be held subject to it as a matter of obligation.

"We have not overlooked the objection repeatedly made and earnestly pressed by counsel, that the consular tribunal is a court of limited jurisdiction. It is undoubtedly a court of that character, limited by the treaty and the statutes passed to carry it into effect, and its jurisdiction cannot be extended beyond their legitimate meaning. But their construction is not, therefore, to be so restricted as to practically defeat the purposes to be accomplished by the treaty, but rather so as to give it full operation, in order that it may not be a vain and nugatory act."

With respect to the remark made in the note of January 18, 1922, that there does not appear to be any recorded case where a Consular Tribunal has claimed or exercised jurisdiction over the nationals of another state, it may be stated that the Consular Courts of the United

[38] Omission indicated in the Secretary's note.

States in China and Japan have continued, when occasion arose, to exercise jurisdiction over American seamen of foreign nationality; and, by the converse of the proposition maintained by this Government in the discussion of the Ross case, those Courts have declined to assert jurisdiction over American members of foreign crews in China and Japan. Furthermore, the records of the Department indicate that in 1889, after an American Consul at Amoy, China, had declined to assume jurisdiction over an American member of a British crew, a British court in China took jurisdiction.

The views expressed by Secretary Blaine and approved by the Supreme Court in the Ross case have been regarded by this Government as applicable in principle with respect to the situation of American seamen of foreign nationality charged with the commission of offences in the Ottoman Empire. In two cases which arose at Smyrna, one in 1912 affecting the captain of the American Steamship *Texas* [39] and the other in 1913, affecting the captain of the American Steamship *Nevada*, this Government maintained the view that the masters and the enrolled seamen of an American vessel are assimilated to American nationality and are therefore amenable to American Consular jurisdiction in the Ottoman Empire.

The action of the American Consular Court at Alexandria in the case of MacClennan was consistent with the opinion expressed by the highest judicial authority in the United States, in the Ross case, with respect to the status of American seamen of foreign nationality and was consonant with the action of extraterritorial courts of His Majesty's Government in China.

It may be noted that in the instant case MacClennan accepted the assistance offered by the American Consul during the time when he was in Egypt after the loss of the vessel upon which he had been signed and that he accepted the arrangements made by the Consul for procuring him passage to the United States by signing him on board the American ship *Dakotan* and that his acceptance of these favors only served to exaggerate the mutinous character of his conduct on board the *Dakotan* and called for severe measures of discipline which together with his status as an American seaman warranted the American Consul in the circumstances in extending his assistance to the Captain of the *Dakotan* and in taking jurisdiction of the case.

In view of the consideration which this subject has heretofore received in diplomatic correspondence between His Majesty's Government and the Government of the United States and in view also of the precedents cited above for the exercise by the courts of His Majesty's Government of jurisdiction over British seamen of Amer-

[39] See *Foreign Relations*, 1913, pp. 1310 ff.

ican nationality, and for the exercise by the courts of the United States of jurisdiction over American seamen of British nationality, it would seem that the question of the propriety of the exercise by Consular Courts of the United States in Egypt over American seamen of British nationality on American vessels in Egyptian waters should be regarded as settled.

I venture to express the hope, that on further consideration Your Excellency's Government will concur in the views of the Government of the United States.

Accept [etc.] FRANK B. KELLOGG

ESTONIA

AGREEMENT BETWEEN THE UNITED STATES AND ESTONIA REGARDING MUTUAL RECOGNITION OF SHIP MEASUREMENT CERTIFICATES

8601.855/1

The Estonian Chargé (Mutt) to the Acting Chief of the Division of Eastern European Affairs (Kelley)

NEW YORK, *July 17, 1926.*

[Received July 19.]

MY DEAR MR. KELLEY: At the time of conclusion of Commercial Treaty between the United States of America and Esthonia [1] the question of mutual recognition of ships measurement certificates was also up. In the conference had between you, the Esthonian Minister A. Piip and Mr. C. M. Barnes [2] on November 11, 1925 it was decided not to make this by the Commercial Treaty but by special exchange of notes or by special declarations. Lately I received from the Minister of Foreign Affairs of Esthonia English translation of the Esthonian ships measurement certificates with request to forward the enclosed three copies of Regulations for tonnage measurement of ships to Mr. C. M. Barnes and to take further steps toward the recognition. I might say that the Esthonian regulations correspond to those of British in all its technical requirements.

Very sincerely yours,

V. MUTT

8601.855/2

The Acting Secretary of State to the Estonian Chargé (Mutt)

WASHINGTON, *August 21, 1926.*

SIR: With further reference to your note of July 17, 1926, in regard to the question of the mutual recognition of ship measurement certificates, with which you forwarded three copies in English of the Esthonian Regulations for tonnage measurement of ships, I have the honor to inform you that the authorities of this Government concerned are satisfied that the vessels of Esthonia may be

[1] Treaty of Friendship, Commerce and Consular Rights between the United States and Estonia, signed Dec. 23, 1925, *Foreign Relations*, 1925, vol. II, p. 70.

[2] Assistant to the Solicitor.

deemed to be of the tonnage noted in the Certificate of Registry or other national papers, and that it will not, therefore, be necessary under existing law for such vessels to be remeasured in any port in the United States. It is, of course, requisite that the Government of Esthonia extend the same recognition to the Certificates of Registry or other national papers of the vessels of the United States.

I shall be obliged if you will bring the foregoing to the attention of your Government and will inform me of the reply so that appropriate instructions may be given to the officers charged with the enforcement of the navigation laws of this country.

Accept [etc.] LELAND HARRISON

860i.855/5

The Estonian Chargé (Mutt) to the Secretary of State

NEW YORK, *November 30, 1926.*

[Received December 1.]

SIR: In reply to your note of August 21, 1926 in regard to the question of the mutual recognition of ship measurement certificates between the United States and Estonia, I have the honor to inform you in the name of my Government, that the concerned authorities of Estonia have found, that in substance there are no hindrances for the recognition, without remeasurement, of tonnage of ships of the United States in Estonian ports, as noted in the Certificate of Registry issued by the authorities of the United States or other national papers. In view of this the Government of Estonia has decided, on reciprocal basis, to recognize the tonnage of ships of the United States as stated herein-before.

At the same time I have the honor to inform you that this agreement, the attainment of which I hereby confirm, will become operative in Estonia ten days after the due publication of the Estonian Government's decision,[3] whereby this agreement will be ratified.

Accept [etc.] V. MUTT

[3] Decision of the Estonian Government published in the *State Gazette*, Feb. 3, 1927. The agreement became operative in Estonia Feb. 13, 1927, and in the United States of America by order of the Department of Commerce on Apr. 2, 1927. (File No. 860i.855/6, 7.)

FRANCE

EFFORTS TO OBTAIN RATIFICATION OF DEBT AGREEMENT BETWEEN THE UNITED STATES AND FRANCE, SIGNED APRIL 29, 1926[1]

800.51 W 89France/280a : Telegram

The Secretary of State to the Chargé in France (Whitehouse)

WASHINGTON, *March 31, 1926—6 p. m.*

81. Finance Minister Peret is quoted in Associated Press despatch from Paris dated March 30 to the effect that "France can make no settlement of the interallied debts that is not based in some measure on reparation payments from Germany," and "these terms should include a safeguarding clause that would give France protection should Germany at any time default." Foregoing statement reported to have been made in the course of his speech opening the debate on the financial measures yesterday.

Please cable exact words used by the Minister of Finance.

KELLOGG

800.51 W 89France/281 : Telegram

The Chargé in France (Whitehouse) to the Secretary of State

PARIS, *April 1, 1926—11 a. m.*

[Received April 1—9:03 a. m.]

127. Your 81, March 31, 6 p. m. According to the *Journal Officiel* following is the statement of the Minister of Finance:

"As to interallied debts it goes without saying that we are not going to discuss them at this moment. The negotiations with the United States, with England, continue, in a spirit of friendliness on the part of these two countries, with a very great desire for conciliation on the side of France.

As for myself, [Gentlemen,] I shall do my utmost to have this thesis prevail, that French payments should be fixed equitably in proportion to those that she will receive from Germany."[2]

Mailed to London, Rome, Brussels, and Berlin. Copy to European Information Center.

WHITEHOUSE

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[1] For previous correspondence concerning negotiations on behalf of the World War Foreign Debt Commission for the settlement of debts owed the United States by France, see *Foreign Relations*, 1925, vol. I, pp. 132 ff. For text of agreement, see *Combined Annual Reports of the World War Foreign Debt Commission, 1922–1926* (Washington, Government Printing Office, 1927), p. 257.

[2] Journal Officiel de la République Française, *Débats Parlementaires: Chambre des Députés, Séance du 30 Mars 1926* (Paris), p. 1628.

800.51 W 89France/292 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *April 29, 1926—9 p. m.*

108. For your own information only. Debt agreement reached today providing for settlement of total debt amounting to $4,025,000,000, of which $3,340,000 represents principal and remainder interest accrued at four and one fourth percent to December 15, 1922, and three percent thereafter to June 15, 1925. Agreement provides for annuities commencing with $30,000,000 in the first year and reaching $125,000,000 in the seventeenth, and thereafter at latter figure to the sixty-second year. No interest for 5 years; one percent for next 10 years; two percent succeeding 10 years; two and one half percent succeeding 8 years; three percent succeeding 7 years, and three and one half percent for remaining 22 years. Present value calculated at four and one fourth percent is approximately $2,000,000,000, or fifty percent of debt funded. Settlement contains no safeguard clause.

KELLOGG

800.51W 89France/296 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *May 5, 1926—1 p. m.*

[Received May 5—10:45 a. m.]

173. It is alleged in press despatches that Congress intends to await French Parliament's ratification before any action is taken on the debt agreement. I hope that this is not the case, since in my opinion prior ratification by the American Congress will facilitate ratification in France. Ever since the time of the Treaty of Versailles the French have been somewhat skeptical in regard to action by the Senate, and opponents of the agreement could use as an argument the possibility that it would not be ratified by the United States. French ratification will not be easy to obtain, and everything possible to facilitate the task of the French Government should be done.

HERRICK

800.51 W 89France/297 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *May 6, 1926—6 p. m.*
[Received May 6—2:55 p. m.]

178. After sending my 173, May 5th, I met Briand,[8] who, without any remark on my part, raised this very point that prior ratification by us would facilitate his task and said that in view of the ratification of the other agreements he hoped our Senate would act quickly on the French one.

HERRICK

800.51 W 89France/310b : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *May 27, 1926—5 p. m.*

146. According to the Secretary of the Treasury the possible date now mentioned for Congress to adjourn is June 19. He points out that if Congress is to take favorable action before adjournment early approval by French Parliament is important.

KELLOGG

800.51 W 89France/313a : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *June 2, 1926—5 p. m.*

153. By a vote of 226 for and 111 against, the House of Representatives has adopted the French debt settlement. The Senate will not act until action has been taken by the French Parliament. The Congress is ready to adjourn and is simply awaiting French action on adoption of the debt settlement. What prospects are there for speedy action?

KELLOGG

[8] Aristide Briand, French President of the Council and Minister for Foreign Affairs.

800.51 W 89France/314 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *June 3, 1926—5 p. m.*
[Received 5:30 p. m.]

221. Your telegram 153, June 2. M. Bérenger[4] informs me that his explanations to his Parliamentary colleagues have dissipated much of the opposition to the agreement but consideration must be given to the internal political situation and further time for preparing the ground is necessary in spite of the fact that Briand's recent triumph has cleared the air. He also said that in his opinion considerable influence would be exerted by the action of the exchanges. It is his belief and expectation that the agreement will be ratified before the Government's financial proposals are introduced, which will probably be some time after June 20. I gathered that he expects the war debt agreement will be voted on between June 13 and June 20, although he was unwilling to commit himself as to dates. He added that he would guarantee ratification by France if the United States Senate should act before the French Parliament did. The vote of the House of Representatives pleased him very much and he expressed gratitude to the President for securing action in the House by the date he had told M. Bérenger.

It is possible that M. Bérenger is over-optimistic but a great effect has certainly been produced by his courageous attitude, and it would seem that ratification is assured unless the Briand Government should fall through some unexpected development.[5]

I shall see the Premier at the earliest opportunity and try to expedite action although, as M. Bérenger says, rather than risk an unfavorable vote it is better to act slowly.

HERRICK

800.51 W 89France/315 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *June 4, 1926—11 a. m.*
[Received June 4—8:55 a. m.]

224. In a telephone conversation on the evening of June 3, Bérenger stated that his task of obtaining ratification of the French debt agreement would be facilitated if the United States Treasury Department

[4] Henry Bérenger, French Senator and Ambassador in the United States.

[5] The Briand Ministry resigned June 15, following which there was a period of rapid changes of ministries. A ministry headed by Raymond Poincaré took office July 23.

would raise the embargo against the firm of Boue Soeurs [6] as a mark of good will. This firm would seem to have been punished sufficiently for the faults which it may have committed heretofore, and as apparently it has very powerful connections, I hope that Mr. Mellon [7] may see his way clear to take action such as suggested by M. Bérenger. This might furthermore deter the French press from outbursts against our customs representatives abroad for their alleged inquisitorial methods.

HERRICK

800.51 W 89France/315 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *June 7, 1926—1 p. m.*

164. Your telegram 224, June 4, 11 a. m. It will be an absolute impossibility for either the House of Representatives or the Senate to consider reservations of whatever kind. If any member of the French Government proposes such a proposition to you I suggest you inform them that for you to send any such proposition to your Government would result in severe rebuke to you. This would be effective I am sure. I appreciate the information you have given to me. Inform me constantly.

KELLOGG

800.51 W 89France/319 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *June 8, 1926—4 p. m.*

[Received 5 : 55 p. m.[8]]

232. Referring to your confidential telegram of June 7 concerning reports that reservations to the debt agreement might be attempted by the French Government, I have repeatedly warned the French that it was futile to make reservations as none would be accepted. As I have indicated in previous telegrams, however, I have been afraid that some such action might be taken and I had hoped that our Government might forestall such action by ratifying first. No propositions or

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[6] A Treasury Department order of Aug. 31, 1925, as amended Sept. 16, 1925, prohibiting, in accordance with section 510 of the tariff act of 1922, the importation and delivery of merchandise manufactured by or for the account of Boue Soeurs, Ltd., of Paris, for refusal of said firm to submit certain of its books and records for inspection.

[7] Andrew Mellon, Secretary of the Treasury and Chairman of the World War Foreign Debt Commission.

[8] Telegram in two sections.

suggestions regarding reservations have been or will be made to me in any event. My reference in a recent telegram to "conversations with various French politicians" did not mean interviews but what I heard in casual conversations in going about.

The political and financial situation is extremely complicated and the people of France are in a somewhat dangerous mood so that any course of action is possible. The feeling may be illustrated by an editorial on the proposed restriction of importations which appeared in today's *Rappel* complaining that the people are told they must sweat blood and gold to pay for the cakes of the Americans and English while at the same time they are told to prepare to ration their own bread.

Opposition to the debt agreement is assuming formidable proportions and includes prominent bankers who might be expected to know better. Franklin-Bouillon [9] who formerly favored a debt agreement without reservations is now outspoken in opposition to the present agreement since he had no hand in making it.

It is also to be noted that even official circles had had the mistaken idea that as soon as an agreement was reached large funds would be made available. This motive for ratification has been modified since it is now seen that this must come slowly and depend on national confidence. It is my opinion that Briand, if given time, and if he feels it is essential and is willing to risk his neck, can secure ratification. If he does not care to do this and if Parliamentary conditions look stormy he may propose reservations, which Parliament would adopt, or he might link the debt agreement with the Dawes annuities [10] by some formal statement on behalf of the Government of which Parliament would take official cognizance. I say this because this line was taken by Bérenger in his speech to the Chamber of Commerce: that it was clearly understood in Washington that one international contract could not be violated without violation of all, as all were sacred.

HERRICK

800.51 W 89France/319 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *June 9, 1926—1 p. m.*

166. Your 232, June 8, 4 p. m.

1. Department entirely approves your action in warning the French that no reservations would be accepted.

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[9] President of the Committee on Foreign Affairs, French Chamber of Deputies.

[10] For text of agreement regarding the distribution of the Dawes annuities, see *Foreign Relations*, 1925, vol, II, p. 146.

2. Should you be asked to forward any reservations, I suggest that you might refuse on ground that to comply with request would, in your opinion, result only in rebuff.

KELLOGG

800.51 W 89France/324 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *June 15, 1926—1 p.m.*
[Received June 15—8:35 a.m.]

241. Chances of early ratification and the situation of the Government are both suffering bad effects of the rise in the exchanges. It has been out of the question to submit the agreement to Parliament this week. Even Bérenger, while still confident of a favorable vote, speaks of the possibility of postponing ratification until the autumn session. Hostility to the agreement still prevails in most press comments.

HERRICK

800.51 W 89France/321 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *June 15, 1926—4 p.m.*

174. Referring to your telegram 224 of June 4, 11 a. m., information of the Department is that the order placing an embargo against Boue Soeurs was revoked June 8.

KELLOGG

800.51 W 89France/321 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *July 13, 1926—1 p. m.*
[Received 3:39 p.m.[11]]

279. For Secretary Mellon from Mr. Gilbert[12] and Mr. Dewey:[13]

"At present the French situation as to ratification of the debt settlement seems to be substantially the following:

In order to bring about a stabilization of the franc it will be necessary for the French Parliament to ratify before adjournment both

[11] Telegram in two sections.
[12] S. Parker Gilbert, agent general for reparation payments.
[13] Charles S. Dewey, Assistant Secretary of the Treasury.

the British and the American debt settlements. Probably stabilization is impossible without foreign credits, and such credits or foreign loans either from America or Great Britain will be dependent upon ratification of debt agreements.

The time element is highly important. If the needed steps are taken within a few weeks the probability is that stabilization can be accomplished. In 6 months it may not be possible, and then the course taken by the mark may have to be taken by the franc, which would be most disturbing to international relations generally as well as to Europe.

Provided the present Government can find courage to force the issue it can possibly get both houses of Parliament to ratify the agreements with both Great Britain and the United States. It badly needs to have some face-saving points in order to gather the courage it needs and also to gain the support of some of its numerous opponents.

The present probability is that Caillaux [14] will return from London with such a settlement as will provide enough concessions on the part of the British to give him something to discuss in the Chamber of Deputies. All the difference between failure and success of both the stabilization effort and the debt ratification itself might be made if Caillaux could have in regard to the American debt settlement something of the same nature at least as his British concessions.

While recognizing the impossibility of the United States' giving any assurances in the nature of a safeguard provision, there is still the question whether something of a concession might not be made as to commercialization. Beyond a doubt there is real agitation here in opposition to the paragraph in the debt settlement which contemplates possible public sale of the bonds. It comes particularly from such persons as Poincaré who otherwise would favor the Government's efforts at stabilization, but fear that the bonds might be sold in Germany or in world markets. How far the Executive of our Government would feel at liberty to proceed in present circumstances we do not know, but it occurs to us that it might be possible even without special legislative authorization for the Secretary of the Treasury to give, as a matter of interpretation, a letter referring to the above-mentioned paragraph of the debt settlement which would be similar to the one reported here to have been sent to Lacour-Gayet [15] by Winston,[16] and stating substantially that the intention of the United States is not to sell the obligations.

Our suggestion is not that the initiative be taken at this stage in giving out any interpretation. We do raise the question now in order that it may be considered thoroughly, in advance, so that an answer can be given instantly if the question should arise in some practical way. Up to this time there has been no request from the French Government for such a concession, but we foresee that something of the kind may possibly be asked, urgently, soon. It would be most

[14] Joseph Caillaux, French Minister of Finance.

[15] R. Lacour-Gayet, Financial Attaché, French Embassy, Washington.

[16] Garrard B. Winston, Under Secretary of the Treasury. For the letter referred to, dated July 4, 1926, see Lucien Petit, *Histoire des Finances Extérieures de la France: Le Règlement des Dettes Interalliées (1919–1929)* (Paris, Éditions Berger-Levrault, 1932), p. 678.

helpful if in Washington, meanwhile, there were a careful and most confidential canvass of the possibilities."

I entirely concur in the summarization of the situation by Dewey and Gilbert. I believe that such an answer to the question of "commercialization" as outlined might prove to be a decisive factor in bringing success to the plans of the Government. In case a favorable statement by Secretary Mellon proves possible, the thought has occurred to me to cause it to be suggested to Caillaux that he inquire as to the American viewpoint on "commercialization."

To be useful a reply to this cable must be immediate.[17]

HERRICK

800.51 W 89France/348a : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *July 16, 1926—3 p. m.*

194. (1) In view of the erroneous statements as to the Franco-British settlement appearing in the American press the Secretary of the Treasury today issued the following statement

"The settlement of the French obligations to America has been made along somewhat different lines from the settlement of French obligations to Great Britain. With the British, banking advances and commercial obligations for war stocks have been treated separately from the war debt proper. If, however, we compare the settlement of all of France's indebtedness to England with the settlement of her indebtedness to America, France has had generous treatment from us. Particularly is this true during the first five years, which will be most difficult for France. The present Caillaux-Churchill settlement[18] does not differ materially from the tentative Caillaux-Churchill agreement of last August, an analysis of which appears in the documents of the Caillaux negotiations with the American Commission of September last, which was released to the press October 1, 1925.

The American settlement with France embraces all of France's indebtedness, and represents in the opinion of the American Commission France's capacity to pay. For obligations incurred by France to America after the war ended, France owes us today $1,655,000,000. The present value of the entire French-American settlement, at the rate of interest carried in France's existing obligations is $1,681,000,000. In effect, therefore, America has cancelled the obligations of France for all advances during the war, and France in the Mellon-

[17] This telegram was transmitted by the Secretary of State to the Secretary of the Treasury on July 13. Secretary Mellon wrote to R. Lacour-Gayet as suggested, July 14, 1926; for text, see *ibid.*, p. 679.

[18] For the agreement signed July 12, 1926, by Winston Churchill, British Chancellor of the Exchequer, and Joseph Caillaux, French Minister of Finance, see Great Britain, Cmd. 2692, French War Debt (1926): *Agreement for the Settlement of the War Debt of France to Great Britain.*

Berenger agreement has undertaken only to repay the advances and obligations subsequent to the Armistice. No other creditor of France has accorded such generous treatment."

(2) Department's 366 October 1, 7 p. m.[20] contains documents analyzing tentative British-French agreement mentioned in the foregoing statement.

(3) Press reports from Paris indicate great satisfaction in France over the British settlement and corresponding bitterness against United States. I see no ground for considering the British settlement to be more lenient than the American settlement with France. Due weight should be given to the fact that the American settlement covers large sums advanced to pay for material sold, exchange transactions, maturing of French commercial debt obligations and advances to the Bank of France. While we do not yet know what arrangements will be made for the payment by France of the Bank of England debt, it is understood that most of France's commercial debt due Great Britain as well as a material part of the Bank of England advances have already been repaid. In comparing the amounts of the two debts it should be noted that the capital sum advanced by Great Britain, not including advances to Bank of France and to cover surplus material sold, was about 445,000,000 pounds, which was increased by compound interest to 653,000,000 pounds, while capital of American advances was about $3,340,000,000, as compared with $4,025,000,000 funded. As to rates of interest, see page 71 of Clementel inventory[21] (transmitted with letter from Logan Dec 30 1924[20]) with respect to British debt; American debt was funded at four and one-fourth per cent interest to 1922 and three per cent thereafter.

Repeat foregoing by telegraph to American Missions in Europe. Refer missions mentioned in last sentence of Department's 366 October 1, 7 p. m.[22] to text thereof which was then forwarded to them, and mail text of that message to other missions. Also furnish all missions with translation of second, third and fourth paragraphs under heading "interest" on page 71 of Clementel inventory.

KELLOGG

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[20] Not printed.

[21] *Inventaire de la Situation Financière de la France au Début de la Treizième Législature, présenté par M. Clémentel, Ministre des Finances* (Paris, Imprimerie Nationale, 1924).

[22] Not printed; its last sentence read: "Mail text to Embassies London, Rome, Brussels and Legations Prague, Bucharest and Belgrade."

800.51 W89France/364 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *August 6, 1926—1 p. m.*
[Received 4:13 p. m.]

313. There are reports current in the Paris press of the ratification next week of the Washington agreement and of Bérenger's immediate return to Washington. Bérenger has just told me that these rumors are premature. He said that considerable progress has been made, and that although he could guarantee nothing, he had hope of the agreement being ratified before Parliament adjourns. However, the Government has come to no decision as yet. He added that he would not sail for the United States in any event until the agreement had been ratified.

Seydoux [23] has read to me Mr. Mellon's letter of July 14 to Lacour-Gayet,[24] but for some unknown reason it is apparently being treated as a secret communication and only a few people in Paris are aware of its existence.

This morning Pertinax,[25] who is generally anti-American, says in *L'Echo de Paris* that the Washington agreement must be ratified to get the foreign credits that the Government finds after all are essential, although he regards the agreement as iniquitous.

HERRICK

800.51 W 89France/365 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *August 7, 1926—11 a. m.*
[Received August 7—10 a. m.]

314. Yesterday Poincaré struck a snag in the Chamber of Deputies when he found, in trying to arrange for the ratification of our debt agreement before the adjournment next week, that his followers had not had time to adapt themselves to his new attitude and were still opposed to ratification. It seems likely that ratification will go over to the autumn, although the Government's attitude is now uncertain.

Since it was a great deal to expect that the ordinary rank and file should make a complete face-about in less than a week, this Parliamentary opposition is unfortunate but not surprising.

[23] Charles L. A. J. Seydoux, assistant director of political and commercial affairs in the French Foreign Office.
[24] Not printed; see footnote 17, p. 99.
[25] André Géraud.

Although Pertinax strongly urges the ratification of the British agreement as a proof of French good faith and to show that opposition to the Washington agreement is not due to the terms but to the lack of a safeguard clause, I gather that it will share our fate.

HERRICK

800.51 W 89France/369

The Secretary of State to American Diplomatic and Consular Officers

No. 529 WASHINGTON, *August 28, 1926.*

GENTLEMEN: There is enclosed, for your information, a copy of a translation of an extract from a leading article in *Le Temps* of Paris, July 18, 1926,[26] which is a comparative analysis of the agreements for payment of war debts recently negotiated with France by Great Britain and the United States, respectively.

It is felt that study of this article will be useful in case of further prejudiced or ill-informed criticism, from whatever source, of the alleged rigor of the terms of the American agreement compared with the terms of the British agreement. The source of the article makes it particularly valuable as a refutation of such criticism.

There is also enclosed a memorandum, prepared in the Department of State, comparing the American debt settlement with France with the several agreements which constitute the British debt settlement with France. While the statements contained in this document are not confidential, it is not desirable that they be quoted or used as originating in a study made in the Department of State.

I am [etc.] FRANK B. KELLOGG

[Enclosure—Memorandum]

Comparison Between British and American Debt Settlements With France

The settlement of the French debt to the United States is contained in a single agreement providing for the liquidation of all sums borrowed by France during and after the war. In the case of France's debt to Great Britain, however, bank advances and obligations for purchase of war supplies have been treated separately from what is termed "war debt". In comparing the two settlements, therefore, it is necessary to take on the one hand the several agreements between France and Great Britain and on the other hand the Franco-American agreement. To compare the latter merely with the Franco-British agreement of July, 1926 would be unjust.

According to statements on pages 59 to 72 of M. Clementel's "Inventory of the Financial Situation of France", 1924, the payment of

[26] Not printed.

France's debt to Great Britain in respect of surplus war supplies is regulated by two agreements of July 1920 and March 1923. According to the agreement of July 1920, France undertook to pay Great Britain in 1925 the sum of £2,226,069:10:1 in respect of war supplies delivered to certain French ministries. This agreement provided for 6 per cent interest. The agreement of March 1923 provided for payments as follows:

1924	£750,000
1925	750,000
1926	1,250,000
1927	1,000,000
1928	1,250,000
1929	1,000,000

The Bank of England advanced a total of £72,000,000 to the Bank of France, this debt being represented by French Treasury bonds. These bonds were discounted at a rate of 1 per cent greater than the discount rate of the Bank of England, but it was provided that the interest rate paid by France should in no case be less than 6 per cent. The Bank of France furnished a deposit of gold equal to one-third of the loan. Certain payment in 1918 and also in 1922–23 reduced this debt to £55,000,000. According to an agreement of April 1923 this debt was to be repaid as follows:

1924	£5,000,000
1925	6,000,000
1926	7,000,000
1927	8,000,000
1928	9,000,000
1929	15,000,000
1930	5,000,000

The capital sum of France's so-called "war debt" to Great Britain, as finally adjusted, was £445,218,387. The total sum of French obligations held by Great Britain, however, was increased £208,000,000 by the addition of interest making the total covered by the agreement £653,127,900. It is understood that the obligations have been in the form of 12 months French Treasury Bills which, as they fall due, have been replaced by new bills discounted at the discount rate of the Bank of England. It is the annual compounding of interest that has increased the principal of the debt by 46.7 per cent. With respect to the interest charged on these obligations, M. Clementel made the following statement in his "Inventory" (page 71):

"The rate of interest which was originally agreed upon was to correspond with that of the issues of British Treasury Bonds; thus it was increased successively from 3¼ per cent to 5½ per cent and 6 per cent which represented an actual burden of 6 to 6½ per cent in view of the fact that interest was paid in advance.

"As issues of Treasury bills became irregular after 1916, the French Treasury bonds were thereafter discounted at the Bank of England rate; the interest then rose to 5 per cent and later, progressively, to 6 and 7 per cent, increasing the cost of our advances to more than 7½ per cent.

"This figure appears very high by whatever standard of comparison is taken, whether the average interest on the British long-time loans, which is not over 5 per cent; the rate granted by the United States to its debtors, which was originally 3 per cent and later 5 per cent; or the rate on all other inter-Allied debts, no part of which was as high as this rate."

Summarizing, on the basis of these agreements, total payments by France to Great Britain on account of the three categories of debts, according to the agreement of July 1926 and other agreements described in M. Clementel's "Inventory" are as follows:

1924	£5,750,000
1925	8,976,069
1926–1927	14,250,000
1927–1928	15,000,000
1928–1929	18,250,000
1929–1930	26,000,000
1930–1931	17,500,000
1931–1932 to 1956–57	12,500,000
1957–1958 to 1987–88	14,000,000

In the case of the Franco-American settlement, no distinction is made between so-called war debt, advances for exchange stabilization, commercial debt and advances to pay for surplus war supplies. The $407,000,000 representing French indebtedness to the United States for surplus war stocks is, of course, properly comparable with the indebtedness of France to Great Britain incurred for a similar purpose. Of the $2,933,000,000 of France's other indebtedness to the United States, $682,000,000 represents advances to pay maturing commercial obligations of the French Government or to support the franc in international exchange. These advances are similar to those made by the Bank of France to the Bank of England.

Conclusions.

(1) Had the principles of the British-French settlements been applied to the French debt to the United States, the $407,000,000 and the $682,000,000 would have been settled on commercial principles. The burden of such a settlement would have been far greater than the settlement actually made, and could not have been supported by France.

(2) The present value of the Franco-American settlement, on a 4¼ per cent basis, is $2,008,000,000, or 60.2 per cent of the capital sum advanced. The total present value of the several Franco-British set-

tlements, on a 4¼ per cent basis, as of their respective dates, and the capital sums advanced are as follows:

War debt settlement, July, 1926	£445,218,387	£260,660,000
Bank debt settlement, April, 1923	£55,000,000	45,999,000
Surplus war supplies, July, 1920	£2,226,069	2,429,000
Surplus war supplies, March, 1923	£6,000,000	5,154,000
		£314,242,000

The total of the above present values is 61.8 per cent of the total capital sums, compared with 60.2 per cent in the case of the Franco-American settlement.

(3) The comparative burden imposed on France by the settlements with the two creditors during the early difficult years is as follows (in dollars):

	British settlement		*American settlement*
1926–27	$69,400,000	1st year	$30,000,000
1927–28	73,000,000	2nd year	30,000,000
1928–29	89,000,000	3rd year	32,500,000
1929–30	126,000,000	4th year	32,500,000
1930–31	85,200,000	5th year	35,000,000

(4) The provisions relating to possible postponement of payments, to protect the transfer, are substantially similar in both the British and American settlements with France, except that the Churchill-Caillaux settlement provides for interest at 5 per cent on any payments postponed, while the Franco-American agreement provides for 4¼ per cent.

(5) The large amount of compound interest that was added to the capital sum advanced by Great Britain to France is primarily responsible for the fact that the principal funded in the Churchill-Caillaux agreement is over $1,000,000,000, or 46.7 per cent, greater than the capital advanced, whereas in the case of the larger debt to the United States, the excess due to interest is $685,000,000, or 20.5 per cent.

In the light of this comparison it is clear that France has had generous treatment from the United States and that the Franco-American basis of settlement is much more favorable to France than the Franco-British basis. Particularly this is true during the first five years, which will be most difficult for France.

Finally, it is important to note that France today owes the United States $1,655,000,000 for obligations incurred by France after the end of the war. The present value of the entire French-American settle-

ment, at the rate of interest carried in France's existing obligations is $1,681,000,000. In effect, therefore, America has cancelled the obligations of France for all advances during the war, and France in the Mellon-Bérenger agreement has undertaken only to repay the advances and obligations subsequent to the Armistice.

SUPPLEMENTARY NOTE

The bank debt of £55,000,000 discussed on pages 60–61 of the Clementel inventory appears to be quite distinct from the advances of £53,500,000 mentioned in paragraph 7 of the Franco-British agreement, which were made pursuant to the Calais agreement of August 1916 (see page 72 of Clementel inventory). The Calais agreement appears to have provided for an advance secured pound for pound by a deposit of gold. The provision in Article 7 of the Franco-British agreement of July 1926 whereby this sum remains as a non-interest bearing debt of France, is of course in consideration for the fact that Great Britain retains the gold deposit without paying interest. In this connection, attention is called to a colloquy in the House of Commons, April 9, 1923, in which Mr. Baldwin [27] in reply to an inquiry from Colonel Wedgwood stated as follows:

"There is no connection whatever between the debt of the Bank of France to the Bank of England, and the gold deposited with the Bank of England in connection with French Government debt to the British Government." [28]

The Department has no information to indicate that the agreement of April 1923 described on page 60 of the Clementel inventory has been modified.

800.51 W 89France/404 : Telegram

The Chargé in France (Whitehouse) to the Secretary of State

[Paraphrase]

PARIS, *October 7, 1926—1 p. m.*

[Received 2:25 p. m.]

379. I am setting forth as follows the situation with respect to our debt agreement at the present time, as I see it: Although he is convinced that the debt question must be settled, Poincaré has not yet reached the point where he will jam the Mellon-Bérenger agreement through, as it is, without reserves. For this there are several reasons.

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[27] Stanley Baldwin, British Chancellor of the Exchequer.

[28] See Great Britain, *Parliamentary Debates*, Fifth Series, vol. 162: House of Commons (London, 1923), cols. 887–888.

(1) Opposition to ratification in Parliament is not only real but is of considerable velocity. In the Cabinet it is represented particularly by Marin.[29]

(2) The present financial situation of his government is pleasing to Poincaré and he is also quite pleased with himself. Therefore, he does not feel that there is any vital necessity for haste from this angle.

(3) The prevailing opinion appears to be that, due to the fact that public sentiment in the United States is gradually becoming favorable to a modification of the debt agreements, delay is advantageous to France. Likewise, for some reason it is thought that the Democratic party would show more generosity. Therefore, there is a desire to know the result of our November elections.

(4) The situation has been complicated by various American bankers who have offered to make available large amounts of money after ratification of the debt agreement. Since these offers have been somewhat numerous, Poincaré has conceived the idea that the financiers' insistence on the need of ratification is due to the plethora of money in the United States, with the result that foreign loans must be made at all costs, and is not due to sincere belief that it is necessary to France's financial salvation.

(5) Poincaré is not yet ready to stabilize the franc. He is dallying with the idea of the German railroad bonds not only as a means of keeping out of the hands of the Anglo-Saxon financiers, whom he dislikes, but also as being in line with his doctrine that France can save herself.

However, Poincaré is preparing for ratification with reservations in some form during November and it is my opinion that everything will depend upon the form adopted.

During Francqui's[30] visit last week, I have been told, Poincaré read to him a draft preamble, and when he asked for Francqui's opinion, the latter stated that to him it seemed very complicated and not easy to understand.

WHITEHOUSE

800.51 W 89France/411 : Telegram

The Chargé in France (Whitehouse) to the Secretary of State

[Paraphrase]

PARIS, *October 20, 1926—4 p. m.*

[Received 5:02 p. m.]

388. Parliament will probably not be convoked until the second week in November, it now appears, and will take up the budget

[29] Louis Marin, French Minister of Pensions.

[30] Emile Francqui, Belgian financial expert, Minister without portfolio.

after ratifying the administrative reforms. Poincaré wishes to have the budget voted before the beginning of the new year in order to avoid provisional twelfths which dislocate budget provisions.

Hostility to the ratification of the debt agreements without safeguard clause is general and it has become apparent that reservations in a preamble would be futile. It seems likely, therefore, that an attempt to reopen negotiations with our Government will be made or at least there will be much delay in bringing the agreements before Parliament.

WHITEHOUSE

FAILURE OF EFFORT OF THE AMERICAN GOVERNMENT TO SECURE AGREEMENT WITH THE FRENCH GOVERNMENT ON A NATURALIZATION TREATY

711.514/4

The Chargé in France (Whitehouse) to the Secretary of State

No. 6218 PARIS, *April 1, 1926.*

[Received April 12.]

SIR: I have the honor to refer to Instructions No. 649 dated May 11, 1923 and No. 1613 dated July 8, 1925[31] relative to the Department's desire that a treaty of naturalization be negotiated with the Government of the French Republic.

For several months a Secretary of this Embassy has been making informal verbal representations at the Foreign Office regarding the question of a treaty concerning the naturalization in the United States of French citizens, and there is now transmitted herewith a draft of a treaty which appears to meet the views of both Governments.[32]

At the Foreign Office M. Pillaut and M. Vieilleville [*Viefville*] stated in informal conversation that, although personally very sympathetic, they doubt whether, in view of the long established provisions of the "Code Civil", the Ministries of Justice, War and Foreign Affairs could find a way to ameliorate the situation in order to conform with the draft of a treaty inclosed in the Department's Instruction of May 11, 1923.[33] However, they stated that they are of the belief that the following might be accomplished regarding cases which have developed up to the present time:

A French born child, having proceeded to the United States with his parents more than five years previous to the calling of his class to the colors, and having subsequently become a naturalized American citizen by due process of law and shown intention upon attaining

[31] Instructions not printed.
[32] Not printed.
[33] Neither printed.

his majority, of continuing to inhabit the United States, might be recognized by the French Government as having validly adopted American citizenship. In cases arising in the future the same would hold true provided the father himself had fulfilled the French military requirements before proceeding to the United States, and had there become naturalized and there resided until the child arrived at his majority.

It was further stated that an amnesty might be established in favor of those persons who had fulfilled their French military obligations before emigrating to the United States but who had not acquired American citizenship previous to the outbreak of hostilities in 1914.

It was stated that no clemency can be shown to those who in the past had left France in time of war, or in the future to those who leave France less than five years previous to the call to the colors of their class; to those who forsake their families in France in emigrating and becoming naturalized abroad; or to persons who leave France with an unexpiated crime or misdemeanor against them.

The representatives of the Foreign Office further stated that, understanding the desire of the American Government to avoid difficulties in cases of dual nationality, they feel that their Government might accord general amnesty in all past cases except the latter of those mentioned above, provided that the United States Government would consent to include in the regulations governing naturalization in the United States, a clause stipulating that French citizens cannot become validly naturalized American citizens without first having satisfied the French military requirements, or having obtained the permission of the French Government to forswear their French citizenship.

There is transmitted herewith for the Department's information a summary of the points which it is the aim of the proposed draft to ameliorate.[34] These points are classified under three headings as follows:

1—Points which France will probably regulate in accordance with the desires of the United States Government.

2—Points which France might possibly regulate in accordance with the desires of the United States Government.

3—Points which France will not concede or cannot concede without appropriate legislation.

M. Pillaut stated he will prepare a draft of a treaty along the lines suggested above. The Embassy at this time transmits its tentative draft in order that the Department's views may be obtained on the various points raised.

I have [etc.] SHELDON WHITEHOUSE

[34] Not printed.

711.514/4

The Secretary of State to the Chargé in France (Whitehouse)

No. 2048 WASHINGTON, *October 8, 1926.*

SIR: The Department has received your despatch No. 6218 of April 1, 1926, in reply to its instructions of May 11, 1923, and July 8, 1925, concerning the desire of this Government to conclude a satisfactory treaty of naturalization with France. It appears from your despatch that this matter has been the subject of discussion between representatives of the Embassy and the Foreign Office, and you transmit a draft of a proposed treaty which you believe that the French Government might be persuaded to conclude with the Government of the United States. You also transmit memoranda concerning the various points as to which the laws of the United States and France appear to be in conflict, together with an expression of views concerning the extent to which the French Government might be persuaded to make concessions to the Government of the United States.

The Department appreciates the careful attention which has evidently been given to this matter by the Embassy, but I regret to say that it is not considered that this Government could properly enter into a treaty along the lines suggested. Without entering into a detailed discussion of the various provisions in the Embassy's draft, I desire to call attention to two provisions which seem to be of special importance. The first of these is found in Article 1, which provides that persons of French origin who obtain naturalization in the United States in their own right shall be recognized by the French authorities as American nationals "provided they left France in their childhood or more than five years prior to the date when they would be called for military service". The second provision mentioned is also found in Article 1 and reads as follows:

"The Government of the United States, for its part, will not undertake to naturalize Frenchmen who have already reached the military age above mentioned, that is to say, sixteen years, unless those persons owe no further obligation to the French military authorities or bear an authorization of the French Government enabling them to be naturalized abroad."

From the second provision quoted, it appears that liability for military service in France begins when a Frenchman becomes sixteen years of age, although it is understood that in time of peace they are not called until they are considerably older than this.

An agreement in a treaty with France embodying either of the provisions quoted above would clearly be contrary to the position of this Government with regard to the right of expatriation, as declared in the joint resolution of Congress, July 27, 1868 (R. S. 1999–2001),

in which it was asserted that "the right of expatriation is a natural and inherent right of all people". This Government has concluded a number of naturalization treaties containing provisions to the effect that naturalized citizens of the United States could be held liable to trial and punishment in their native lands for offenses committed by them prior to their emigration. In this relation special attention is called to the provisions of Article 2 of the Naturalization Treaty of 1871 with Austria [35] and the similar provision contained in Article 2 of the Treaty of 1870 with Baden.[36] Both of these treaties are now obsolete. Attention is further called to the second article of the protocol to the Naturalization Treaty of 1872 with Sweden and Norway.[37] While these treaties admit the right of the country of origin to punish a former national who has been naturalized in the other country for desertion from the army or for emigration after liability for military service has arisen, they do not deny the right of persons to emigrate before liability for military service has arisen and subsequently to obtain naturalization in the other country.

It is believed that it would be much better to have no naturalization treaty at all than to have a treaty expressly recognizing the right of the French Government to treat as French nationals persons of French origin naturalized as citizens of this country who emigrated within five years before the date set for their call to the French colors. It is understood that Frenchmen are called to the colors at about the age of eighteen years. If such is the case, this Government, under the proposed treaty, would expressly recognize the right of the French Government to take naturalized American citizens of French origin who emigrated at any time after reaching the age of thirteen years.

As to the proposed provisions that the United States will not grant naturalization to Frenchmen who have reached the age of sixteen years "unless those persons owe no further obligation to the French Military authorities or bear an authorization of the French Government, enabling them to be naturalized abroad", it may be observed that such a provision would not only seem to be contrary to the position of this Government with regard to the right of expatriation, but would also seem to be in violation of Clause 4, Article 2 of the Constitution of the United States, that "the Congress shall have power . . .[38] to establish an uniform rule of naturalization". An attempt by the treaty-

[35] Concluded Sept. 20, 1870; proclaimed Aug. 1, 1871. For text of article II, see Malloy, *Treaties*, 1776–1909, vol. I, p. 46.

[36] Concluded July 19, 1868; proclaimed Jan. 10, 1870. For text of article II, see *ibid.*, p. 54.

[37] Concluded May 26, 1869; proclaimed Jan. 12, 1872. For text of protocol, see *ibid.*, vol. II, p. 1760.

[38] Omission indicated in the original instruction.

making power to conclude a treaty with France containing the provision last mentioned would seem to be not only an invasion of the Constitutional jurisdiction of Congress but a violation of the provision as to uniformity.

If you believe that there is any likelihood that the French Government may be persuaded to conclude a treaty of naturalization along the lines of the draft submitted with the Department's instruction of May 11, 1923, it is desired that you avail yourself of a suitable opportunity to present the matter again to the Foreign Office. However, if there seems to be no such likelihood, it is believed that the matter should be dropped for the present.

As to the cases of dual nationality, particularly cases of persons born in the United States of unnaturalized French parents, it might be desirable to attempt to include a special provision in the proposed naturalization treaty, if it appears that there is any likelihood that a treaty satisfactory to this Government might be concluded. However, this Government could not agree to any provision under which persons born in the United States of alien parents would be free to elect the nationality of their parents and renounce American nationality upon reaching the age of majority while continuing to reside in this country. Generally speaking, it is believed that, in cases of persons born with dual nationality, their permanent allegiance after they have attained the age of majority should be dependent upon their actions, and particularly upon the place where they have maintained a domicile, rather than upon mere declarations. For example, it does not seem reasonable that the French Government should claim the allegiance and demand performance of service in the French army in the case of a person who was born in the United States of French parents and who, having attained the age of majority, has continued to reside in this country.

With relation to this matter, your attention is called to the fact that the action of the French Government in impressing into the French army naturalized American citizens of French origin and persons born in this country of French parents, when such persons were on a mere temporary visit to France, has recently been the subject of comment in the press of this country. It may also be observed that the Department has just received a letter from The Merchants' Association of New York, a prominent organization of business men, making inquiry concerning this subject.[39]

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[39] Letter not printed.

FAILURE OF THE UNITED STATES TO SECURE A CONVENTION WITH FRANCE RELATING TO LETTERS ROGATORY

811.04551/10

The Secretary of State to the Ambassador in France (Herrick)

No. 1591 WASHINGTON, *July 2, 1925.*

SIR: The Department transmits herewith a draft of a convention relating to letters rogatory which the Government of the United States would be pleased to conclude with the Government of the French Republic if the proposal should be acceptable to that Government.

The proposed convention is designed to further the interests of justice by insuring that the courts in territory under the dominion of either country may obtain from any person resident in territory under the dominion of the other country testimony which may be deemed essential to the proper determination of any judicial proceeding which may be instituted in any of the courts mentioned for the recovery of money or property to which the Government of the United States or the Government of France is a party or in which either Government has an interest.

You are accordingly requested to transmit the draft convention with a statement in the sense of the foregoing to the French Government and to inquire whether it would be agreeable to that Government to conclude such a convention with the United States. It would be desirable, if practicable, that the proposed convention be concluded before the convening of Congress in December next.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

Draft of a Convention Relating to Letters Rogatory

The United States of America and the French Republic, desiring to provide for the execution in their respective countries of letters rogatory issued by the competent authorities of the other country, have decided to conclude a convention for the purpose and have accordingly nominated as their Plenipotentiaries:

The President of the United States:

The President of the French Republic:

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

ARTICLE I

This convention applies only to letters rogatory issued in connection with judicial proceedings, for the recovery of money or prop-

erty, and to which the Government of the United States or the Government of France is a party or in which either government has an interest.

ARTICLE II

Each of the High Contracting Parties agrees to execute throughout the territory over which it exercises dominion as sovereign thereof all letters rogatory, requiring answers to written interrogatories or oral examination of the witness as the court issuing the letters may request, which may be issued by any court described in Article III of this convention and communicated by the other High Contracting Party in the manner set forth in Article III.

The judicial authority to whom a letter rogatory is addressed shall, if necessary, enforce its execution by such compulsory measures as are commonly employed by such judicial authority, in conformity with applicable laws, to compel obedience to its mandates.

The authority by whom a letter rogatory is issued shall, upon its request, be informed of the date when and the place where the proceedings in execution of the letter shall take place in sufficient time to enable the party or parties in interest to be present either in person or by representative.

ARTICLE III

(*a*) Letters rogatory issued by any American court of record for execution by any French court of record shall be transmitted by the appropriate officer of the American court to the "Procureur de la République" within whose jurisdiction the letter rogatory is to be executed, through the nearest American consular officer, to whom it shall also be returned, when it shall have been executed, for transmission to the authority by whom it was issued.

(*b*) Letters rogatory issued by any French court of record for execution by any American court of record shall be transmitted by the appropriate officer of the French court to the clerk of the court within whose jurisdiction the letter rogatory is to be executed, through the nearest French consular officer, to whom it shall also be returned, when it shall have been executed, for transmission to the authority by whom it was issued.

(*c*) Letters rogatory shall be in the language of the country where they are issued and shall be accompanied by a translation in the language of the country where they are to be executed.

(*d*) If the court to which a letter rogatory is addressed is without jurisdiction to execute it, the letter shall be forwarded by such court without delay and without any additional request to the competent authority and the authority by whom it was issued shall be so

informed, through the consular officer who transmitted the letter to the court.

(*e*) The designations "French court" and "American court" as used in this Article signify every court of record throughout the territory over which France or the United States respectively exercises dominion as sovereign thereof.

ARTICLE IV

The execution of a letter rogatory can only be refused:—

(1) If the authenticity of the document is not established.

(2) If the government of the country in which the letter was to have been executed considers that its execution would affect its sovereignty or safety.

Whenever, in accordance with the provisions of this Article, the execution of a letter rogatory is refused, the authority to whom the letter is addressed shall immediately so inform the authority by whom it was issued through the consular officer from whom it was received stating the reason for such refusal.

ARTICLE V

No official fees or taxes of any nature shall be levied by either of the High Contracting Parties in connection with the transmission or execution of letters rogatory.

Nevertheless any expenses incurred by the authority of the country where a letter is executed which were reasonably necessary to effect its execution shall be repaid by the authority by whom the letter rogatory was issued.

The repayment of these expenses shall be requested when the documents establishing the execution of the letter rogatory are transmitted to the authority by whom the letter was issued.

Any difficulties which may arise in connection with the transmission or execution of a letter rogatory shall be settled through the diplomatic channel.

ARTICLE VI

The High Contracting Parties agree to make effective the foregoing provisions by any necessary and appropriate legislative or administrative action.

ARTICLE VII

This convention shall be ratified according to the respective constitutional forms of the High Contracting Parties and the ratifications shall be exchanged at Washington.

The convention will come into force on the date of the exchange of ratifications and will continue in force until the expiration of one year from the date of the receipt by either High Contracting Party of a notice communicated by the other High Contracting Party of its intention to denounce the convention.

811.04551/11

The Chargé in France (Whitehouse) to the Secretary of State

No. 5573 PARIS, *October 1, 1925.*
[Received October 12.]

SIR: I have the honor to refer to the Department's instruction No. 1591 of July 2, 1925, transmitting a draft of a convention relating to letters rogatory which the Government of the United States would be pleased to conclude with the Government of the French Republic if the proposal should be acceptable to that Government.

The Embassy duly submitted this draft convention to the consideration of the French Government and is now in receipt of a reply from the French Foreign Office dated September 24, 1925, stating that before being able to consider this draft, it required to be furnished with more precise information on certain points thereof. A copy and translation of this note is enclosed.

I have [etc.] SHELDON WHITEHOUSE

[Enclosure—Translation]

The French Ministry of Foreign Affairs to the American Embassy

By a note under date of July 21st last, the Embassy of the United States was good enough to transmit to the Ministry for Foreign Affairs a draft of a convention relating to the execution of letters rogatory.

Before being able to consider this draft, it is advisable first of all to know precisely what its import will be.

The first article lays down as a general principle:

The present convention applies only to letters rogatory issued in connection with judicial proceedings, for the recovery of money or property, and to which the Government of the United States or the Government of France is a party or in which they have an interest.

Does this article take in only civil matters, that is, suits in which the State lays claim to a sum of money or to property in cases similar to those in which private individuals may do the same? Example, a person by testament has made a legacy subject to contestation to the State, which applies to the tribunals to enforce its rights.

Does this article take in likewise penal matters? Example, an object of art has been stolen from a museum.

Finally, will this article be operant in questions of fiscal matters? Example, a taxpayer is sued for a false return, the proof of which may be secured by inquiry or search in the other country.

The French Government in a general way would like to know what are the particular cases in respect to letters rogatory which the Government of the United States intends to cover by this first article.

In Article III, paragraph E, it is said: The designations French court and American court used in the present article signify every "court of record" throughout the territory over which France or the United States respectively exercises sovereignty.

It would seem to be necessary to state precisely what tribunals are thus signified in the United States by the term "court of record" and what their competence is, in order to find the equivalent term in French, the French judicial organization differing greatly from the American judicial organization.

In Article V it is specified that no fees or taxes of any nature whatsoever shall be levied by either of the High Contracting Parties in connection with the transmission or execution of letters rogatory. Nevertheless any expenses incurred by the authority petitioned, and which were reasonably necessary to effect execution, shall be repaid by the authority petitioning.

The execution of letters rogatory requires certain formalities, subpoenaing of witnesses, indemnification of the latter, expenses of search, examination, *expertise*, of which quite a complete nomenclature can be made. It would seem to be preferable to decide in a precise way what expenses shall or shall not be reimbursed.

The Ministry for Foreign Affairs will be greatly obliged to the Embassy to be good enough to advise it of the views of the Government of the United States on the questions set forth.

PARIS, *September 24, 1925.*

811.04551/11 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *January 30, 1926—8 p. m.*

23. Your despatch No. 5573, October 1, 1925, regarding proposed convention relating to letters rogatory.

Convention intended to cover every category of judicial proceedings for recovery of money or property and would include civil cases of character mentioned in note from Foreign Office. It would not apply to criminal proceedings because of constitutional provision

guaranteeing defendants charged with crime the right to be confronted with witnesses against them.

The term "court of record" used in Article 3 embraces generally speaking every court in the United States and its possessions except those exercising petty jurisdiction such as magistrate's courts and courts of justices of the peace.

Article 5 is intended to prohibit imposition of taxes or other official charges not based on services rendered or expenses actually incurred in the execution or transmission of letters rogatory. It would authorize any expense necessarily incurred by court executing letter in securing attendance of witnesses and taking their testimony but would not include fees or expenses of attorneys representing any litigant.

Immediate need of such a convention is emphasized by inability to obtain under existing procedure in France testimony of Harry M. Blackmer and James E. O'Neill urgently needed in pending proceedings in Federal court.[40] (See Embassy telegram No. 140 of February 26, 1925 [41]). You may in your discretion, in urging early conclusion of convention, explain situation to Foreign Office.

Endeavor to ascertain and inform Department present whereabouts of Blackmer and O'Neill.

KELLOGG

811.04551/13 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *February 20, 1926—2 p. m.*

[Received February 20—12:12 p. m.]

60. Your 22 [*23*], January 30, 8 p. m. Foreign Office states that convention with slight alteration appears acceptable. The taking of testimony by letters rogatory in questions regarding fiscal irregularities such as the recovery of taxes from a person who had previously made a false declaration of income or resources could not be permitted. Testimony in cases in "droit commun," wherein the Government becomes an individual in a suit for recovery of stolen property or in a suit concerning a concession illegally or fraudulently acquired, can be permitted.

HERRICK

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[40] *U. S.* v. *Mammoth Oil Co. et al.*, 5 Fed. (2d) 330. The testimony of Harry M. Blackmer and James E. O'Neill was desired by the Special Counsel for the United States Government in the suit to recover the Teapot Dome oil lands leased to the Mammoth Oil Company.

[41] Not printed.

811.04551/20

The Chargé in France (Whitehouse) to the Secretary of State

No. 6233 PARIS, *April 9, 1926.*
[Received April 19.]

SIR: I have the honor to refer to the Department's Instruction No. 1591 dated July 2, 1925 and to subsequent correspondence regarding the desirability of concluding with the French Government a convention providing for the execution of letters rogatory in civil cases.

There is now transmitted herewith a copy and translation of a communication from the Ministry for Foreign Affairs dated March 31, 1926 [42] in which it is stated that the Foreign Office will undertake to execute letters rogatory in the usual manner. In the note the Foreign Office suggests that letters be forwarded to this Embassy for transmission to the French Government in the usual way.

M. Pillaut, who previously undertook to compose a draft of a convention along the lines suggested by the Department, has informed me that it is considered that the convention proposed by the Department could not be effected without recourse to legislation. Both he and M. Vieilleville [*Viefville*] stated that in a case involving an official of a foreign government, the French Government could not undertake to execute letters rogatory because of a certain political aspect, which, although perhaps not directly apparent in the proceedings or in the possible outcome of subsequent investigations, was nevertheless indirectly extant and might open up a field of negotiations with other countries, the scope of which could not be foreseen.

It appears that an attempt to execute further letters rogatory in a case now pending before the Federal courts might obtain only the negative result of a refusal to testify such as was experienced by an agent sent from the United States last September to take the testimony of two witnesses in France. M. Vieilleville [*Viefville*] stated that no general convention could be drawn up that could have any hope of forcing witnesses to testify in civil cases if they chose to refuse. He suggested, however, that American citizens might be summoned before an American consular officer and questioned directly, whereupon, if American law so permitted, their refusal to testify might be made the grounds for a charge of refusal to recognize the authority of the United States Government. He suggested that if the witnesses in question were made the subject of a warrant for arrest issued by the competent authorities in the United States for complicity in a crime or for other extraditable offense, extradition as in a criminal case, might be accomplished without reference to any possible political consideration involved.

I have [etc.] SHELDON WHITEHOUSE

[42] Not printed.

811.04551/20 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *April 30, 1926—6 p. m.*

109. Embassy's despatch No. 6233, April 9, in regard to proposed convention concerning letters rogatory. Endeavor to ascertain and report to Department (1) the reason for Foreign Office's sudden unexplained change of attitude; (2) whether the French Government is averse to concluding any convention on letters rogatory; or (3) whether the French Government would be willing to sign an amended form of the draft submitted to it by the Department. If affirmative response obtained to point (3), report changes in draft which Foreign Office would accept.

KELLOGG

811.04551/24

The Ambassador in France (Herrick) to the Secretary of State

No. 6327 PARIS, *May 14, 1926.*

[Received May 22.]

SIR: I have the honor to refer to the Department's telegram No. 109 dated April 30th, 6 p. m. and to previous correspondence regarding the desirability of concluding with the French Government a convention providing for the execution of letters rogatory in civil cases.

Previous to April 1, 1926, M. Pillaut, who then occupied himself in the Foreign Office with questions of this nature, undertook to draft a text of a convention which might meet the views of both Governments. Subsequently there occurred a number of changes in the Foreign Office and M. Pillaut was assigned to another department. The draft he previously prepared does not appear to have been acted upon and M. Viefville, who succeeded M. Pillaut, now states that a convention would be rendered ineffective by the contradictory reservations which would have to be incorporated in order to satisfy existing French law. This explains the apparently sudden change of attitude toward the conclusion of a convention of the nature suggested by the Department. Moreover, it was stated that persons could not be obliged to give testimony even though they be called before a competent judicial authority. Consequently, a convention providing for the execution of letters rogatory could not be made any more effective than the existing practice of transmitting letters rogatory through the diplomatic channel for examination in the usual way.

It was further stated that special clauses would necessarily be inserted in any convention such as that contemplated by the Depart-

ment, expressly excepting the execution of letters rogatory in all cases in which there appeared to be a political aspect or in which was concerned a person in political life.

However, there is now transmitted herewith, for the Department's information, a copy of a convention which was concluded on February 2, 1922 between the Governments of France and Great Britain.[43] Today at the Foreign Office MM. Pillaut and Viefville stated that it was possible that a somewhat similar convention might be concluded between the United States and France.

I have [etc.] MYRON T. HERRICK

811.04551/24

The Secretary of State to the Ambassador in France (Herrick)

No. 1627 WASHINGTON, *June 25, 1926.*

SIR: The Department has received your despatch No. 6327 in regard to the proposed convention between the United States and France relating to letters rogatory and has noted your explanation of the reason for the disinclination of the French Government to conclude a convention along the lines of the draft submitted by this Government.

Note has also been taken of the statement of the Foreign Office reported in your despatch that a convention regarding letters rogatory might be concluded between the United States and France similar to the convention concluded between France and Great Britain on February 2, 1922, a copy of which accompanied your despatch under acknowledgment. It is observed that Article 6 (*d*) of the Convention above mentioned contains the following provision:

"The judicial authority to whom the 'commission rogatoire' is addressed executes it by the use of the same compulsory measures as would be applied in the case of a commission emanating from the authorities of the State applied to or a request to that effect made by an interested party in the territory of that State."

It appears difficult to reconcile the above quoted provision with the statement made by the Foreign Office and reported on page two of your despatch:

"That persons could not be obliged to give testimony even though they be called before a competent judicial authority. Consequently, a convention providing for the execution of letters rogatory could not be made any more effective than the existing practice of transmitting letters rogatory through the diplomatic channel for examination in the usual way."

[43] For text of convention, see *British and Foreign State Papers*, vol. CXVI, p. 452.

One of the principal purposes sought to be accomplished by this Government by the conclusion of a convention regarding letters rogatory between the United States and France is to obtain compulsory judicial process against any witness in France who refuses voluntarily to testify under letters rogatory. In order to determine whether this purpose would be accomplished by the conclusion of a convention similar to the convention concluded between France and Great Britain, the Department desires to ascertain the "compulsory measures" referred to in the provision of the convention above quoted which are resorted to by French courts in executing a "commission rogatoire" emanating from the authorities of France, and you are accordingly requested to endeavor to obtain that information as soon as possible.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

811.04551/25

The Ambassador in France (Herrick) to the Secretary of State

No. 6503 PARIS, *July 16, 1926.*
[Received July 28.]

SIR: I have the honor to refer to the Department's Instruction No. 2027 [*1627*] dated June 25, 1926 regarding the proposed convention between the United States and France relating to letters rogatory. The Department observes that Article 6 (*d*) of the convention concluded between France and Great Britain on February 2, 1922, a copy of which accompanied my despatch No. 6327 dated May 14, 1926, contains the following provision:

"The judicial authority to whom the 'commission rogatoire' is addressed executes it by the use of the same compulsory measures as would be applied in the case of a commission emanating from the authorities of the State applied to or a request to that effect made by an interested party in the territory of that State."

It was explained at the Foreign Office today that in the case of the Franco-British convention, each country executes "commissions rogatoires" according to the provisions of the existing local laws. To indicate how the existing French law limits the compulsion that can be exercised in the taking of testimony in France, the Foreign Office refers to Sections 363 and 364 of the rules of civil procedure which provide that if a witness refuses to answer a summons before a competent tribunal executing a "commission rogatoire" he may only be fined from ten francs to one hundred francs, at the discretion of the presiding judge. Furthermore, should he decline to give testimony

in answer to the request of the judge the latter may accuse him of contempt and fine him a similar amount. This is the limit of compulsion at present provided for by the existing French procedure.

I am not cognizant with the measure of compulsion that can be imposed under British law, but it appears that the fines which are authorized for failure to testify are of sufficient unimportance to nullify any effort to compel the giving of testimony in the case which the Department has in mind.

I have [etc.] MYRON T. HERRICK

EFFORTS TO REACH AN UNDERSTANDING WITH FRANCE FOR RECIPROCAL RECOGNITION OF AMERICAN AND FRENCH LEGISLATION REGARDING INSPECTION OF VESSELS [44]

195/632

The Secretary of State to the Ambassador in France (Herrick)

No. 1299 WASHINGTON, *January 13, 1925.*

SIR: Reference is made to your despatch No. 4415, of August 28, 1924,[45] and to other correspondence with the Department relative to the French inspection requirements as affecting vessels of the Dollar Steamship Line calling at the port of Marseilles. The following information is forwarded in order that you may make appropriate reply to the French Foreign Office note of August 21, 1924, transmitted to the Department with your despatch above-mentioned.

The French note under reference states that the question of the recognition of the American Bureau of Shipping has been referred to the Under Secretary of the Merchant Marine who expresses the desire to receive certain specific information concerning the American Bureau of Shipping. At the same time it is pointed out that the formalities with which American steamers have to comply in France are not based on the fact that the American Bureau of Shipping is not recognized in France, but are a consequence of the provisions of Article 3 of the law of April 17, 1907, obliging passenger steamers to be examined by the Examining Board and to be in possession of a French navigation permit. The note states further that American steamers would not have to comply with this obligation if an agreement were concluded between the United States and France recognizing the equivalence of French and American legislation, and inquiry is made as to whether the United States Government would feel disposed to conclude an agreement of this kind with the French Government.

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[44] For previous correspondence between United States and France concerning inspection of vessels, see *Foreign Relations*, 1924, vol. I, pp. 756 ff.

[45] Not printed; see telegram No. 383, Aug. 26, 1924, noon, from the Chargé in France, *ibid.*, p. 759.

1. With reference to the proposal that the United States and France enter into an agreement whereby each would recognize the equivalence of French and American vessel inspection legislation, you are instructed to inform the French Foreign Office that this Government has entertained the belief that a reciprocal arrangement for vessel inspection already exists between the United States and France, in consequence of the agreement concluded between the two countries in 1902. In a note addressed to the Secretary of State under date of April 24, 1902,[48] the French Ambassador declared that "in pursuance of Article 50 of the decree of February 1, 1893, and as long as the said decree shall remain in force, the French authorities will recognize as valid the boiler inspection certificates issued by the authorities of the United States to American steamers for all the time during which the American authorities will, under the Act of February 15, 1902, exempt from the inspection of their boilers and steam engines such French ships as shall have undergone the periodical inspections prescribed by the aforesaid decree of February 1, 1893." The Treasury Department thereupon issued its Circular of May 3, 1902,[48] in which it was ordered "that hereafter and till otherwise directed, the merchant steam vessels of France sailing from ports in the United States, and holding unexpired certificates of inspection issued by the duly constituted authorities of that country, 'shall be subject to no other inspection than necessary to satisfy the local inspectors that the condition of the vessel, her boilers, and life-saving equipments are as stated in the current certificate of inspection'." Two copies of this Circular are enclosed for the information of the French authorities.

In consequence of the agreement thus concluded, this Government since 1902 has recognized, and now recognizes, certificates of inspection issued by the French Government to French steamers carrying passengers, and makes only such examination of such French steamers as to satisfy itself that those vessels have on board the equipment required by their French certificate. If, therefore, the French Government considers that the reciprocal agreement of 1902 is no longer in force, it is only necessary, in order to reestablish reciprocal vessel inspection relations between the two countries, that the French Government accept the American legislation on this subject as equivalent to existing French legislation and agree to recognize the inspection certificates issued to American vessels by the Government of the United States.

There are enclosed two copies of the "Laws Governing the Steamboat Inspection Service",[48] which may be submitted to the French authorities for their examination should further information concerning the vessel inspection laws of the United States be desired.

[48] Not printed.

2. While it is desired primarily that reciprocal recognition be accorded the inspection certificates of the United States Government, it is nevertheless desired that the French Government also recognize the American Bureau of Shipping. You will furnish the French authorities with the following information in answer to the questions concerning the American Bureau of Shipping propounded in the French Foreign Office note of August 21, 1924:

(1) "Kind of Bureau—is it an official or private organization?"

The American Bureau of Shipping, like Lloyd's Register, is a society for the classification and registry of shipping, and as such it has no capital stock and pays no dividends. The distinction between these two societies and the Bureau Veritas, it is understood, is that the latter is an organization which has capital stock and which pays dividends to stockholders.

The official character of the American Bureau of Shipping is derived from Section 25 of the Merchant Marine Act of 1920, which provides as follows:

> "That for the classification of vessels owned by the United States, and for such other purposes in connection therewith as are the proper functions of a classification bureau, all departments, boards, bureaus, and commissions of the Government are hereby directed to recognize the American Bureau of Shipping as their agency so long as the American Bureau of Shipping continues to be maintained as an organization which has no capital stock and pays no dividends: Provided, That the Secretary of Commerce and the chairman of the board shall each appoint one representative who shall represent the Government upon the executive committee of the American Bureau of Shipping, and the bureau shall agree that these representatives shall be accepted by them as active members of such committee. Such representatives of the Government shall serve without any compensation, except necessary traveling expenses: Provided further, That the official list of merchant vessels published by the Government shall hereafter contain a notation clearly indicating all vessels classed by the American Bureau of Shipping."

(2) "Number of ships at present controlled by the Bureau."

There are 2,095 vessels classified by the American Bureau of Shipping, each of an average of 4,412 gross tons.

(3) "Classification rules used by the Bureau."

The construction rules, survey requirements, and classification requirements of the American Bureau of Shipping are substantially the same as the requirements in similar cases of the Bureau Veritas of France and Lloyd's Register of Great Britain. There is enclosed for the information of the French authorities one copy of the "Rules for Building and Classing Steel Vessels, American Bureau of Shipping." [49]

(4) "Nature of relations which the American Bureau of Shipping may have with the British Corporation and the German Lloyd."

[49] Not printed.

The American Bureau of Shipping has alliances with the British Corporation for the Survey and Registry of Shipping, the Registro Navale Italiano and the Imperial Japanese Corporation, whereby the surveys for all the societies are mutually made by the resident society. The American Bureau of Shipping has no connection with the German Lloyds.

This Government is confident that the French Government, on having the above information brought to its attention, will be prepared to include the American Bureau of Shipping among the classification societies recognized by France. Therefore, the French authorities probably will desire to be informed in regard to the symbols employed by the American Bureau of Shipping. The symbols employed for both steel and wooden vessels are "A1" and "AMS" with the letter Ⓔ affixed to include equipment. The "A1" refers to hulls and the "AMS" to machinery.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

195/767

The Ambassador in France (Herrick) to the Secretary of State

No. 5319 PARIS, *June 22, 1925.*
[Received July 7.]

SIR: With reference to the Department's instruction No. 1299 of January 13, 1925, regarding the proposal that the United States and France enter into an agreement whereby each would recognize the equivalence of French and American vessel inspection legislation, I have the honor to enclose herewith a copy and translation of a note from the Foreign Office dated June 20th.[50]

This note states in part that the 1902 agreement regarding vessel inspection is no longer effective, and that there should be substituted for it a more general accord, which should take into consideration the modifications which have been made since 1902 in French and American maritime legislation. In this connection, the note asks that duplicate copies of American laws concerning security of navigation and concerning hygiene on board commercial vessels be sent to the Foreign Office.

As regards the recognition of the American Bureau of Shipping, the note states that such recognition can only be accorded after an agreement has been concluded regarding the equivalence of French and American legislation.

I have [etc.]

For the Ambassador:
SHELDON WHITEHOUSE
Counselor of Embassy

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[50] Not printed.

195/874

The Ambassador in France (Herrick) to the Secretary of State

No. 5682 PARIS, *November 5, 1925.*

[Received November 16.]

SIR: With reference to my telegram No. 540 of November 3rd, 5 p. m.,[51] I have the honor to enclose herewith a copy and translation of a note from the Foreign Office dated November 3rd,[51] in which it is stated that American ships touching at French ports will experience no difficulties until such a time as an agreement has been made between France and the United States concerning the equivalence of navigation certificates.

I have [etc.] MYRON T. HERRICK

195/912

The Secretary of State to the Ambassador in France (Herrick)

No. 1979 WASHINGTON, *July 28, 1926.*

SIR: The French note of June 20, 1925,[52] which was in response to your note pursuant to the Department's instruction No. 1299 of January 13, 1925, relates to two questions: First, the reciprocal recognition of the equivalence of French and American vessel inspection legislation, and, second, the recognition by the French Government of the American Bureau of Shipping.

With respect to the first question, the competent authority of the Government of the United States has carefully examined the whole matter and has reached the conclusion that the vessel inspection laws of France approximate those of the United States.

Section 4400 of the Revised Statutes of the United States provides that private steam passenger vessels of other countries shall be liable to visitation and inspection by the proper officer in any of the ports of the United States, but that when such vessels belong to countries having inspection laws approximating those of the United States, they shall, on condition of reciprocity, be subject to no other inspection than is necessary to satisfy local inspectors as to the correctness of their inspection certificates.

The competent authority of the Government of the United States further states that an order is in effect that the merchant steam vessels of France sailing from ports in the United States, and holding proper French inspection certificates, shall be subject to no other inspection than is necessary to satisfy the local inspectors.

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[51] Not printed.

[52] Not printed; see the Ambassador's despatch No. 5319, June 22, 1925, p. 126.

In 1924, however, the Dollar Steamship Company's ships were required to go into dry dock in French ports for examination. The reciprocity necessary to the continuance of American exemption of French vessels having thus seemingly terminated, the Embassy was requested in instruction No. 1299, January 13, 1925, to inform the French Government that, in order to re-establish reciprocal vessel inspection relations between the two countries, it would be necessary for France to accept American legislation on inspection matters as equivalent to existing French legislation and to agree to recognize American inspection certificates. The French authorities replied that the legal basis for the old arrangement had terminated and proposed a new and more general agreement which would apply to all vessels of the two countries and take into account recent modifications in French and in American maritime legislation.

In order that this might be accomplished a text of the French laws concerning the security of navigation and concerning hygiene was furnished. The competent authority of this Government, having carefully studied the vessel inspection laws of France and having found them to approximate those of the United States, now proposes that this Government enter into a new reciprocal agreement with France.

There are enclosed copies of the letter of the Department of Commerce of March 25, 1926, and of the following documents the latter in duplicate:[53]

Quarantine Laws and Regulations of the United States, Revised Edition, June, 1920, (issued by the Treasury Department, United States Public Health Service).

General Rules and Regulations prescribed by the Board of Supervising Inspectors April 6, 1926, (issued by the Department of Commerce, Steamboat Inspection Service).

Laws Governing the Steamboat Inspection Service, June 24, 1925, (issued by the Department of Commerce, Steamboat Inspection Service).

It is desired that you transmit these documents to the appropriate official of the French Government, calling his attention to the opinion of the Department of Commerce that they can be studied without a conference, but expressing the willingness of this Government to participate in a conference should it be deemed desirable.

With respect to the recognition of the American Bureau of Shipping, it is assumed from the penultimate paragraph of the French note of June 20, 1925, that such recognition can readily be effected.[54]

The Embassy is instructed in bringing the above considerations to the attention of the French Government, to inquire whether it is the

[53] No enclosures printed.

[54] See last paragraph of the Ambassador's despatch No. 5319, June 22, 1925, p. 126.

intention of the French Government to accord to vessels of the United States such recognition as is desired that the Government of the United States accord to vessels of France.[55]

I am [etc.]

For the Secretary of State:
LELAND HARRISON

EXEMPTION OF AMERICAN BUSINESS FIRMS IN MADAGASCAR FROM PAYMENT OF SPECIAL TAXES

851 W.512/11

The Consul at Tananarive (Carter) to the Secretary of State

No. 1063 TANANARIVE, *August 14, 1926.*
[Received September 30.]

SIR: On pages 7, 8 and 9 of the Consulate's commercial report dated July 18, 1926,[56] concerning concrete results of its trade promotion work during the fiscal year ended June 30, 1926, was discussed correspondence had by the Consulate with the Acting Governor General of Madagascar and Dependencies in the matter of ascertaining whether, under Article 7 of the Consular Convention of February 23, 1853,[57] between France and the United States, American merchants doing business in this French colony may not be exempt from the payment of special taxes imposed upon all foreign business concerns, and which are not equally imposed upon French firms.

According to the terms of an *arrêté* of the Governor General of February 10, 1899, concerning domanial concessions, when local Government land is purchased by a Frenchman, one-half of the purchase price is paid when the provisional title is delivered, and the remaining one-half is paid when the definite title is delivered. When the purchaser is a foreigner, the *arrêté* requires that the total purchase price be paid when the provisional title is delivered. It usually requires considerable time for the delivery of the definite title, which may mean anything from three to ten years, and it may happen that the definite title is never delivered where some native may claim possession through ancestorial rights, etc.

Under date of July 12, 1926, the Consulate again wrote the Acting Governor General, with further reference to the application of equal rights of American citizens under Article 7 of the Consular Convention of February 23, 1853, to ascertain whether American citizens in Madagascar may not, when making application for land concessions, be permitted to pay one-half of the price thereof upon the delivery of

[55] Further action in this matter was not taken until 1930.
[56] Not printed.
[57] Malloy, *Treaties*, 1776–1909, vol. I, p. 528.

the provisional title, and the other one-half when the definite title is delivered, as in the case of Frenchmen.

By his letter of the 30th. of July, 1926, the Acting Governor General informed me that, in consideration of my letter of the 25th. of May, 1926, concerning the unequal payment of licences and other taxes paid by foreigners and Frenchmen in Madagascar, he had requested Governor General Olivier, who is on mission in France, to ascertain from the French Minister of Colonies, in case the Consular Convention of 1853 should be considered applicable in all French territory and not only in France itself, just what provisions of the Decree of 1925 and the *Arrêté* of February 10, 1899, should not be applicable to American citizens. By a letter of the 11th. of August, in reply to a further letter from me dated the 12th. of July, the Acting Governor General advised that, in the absence of contrary instructions from the Minister of Colonies, the application of the restrictions against foreigners provided for by the *Arrêté* of February 10, 1899, remain applicable to American citizens, as well as other foreigners.

As of possible interest to the Department, there are enclosed copies of the correspondence passed between the Consulate and the Acting Governor General of Madagascar and Dependencies on this subject.[58]

As of possible interest to the Embassy, a copy of this despatch, with its enclosures, is being transmitted to the American Ambassador at Paris.

I have [etc.] JAS. G. CARTER

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851 W.512/11

The Secretary of State to the Chargé in France (Whitehouse)

No. 2052 WASHINGTON, *October 12, 1926.*

SIR: The Department encloses for your information copies of a despatch dated August 14, 1926 from the American Consul at Tananarive, Madagascar,[58a] and of its enclosures, together with a copy of the Consul's communication of May 25, 1926 to the Governor General of Madagascar,[58b] referred to in the despatch, which deal with the discriminations in Madagascar against American citizens and other aliens with respect to the purchase of domanial concessions and the right to possess real estate as well as with respect to certain forms of taxation. It will be observed that the Consul has endeavored to have American citizens relieved from these discriminations in view of the provisions of Article 7 of the Consular Convention of 1853 between the United

[58] Not printed.

[58a] *Supra.*

[58b] Enclosures to despatch of August 14 and the communication of May 25, 1926, to the Governor General of Madagascar, not printed.

States and France, but that his efforts, up to the present time, have not been successful.

It may be stated with respect to the question of the applicability of the Consular Convention of 1853 to Madagascar that in a note dated July 22, 1896, the French Ambassador at this capital in informing the Department of the annexation of Madagascar to France stated that the annexation had "the effect of extending to the great African island the whole of the conventions concluded between France and the United States, which are henceforward to replace the Madagascar Treaty of May 13, 1881". (*Foreign Relations*, 1896, page 133).

Article 7 of the Consular Convention of 1853 with France provides as follows:

"In all the States of the Union whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously, or for value received, by donation, testament, or otherwise, just as those citizens themselves; and in no case shall they be subjected to taxes on transfer, inheritance, or any others different from those paid by the latter, or to taxes which shall not be equally imposed.

"As to the States of the Union by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right.

"In like manner, but with the reservation of the ulterior right of establishing reciprocity in regard to possesion and inheritance, the government of France accords to 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."

It seems clear that this article guarantees to American citizens in France, on the basis of reciprocity, national treatment with respect to the possession and transfer of property and the payment of taxes arising in connection therewith. The French Foreign Office in its note to your Embassy dated November 24, 1925, a copy of which was transmitted to the Department with the Embassy's despatch No. 5778 of November 30, 1925,[59] stated moreover "that from Article 7 of the Franco-American Consular Convention of February 23, 1853, it results in fact that American citizens in France and French citizens in the United States are assimilated to nationals as regards the payment of or exemptions from taxes."

You are accordingly requested to bring the discriminations referred to by the Consul at Tananarive to the attention of the French Foreign Office and to express the hope that in view of the provisions of

[59] *Foreign Relations*, 1925, vol. II, p. 131.

Article 7 of the Consular Convention of 1853, American citizens in Madagascar will be accorded the right to purchase domanial land and to possess real property on the same basis as French citizens, and further that they will be accorded national treatment with respect to taxation. You will submit a report to the Department regarding this matter.

A copy of this instruction is being sent to the American Consul at Tananarive for his information and guidance.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

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851 W.512/12

The Vice Consul in Charge at Tananarive (Thompson) to the Secretary of State

No. 1084 TANANARIVE, *November 5, 1926.*
[Received January 3, 1927.]

SIR: I have the honor to report that apparently as a result of the objections raised by this Consulate, the Government of Madagascar has relieved American citizens of the discriminatory features of a tax of 5 per cent on the amount of the trading and revenue licences, which was attempted to be imposed on all foreigners by the Municipalities of Tamatave, Majunga, Antsirabe and Mananjary.

The Consulate on May 25, 1926, on its own initiative, requested of the Governor General ad interim an interpretation of the Municipal Order creating such tax at Tamatave. This official, under date of June 30, 1926, agreed to obtain suspension of the Order as far as American traders at Tamatave were concerned, and to submit the point to Governor General Olivier, who was and is now on leave in France. Upon further inquiry regarding the possible imposition of such tax in other towns in Madagascar, the Governor General ad interim on September 9, 1926, advised that similar municipal orders were in force at Majunga, Antsirabe and Mananjary, that they were effective upon all traders without distinction of nationality at Mananjary, and that instructions would be given to either abrogate these Municipal Orders at Majunga and Antsirabe, or to have the tax extended to all traders, regardless of nationality. Pursuant to this promise there have been published in the Journal Official of Madagascar and Dependencies of October 30, 1926, Municipal Orders issued by the Administrator-Mayors of Majunga and Antsirabe, recalling and cancelling the tax in question.

Inasmuch as the question is largely one of principle in Madagascar, as far as American citizens are concerned, there being no Ameri-

can firms or traders in Majunga, Antsirabe and Mananjary, and apparently only one in Tamatave, the Consulate will take no further steps as far as Tamatave is concerned. It may safely be assumed that the tax has been permanently suspended as concerns Americans, but it is probable that the Government wishes to retain the tax upon other foreigners, of whom there are a number engaged in trade in Tamatave, the chief port of Madagascar. The efforts of the Consulate would appear to have benefited some British and other nationals at Majunga, and perhaps at Antsirabe.

Copies of all the correspondence, with translations, comprised in the dossier of this case are transmitted herewith.[60]

I have [etc.] PAUL DEAN THOMPSON

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851 W.512/14

The Ambassador in France (Herrick) to the Secretary of State

No. 7147 PARIS, *February 10, 1927.*

[Received February 24.]

SIR: I have the honor to refer to the Department's instruction No. 2052 of October 12, 1926 (File No. 851W.512/11), concerning the applicability of the Consular Convention of 1853 to real estate rights in Madagascar.

I am enclosing herewith the copy and translation of a note received from the Foreign Office dated the 8th instant, which states that the text of Article 7 of the Treaty of 1853 refers to the "States of the Union" and to "France," and that it therefore is inapplicable to the colonies of either country.

I have [etc.]

For the Ambassador:
SHELDON WHITEHOUSE
Counselor of Embassy

[Enclosure—Translation]

The French Ministry of Foreign Affairs to the American Embassy

By note dated October 22nd last, the Embassy of the United States, in support of the claims of American citizens in regard to real estate in Madagascar, invoked Article 7 of the Consular Convention of February 23, 1853.

The Ministry has the honor to point out to the Embassy that the text of this Article 7 regulates the right to possess real estate solely in the "States of the Union" and in "France." It therefore cannot apply to the colonies of either country.

[60] Not printed.

The term "France" used in the agreement of 1853 can only apply to the continental territory of the Republic and not to Madagascar which was not a French colony in 1853.

PARIS, *February 8, 1927.*

PRECAUTIONS BY THE UNITED STATES FOR THE SAFETY OF AMERICANS DURING THE SYRIAN INSURRECTION[61]

890d.00/345 : Telegram

The Consul at Beirut (Knabenshue)[62] *to the Secretary of State*

BEIRUT, *February 17, 1926—5 p. m.*

[Received 5:25 p. m.]

Situation at Damascus deplorable. French forces there numbering several thousand remain behind barricades in one small portion of the city while rebels loot and kidnap notables for ransom in all parts of the city including French section. Doctor Melikian, dragoman of the American consulate, was kidnapped evening February 7th, robbed of several thousand dollars and is held for ransom of about $2,000 additional. French have not replied to Keeley's tactful request for information as to their action in the matter. Keeley[63] fears that if French upon our official demand were to attempt rescue, Melikian would be murdered by the rebels. Keeley feels that prestige of the consulate is involved and believes that upon his request Attrash[64] whom he knows personally would cause immediate relief [*release*?] of Melikian. Keeley and I with the knowledge and consent of the French might get informal word to Attrash through influential sources which might possibly cause the release of Melikian. Pending the receipt of instructions from the Department I have instructed Keeley to continue his policy of noninterference in the hope that the family of Melikian will themselves effect his release and thus avoid involving the United States.

There seems to be no hope of peaceful settlement between French and rebels. French are preparing for spring campaign but it is believed that the general situation will become worse before better. Please see my despatch of January 26th [*25th*].[65]

Sent to the Department and to Embassy at Paris.

KNABENSHUE

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[61] Continued from *Foreign Relations*, 1925, vol. II, pp. 105–127.

[62] Supervising consular officer in Syria.

[63] James H. Keeley, Jr., consul at Damascus.

[64] Sultan Pasha el Attrash, commander of the Druse revolutionary forces.

[65] Not printed.

890d.00/347 : Telegram

The Consul at Beirut (Knabenshue) to the Secretary of State

BEIRUT, *February 20, 1926—2 p. m.*

[Received 4:25 p. m.]

Referring to my telegram of February 17, 5 p. m. Melikian released on payment $1,700 ransom. Melikian states that rebels have definitely decided to kidnap Keeley and other rich Americans for the purpose of ransom and to cause American interference in Syrian situation. I have sent following telegram to Keeley today by French wireless telegraphy as telegraph, telephone and railway are cut:

"February 20, 1 p. m. I strongly recommend you advise all Americans leave Damascus immediately and that you send your wife and child to Beirut escorted by McGonigal who will return to Damascus and that you demand of French an adequate military guard for your constant protection. If you or other Americans are kidnapped demand will be made that French pay the ransom."

Severe fighting has taken place in the city of Damascus throughout this entire week being particularly severe on the 17th when French resorted to bombardment of Meidan quarter throughout the day while a large fire swept that quarter that night. Considerable damage to life and property but extent thereof unknown at present.

There is also activity in other sections of the country and Altaffer [66] reports that reign of terror prevails among inhabitants of Syrian towns on frontier anticipating attacks from Turkish bands.

Indications are that Druses and other rebels will commence active operations before French complete arrangements for their expected spring campaign.

. . . Economic conditions throughout country deplorable. Nearly 200 bankrupt petitions now filed in Beirut.

Sent to the Department and Embassy at Paris.

KNABENSHUE

890d.00/347 : Telegram

The Secretary of State to the Consul at Beirut (Knabenshue)

WASHINGTON, *February 23, 1926—7 p. m.*

You should bring to de Jouvenel's [67] attention situation reported in your February 17, 5 p. m., and February 20, 2 p. m., and inquire whether mandatory authorities will extend adequate protection to Consul Keeley and to the consular premises at Damascus.

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[66] Maurice W. Altaffer, vice consul at Aleppo.

[67] Henri de Jouvenel, French High Commissioner to the States of Syria and the Lebanon.

Department will leave to you and Keeley the decision regarding the propriety of advising Americans to leave Damascus. In the absence of any disavowal by the French authorities of their ability adequately to protect foreigners there, this Government must hold the mandatory authorities responsible for the safety of Americans in Damascus. You may so inform de Jouvenel.

If you and Keeley decide upon advisability of departure of Mrs. Keeley and child, Department will reimburse Keeley for their necessary travelling expenses from Damascus to Beirut and subsistence charges during their necessary absence.

You should keep in mind Department's November 7, 1 p. m.,[68] on which you and Keeley are authorized to act at any time that, in your judgment, the situation requires.

KELLOGG

890d.00/377

The Consul at Damascus (Keeley) to the Secretary of State

No. 329 DAMASCUS, *March 3, 1926.*

[Received April 28.]

SIR: I have the honor to refer to my despatches Nos. 285 and 296 of October 26 and December 4, 1925, respectively,[69] in so far as they deal with representations to the French Authorities respecting the protection of foreigners in general and Americans in particular residing in Damascus, and to report the following additional developments along this line.

On February 9, 1926, at the instigation of this office, the Consular Corps addressed a note to M. Pierre Alype, Envoy Extraordinary in Damascus of the French High Commissioner, inviting his attention to the ease with which the rebels had recently been circulating in Damascus where they had kidnapped various persons and possessed themselves of their belongings. It was pointed out that there appeared to be nothing to prevent the same thing being done to foreigners, and he was requested to inform the Consuls whether or not he thought the condition of security in the city warranted any modification in the opinion expressed by General Soulé, the predecessor of General Andréa, and communicated to the Consuls on December 1, 1925, (see Enclosure No. 5 with despatch No. 296 of December 4, 1925) to see effect that the situation did not then seem to warrant advising foreigners to evacuate the city. A copy of the Consular Corps' note, in French and in translation, is transmitted herewith.

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[68] *Foreign Relations*, 1925, vol. II, p. 118.

[69] Neither printed.

On February 19, 1926, M. Alype transmitted to the Dean of the Consular Corps a copy of General Andréa's reply, dated February 13, 1926, to the questions raised in the Consular Corps' note. Copies of each of these communications are transmitted herewith. They are self-explanatory.

Being unable to share General Andréa's optimistic view of the situation as expressed in his letter, and the potential danger to Americans having been subsequently increased by the anti-Christian and anti-foreign feeling aroused by the action of Armenian irregulars who were sent into the Meidan Quarter on February 15th ostensibly against the rebels occupying that quarter . . . this Consulate on February 22, 1926, addressed a further note to M. Alype. A copy of the note, in English and in translation, is transmitted herewith.

It is believed that the Department will find my note of February 22nd self-explanatory. In order to avoid a possible misinterpretation of my motive in referring to the use of Armenian irregulars, however, it may be well to point out that it was from their use that Moslem feeling had become aroused to such an extent that a massacre of all Christians was not beyond probability and was thwarted not so much by any preventive action of the French Authorities as by the attitude of the more enlightened Moslems who, some because they realized the inexpediency of a massacre, others because they were really opposed to it on ethical grounds, counseled moderation to their coreligionists.

On February 25, 1926, not having received any response to my communication of the 22nd to the French Authorities, I addressed all Americans in Damascus individually, advising them to leave the city and district. A copy of one of these letters is transmitted herewith.[70]

Certain of the more loquacious members of the American colony upon receiving my letter proceeded to divulge its contents to their native friends with the result that within a few hours my advice to my nationals was quite generally known in the city and was being exaggerated by repetition.

Saturday morning, February 27, 1926, I received a personal note from General Andréa asking me whether I would be good enough to call upon him to discuss the matter of protecting my nationals. I called at three in the afternoon and passed an hour with the General who took up my letter of February 22nd point by point with me. He went into great detail in explaining the military measures taken for the defense of the city and assured me that he was prepared to guarantee foreigners in general and Americans in particular from the danger of any important attack from without and from serious disorders within the city.

[70] Not printed.

General Andréa made no reference to the letter advising Americans to leave the city, but being certain that he either then knew of it or would soon learn of it and perhaps misconstrue its intent, I broached the subject, showed him a copy of the letter and translated its contents. His previous cordial manner changed to a formal reserve as he pointed out that, diplomatically speaking, the letter was really a reflection upon his administration in that it declared the city to be unsafe, whereas he had just shown me that it was safe. I pointed out his admitted inability to guarantee Americans against the danger of stray shots which have recently killed a number of innocent pedestrians, and for that reason alone, if for no other, the warning to Americans was justified.

After a further exchange of opinions and friendly discussion of the rebellion, he became more cordial again, and as we parted he assured me that the safety of my nationals would be one of his chief concerns, that he would notify me immediately of impending danger, and that in the event of serious disorder within the city he would send a special guard to the Consulate for its protection and for that of any Americans who might take refuge there.

Yesterday I received from M. Alype his reply, dated March 1, 1926, to my note of February 22, 1926. A copy of M. Alype's letter, in French and in translation, is transmitted herewith. It is self-explanatory.

I agree with M. Alype's admission in the fifth [*fourth*] paragraph of his letter of March 1, 1926, to the effect that the situation in Damascus is still serious and must be followed with attention. I am pleased to report, however, that the situation within the city has ameliorated since my note of February 22, 1926, was written, but I cannot conscientiously grant that there is as complete security for foreign nationals established in Damascus as M. Alype would have me believe. I have no intention, however, of pursuing the discussion further with the Authorities along abstract lines, and I have therefore merely thanked M. Alype and General Andréa for their detailed exposition of the case, assuring them at the same time of my sincere desire to cooperate with them fully in this part of their difficult task.

I trust that the Department will approve the course pursued by me as outlined herein, since I am of the opinion that it, together with Mr. Knabenshue's representations direct to the High Commissioner, has aroused the French Authorities locally to a better appreciation of their responsibility with respect to our nationals, a responsibility for which they have not on all occasions shown due regard.

I have [etc.] J. H. KEELEY, Jr.

[Enclosure 1—Translation]

The Dean of the Consular Corps at Damascus (Smart)[71] *to the Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)*

DAMASCUS, *February 9, 1926.*

MR. ENVOY EXTRAORDINARY: I am charged by the Consular Corps to make known to you its anxiety on the subject of the actual situation in the city of Damascus. While fully considering the momentary difficulties confronting the Authorities, the Consular Corps believes it necessary to point out the possibility of danger for the foreign colonies.

The foreigners are very much scattered in the city, and, for the most part, are not found in the limited zone that is covered by the troops. Recently, bands have circulated quite frequently in many quarters of the city, where they have carried away various persons and their belongings. It seems that nothing prevents these bands from doing the same with respect to the foreigners.

General Soulé in his letter No. 9335/1 of November 30 addressed to the Delegate, who communicated it to me as Dean under cover of his letter No. 9335 bis of the same date, expressed the opinion that the situation did not indicate that foreigners should be advised to leave the city. The Consular Corps would be grateful to you to be good enough to let it know if this advice should be modified in view of the present situation.

Meanwhile, the Consular Corps hopes that the Mandatory Authorities will take the necessary measures to assure the foreigners against the dangers, above-mentioned.

Accept [etc.] W. A. SMART

[Enclosure 2—Translation]

The Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel) to the Dean of the Consular Corps at Damascus (Smart)

No. 2924/C DAMASCUS, *February 19, 1926.*

Mr. DEAN: The 9th of February last, you were good enough to call my attention to the anxiety of the Consular Corps on the present situation in Damascus.

I hastened to bring this matter to the attention of General Andréa, and I have the honor to transmit to you herewith a copy of his answer.

I add that the fate of the foreign colonies is the object of all the solicitude of the Mandatory Power in Syria, and I beg you to accept, Mr. Dean, the assurance of my high consideration.

PIERRE ALYPE

[71] British consul at Damascus.

[Subenclosure—Translation [72]]

The General Commanding the Troops of the Region of Damascus and of the Djebel Druse (Andréa) to the Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

No. /2 DAMASCUS, *February 13, 1926.*

The kidnapping of persons to which the Dean of the Consular Corps refers has not failed to attract every attention of the Command.

The works of defense now in progress will make it possible within two weeks to prevent bands from entering the inner quarters which represent, after all, the most important part of the city. The elimination of the troublesome elements will follow.

Only the Meidan-Akrad and Mohajrin quarters will be left outside the barbed wire entanglements. Their defense will be entrusted to three groups of 50 partisans each.

I consider that, under these circumstances, the security of the foreign nationals will be adequately assured, and I cannot in consequence modify the advice previously expressed by General Soulé.

ANDRÉA

[Enclosure 3—Translation]

The American Consul at Damascus (Keeley) to the Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

DAMASCUS, *February 22, 1926.*

SIR: I have the honor to refer to your letter No. 2924/C of February 19, 1926, addressed to the Dean of the Consular Corps, transmitting a copy of General Andréa's reply to the Consular Corps' note of February 9, 1926, respecting the anxiety of the Consuls for the safety of their nationals because of the condition of public security in Damascus.

The danger from the activities of the bands which prompted the Consular Corps' note of February 9, 1926, has now been added to by the natural reaction against foreigners and Christians as a result of the recent activities of the Circassian and Armenian partisans in certain sections of the city.

Despite the optimistic tone of General Andréa's communication, I feel sure that neither he nor you can now be unaware of the gravity of the present situation in Damascus or of the fact that further religious animosity and hatred of foreigners cannot fail to result from a continued use of Armenian partisans against the Moslems.

[72] File translation revised.

While being sincerely appreciative of the solicitude for the safety of foreigners expressed by yourself and taking into account the measures of defense which General Andréa believes will eventually assure the security of foreigners, I regret to record that I am yet unable to view the situation with optimism. From information which I can no longer ignore I am forced to conclude that the present situation in Damascus is more serious than at any previous time. I must request, therefore, that adequate measures be taken immediately to safeguard the lives and property of American citizens, for the protection of which the Mandatory Government will be held strictly accountable.

In order to assist the Mandatory Authorities in this difficult task should grave disorders break out in the city an effort will be made to gather as many Americans as possible under the shelter of this Consulate.

I shall be grateful, therefore, to you and to General Andréa if you will advise me immediately of the start of any serious disorders.

A similar request addressed to your predecessor prior to the outbreak in October[73] elicited assurances that Americans would be fully protected and that this Consulate would be promptly informed of the least sign of danger . . . I trust that you will understand, therefore, that this letter is prompted by solicitude for my nationals and by a sincere desire to cooperate fully with the French Authorities with the difficulty of whose task I am fully sympathetic.

I avail myself [etc.] J. H. KEELEY, Jr.

[Enclosure 4—Translation [74]]

The Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel) to the American Consul at Damascus (Keeley)

No. 5080/SP DAMASCUS, *March 1, 1926.*

MR. CONSUL: You were good enough to invite my attention to the apprehension which the political situation in Damascus has caused you, and to the dangers that seemed to you would result to the Christian elements of this city, whether of Syrian origin or of foreign nationality.

Already, in a note which was transmitted to me by the Consular Corps on February 9, you made known to me your anxiety. I answered assuring you that General Andréa had taken sufficient military measures so that no threats could be put into execution in respect to your nationals dwelling in town and so that they would

[73] See telegram of Oct. 28, 1925, 4 p. m., from the consul at Beirut, and subsequent papers, *Foreign Relations*, 1925, vol. II, pp. 112 ff.

[74] File translation revised.

suffer no more from the repercussions of acts of banditry in the interior of Damascus.

General Andréa, to whom I communicated your letter of February 22, informs me that the apprehensions of which you make yourself the interpreter do not seem to him to correspond any longer to the present situation. After the clearing operations in the Meidan Quarter where a great number of bandits were killed, a certain agitation had, in fact, manifested itself among the Moslems against the Armenians and the Christians in general, but the measures taken immediately by the responsible authorities, as well as the advice to be calm which was given to the delegation of the notables, have greatly abated this feeling. You have yourself been able to note a conspicuous resumption of commercial activity.

I do not pretend that the situation in Damascus must not be followed with attention. It is still serious. General Andréa carries on very actively the work for the defense of the outskirts of the city. The barbed wire entanglement is completed and will be further strengthened.

This wirework, perfectly commanded at all points by the machine-gun fire from the barrage posts, is already a very effective guarantee against the incursions of bands into the interior of the city.

To prevent any insurrectionary movement in the city itself, strong patrols composed of French soldiers, commanded by officers of our army and aided by gendarmes, policemen and partisans, patrol, night and day, the different quarters.

General Andréa considers, under these circumstances, that he will be kept accurately in touch with the state of mind of the population, and will be able, in case of necessity, to take immediate measures which will enable him to maintain order and peace.

I am glad to bring this information to your knowledge, and I hope it will allay the apprehension which you have manifested. The French Authority assumes at this moment the responsibility of maintaining order in Syria, and its first care is to see that a security as complete as possible, in view of events, be given to the foreign nationals settled in Damascus.

You will be good enough to grant that it is not lacking.

Accept [etc.] PIERRE ALYPE

890d.00/371

The Consul at Beirut (Knabenshue) to the Secretary of State

No. 2118 BEIRUT, *March 9, 1926.*

[Received April 23.]

SIR: I have the honor to refer to my telegram of February 20, 1 [2] p. m., relative to the threat of the rebels to kidnap Consul

Keeley and other Americans, and to the Department's telegram of February 23, 7 p. m., instructing me to bring the matter to the attention of the French High Commissioner.

As the matter involved also a question of principle and policy I deemed it desirable that my representations and the High Commissioner's reply should be in writing. However, because of the delicacy of the subject and the possible risk of conveying an impression of unfriendliness, it was considered better to present the case in an informal manner instead of by an official communication.

For the Department's information I enclose a copy of my informal letter of February 25, 1926, to M. de Jouvenel and a copy of his reply. I am very happy to call attention to the fact that in his friendly reply, M. de Jouvenel accepted my representations in the spirit intended. I also enclose a copy of the reply which his letter made necessary.

Reference is made to Consul Keeley's despatch No. 329 of March 3, 1926, on the same subject.

As a side light on the same subject I enclose a copy of my informal note to Mr. Keeley of March 1, 1926.[75]

I have [etc.] P. KNABENSHUE

[Enclosure 1]

The American Consul at Beirut (Knabenshue) to the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

BEIRUT, *February 25, 1926.*

MY DEAR MR. HIGH COMMISSIONER: I beg to ask that I may be permitted to discuss with you, in a frank but most friendly spirit, certain features of the situation at Damascus in so far as they affect American interests there and the protection of American citizens.

During the past several weeks it seems that armed bands have found it possible to penetrate into practically all quarters of the city of Damascus where they have entered and robbed certain houses and have on a number of occasions kidnapped peaceful residents and held them for ransom.

The McAndrews Forbes Company, an American firm engaged chiefly in the exportation of licorice root, has been obliged to close its factory and discontinue its business in Damascus. Both the Standard Oil Company and the Vacuum Oil Company have received demands for payment of sums of money to the bands with the threat that otherwise their installations will be destroyed.

On the night of February 7th, 1926, an armed band forced its way into the house of Dr. Melikian who resides in the Salhieh quarter. Dr. Melikian is the Dragoman of the American Consulate. This band

[75] Not printed.

first seized money and valuables to the amount of Pounds Turkish 3709 (gold) which the doctor had in his possession and then carried him off and held him for ransom. After ten days of captivity in which he suffered both mental and physical discomfort, he was finally released upon the payment by his family of a ransom amounting to Pounds Turkish 320 (gold).

Since this incident, information, which cannot be ignored, has come to my attention, indicating that it is the definite intention of the bands operating in and around Damascus to kidnap American citizens in general and the American Consul at Damascus in particular. It would seem from the information received that the object of the bands is two-fold; first, to secure considerable sums of money in the form of ransoms; and second, to involve the United States Government—nursing the vain hope of securing its sympathy toward their rebellious movement.

In addition to this potential danger to American citizens the incidents of last week, which gave rise to a threat on the part of certain Moslems to attack the Christians of the city, have caused considerable uneasiness not only among the native Christians of Damascus but also among the foreigners residing there and it is feared that they might, in consequence of such an attack, be placed in a precarious position.

Very naturally the question arises in my mind whether, because of the circumstances as related and in view of other possible eventualities, it might not be advisable to evacuate all Americans from Damascus, and as a logical consequence thereof to close the American Consulate there. However, for many obvious reasons, such measures are undesirable, and I should hesitate to resort to such expediencies inasmuch as I would fervently wish to avoid causing possible embarrassment to your administration.

It is in a spirit of most friendly co-operation that I bring these facts to your notice, feeling that in so doing I may be of some assistance in the formulation of measures which might be deemed necessary for the protection of American citizens in Damascus. You will of course readily appreciate that in the absence of any disavowal by you of your ability adequately to protect foreigners my Government must hold the Mandatory power responsible for the safety of Americans in the disturbed areas.

Under the circumstances I should like to inquire whether in your opinion American citizens may continue to reside safely in Damascus and whether the appropriate authorities in Damascus will be good enough to extend adequate protection to the American Consul and the Consular premises there.

I am [etc.] P. KNABENSHUE

[Enclosure 2—Translation [76]]

The French High Commissioner to the States of Syria and the Lebanon (De Jouvenel) to the American Consul at Beirut (Knabenshue)

No. 89/D. C. M. BEIRUT, *February 27, 1926.*

Your friendly letter of yesterday [*sic*] touched me very much. I appreciate all the sentiments that dictated it—the desire to avoid an evacuation, which would have a most grievous effect, and the desire, as justifiable as the former, to guarantee the security of American citizens in Damascus.

I received just this morning, almost at the same time as your letter, a report from General Andréa stating that the network for the protection of Damascus had been finished last evening.

If there were an American officer here, I should invite him to go and see for himself that the city will from now on be secure against any infiltration.

Do you wish me to ask the British liaison officer to make this trip? General Andréa will certainly be glad to receive him. He will judge with an impartial eye, and it might be well for both you and me to have his advice.

In any event, I want to tell you that the American Consul at Damascus can go to see M. Pierre Alype who is always at his service. M. Alype will have him provided with means sufficient for his protection, and will frustrate the singular tactics to which your letter justly alludes in so scornful a manner.

On my part, my dear Consul General, I want to thank you for your excellent procedure, and I beg you to believe that under all circumstances I shall facilitate your task.

Sincerely yours,

JOUVENEL

[Enclosure 3]

The American Consul at Beirut (Knabenshue) to the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

BEIRUT, *March 5, 1926.*

MY DEAR MR. HIGH COMMISSIONER: I thank you very sincerely for your very kind letter of February 27, 1926, in which you were good enough to inform me that the measures taken by General Andréa for the protection of Damascus have been completed and that the city is henceforth secure against any infiltration of bands, thus guaranteeing the protection of American citizens in Damascus.

I appreciate very much your willingness to have invited an American officer to have visited Damascus were such an officer present here.

[76] File translation revised.

Your very kind offer to ask the British Liaison Officer to examine the situation at Damascus with a view to advising in the matter of the protective measures taken is also much appreciated, but for my part I am very happy to accept the assurances and good judgement of General Andréa.

Following your suggestion I have advised the American Consul at Damascus to see M. Alype and to leave to the discretion of the appropriate authorities such measures for his protection as they may deem necessary.

I wish to thank you for the sympathetic interest you have manifested in this matter and for the friendly co-operation which you have so kindly offered.

I am [etc.] P. KNABENSHUE

890d.00/377

The Secretary of State to the Consul at Beirut (Knabenshue)

WASHINGTON, *May 7, 1926.*

SIR: The Department has received and read with interest your despatch No. 2118 of March 9, 1926 and Consul Keeley's despatch No. 329 of March 3, 1926 referred to therein reporting the recent representations made by the Consulates at Beirut and Damascus to the French mandatory authorities in Syria with respect to the protection of American citizens residing in the Damascus consular district. In particular, it is noted that, after consultation with you, Consul Keeley availed himself of the authorization, contained in the Department's telegram of February 23, 1926, in addressing circular letters to all Americans residing in Damascus inviting their attention to the danger attending residence in the city and its environs and strongly advising them to leave the city.

The Department is pleased to commend the action taken by you and by Consul Keeley in this matter together with the character of your respective representations to the French mandatory authorities.

Further instructions are being prepared by the Department with respect to the special questions raised by the recent kidnapping of Doctor Melikian, Honorary Dragoman of the Consulate at Damascus, and the killing of Mrs. Fatmeh Hessie in that city, as reported respectively in Consul Keeley's despatches Nos. 323 and 328 of February 23 and March 2, 1926.[77]

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[77] Neither printed.

890d.00/406

The Consul at Damascus (Keeley) to the Secretary of State

No. 378 DAMASCUS, *May 18, 1926.*

[Received June 11.]

SIR: I have the honor to transmit herewith, in French and in translation, a copy of a communiqué issued to the local press on April 27, 1926, by the French Military Governor of Damascus, to the effect that certain villages of the Ghouta and quarters of the city of Damascus might henceforth be subjected to coercive measures in retaliation for the nonpayment of fines and the nonexecution of other measures imposed upon them.

Despite the fact that neither the villages and quarters exposed to these measures were specified nor the nature of the coercive measures themselves defined, the Military Governor stated that following the publication of this notice he would assume no responsibility whatsoever for any accidents that might happen as a result of the putting into execution without further notice of the coercive measures. Since it was conceivable that foreigners might suffer from these measures should they take the form of bombardments or other general punitive operations and since it was not possible to warn the foreigners so exposed because of the absence of information as to what villages and quarters of the city were likely to be made the object of these measures, the Consular Corps thought it proper to request the French Authorities to be more explicit and to give foreigners timely warning before the execution of any program which would endanger their lives or property.

There is transmitted herewith, in French and in translation, a copy of the Consular Corps' note of April 28, 1926, addressed to M. Alype, Envoy Extraordinary of the French High Commissioner, on this subject; a copy of M. Alype's reply of May 14, 1926, together with a copy of the Military Governor's letter to him of May 8, 1926, transmitted therewith; and a copy of the Consular Corps' acknowledgment of May 18, 1926. It is believed that all of these communications will be found self-explanatory and that extended comment thereon is therefore unnecessary.

It may be remarked, however, that General Vallier, the present Military Governor, in the last paragraph of his letter manifests a disposition to cooperate with the Consuls in their task of protecting their nationals, . . .

The bombardment of the Meidan Quarter of Damascus on May 7, 1926, the circumstances of which were reported in my despatch No. 373 of May 12, 1926,[78] was undoubtedly the execution of one of the

[78] Not printed.

contemplated coercive measures. It was carried out without any warning whatsoever. . . .

Fortunately the number of American citizens left in this district is small, and all those known to this office were advised several months ago to leave the district.

I have [etc.] J. H. KEELEY, Jr.

[Enclosure 1—Translation]

Communiqué Issued to the Press by the French Military Governor of Damascus on April 27, 1926

A certain number of villages of the Ghouta or quarters of the city, being found under the penalty of fines, may be the object of measures of coercion, in case of non-execution. As these measures of coercion will become effective without any previous notice, by the sole fact of the non-execution of clauses agreed upon, the General commanding the troops of the region invites instantly the interested local Syrian Authorities to evacuate, in due time, from the said localities, the women, old men and children, because the Military Governor, following this notice, assumes no responsibility, even moral, for accidents that may occur.

[Enclosure 2—Translation]

The Dean of the Consular Corps at Damascus (Keeley) to the Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

DAMASCUS, *April 28, 1926.*

SIR: I am directed by the Consular Corps to inform you that according to a communiqué published in the Arabic newspapers the French Military Authorities have announced that a certain number of villages of the Ghouta or quarters of the city may be the object of measures of coercion, in case of the non-payment of fines, and as these measures of coercion will take effect without any previous warning, by the mere fact of the non-execution of the clauses agreed upon, the Military Governor, after this notice, assumes no responsibility, even moral, for accidents that may occur.

This communiqué being susceptible to many interpretations, even ambiguous ones, the Consular Corps would like to know more precisely the nature of the measures of coercion in view. It hopes that these measures will not be of such a nature that the lives or property of foreigners may be endangered.

If the Mandatory Authorities do not believe that they are in a position to give it formal assurances on this subject, the Consular

Corps is fully confident that these measures of coercion will not be put into force without the Consuls being directly advised in sufficient time to enable them to withdraw their nationals out of danger.

In case the Mandatory Authorities decide that certain villages and quarters of the city must be the object of measures of coercion, the Consular Corps requests them to be good enough to notify it which villages and quarters will be exposed to these measures as well as which villages and quarters will be safe in order that the Consuls may cooperate with the French Authorities in removing the foreign nationals to the places indicated as secure. At the same time, the Consular Corps would be grateful to you to be good enough to inform it what measures the Mandatory Authorities intend to adopt to enable the Consuls to assure the efficient protection of their nationals in the villages or quarters exposed to the measures of coercion.

The Consular Corps does not share the Military Governor's opinion that he can, by the simple publication of this communiqué, decline responsibility for incidents that may occur from the measures of coercion in view, and it holds always the Mandatory Power responsible for the safeguarding of the lives and property of foreigners.

The Consular Corps wishing to facilitate as much as possible the task of the Mandatory Authorities and being thankful for the kind solicitude for foreigners shown by the French Authorities in the past renews its assurances that it is inspired only by a desire to collaborate with the Mandatory Power in its efforts to insure the protection of foreigners.

Accept [etc.] J. H. KEELEY, Jr.

[Enclosure 3—Translation [79]]

The Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel) to the Dean of the Consular Corps at Damascus (Keeley)

No. 248/SP DAMASCUS, *May 14, 1926.*

MR. DEAN: Referring to your letter of April 28th, I have the honor to address to you herewith the reply that General Vallier, in charge of the maintenance of public order and security in the region of Damascus, has transmitted to me.

I am persuaded that the information given by the General will allay the anxiety of the Consular Corps of this city.

Accept [etc.] PIERRE ALYPE

[79] File translation revised.

[Subenclosure—Translation [80]]

The General Commanding the Troops of the Region of Damascus and the Hauran (Vallier) to the Envoy Extraordinary at Damascus (Alype) of the High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

No. 1567/2 DAMASCUS, *May 8, 1926.*

In returning to you herewith the letter, dated April 28, from the Dean of the Consular Corps of Damascus which you were good enough to transmit to me for the basis of a reply, I have the honor to bring to your knowledge:

1. That the communiqué which appeared in the newspapers of April 28 is aimed only at the villages upon which fines in arms and money are imposed as a reprisal for proven acts such as open and repeated complicity with the bands or attacks on our troops or on representatives of the French or Syrian authorities.

2. That far from constituting a new menace to the villages, it aims only to spare the lives of the women, old men and children, by warning the populations concerned that the noncompliance with the conditions imposed upon them exposes them to coercive measures which may lead to the loss of human life.

3. That these coercive measures may consist either of bombardment without forewarning at the expiration of the time limit or of offensive operations eventually followed by the seizure of property destined to be sold for the benefit of the Syrian budget and in substitution of unpaid fines.

I shall be grateful to you if you will be good enough to communicate with the Dean of the Consular Corps and make known to him:

1. That the fact of granting a time limit in which to comply with the conditions imposed on a particular village constitutes in itself a forewarning, permitting the guilty population to take all measures to escape eventual sanctions.

2. That obviously I cannot acquaint the Consular Corps with the repressive operations which I may find it necessary to carry out and for the success of which secrecy is absolutely necessary.

3. But that I remain entirely disposed to assist the Consular Corps in its mission of protecting foreign nationals by furnishing it a copy of the notices sent to the villages or quarters upon which fines are imposed, in order to permit the interested Consuls to notify in sufficient time the said nationals of the danger which they may risk in case of noncompliance.

Accept [etc.] VALLIER

[80] File translation revised.

[Enclosure 4—Translation]

The Dean of the Consular Corps at Damascus (Keeley) to the Envoy Extraordinary at Damascus (Alype) of the French High Commissioner to the States of Syria and the Lebanon (De Jouvenel)

DAMASCUS, *May 18, 1926.*

MR. ENVOY EXTRAORDINARY: I am charged by the Consular Corps to acknowledge the receipt of your letter No. 248/SP of May 14, 1926, with which you were good enough to transmit to me the reply of General Vallier to the Consular Corps' note dated April 28, 1926, on the subject of the protection of foreigners, particularly the measures to be taken in order to protect foreigners from the dangers to which they may be exposed by the measures of coercion of which a certain number of villages of the Ghouta or quarters of the city may be the object.

The Consular Corps requests you to be good enough to transmit to General Vallier its thanks for the indications which he was good enough to give it and which will be very useful to the Consuls in relation to their respective nationals.

The Consular Corps is particularly pleased to note that the General is disposed to accept its collaboration to the end of assuring the protection of foreigners by furnishing it with a copy of the notices sent out to the villages or quarters which may be the object of the measures of coercion, in order to permit the Consuls to notify their nationals of the dangers that they may be exposed to in sufficient time to permit them to withdraw from the danger. It believes that this collaboration can have as a result only the better safeguarding of the lives and property of foreigners without any prejudice whatsoever to the operations that the Authorities may find necessary to put into execution.

In reserving the right of their respective Governments to hold the Mandatory Authorities responsible for any damage caused to the person and the property of the foreigners, the Consular Corps would like to reassure you, Mr. Envoy Extraordinary, that it does not at all desire and has never wished to hinder the execution of the task of the Mandatory Power in Syria. Being interested only in the adequate protection of their nationals and wishing, as much as possible, to facilitate the work of the French Authorities in this regard, the Consuls in Damascus hope that henceforth they will be able to concert with them for its realization.

Accept [etc.] J. H. KEELEY, Jr.

890d.00/416

The Secretary of State to the Consul at Damascus (Keeley)

WASHINGTON, *July 19, 1926.*

SIR: The Department has received your despatch No. 392 of June 14, 1926,[81] transmitting notes on the political situation in the Damascus consular district for the period June 6 to 12, 1926. Particular note has been taken of your account of the circumstances attending the bombardment of the village of Joubar, of your statement that the bombardment "was not preceded by an official notice to the Consular Corps as promised by General Vallier in his letter of May eighth", and of your comment that "since this is the second promise of this nature that has been disregarded within a few months, the futility of further representations on the matter . . . would seem to be apparent."

With reference to this comment you will, of course, bear in mind that the question of the efficacy or futility of further representations to the French authorities in connection with the protection of foreign lives and property at Damascus should not be permitted to influence any decision to be taken by the Consular Corps with respect to the advisability of addressing to the mandatory authorities any request for information which, if complied with, might render possible action on the part of the foreign consuls for the protection of their nationals.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

890d.00/422 : Telegram

The Consul at Beirut (Knabenshue) to the Secretary of State

BEIRUT, *July 26, 1926—5 p. m.*
[Received 5:05 p. m.]

French army executed elaborately planned attack on the rebels in the Ghouta region around Damascus on July 20th with the object of striking decisive blow against the rebellion in that area. Seven thousand troops divided into five columns were employed in an encircling movement supported by heavy artillery from Damascus batteries and by aeroplanes. . . . I am informed . . . that the movement failed in its object. The French casualties seem to have been greater than those of the armed forces of the rebels who still dominate the Ghouta. It is estimated that 15,000 noncombatant villagers were killed and wounded during the bombardment and by troops on return march to Damascus. Damascus region is now the chief theatre of the rebel-

[81] Not printed.

lion. Only a small percentage of the armed forces of the Druses have submitted and hostile bands are still operating in several other sections of the country. Train communication interrupted between Beirut and Damascus for several days last week, and attack on one train resulted in 20 casualties including military and civilian passengers. Tourists should continue to be advised to avoid this country.

KNABENSHUE

890d.00/452

The Vice Consul in Charge at Damascus (Alling) to the Secretary of State

[Extract]

No. 450 DAMASCUS, *December 8, 1926.*

[Received January 7, 1927.]

SIR: I have the honor to report that the state of public security in this district has shown gradual improvement during the past two months. Disorder still reigns in certain sections of the territory, and during the past two weeks small bands have penetrated even as far as Damascus, but with one exception fighting on a large scale appears to have ceased. The only section of the district where any battle of importance has taken place is in the Leja, a mountainous labyrinth of volcanic lava located from twenty-five to thirty miles to the southeast of Damascus. Here one of the last large remaining bands of the revolutionists has taken refuge and has held its position in spite of energetic attempts on the part of the French to force its withdrawal. A more or less provisional form of government has been set up in the Jebel Druse itself, but small bands there continue to harass unprotected travelers and to snipe at French columns and outposts. In the meantime the Syrian Government of Ahmed Namy Bey has developed internal dissensions, which have only recently been adjusted through the formation of a new cabinet.

In the following pages an attempt is made to discuss these various points in more detail, but here it may be said that though the backbone of the revolution appears to have been broken, at least unless aid arrives from some unexpected source, it may be a period of several weeks or even months before any definite settlement is made; or, indeed, the revolution may eventually die out without the necessity of any formal peace. At the present time the situation in this respect is still too confused to permit of an accurate or reliable estimate.

As suggested above, public security has shown unmistakable signs of improvement since the late summer. The motor road between Beirut and Damascus, which was opened to traffic about the middle

of October after having been closed for nearly a year, has continued to be used to an increasing extent. The French Authorities state that they are taking special steps to make the highway safe on Tuesdays and Fridays by sending out patrols and armored cars. Even on the other days of the week the traffic is relatively heavy, sometimes as many as twenty or thirty cars a day making the trip. So far as can be learned there have been no untoward incidents as a result of this movement on the highway. In addition, a native automobile transport company has been operating passenger cars between Damascus and Bagdad for about three weeks, and within the past four days the first convoys of the Nairn Transport Company to enter the city in many months came in from Bagdad. It is understood that the Nairn Company now intends to resume its original route from Beirut to Bagdad via Damascus and Rutbah Wells.

All of these points indicate an improvement in the general security of the outlying districts, but in spite of this the situation is not yet thoroughly in hand. Villagers from the Hauran and from the Jebel Druse who have recently visited the city report that it is unsafe for the ordinary traveler, whether native or foreign, to circulate freely in the areas that were subject to disturbance. There is general uncertainty as to the movements of small bands of marauding rebels, as is indicated by the fact that twice within the past week small brigand forces have penetrated close enough to the city of Damascus to exchange rifle fire with French outposts. The sound of artillery shelling these bands in the Ghouta has been heard nearly every day for a week. With these exceptions, the city itself has been quiet. The streets, however, are still barricaded with barbed wire entanglements, and machine gun and rifle posts are still maintained and manned with soldiers. In the center of the city circulation is permitted until midnight, but in the outlying quarters the barriers are closed at nine o'clock, after which time a pass is required. One of these barricades is located at about 200 yards from the Consulate and quite recently the Turkish Consul had considerable difficulty in passing it on returning to his residence from a dinner at the home of a French official. Armed troops are everywhere in evidence in the city, and it is noticeable that French soldiers, even when off duty, carry side arms or bayonets. From these various circumstances one gathers the impression that even though all appears to be calm the authorities, probably from past experiences, deem it wise to adopt a policy of preparedness and caution.

That all the disturbances are not confined to the southern section of the district is indicated by the fact that on the night of November 29th a band of about twenty brigands entered the city of Homs,

where, after killing two persons, they broke into the house of a prominent Christian and carried off 10,000 Turkish Gold Pounds in cash and jewelry. Throughout the whole night the city is said to have been disturbed by the rattle of rifle fire and the explosion of hand grenades as a result of a skirmish between the troops and this band.

. . . . . .

From the somewhat confused mass of details discussed above it will be apparent that, though fighting on a large scale has apparently finished, the general state of the district is far from peaceful. It is indeed unlikely that large forces of rebels will again roam at will over the countryside, at least not in the near future, but petty brigandage by small bands, highway robberies, and the slaying of French outposts and sentries may be expected even after a formal declaration of peace. It may also be predicted with a reasonable degree of certainty that as soon as the French reduce their military effectives in the district there will be another outbreak, unless, indeed, the Mandatory Authorities are prepared to grant a degree of independence which now seems unlikely. The temper of the people is smoldering, and any opportunity to throw off those whom the Syrians consider as their conquerors will be seized upon quickly.

In any event it will undoubtedly take many months to bring the state of public security and the economic situation up to a point comparable to that existing prior to the beginning of hostilities. It seems probable too that any formal peace will not be made before the High Commissioner has made his impending visit to France to receive instructions. In the interim it is expected that the insurgents will make numerous minor attempts to harass the French forces, which, now that the winter rains have arrived, find themselves more or less confined to their garrisons.

I have [etc.] PAUL H. ALLING

GERMANY

INSISTENCE OF THE UNITED STATES ON ITS RIGHTS TO PRIORITY PAYMENTS FOR COSTS OF ARMY OF OCCUPATION UNDER THE AGREEMENT OF JANUARY 14, 1925[1]

462.00 R 294/521 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *May 12, 1926—8 p. m.*
[Received May 13—8:12 a. m.]

185. H–100 [from Hill[2]]. Agreement of September 21, 1925,[3] Annex 2691, fixing costs of Armies of Occupation and Interallied Rhineland High Commission and Commission of Control for second Dawes annuity provides that Allied Governments and the United States will decide before September 1st, 1926, arrangement for their costs in future. French now propose first meeting for this purpose on May 26th next. Request that Department will, as last year, authorize me to attend meetings on behalf of our Government. Will, of course, report to Department for instructions on proposals made in meetings. Hill.

HERRICK

462.00 R 294/522 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *May 19, 1926—2 p.m.*

132. H–50 for Hill. Your H–100, May 12, 8 P. M. You are authorized to attend meetings on behalf this Government and report developments for Department's consideration. You will of course not make commitments except under specific instructions from Department.

In this connection note from British Ambassador received 17th instant[4] states in substance as follows:

"The British Government has lately had under consideration steps to be taken to arrange for reappointment of committee which nego-

[1] For correspondence concerning the agreement of Jan. 14, 1925, see *Foreign Relations*, 1925, vol. II, pp. 133 ff.

[2] Ralph Waldo Snowden Hill, American unofficial representative on the Reparation Commission.

[3] For text of agreement, see *Foreign Relations*, 1925, vol. II, p. 163.

[4] Dated May 13.

tiated the agreement signed by the Allied Governments and the United States at Paris on September 21, 1925, to regulate the amounts to be allocated from the second Dawes annuities for armies of occupation, Rhineland High Commission and Military Mission of Control. Under terms of this agreement amount to be allocated in future to armies of occupation and Rhineland High Commission were to be discussed within the two months following evacuation of the Cologne zone, and such discussion, which has not yet taken place, should be initiated without further delay.

The British Government considers that same procedure should be followed respecting constitution committee and negotiation agreement as took place in September, 1925, and that committee so constituted should meet in Paris in order to; first, agree upon the amounts to be allocated as from April 1st last to the armies of occupation and Rhineland High Commission; second, consider whether, in view of diminution in work of Military Commission of Control since September 21, 1925, any reduction can now be effected in the allocation then decided upon; third, the committee should be empowered to consider and settle any other outstanding questions in relation to the distribution of the Dawes annuities, such as that raised by the recent arbitral decision to the effect that the Dawes annuities comprise the transfers to be made by Germany to France and Poland in respect of social insurance funds relating to Alsace-Lorraine and Upper Silesia, respectively, and in respect of pensions earned in Alsace-Lorraine on November 11, 1918. For this purpose a Polish representative would be added to the committee when discussing charges affecting Poland."

Please cable your comments regarding above and in respect to reply which should be made to British Ambassador.

KELLOGG

462.00 R 294/523 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *May 21, 1926—7 p.m.*
[Received May 22—12:04 a.m.]

204. H–107 [from Hill]. Department's H–50, May 19.

1. May 26 is date set for new informal meeting. I do not think that there will be any difficulty over agreement on very substantial reduction in the allotment for the Rhineland High Commission and for the Military Commission of Control. Opposition will be centered on any reduction in cost of Armies of Occupation. The French will naturally desire to retain at least present figures. Belgians probably will take same position. British would like reduction to 120 millions but would be content with 140 millions. The Italian assistant delegate called yesterday and after saying that he had the support of the

Japanese delegate who was absent, suggested that Italian, Japanese, and American delegates endeavor to agree upon substantial reduction cash priority payments on army costs. Signor Corsi was not in position, however, to submit any figures. He seemed to hold view that while British would prefer reduction they might not insist, in view of concessions on other matters. I said that, while I was sure my Government would be pleased to have allotments reduced, lacking any instructions I had no authority to commit it in any way on this point.

2. With reference to British note Department might reply that it concurs in constitution of a committee, as was done last year, to negotiate on these points, and might add that I have been designated to attend meetings on behalf of Government of the United States.

3. Situation with respect to allotments for army costs, etc., which interest us directly and immediately, is different from questions raised in British note. Article 8 of the Finance Ministers' Agreement of January 14, 1925,[5] provides that if Secretariat should establish that these claims are to be met from annuities "the Allied Governments will concert together as to manner in which they should be dealt with" [6] under paragraph C, article 3. We should be interested in these claims only if others were inclined to admit them as charges against annuities so as to reduce our share in sums to be distributed as reparations. We could answer in two ways:

(*a*) In view of our possible ultimate interest to agree to sit in Committee from start with view to using influence to see that these claims are not charged against the annuities in any way to reduce our share.

(*b*) To refer to above-mentioned provision of article 8 and to indicate that we would not desire to be represented on Committee when this question should be under consideration, pointing out that our agreement would be necessary only in event that it was desired to admit these charges against Dawes annuities in manner which would reduce amounts to be distributed as reparations.

4. I believe that British strongly oppose admitting any of these charges so as to reduce annuities and French also oppose admitting Poland to participate in annuities particularly in view of her large outstanding indebtedness; it is possible that Allied representatives will work out some scheme whereby present shares in annuities would not be affected, and thus we would be able to avoid mixing in matter.

If, on other hand, we refused to sit on committee and its members should decide to admit any of these charges against the annuities we might find it difficult to refuse our consent.

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[5] *Foreign Relations*, 1925, vol. II, pp. 146, 152.

[6] Quoted passage not paraphrased.

5. I should like Department's instruction on point set forth above as question of our participation in Committee to consider claims mentioned in British note will probably arise at May 26 meeting.

6. I am not aware of any outstanding questions which relate to distribution of the Dawes annuities besides those mentioned in British note; Department's reply to it might call attention to this, and state that if there are other questions then the Department after being informed of their nature would decide whether it wishes to be represented.

7. At the meetings the question may arise whether allotment for costs should be fixed for other annuities in addition to the third. I should like to be informed whether Department prefers to limit discussion to third annuity alone. Hill.

HERRICK

462.00 R 294/523 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *May 25, 1926—2 p. m.*

144. For Hill. H–52. Your H–107, May 21, 7 p. m.

1. Department has informed British Embassy that you will attend forthcoming meeting on behalf of this Government.

2. While the Government of the United States would be pleased to see reductions made in allotments for armies of occupation, the Rhineland Commission, and the Commission of Control, and you may say so, it would not appear to be necessary for you to participate in any discussion or controversy on this point, as it is understood that there will not in any event be any increase proposed in the existing allotments. Unless our interests should be adversely affected by Allied representatives' proposal, you may state that you have no objection.

3. As you have been authorized to represent the Government of the United States at committee meetings, the Department perceives no reason why you should not attend all meetings. If and when discussion of crediting payments mentioned in British note should come up, however, you may state that this Government does not feel called upon to make any comment provided that arrangements made do not operate to reduce our participation in annuities in question.

4. Your H–107, paragraph 7. The Department prefers that present discussion be limited to third annuity, as there is possibility of further reductions in respect to subsequent years.

KELLOGG

462.00 R 294/525 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *June 5, 1926—2 p. m.*
[Received 2:55 p. m.]

229. H–113 [from Hill]. Department's H–52, May 25.

1. At meeting held late yesterday afternoon consideration of the question of army costs postponed as British and French proposals had only been circulated just before meeting without sufficient time for their information.

2. From these proposals it appears that French at present are standing on old figures.

3. British propose "an allocation of 25,000,000 gold marks from the Dawes annuities in full discharge of their Army costs if the French and Belgian Governments are prepared to waive all claims for future additional army costs as to advance allocations of 85,000,000 gold marks and 10,000,000 gold marks respectively, in full discharge of their annual costs of occupation as long as their effectives remain at about the prescribed strengths. The new allocation should date back to 1st April, 1926, and should be subject to revision in 1930 or in the event of any substantial reduction of the armies of occupation before 1930 but not otherwise".

[Paraphrase]

4. Department will observe that the British have in mind an agreement extending over more than the third annuity. As the proposals were not discussed I took no position on this point. Should there be substantial reduction in priority for army costs, would the Department raise serious objection to agreement extending over more than third annuity provided that there is also stipulation that in event of substantial reduction in armies that question would be reconsidered?

5. All delegations save Italian, who asked for further time, indicated their agreement to fix Rhineland Commission costs at 3,300,000 gold marks.

6. Military control costs have not yet been discussed but letter to conference of Ambassadors from General Walsh, President of Military Control Commission, estimates expenses for the next year at 2,892,000 gold marks. It is not improbable that the Committee will settle upon a figure of approximately that amount.

7. As it is intended to fix the above costs first, the other questions specifically mentioned in British note to Department and also referred to in similar note Embassy here has received from the French, have not yet been discussed.

British assistant delegate and I are both leaving Paris next week; the date of the next meeting has been postponed until after our return. Hill.

HERRICK

462.00 R 294/525 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *June 14, 1926—3 p. m.*

173. For Hill. H–59. Your H–113, June 5, 2 p. m. The Department perceives no objection to agreement extending over more than the third annuity on the terms stated in paragraph 4 your telegram.

KELLOGG

462.00 R 294/555

The Agent General for Reparation Payments (Gilbert) to the Secretary of State

BERLIN, *September 28, 1926.*

[Received October 12.]

DEAR MR. SECRETARY: I have the honour to advise you that at its meeting in Berlin on September 18, 1926, the Transfer Committee considered the policy to be followed during the third Annuity year in liquidating the priority of the United States of America on account of Army Costs in arrears. This priority arises, as you know, under the provisions of the Finance Ministers' Agreement of January 14, 1925,[7] and amounts to 55,000,000 gold marks for the year. It takes the form of "a first charge on cash made available for transfer by the Transfer Committee out of the Dawes Annuities, after the provision of the sums necessary" to cover the prior charges for the service of the German External Loan, 1924, and the other priorities contemplated by the Agreement.

The Transfer Committee, after consideration, adopted a resolution authorizing the Agent General for Reparation Payments to make monthly payments during the third Annuity year, for the purpose of liquidating the priority of the United States of America, up to the amount of 55,000,000 gold marks for the year, "the payments to be made in twelve monthly instalments and to be so arranged that each instalment represents substantially the same proportion of the monthly income available in the Annuity". This resolution, of course, has been taken under full reserve of the Transfer Committee's

[7] *Foreign Relations*, 1925, vol. II, p. 146.

general powers under the Experts' Plan.[8] The Secretary of the Committee has, in regular course, transmitted a copy of the resolution to the Reparation Commission for its information, and I am enclosing a copy of it herewith for the information of the Department.[9]

I have the honour to advise you further that in pursuance of the resolution adopted by the Transfer Committee I have made arrangements for the transfer to the United States of America of the equivalent in dollars of 890,600 gold marks, representing the share of the United States of America in the programme for the month of September, 1926, on account of the priority for Army Costs in arrears. This transfer will be carried out on September 30, 1926, by the payment of this sum in dollars to the credit of the Treasurer of the United States with the Federal Reserve Bank of New York. The share of the United States in subsequent monthly programmes, on account of its priority for Army Costs in arrears, will be stated in the quarterly programmes presented in regular course to the Reparation Commission. The programmes for September, October, and November, 1926, have already been presented, and in addition to the foregoing September payment provide for a monthly share in October, 1926, of 3,339,700 gold marks, and for November, 1926, of 3,348,500, both on account of the priority for Army Costs in arrears.

I am transmitting a copy of this letter and its enclosure to the Secretary of the Treasury for his information.

I am [etc.] S. PARKER GILBERT

462.00 R 294/555

The Secretary of State to the Agent General for Reparation Payments (Gilbert)

WASHINGTON, *October 15, 1926.*

MY DEAR MR. GILBERT: I beg to acknowledge the receipt of your letter of September 28, 1926, concerning the resolution of the Transfer Committee with regard to the liquidating of the priority of the United States on account of Army costs. This resolution has already been communicated to the Department by Mr. Hill.

I understand that this decision does not in any way prejudice the priority rights of the United States in the event that additional cash transfers should be authorized. The United States, of course, in no way waives its rights under the agreement of January 14, 1925.

I am [etc.] FRANK B. KELLOGG

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[8] See *Foreign Relations*, 1924, vol. II, pp. 1 ff.

[9] Not printed.

462.00 R 294/560

The Agent General for Reparation Payments (Gilbert) to the Secretary of State

BERLIN, *November 19, 1926.*
[Received December 8.]

MY DEAR MR. SECRETARY: I have the honour to acknowledge the receipt of your letter of October 15, 1926, with reference to the decision taken by the Transfer Committee at its meeting on September 18, 1926, on the subject of the priority granted by the Finance Ministers' Agreement to the United States of America on account of Army Costs in Arrears. I note from your letter that according to your understanding the decision of the Transfer Committee "does not in any way prejudice the priority rights of the United States in the event that additional cash transfers should be authorized", and, further, "that the United States, of course, in no way waives its rights under the Agreement of January 14, 1925".

I had previously received from Mr. Hill, of the United States Unofficial Delegation on the Reparation Commission, a letter dated October 1, 1926, referring also to the Transfer Committee's decision, and stating that he had been instructed to inform me that the United States Government "understands that the decision does not in any way prejudice the priority rights of the United States in the event that any additional cash transfers should be authorized, and that the United States in no way waives its rights under the Agreement of January 14, 1925." I am informed that at the meeting of the Reparation Commission on October 2, 1926, Mr. Hill made a reservation as to the Transfer Committee's decision in substantially the same terms, and that the Reparation Commission in authorizing the payments contemplated by the decision took note of the reservation formulated by Mr. Hill.

I am writing to advise you that the Transfer Committee at its meeting on October 12, 1926, took note of the Reparation Commission's decision in the matter and of the reservation about the Transfer Committee's decision that had been made in behalf of the United States Government. The Transfer Committee offered no objection whatever to the reservation made by the United States, and desired me to point out to you that the decision taken by the Transfer Committee was not, of course, intended to prejudice the priority rights of the United States. The decision, in fact, recognized by its own terms "the priority granted by the Finance Ministers' Agreement to the United States of America on account of Army Costs in Arrears up to the amount of 55,000,000 gold marks for the third

Annuity year", and endeavoured to provide a method of discharging the priority that would be "most conducive to the orderly administration of the Annuity, and least likely to cause disturbance to the German exchange". I should point out at the same time that the Transfer Committee's decision was taken "subject to the reservation of its general powers under the Plan", and that the Committee itself has thus reserved entire freedom of action to alter the proposed method of payments if for any reason it should seem desirable in the interests of the orderly administration of the Annuity or the stability of the German exchange.

In dealing with the priority of the United States in the third Annuity, the Transfer Committee up to this time has followed the plan of payments indicated in its resolution of September 18, 1926, and monthly payments approximately in proportion to the monthly income available in the Annuity have already been made in the months of September and October, 1926. The Transfer Committee believes that this method of payment is best calculated to discharge the priority of the United States, and hopes that it will be possible to continue the monthly instalments on this basis throughout the third Annuity year.

The Transfer Committee understands from the reservation which has been made by the United States that in case there should be additional cash transfers the United States desires to have the balance of its priority for the year discharged at once out of the additional cash transfers, instead of waiting for the balance to be covered by succeeding monthly instalments under the plan of payments proposed by the Transfer Committee's decision. The Transfer Committee is naturally unable to make any engagements whatever as to the cash transfers that may be made during the year, and it is impossible at this time to state whether or not any additional cash transfers will be authorized. The Committee makes no objection, however, to the reservation formulated by the United States, understanding, in fact, that it rests upon the terms of Article 3 of the Finance Ministers' Agreement of January 14, 1925, which reads, in part, as follows:

"These annual payments constitute a first charge on cash made available for transfer by the Transfer Committee out of the Dawes Annuities, after the provision of the sums necessary for the service of the 800 million gold mark German external loan, 1924, and for the costs of the Reparation Commission, the organisations established pursuant to the Dawes Plan, the Interallied Rhineland High Commission, the Military Control Commissions, and the payment to the Danube Commission provided for in Article 9 below, and for any other prior charges which may hereafter with the assent of the United States of America be admitted."

The Transfer Committee desires to point out, nevertheless, that in order to carry into effect the reservation made by the United States it would be necessary, in the event that additional cash transfers should be made before the end of the year, for the United States Government in cooperation with the Reparation Commission to make appropriate arrangements with the other creditor Powers for a sufficient redistribution of the shares of the Powers in the regular monthly programmes to cover the balance proposed to be paid to the United States on account of its priority. The payment of the balance before the end of the year would, in other words, involve an anticipation, *pro tanto*, of the income available to the Annuity, and it would be necessary, accordingly, to make provision for it by appropriate adjustments in the monthly shares of the other Powers, thus necessitating a revision of the monthly programmes of payments and deliveries that would otherwise be in course of execution at the time. This necessity, of course, arises from the fact that the reparation payments due from Germany during the third Annuity year are not payable in one lump sum but are received instead from month to month in the form of payments, first, from the German budget, on account of the normal and the supplemental budgetary contributions; second, from the German Railway Company, for the service of its reparation bonds; third, from the Industrial Charge, for the service of the German Industrial Debentures; and, fourth, from the yield of the Transport tax. The arrangements governing the receipt of these various payments, and the schedule of the payments themselves, have already been communicated to the Reparation Commission, and the amount of income available from month to month necessarily determines the monthly programmes of deliveries and payments, which, in turn, are customarily communicated to the Reparation Commission every three months.

The distribution among the Powers of the amounts available for the successive monthly programmes raises a question not for the Transfer Committee but for the Reparation Commission, and in case it should become necessary, in order to satisfy the priority of the United States, to make a redistribution of any of the monthly programmes for the third Annuity year, the Transfer Committee assumes that the necessary arrangements for the purpose will be made in due time as between the United States Government and the Reparation Commission.

I am transmitting a copy of this letter to the Reparation Commission for its information and attention, together with a copy of your letter under acknowledgment.

I am [etc.] S. PARKER GILBERT

REJECTION BY ARBITRATORS OF CLAIM OF THE STANDARD OIL COMPANY TO THE D. A. P. G. TANKERS[10]

362.115 St 21/427

The Unofficial Representative on the Reparation Commission (Hill) to the Secretary of State

PARIS, *August 13, 1926.*

[Received August 24.]

SIR: Referring to my telegram H–124, of July 20, 1926,[11] I beg to enclose herewith five copies of the English translation of the decision of Messrs. Sjoeborg and Lyon (Annex 2953b) and five copies of the dissenting opinion of Colonel Bayne (Annex 2953c) in the D. A. P. G. Tanker case. I am also enclosing five copies of the transmitting letter.[11]

The decision of Messrs. Sjoeborg and Lyon was rendered in French and the translation was only received today in time to go in the pouch. I have not yet had an opportunity therefore to study it.

I am sending two copies of the English text of the decisions to Mr. Piesse, the Counsel of the Standard Oil Company in New York.

I am [etc.] RALPH W. S. HILL

[Enclosure 1]

Annex 2953b

Majority Award in the Case of the Tankers of Standard Oil Company

PREAMBLE

WHEREAS

It is fitting, before examining the question in any way, to recall the following facts and documents:

By Paragraph I of Annex III to Part VIII of the Treaty of Versailles,[12] the German Government "on behalf of themselves and so as to bind all other persons interested, ceded to the Allied and Associated Governments", represented for the purpose by the Reparation Commission, "the property in all the German merchant ships which are of 1,600 tons gross and upwards".

The third paragraph of the same Annex lays down that "the ships and boats mentioned in paragraph 1 include all ships and boats which (*a*) fly, or may be entitled to fly, the German merchant flag; or (*b*) are owned by any German national, company or corporation".

In execution of the above provisions, the German Government delivered to the Reparation Commission nine tankers (*Helios*, *Mann-*

[10] For previous correspondence concerning disposal of D. A. P. G. tank ships, see *Foreign Relations*, 1925, vol. II, pp. 165 ff.

[11] Not printed.

[12] Malloy, *Treaties*, 1910–1923, vol. III, pp. 3329, 3429.

heim, *Sirius*, *Niobe*, *Pawnee*, *Hera*, *Loki*, *Wotan* and *Wilhelm Riedemann*) which belonged to a company having its Registered Office at Hamburg and known as the Deutsche Amerikanische Petroleum Gesellschaft, hereinafter referred to as the D. A. P. G.

There was no doubt that, from the point of view of the German Government, the ships in question came under Annex III, seeing that they flew the German merchant flag and also belonged to a company which was indisputably German.

It must be pointed out at once that, subsequently, one of these vessels, the *Wilhelm A. Riedemann*, was recognized as not deliverable as a vessel under construction under Annex III and that three others, the *Helios*, *Mannheim* and *Sirius*, were sold by agreement between the parties.

The present arbitration is concerned with the tankers *Niobe*, *Pawnee*, *Hera*, *Loki* and *Wotan*, with the proceeds from their working and with the proceeds from the sale of the tankers *Helios*, *Mannheim* and *Sirius*.

In March 1919 and subsequently, through the intermediary of the American Delegations to the Peace Conference and to the Reparation Commission, the American "Standard Oil Company" of the State of New Jersey protested against the delivery to the Powers of the vessels in question, of which it claimed the ownership.

In support of this claim, the Standard Oil Company relied upon the fact that the D. A. P. G. had been created by it, with the help of capital supplied by it and employed for the construction of the vessels claimed. It explained that the capital of the D. A. P. G. was 60 million marks, divided into 9 million shares, 21 million share-warrants and 30 million debentures. It alleged that at the time of the coming into force of the Treaty of Versailles, it owned of this capital the whole of the shares and almost all the share-warrants and debentures, except for an infinitesimal part.

It concluded that it had a right of ownership in the disputed vessels of a special kind known as "beneficial ownership", which made it impossible to say that they were the property of German nationals in the meaning of Annex III.

It further invoked considerations of equity which, in its opinion, justified the return of these vessels.

As the Governments of the Principal Allied Powers represented on the Reparation Commission did not see fit to allow the claim of the Standard Oil Company, a convention was concluded, after many discussions which will be mentioned later, on June 7, 1920,[13] between the Reparation Commission represented by M. Dubois and Sir John Bradbury, and the United States Government, represented by Mr. Boyden.

[13] *Foreign Relations*, 1920, vol. II, p. 598.

Under this convention the disputed tankers were temporarily handed over to the Government of the United States of America on the understanding that they were to fly both the flag of that country and the interallied flag.

In order to settle the dispute, Article 1 [*sic*] of this Convention provided for the constitution of an independent tribunal in the following form:

Paragraph I: "If the United States has not on July 1, 1920, ratified the Peace Treaty and an American representative is not qualified and acting on the Commission, then the Standard Oil Company's claim shall, at the request of the United States or other interested Governments, be adjudicated by an independent tribunal to be agreed upon between the United States and the several Governments concerned so that all parties interested may be properly heard. The Reparation Commission and the United States pledge themselves to use their best efforts to arrange this tribunal without delay".

The problems to be submitted to this Tribunal were formulated as follows in Paragraphs F and G:

Paragraph F. "As soon as the Reparation Commission or Independent Tribunal mentioned in paragraph I has declared its decision upon the claim of the Standard Oil Company, the United States will transfer tankers in accordance with such decision, it being agreed, however, that if Standard Oil Company makes good its claim to beneficial ownership of all or any of the tankers in question, then such tankers shall by the terms of the decision be awarded to that Company and transferred to the United States flag".

Paragraph G. "If Standard Oil Company fails to make good its claim to beneficial ownership of tankers, but is found to be entitled to financial reimbursement, then Standard Oil Company shall be entitled to liquidation of the award by transfer of tankers to a value equal to the award, the tankers to be valued by the Reparation Commission or Independent Tribunal in its award, and the particular tanker or tankers to be selected by the Standard Oil Company and accepted by the Company at the valuation aforesaid".

By a decision of October 14, 1921, the Reparation Commission proceeded, with the approval of the American Unofficial Delegate, to set up the Tribunal provided for in Paragraph I of the said Agreement. It appointed as Arbitrators: Colonel Hugh A. Bayne, Attorney at the Supreme Court of the United States, and M. Jacques Lyon, Avocat à la Cour d'Appel de Paris. Moreover, it was provided by this decision that in the event of disagreement between them a third Arbitrator previously appointed for the purpose would become a member of the Tribunal and the decision of the majority of the members of the Tribunal thus constituted would be final.

The two Arbitrators appointed by the Decision of October 14, 1921, received the memorials and heard the observations of the Parties concerned, but, as they were unable to come to an agreement and had

previously obtained a promise of co-operation from M. Erik Sjoeborg, former Sectional President of the Franco-German Mixed Arbitral Tribunal and Envoy Extraordinary and Minister Plenipotentiary of the King of Sweden, they requested the latter to join them on the Tribunal.

The Tribunal thus constituted proceeded to a further examination of the question. All the documents were submitted to the new Arbitrator for examination.

M. Lyon and Colonel Bayne, acting respectively on behalf of the Reparation Commission and the American Government, waived any further hearing and the Parties confined themselves to adding a short written Note to their previous memorials, the arguments and conclusions of which they maintained.

Thus after various meetings in Paris for deliberation, MM. Sjoeborg and Lyon formulated the majority decision, the text of which is given below, to which Colonel Bayne appended a minority opinion.

The Sale of the Shares in February 1917

Whereas, in support of its claims, the Standard Oil Company asserts that at the time to which it is necessary to go back to determine the validity of these claims, that is, January 10, 1920, the date of coming into force of the Treaty of Versailles, it was owner of all the shares and almost all the other securities of the D. A. P. G;

Whereas the Reparation Commission objects that at a date previous to that time the Standard Oil Company had sold all these shares;

Whereas, in fact, it is indubitable that in February 1917, when America's declaration of war was imminent, the Standard Oil Company, desiring to save its shares from confiscation by the German Government, sold all its voting shares to a German national, Herr Riedemann; and whereas the price not having to be paid until a later date, the purchaser made over to the Standard Oil Company as partial guarantee, some securities which he held in the United States;

Whereas, however, it is necessary to examine the juridical effects of this sale;

Whereas the above-mentioned securities made over by Riedemann to the Standard Oil Company were seized as enemy property by the Alien Property Custodian, the latter, when opposition was lodged by the Standard Oil Company, asserted his belief in the good faith of the sale, but none the less, by a decision of February 6, 1919, declared it to be null and void;

Whereas this decision being prompted only by reasons of public order, could not lead the Tribunal to consider the sale as null;

Whereas, in order to determine the validity of the latter it is necessary to refer to German law;

Whereas this contract was concluded in Germany; whereas it is necessary in this connection to note that in reply to a cable of February 5, 1917, in which, after formulating his offer of purchase, Herr Riedemann added: "Purchase to be perfect on receipt of your confirmation", to which the Standard Oil Company replied the same day: "Terms stated accepted and sale confirmed".

Whereas, moreover, in this case, it was a question of the sale of the shares of a German company, and under the contract the shares sold were, in accordance with the express intention of the parties, to be transferred on the books of the company to their new owner;

Whereas in order to understand the effect of such a sale in German law, two legal opinions were submitted to the Tribunal, the one emanating from Professor Riesse of the University of Berlin, communicated by the Managing Board of the Standard Oil Company, and the other from Herr Max Bonnem, Advocate at the Court of Berlin, directly consulted by M. Lyon and Colonel Bayne;

Whereas it appears from these opinions that since the shares in question are registered shares, German Law, which is strictly formalistic on this point, considers their sale as perfect only as and when the securities representing the shares have been the subject of a material transfer from the seller to the purchaser;

Whereas it is not denied that the certificates issued by the D. A. P. G. representing shares which formed the subject of the convention of February 1917, never left the Head Office of the Standard Oil Company in the United States;

Whereas, therefore, failing their handing over to the purchaser, the sale in question must be considered, in German law, as never having been put into execution;

Whereas it is consequently certain that at the time of the coming into force of the Treaty of Versailles, the Standard Oil Company was still owner of the whole of the shares, as well as of almost all the other securities of the D. A. P. G.;

Whereas, this point being established, it is necessary to consider successively the problems arising for the Tribunal out of Paragraphs F and G of the Agreement of June 7, 1920;

Paragraph F

Whereas, under this paragraph, it is for the Tribunal to decide whether the Standard Oil Company has made good its claim to the "beneficial ownership" of all or any of the tankers;

Whereas, at the outset, a question of interpretation of the terms of reference arises;

Whereas this question is: whether the proof of the ownership by the Standard Oil Company on January 10, 1920, of all or nearly all the various categories of securities issued by the D. A. P. G. is the sole and only condition of its alleged right to the "beneficial ownership" of the tankers, or whether this right does not involve a factor in addition to the right of ownership of the securities, the nature of which factor it is for the Tribunal to determine;

Whereas, in other words, it has to be ascertained whether the previous finding of the right of ownership of the Standard Oil Company in the securities of the D. A. P. G. ends the task of the Tribunal, or whether it is only the point of departure necessary, but in itself insufficient;

Whereas the Tribunal cannot find that the Agreement of June 7, 1920, may be interpreted to mean that the ownership of the securities of the D. A. P. G. would suffice to confer upon the Standard Oil Company the "beneficial ownership" of the tankers;

Whereas, in the first place, such an interpretation is belied by the preparatory reports of the said Agreement, especially paragraphs F and G, as communicated to the Tribunal by Colonel Bayne;

Whereas the Reparation Commission had entrusted the drafting of these two Articles to Sir John Bradbury and Mr. Boyden, representing respectively Great Britain and the United States on the Reparation Commission;

Whereas in a telegram sent on May 19, 1920, to the State Department,[15] Mr. Boyden summarised as follows the attitude of Sir John Bradbury with regard to the American proposal for the drafting of Paragraph F:

"He has no objection to Standard Oil Company making any claim of any kind before Tribunal. His objection is to instructing Tribunal that proposal [*proven?*] ownership of securities shall necessarily lead to any particular result. He wishes whole matter to be determined by Tribunal. If your language 'claim of beneficial ownership' means beneficial ownership in tankers themselves, he would accept your idea. It would then be possible for Tribunal to consider whether ownership of securities as proved did or did not constitute beneficial ownership of the tankers, but if your language means, as he thinks, that ownership of securities necessarily determines the question of beneficial ownership, then he is unwilling to accept your suggestion."

Whereas it further appears from this same cable that Sir John Bradbury, not accepting the American suggestion concerning the drafting of Paragraph F, proposed another wording for this paragraph, namely that which was afterwards inserted in the Agreement;

[15] *Foreign Relations*, 1920, vol. II, p. 592.

Whereas in a Note of May 20, 1920, transmitted to Mr. Boyden, Sir John Bradbury, who drafted it, declared: "If the Reparation Commission rightly understands the contention of the United States Government, it is that the vessels in question are substantially the property of United States citizens by reason of the fact that an American Company is the proprietor of practically the whole of the securities of the German Company to which they belong";

Whereas it follows from the facts set forth above that prior to the signing of the Agreement of June 7, 1920, the Reparation Commission, through its spokesman Sir John Bradbury, had clearly stated to Mr. Boyden, representing the American Government, that in its opinion Article F, as it stood, could not be interpreted to mean that the problem submitted to the Tribunal was limited to examining the right of ownership of the Standard Oil Company in the securities of the D. A. P. G.;

Whereas, moreover, and independently even of the conclusion to which the preliminary reports necessarily lead, if the Parties concerned had meant to submit to the Tribunal only the problem of the ownership of the securities, they would certainly not have failed to say so expressly and would not have concealed this problem, which it would have been easy to state, under cover of the "claim to beneficial ownership";

Whereas, moreover, it would be difficult, if the agreement of June 7, 1920, had been interpreted by the Standard Oil Company as limiting the task of the Tribunal, to explain why the introductory memorial of this company, signed by three eminent Counsels was almost entirely devoted to discussing the juridical rights of the shareholders in the corporate assets;

Whereas, finally, such an interpretation of Paragraph F seems to render Paragraph G unnecessary; for either the Standard Oil Company, making good its right of ownership in all or part of the securities, thereby establishes directly, from this very fact, its right of ownership in all or part of the disputed vessels, or else, the Standard Oil Company having failed to get itself recognised owner of the securities, it is difficult to understand on what basis an indemnity could be awarded to it under Paragraph G;

Whereas, since the Tribunal concluded on this point that if the problem of "beneficial ownership" could only arise in so far as the Standard Oil Company had previously established its right of ownership in the securities of the D. A. P. G., the two problems remain distinct, and "beneficial ownership" is only conceivable in the form of a special kind of right, distinct from the right of ownership of the securities and additional to it;

Whereas it is consequently necessary to ascertain what this right may be from the definition given of it by the Standard Oil Company, to whom it falls to make good its claim to "beneficial ownership";

Whereas, indeed, the two memorials submitted to the Tribunal in the name of the Standard Oil Company, that of Mr. John B. Moore of December 31, 1921, and that of Mr. Piesse of August 31, 1923, furnish a twofold definition of this expression;

A

a) Whereas the first definition appears in Nos. 16 and 17 of the "*De facto* and *de jure* Summary" at the close of the first memorial, (p. 114) as follows;

16.—"The right of beneficial ownership, derived from the substantial, i. e. the lucrative or economic interest, is universally recognised. This right, although subject to the agreed conditions of legal control, reaches the property itself and comprises the right to the continued present enjoyment and ultimate possession".

17.—"The right of beneficial ownership is most frequently assured through corporate organisation, in which individuals unite their resources for purposes of business, and while the control and use of the property are subject to the terms of the corporate agreement, yet the contributing individuals, as the ultimate owners of the assets, have in the capital and business a distinct and positive right of property which the law recognises and protects. This right, no matter by what form of security it is evidenced, is recognised under all legal systems;["]

Whereas the argument of the Standard Oil Company is perfectly unambiguous since it lays down very clearly that in its view the shareholder in a company has in the assets of that company "a distinct and positive right of property which the law protects", a right *sui generis* known as 'beneficial ownership' which is essentially a right which "reaches the property";

Whereas the existence of such a right can be affirmed by the Tribunal only in so far as it could be proved that this right has been recognised by doctrine and sanctioned by jurisprudence;

b) Whereas indeed the memorials of the Standard Oil Company quote passages from authors and appeal to the works of doctrinal authorities;

Whereas, however interesting these opinions may be from the theoretical point of view and for the effect they may possibly have on future jurisprudence, the Tribunal must remark that up to the present they have encountered the opposition of most doctrine and nearly all jurisprudence, which in all countries accord to the legal entity known as a company a personality and a patrimony entirely distinct from those of its shareholders;

Whereas in fact the decisions of principle of the highest courts of most countries continue to hold that neither the shareholders nor their creditors have any right to the corporate assets other than to receive, during the existence of the company, a share of the profits, the distribution of which has been decided by a majority of the share-holders, and, after its winding up, a proportional share of the assets;

Whereas it is sufficient in this connection to quote, in so far as concerns the United States, the case of *Eisner* v. *Macomber* (1919—252 U. S. 189), in which, the point being to determine whether stock dividend should be considered to be dividend which as such became the property of the share-holders or to be capital which remained the property of the company, in this case the Standard Oil Company of California, the Supreme Court of the United States declared that: "The stock holder's interest pertains not to any part, divisible or indivisible, but to the entire assets, business, and affairs of the Company. Nor is it the interest of an owner in the assets themselves, since the corporation has the full title, legal and equitable, to the whole";

Whereas this decision must be compared with the decision of the New York State Appellate Court in the case of *Riggs* v. *Insurance Co.* (123 [*125?*]. N. Y. 7 1890), in which, replying in the affirmative to the question as to whether a share-holder as such had the right to insure certain corporate property, the Court declared: "It seems to us, both upon authority and reason, that the insurance now in question is a fair and reasonable contract of indemnity founded upon a real interest, though not amounting to an estate, legal or equitable, in the property insured";

Whereas numerous similar decisions have been rendered by the British courts, and whereas it will be sufficient to quote in this connection the following decisions which have established a precedent:

Bulmer v. *Norris* (1860. 9 C. B. N. S. 19), in which it was decided that the share-holder in a joint stock company had no legal or equitable interest in lands belonging to the company, his interest being limited to a proportional share in the profits of the Company;

R. v. *Arnaud* (1846, 9. Q. B. 806), in which Lord Denman, deciding the case of a limited liability company which was the owner of a vessel, declared that "the corporation is, as such, the sole owner of the ship, and individual members of the corporation are not entitled, in whole or in part, directly or indirectly, to be owners of the vessel";

Gramaphone Co. Ltd. v. *Stanley* (1908. 2. K. B. 89), in which Lord Cozens Hardy declared: "The fact that an individual by himself or his nominees holds practically all the shares in a company may give him the control of the company in the sense that it may enable him by exercising his voting powers to turn out the directors and to enforce his own views as to the policy, but it does not in any way diminish the rights and powers of the directors or make the property and assets his, as distinct from the corporation's. Nor does it make any difference if he acquires not practically the whole but absolutely the whole

of the shares. The business of the company does not thereby become his business. He is still entitled to receive dividends on his shares but no more";

Whereas a decision of the House of Lords of April 3, 1925 (*Macaura* v. *Northern Assurance Company Ltd.*) (*Times Law Reports*, May 8, 1925, page 447), summing up and confirming all this jurisprudence, declared null and void a contract insuring a stock of building timber belonging to a company, concluded by a person who was at the same time the owner of all the shares of the company and by far its most important creditor;

Whereas in support of this conclusion it is pertinent to quote the following passages by Lords Buckmaster, Sumner and Wrenbury:

Lord Buckmaster: "Turning now to his position as shareholder, this must be independent of the extent of his share interest. If he were entitled to insure holding all the shares in the company, each shareholder would be equally entitled, if the shares were all in separate hands. Now no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest 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";

Lord Sumner: "He stood in no legal or equitable relation to the timber at all. He had no concern in the subject insured. His relation was to the company, not to its goods, and after the fire he was directly prejudiced by the paucity of the company's assets, not by the fire".

Lord Wrenbury: "This appeal may be disposed of by saying that the corporator, even if he holds all the shares, is not the corporation and that neither he nor any member of the company has any property, legal or equitable, in the assets of the corporation";

Whereas, in so far as concerns French jurisprudence, it will be sufficient to quote Professor Thalier, who is one of the most eminent opponents of the classic theory of the personality of companies, but who adds, on page 189 of the 1916 edition of his *Traité élémentaire de droit commercial:* "Jurisprudence has immutable faith in it and does not seem even to suspect the existence of the other constructions which doctrine advances in opposition";

c) Whereas the memorials of the Standard Oil Company rely also on various legal or administrative decisions on the seizure of ships or the sequestration of property belonging to companies during the war, according to which courts and administrations of the belligerent countries admitted that the nationality and personality of a company could not constitute an obstacle to a seizure or a sequestration if it could be proved that the company was "controlled" by énemy subjects;

Whereas however the decisions and circulars relied on have avoided placing themselves in direct opposition to the classic theory and the

established doctrine; whereas they never denied that the company should in private law be considered to be the legitimate owner of the property seized or sequestrated; whereas reasons of public weal and national safety alone led them to admit that the enemy nationality of the share-holders must affect the character and functions of the company;

Whereas, in order to bring out the real nature of the decision of the House of Lords in the case of *Daimler Company Ltd.* v. *Continental Tyre & Rubber Company* (1916 App. 2 Cas. 307), and to show the error in the conclusions which the Standard Oil Company seeks to draw from it in favour of its theory, it is sufficient to quote the following passage from Lord Parker's opinion: "No one can question that a corporation is a legal person distinct from its corporators; that the relation of a share-holder to a company which is limited by shares, is not in itself the relation of principal and agent or the reverse; that the assets of the company belong to it, and the acts of its servants and agents are its acts while its shareholders as such have no property in the assets and no personal responsibility for those acts";

Whereas the decision quoted above, without ignoring either the personality of a company or its right of ownership in the corporate assets, merely draws certain conclusions from the control which is or may be exercised by a share-holder or a group of share-holders over the activity of the company;

Whereas to state that a physical person, a legal person or a group of physical or legal persons exercise a preponderating influence over a given legal person is obviously not equivalent to declaring or admitting that they have a right of ownership in the property of the latter;

Whereas this is so true that when the legal person controlled is an enemy its property can be seized, no account being taken of the fact that the third parties vested with this control are allied or neutral;

Whereas, although it has happened that, for the reasons above set forth, Allied companies have been found to be enemy in character and have been treated as enemies, it has not happened—no legal decision is quoted to this effect—that enemy companies have not been treated as such, even when some or all of the share-holders were of Allied or neutral nationality;

Whereas the Supreme Court of the United States sustained a similar theory in the case of the *Pedro* (175 U. S. 354), in which a vessel belonging to a Spanish company and captured by the American Navy during the Spanish-American war was declared lawful prize by the Supreme Court, although all the shares of this company were held by British nationals;

d) Whereas finally the awards of international arbitration relied on by the Standard Oil Company, in particular those rendered in the cases of the "Delagoa Bay," "El Triunfo," "Alsop" and "Orinoco Steamship" Companies cannot be held to support its theory;

Whereas in none of these cases has it been a question of granting or assigning to claimant share-holders or debenture-holders rights in any part of the corporate assets, but merely of granting them indemnity for damage caused by unjustified intervention on the part of the government;

Whereas moreover in all these cases, and notably in the first two, which are the most important, it was clearly specified that the share-holders and debenture-holders were admitted, in view of the circumstances, to be exercising not their own rights but the rights which the company, wrongfully dissolved or despoiled, was unable thenceforth to enforce; and whereas they were therefore seeking to enforce not direct and personal rights, but indirect and substituted rights;

B

Whereas, it is true, the conception of "beneficial ownership" has taken, in the oral argument of the Standard Oil Company as reproduced and completed in its supplementary memorial of August 31, 1923, a new form which this memorial presents as follows:—

"The owner of property may, or may not, be the beneficial owner of that property, and a beneficial owner may not be the owner, when that word is used in the proprietary sense. The owner may be the legal owner of the title to the property, but the beneficial owner is he who has or owns the beneficial interest in that property. The words beneficial owners as used in paragraphs F and G of the Agreement of June 7, 1920, must and can only have been used in the sense of the owner of the beneficial interest without the legal title" (page 42);

"The words beneficial owner when used together can have but one meaning, and that is, the owner of the benefit, or the owner of the beneficial interest. In the case of a corporation, the corporation itself is entitled to receive the income from the property owned by the corporation, but the share-holders of the corporation are the parties for whose ultimate benefit such income is received. In the present case the D. A. P. G. were entitled to receive the profits derived from the tankers in question, but such profits were received by the corporation for the benefit of its share-holders, and therefore the share-holders were the beneficial owners of the tankers" (page 44);

Whereas, according to this new and alternative interpretation, the share-holder would be owner of the corporate assets, not in the legal but in the economic sense, in that he would be owner of the income produced by the operation of the corporate assets;

Whereas however it is not correct to state that the share-holders have a right of ownership in the profits of the operation; whereas indeed the profits belong to them only in so far as and when they are distributed; whereas before this date they are precisely the property of the company, which at the General Meeting will decide as such, by the majority vote of the share-holders, on the use to be made of the profits;

Whereas from that time the share-holders have a right of ownership only in that share of the income which it has been decided to allot to them;

Whereas this right, and the right to share in the division of the assets of the company when dissolved, seem indeed to constitute the two essential characteristics of the right of the share-holder and to be merged with it, so that it is impossible to discern the distinct aspects of any "beneficial ownership" which might be added;

C

Whereas, in fine, according to the commentaries furnished and the documents produced by the Standard Oil Company, "beneficial ownership" constitutes a right of ownership for the shareholders either in the corporate assets or in the profits from the operation of these assets;

Whereas, in the first hypothesis, this alleged right would be in contradiction with universal jurisprudence, in particular with that of the United States, Great Britain and France;

Whereas, in the second hypothesis, it would be merged with the shareholder's right of ownership in his shares, and is therefore only a new expression for the same legal fact;

Whereas, finally, in the course of its written and oral observations the Standard Oil Company has sometimes seemed to maintain that the beneficial ownership on which it relied was not included in the classic legal categories, but must be considered and recognised as a right of an economic nature;

Whereas, however, to proclaim the economic character of an alleged right is not sufficient to vest it with the privileges and sanctions of a right of ownership; whereas the right which the shareholder derives from his share is indisputably of an economic nature, but cannot confer upon him a right of ownership either in the corporate assets or in the corporate earnings, as has just been shown;

PARAGRAPH G

Whereas the Standard Oil Company, not having made good its claim to the beneficial ownership of any of the tankers under paragraph F of the Agreement of June 7, 1920, it is for the Tribunal

to ascertain whether this company is justified in claiming indemnity under paragraph G of the same Agreement;

Whereas—in vain, so far as this paragraph is concerned—the Standard Oil Company seems at times to seek to maintain that the right to financial reimbursement necessarily arises from its possession of the shares of the D. A. P. G.;

Whereas, since compensation under paragraph G should take the form of a surrender of boats, and since paragraph F provides for the event of the Standard Oil Company's establishing its beneficial ownership of some of the boats only, which alone would be assigned to it, the difference between the two paragraphs, in such a construction, is not evident;

Whereas moreover the arguments previously adduced in connection with paragraph F to set aside the identity between beneficial ownership and ownership of shares may be extended to paragraph G, in respect of the alleged identity between the possession of shares and the right to financial reimbursement;

Whereas, just as the ownership of shares can imply beneficial ownership in the corporate assets represented by the tankers only in so far as it is re-inforced by a legal factor of which the Tribunal finds no trace in doctrine or jurisprudence, so the possession of these shares can confer a right to financial reimbursement only in so far as this right is founded on some express text or on considerations of justice involving a judicial sanction;

Whereas, finally, when paragraph G lays down that a certain number of tankers, to be determined later, will be handed over to the Standard Oil Company only in so far as it may be found to be entitled to financial reimbursement, it clearly leaves it to the Tribunal to examine and to judge whether it is so entitled;

A) Whereas the essential if not the only title relied on by the Standard Oil Company is paragraph 20 of Annex II to Part VIII of the Treaty of Versailles;

Whereas this article reads as follows in French and English:

"La Commission, en fixant ou acceptant les payements qui s'effectueront par remise de biens ou droits déterminés, tiendra compte de tous droits et intérêts légitimes des Puissances alliées et associées ou neutres et de leurs ressortissants dans lesdits";

"The Commission, in fixing or accepting payment in specified property or rights, shall have due regard for any legal or equitable interests of the Allied and Associated Powers or of Neutral Powers or of their nationals therein";

Whereas it is to be remarked that there is a notable discrepancy in these texts, for while the English stipulates that due regard shall be had to any "legal or equitable interests", which corresponds to

very clear and well-known conceptions of English and American law, of which equity is a form, the French employs the infinitely vaguer phrase of "droits et intérêts légitimes", which corresponds to no definite legal idea;

Whereas therefore everything points to the conclusion that the French phrase is merely the translation of the English, in which alone the expression employed has legal sense, and which makes clear the general tenor of the articles;

Whereas if we rely on the meaning in English law of the words "legal or equitable interests" and if we consider that the hypothesis envisaged in paragraph 20 is the "remise" to the Reparation Commission of "specified property or rights", it is obvious that the "legal or equitable rights" to which, according to this same paragraph, due regard shall be had, are only the real rights, the "*jura in re*";

Whereas it has just been shown that the rights of share-holders in the corporate assets cannot imply such a limitation;

Whereas it is to be noted that according to the decisions of American and British courts above mentioned the right of the share-holder implies no legal or equitable interest in the corporate assets;

Whereas it will be sufficient in this connection to recall that, in the case of *Eisner* v. *Macomber*, the Supreme Court of the United States declared that "the corporation has the full title, legal and equitable, to the whole (the entire assets, business and affairs of the company)", and that in the case of *Macaura* v. *Northern Assurance Company Ltd.* Lord Wrenbury, interpreting the opinion of the members of the House of Lords, declared that "no member of the company has any property, legal or equitable, in the assets of the corporation";

Whereas moreover the Reparation Commission, in its interpretation of paragraph 20, agreed with this jurisprudence in so far as it confirmed the report of its Maritime Service of January 13, 1922, on "legal and equitable claims under paragraph 20";

Whereas this report rejected all claims advanced by Allied or neutral share-holders in German shipping companies whose boats had been handed over in execution of Annex III, because "a shareholder's interest in a shipping company owning a ship or ships cannot be regarded as a legal or equitable interest in the ship or ships under paragraph 20;"

B) Whereas, it is true, it was a question only of claimants possessing some shares of these companies, and whereas the Standard Oil Company has several times relied on the fact that it was practically the sole share-holder and the sole creditor of the D. A. P. G.;

Whereas however paragraph 11 of Annex II, which may be relied on in this discussion with as good reason as paragraph 20 of the same Annex, specifies that the decisions of the Reparation Commission must

follow "the same principles and rules in all cases where they are applicable";

Whereas this provision makes it obviously impossible to draw a distinction between the holder of a share in a company and the holder of all the shares;

Whereas only the extent and not the nature or the essence of his right can vary with the number of shares that a share-holder may possess;

Whereas moreover it is inconceivable in practice that during the existence of a company and the transfers of shares that take place the rights of share-holders in the corporate assets could vary with the number of shares held by each of them;

Whereas these rights must be identical, whether the company's shares are distributed among many holders or are owned by a single holder;

Whereas it will be sufficient to recall in this connection the decisions of the House of Lords above quoted in the cases *Gramaphone Company Ltd.* v. *Stanley* and *Macaura* v. *Northern Assurance Company Ltd.*

C) Whereas, it is true, this same paragraph 11 of Annex II states that the Commission "shall be guided by justice, equity and good faith" and that the Tribunal is equally bound to consider the Standard Oil Company's claim from the point of view of equity, above all since this company has on several occasions made a final appeal to reasons of equity;

Whereas however the entire theory of the Standard Oil Company rests on the establishment of its right of ownership, on January 10, 1920, in the shares of the D. A. P. G. that is, shares involving, together with the right to vote, the control of this company;

Whereas in fact it is obvious that if the Standard Oil Company had been able to rely only on the ownership of share-warrants and debentures on this date, if it had been unable to come forward only as a creditor, even a first creditor, of the D. A. P. G., its claim would have been deprived of all legal basis and devoid of any consideration of equity;

Whereas the sale of shares to which it proceeded in February 1917 in favour of a German national was, according to the Standard Oil Company, a regular and valid sale *ergo omnes;* whereas the Standard Oil Company has not ceased to contend, before the Alien Property Custodian, that in its view the sale preserved this character;

Whereas, although the Tribunal has nevertheless deemed it necessary to set aside this contract of sale, thereby allowing the right of ownership of the Standard Oil Company in the shares on January 10, 1920, to stand, it was only by strict application of the German law, which has remained exceptionally formalistic on this point;

Whereas the Standard Oil Company was able to submit its claim to the Tribunal only by the application of strictly legal considerations;

Whereas therefore it does not seem that the Standard Oil Company, which, in order to be able to take advantage of paragraph 20, was obliged to rely on strictly legal arguments, can be allowed, in order to escape from the interpretation which this paragraph implies and from the application of it made by the Reparation Commission to shareholders in other shipping companies, to rely on mere considerations of equity;

D) Whereas moreover, even if we set aside this argument and rely solely on arguments based on equity, they do not justify granting financial reimbursement to the Standard Oil Company;

Whereas, first of all, the Standard Oil Company cannot, in support of its claim for reimbursement, rely on the arbitral awards rendered in the cases mentioned above;

Whereas, in fact, the damage involved in these cases, for which the foreign shareholders or debenture-holders obtained reparation through international channels, was damage caused by government intervention recognised to be wrongful; whereas thus, in the cases of the Delagoa Bay and El Triunfo companies, the Portuguese and Salvador Governments, in appropriating without compensation the property of these companies by arbitrary measures which affected them alone, had committed acts that might be ranked as overstepping of authority or abuse or [*of?*] law;

Whereas in the present case no such grievance could be or has been brought forward; whereas it was in execution of an international undertaking that the German Government proceeded to the confiscation of the tankers; whereas moreover it has not been claimed that the indemnity paid under this head to the D. A. P. G. by the said Government was comparable to that which in the same circumstances has been granted to other German shipping companies;

Whereas, in application of a generally accepted principle, any person taking up residence or investing capital in a foreign country must assume the concomitant risks and must submit, under reservation of any measures of discrimination against him as a foreigner, to all the laws of that country;

Whereas therefore an Allied or Associated national having invested capital in Germany has no ground for complaint if for this reason he incurs the same treatment as German nationals;

Whereas this principle of equality of treatment, and not of discrimination in favour of Allied and Associated nationals, has moreover been consecrated by the Treaty of Versailles in Articles 276 C and D and 297 J dealing with the treatment to be accorded in Ger-

many to the property and interests of the said nationals after January 10, 1920;

Whereas this same principle seems also to have been followed by the Reparation Commission in the case of laws for the execution of the Dawes Plan;

Whereas in fact several metallurgic and mining companies, indisputably German but of which most or all the shareholders were Allied nationals, having protested to the Reparation Commission against the subjection of their concerns to the mortgage charge represented by the industrial debentures of the Dawes Plan, the Commission merely transmitted their claims to the Trustee for these Debentures, together with the unanimous opinion of its Legal Service (Opinion No. 527 of November 27, 1924); whereas this opinion rejected the claims because all foreign nationals, including Allied and Associated nationals, residing in Germany or possessing property there, must be considered to be subject, on the same footing as German nationals, to the payment of the charges provided for by the laws carrying out the Dawes Plan;

Whereas, in fine, at the time of the confiscation of the tankers of the D. A. P. G., the German Government committed no act of discrimination against this company as compared with other German shipping companies;

Whereas therefore the granting of compensation to the Standard Oil Company cannot be justified, as against these companies, by any consideration of equity;

Whereas such compensation could not in equity be justified as against the other Allied or neutral share-holders in German shipping companies, since the claims for compensation advanced by these share-holders have rightly been rejected by the Reparation Commission;

Whereas it is true that these same share-holders held only a few shares, but whereas it seems that equity would be thwarted *a fortiori* if a share-holder could collect, as the holder of a large number of shares, an indemnity which had been refused to less important share-holders;

FOR THESE REASONS

THE TRIBUNAL

Declares that the Standard Oil Company has not made good its claim to beneficial ownership of any of the tankers in question, under paragraph F of the Agreement of June 7, 1920;

Declares that neither is the Standard Oil Company justified in claiming indemnity under paragraph G of the same Agreement;

Finds, therefore, that the tankers *Niobe*, *Pawnee*, *Hera*, *Loki* and *Wotan*, as well as the proceeds of their operation and the proceeds

of the sale of the tankers *Helios*, *Mannheim* and *Sirius*, shall remain, under Annex III to Part VIII of the Treaty of Versailles, the property of the Allied and Associated Governments represented by the Reparation Commission.

The present award is drawn up in two copies signed by MM. Erik Sjoeborg and Jacques Lyon.

One of these copies is deposited with the General Secretariat of the Reparation Commission at Paris.

The other copy is delivered to the Government of the United States of America, by the intermediary of Mr. Hill, Unofficial Delegate of the said Government to the Reparation Commission.

Done and signed at Paris this fifth day of August, one thousand nine hundred and twenty-six.

ERIK SJOEBORG
JACQUES LYON

[Enclosure 2]

Annex 2953c

Dissenting Opinion in the Case of the Tankers of Standard Oil Company

PARAGRAPH F

I regret that I cannot concur in the decision of my learned colleagues.

I am of the opinion that the Standard Oil Company has made good its claim to beneficial ownership of all of the tankers in question, except the *Riedemann* and that, therefore, under Paragraph F of the Arbitration Agreement of the 7th of June 1920, those tankers should be awarded to it.

In applying Paragraph F of the agreement the point of divergence which separates me from my learned colleagues is not one of law, but of interpretation of the language of the above agreement.

They interpret the Standard Oil Co.'s "claim to beneficial ownership" to mean a claim that its ownership of the shares of the D. A. P. G. vested it with an "estate legal or equitable" in the assets of the D. A. P. G. in the technical sense of that expression as a term of private municipal law.

If such had been the basis of the claim I would have no hesitation in rejecting it. Often as the courts have given effect to the obvious fact that the shareholders are the real parties in interest where the assets of the corporation are in question, they have found ways to do so without classifying the interest as "an estate legal or equitable" in the assets. (See Appendix A at page 15 hereof[16]). Indeed the

[16] *Post*, p. 194.

Courts are so unanimous in holding that a stockholder has no "estate legal or equitable" in the corporate assets, in the technical sense, that, in addition to my other reasons for holding that the claim made was not of that technical character, I should find it difficult to believe that the United States would have advanced or that the Reparation Commission would have supposed that they were basing their claim upon a technical legal proposition which any lawyer could readily have advised them was contrary to the unanimous decisions of the Courts.

The claim of the Standard Oil Co. was simple as to its facts, and, in my opinion, was obvious as to the equity of the appeal for relief which was based on those facts. The simple nature of the claim under Paragraph F has been obscured by what I deem to have been an irrelevant discussion of classification under some of the most technical rules of private municipal law. (Note A.*)

As to the facts claimed they were that the German corporation, the D. A. P. G., in which ownership of the tankers was vested, was organised, owned and controlled by the Standard Oil Co. of New Jersey, an American citizen, and for thirty years had been operated as an integral part of its international commerce; that the total capitalisation of the D. A. P. G. was M.60,000,000 represented by shares, share warrants and debentures as follows: shares M.9,000,000., share warrants, M.21,000,000., debentures M.30,000,000,; that, while only the shares carried voting powers, yet all three classes of these securities represented a substantially identical interest in the property and business of the corporation and participated alike in its earnings; that at the relevant date the Standard Oil Co. owned over 99.91 per cent of the M.30,000,000 of shares and share warrants and over 99.98 per cent of the M.30,000,000 of debentures.

As to the equity of the appeal for relief which was based on these facts, it was that it resulted therefrom that the entire substantial or economic interest in the tankers was vested in an American citizen, and that to take them to indemnify the Allied Powers for Germany's wrong would be in substantial effect to enrich those Powers (and Germany, who would receive a credit) at the sole expense of a citizen of one of their Allies in the War.

The Justice of the above appeal for relief had already been recognised by Great Britain and France (to whom the tankers here in

* NOTE A: For instance, the interest of the shareholders in the corporate assets tho it entitles them to full ownership thereof on dissolution of the corporation is not classified, under the rules of private municipal law, as an "estate in the assets legal or equitable", even at the moment of the dissolution of the corporation when it entitles the shareholders to present possession and full ownership of the assets. Actually and potentially, however, the shareholders' above interest in the assets is nearer to full ownership than most of the interests therein which are classified as "estates legal or equitable". [Note in the original.]

dispute would be allocated, if retained) when, in the early part of the War, Great Britain surrendered the captured D. A. P. G. tanker *Leda* to the Standard Oil Co. on exactly the same claim of facts and on exactly the same equitable appeal, characterised by exactly the same name of "beneficial ownership", and Great Britain and France, on the same grounds, consented to the transfer to the Standard Oil Co. and to the American flag of other D. A. P. G. tankers in foreign ports.

The respondent replies that, in so doing, these Powers yielded to motives of policy and not to rules of law. That is true, for, under existing rules of law, the beneficial owners, however that term be interpreted, are never entitled to present ownership of the property.

Under the rules of law the tankers, having been legally vested in a German corporation, were, by the Treaty, vested in full ownership in the Allied and Associated Powers who ratified the Treaty. This was the clear and absolute legal situation. Therefore in stipulating by the agreement of June 7, 1920 that the tankers would be awarded to the claimant if it established its "beneficial ownership" thereof, the interested Powers were yielding not to rules of law, but to motives of policy which induced them to deal with a friendly Power equitably rather than legally; to yield their strict legal rights in favour of equitable considerations.

But, since the date when the interested Governments, without requiring any arbitration had transferred the *Leda* to the Standard Oil Co. and consented to the transfer to it of the other tankers, a new question had arisen, viz: was the Standard Oil Co. in fact owner, as it claimed, of substantially all of the shares, and if not, what was the extent of its interest.

The validity of the attempted sale in February 1917 of the M. 9,000,000 of voting shares was in question. To decide that and the other questions involved in the agreement of 7 June 1920, the present tribunal was constituted.

We are unanimous in holding that all of the disputed questions of fact must be decided in favor of the claimant.

We are divided, however, in our interpretation of what the parties must be held to have meant by the term "beneficial ownership".

I say "must be held to have meant" by the expression "beneficial ownership" because it is not in itself a term of clear significance; nor has it yet become a term of art. It is not defined nor even referred to in the law dictionaries and digests to which I have had access. It is of modern origin and is mainly in popular use, tho, as I shall show presently, eminent legal authorities have used it to refer not to an "estate legal or equitable" in the technical sense, but to the well-

known attributes and rights of a beneficial and proprietary character in the corporate assets and profits which pertain to the shareholders interest.

We know, and the Reparation Commission knew that the claimant used it in that sense. We are not permitted to say that the Reparation Commission agreed to that meaning, for Sir John Bradbury, their representative in the negotiation of the final terms of the agreement of 7 June 1920, refused to define in advance the meaning of the term, tho he never denied that it meant the foregoing kind of interest nor asserted that it meant an "estate legal or equitable" in the ships, in the technical legal sense.

According to a cablegram of April 29, 1920, from Mr. Boyden to his Government,[17] Sir John, after first characterizing Paragraph F as follows refused to concede in advance that, under Par. G. tankers should be awarded in mathematical proportion to the proved stock ownership. But he expressed the following view on the claim which is interesting and significant.

"Bradbury expressed subject to further reflection the view that if Standard Oil proved ownership of substantially all securities and based claim on theory that under such conditions tankers should be regarded as property United States citizen, even though flew German flag, and even though technical title in German corporation, then very strong case presented and no dangerous precedent established by decision of tribunal to that effect, but Bradbury did not think that tribunal would decide or that Reparation Commission had power now to concede that Standard Oil ownership of one share or 50 per cent of shares or securities entitled Standard Oil to any tankers. Felt such concession by Commission very dangerous though no objections to Standard Oil's arguing point to tribunal, but concession by Commission would make possible claim for exemption or indemnity from Reparation Commission in kind or in money by an Allied or Neutral shareholder in German company or any other German corporation affected by reparation".

And on May 20, 1920, Sir John wrote out his understanding of the claim as follows: "If the Commission rightly understands the contention of the United States Government it is that the vessels in question are substantially the property of United States citizens by the reason of the fact that an American company is the proprietor of practically the whole of the securities of the German Company to which they belong".

Tho unwilling formally to agree on a definition of "beneficial ownership" Sir John clearly understood that the claim was not that the tankers were the property of an American citizen, but that, because of its ownership of all of the corporation's securities the tankers

[17] Not printed.

"should be regarded as" its property; that, by reason of such totality of stock ownership they were, tho not in form, nevertheless "substantially" the property of the claimant. Tho unwilling to agree on a definition of "beneficial ownership" Sir John was ready to accept as the meaning whatever the Tribunal held that the parties must be held to have meant by it. The responsibility of the decision thus would rest on the Tribunal and not on the Reparation Commission.

My colleagues suggest that the proposed form of Par. F "If the Standard Oil Co. makes good its claim to beneficial ownership the tankers shall be awarded to that Company" was amended by Sir John Bradbury by adding after "ownership" the words "of all or any of the tankers" for the purpose of making it clear that he did not concede that ownership of all of the securities should necessarily mean "beneficial ownership".

The answer to this suggestion is that the words added were necessary and were added for another reason, namely, that other parties were claiming some of the tankers, and, if, as in the case of the *Riedemann*, a superior title was proven by these parties, the Reparation [Commission?] could not properly agree to award all of the tankers to the claimant.

But the above argument of my colleagues turns against their view, for it shows that they consider that "beneficial ownership" without the addition of limiting expressions might properly be interpreted in the sense in which I interpret it.

In interpreting "beneficial owner" as synonymous with "proprietor of an estate legal or equitable" I think that my colleagues have exerted a mistaken lawyerlike zeal in endeavouring to bring within the boundaries of familiar legal rules and legal terms the language of an agreement in which the parties disregarded strict legal rules and made the decision depend upon the interpretation of a term of popular rather than of well-defined legal signification.

In so waiving the strict rule of law in favor of equitable considerations, the Reparation Commission, acting for the interested Powers, followed the precedents of the Delagoa Bay Railway case, the Salvador Commercial Co. case and the Alsop case, cited by the claimant in its brief. These were all international arbitrations provoked by diplomatic representations made on behalf of shareholders and security holders damaged by the unjust taking of the corporate assets. Under existing rules of law their interest in the assets was not an estate therein legal or equitable and gave them no right of action. But the interested Powers, by agreements made to meet the particular cases, waived the defenses of the strict rules of law in favor of equity and substantial justice, recognizing that the shareholders and security holders of the corporation were the real parties damaged by

the unjust taking of the corporate property, technical rules of municipal law to the contrary notwithstanding.

By interpreting "beneficial ownership" as synonymous with "ownership of an estate legal or equitable", my colleagues have, I believe, defeated the purpose of the agreement.

Under the strict rules of law, full legal ownership of the tankers was vested first in the German corporation, and then by the Treaty, in the Allied and Associated Powers who ratified the Treaty. Unless these Powers had agreed to waive their rights under existing rules of law no tribunal municipal or international applying existing rules of law could have awarded the tankers to the Standard Oil Co.

It was to meet the alleged inequitable situation created by the law that the parties resorted to an agreement by which the tankers should be awarded, not according to the rules of law, but according to rules formulated by the parties for the particular case. Under no known rules of law is one entitled to present ownership of an object in which his interest is less than full ownership. Neither the proprietors of estates legal or equitable less than ownership nor the proprietors of the entire economic interest, the shareholders are entitled under the rules of existing law to the remedy provided by Paragraph F in favor of the "beneficial owner" of the tankers. In agreeing to award ownership of the tankers on grounds other than complete legal ownership, the parties, for the purpose of doing substantial justice, went outside of the existing rules of the law. Therefore, I believe that, in the absence of clear reasons to the contrary the parties to this international agreement of arbitration ought not to be held to have used the popular expression "beneficial ownership" as synonymous with the technical legal expression "estate legal or equitable", an interest which, in strict law, would no more carry the right to the remedy provided by the agreement than would the economic interest arising from ownership of all of the shares, an interest whose equitable appeal was not as strong as the equitable appeal of ownership of all of the shares and debentures.

If we had no guide to its meaning save the expression itself, we would have to decide that in relation to the assets of a corporation "beneficial ownership" in the first place did not mean ownership; the prefix "beneficial" shows that it means something different from ownership. It must therefore refer to an interest in the assets having attributes of ownership of a beneficial character.

The shareholders interest in the assets of a corporation is of the foregoing character. They are vested with the entire lucrative or economic interest in the corporate assets, and with the following juridical rights, namely, the right to exploit the assets for their benefit and profits through representatives chosen by them, to receive the bene-

fits of such exploitation in the form of declared dividends; to invoke the aid of the Courts (by suing in the Corporation's name) to protect their above interest in the assets from loss or waste in certain cases where their authorized corporate representatives fail or refuse to or are incapable of protecting them, and ultimately, on dissolution and payment of the Company's debts, the right to enter into the full possession and ownership of the assets.

We are not, however, obliged to rely solely on an analysis of the words themselves to determine the meaning of "beneficial ownership". Eminent jurists have used the expression in the foregoing sense.

In his work on *Private Corporations*, 2nd edition, Mr. Morowetz one of the most eminent of our American authorities on corporation law, refers to the stockholders as the "beneficial owners" of the corporate assets.

Mr. Morowetz uses the expression "beneficial owners" in the sense in which the Standard Oil Co. used it to characterise its claim. It is perfectly clear that Mr. Morowetz when he uses the term is not asserting any disputed theory relative to the attributes of stock ownership. That he does not by characterising the interest in which he refers as "beneficial ownership" mean to claim that the stockholders are vested with a present estate in the assets in the technical sense is shown, not only by the context in which he uses the term, but by the fact that, elsewhere in his work, he recognised the limitations on the rights and remedies of stockholders which are laid down in the decisions which have been cited by the counsel of the Reparation Commission. In other words, Mr. Morowetz and the other authorities cited below consider that "beneficial ownership" appropriately describes the underlying economic interest which carries important rights and attributes of a beneficial and proprietary character, though among those rights and attributes is not included a present estate in the assets, in the technical sense of that term.

Mr. Morowetz says: "In equity, the conception of a corporate entity is used merely as a formula for working out the rights and equities of the real parties in interest, i. e. the shareholders. . . . Even in those cases in which only corporate rights and obligations are involved, and the corporation is nominally interested only, as an entity, the courts are constantly obliged to consider that the real persons in interest are the individual shareholders. . . . The fact that the legal title of a corporation to property held by it becomes extinguished by a dissolution, is no reason why the beneficial owners should lose their rights". (Morowetz on *Private Corporation*[*s*], 2nd edition, I, 22, 222, 225, 231, II, 990, 991)

Mr. Morowetz considers it proper therefore, to refer to the stockholders as the "beneficial owners" of the corporate assets not because

he pretends that their interest constitutes an "estate legal or equitable" in the assets (for he concedes that it does not) but because that interest makes the stockholders the real parties in interest in all matters affecting he assets and carries with it attributes of a beneficial and proprietary character which the law recognises and enforces.

In *Lynch* vs. *Turrish* No. 236, Fed. Rep. 656 [*653*] affirmed on appeal by the U. S. Supreme Court, (247 U. S. 221) Mr. Justice Sanborn, now a member of the United States Supreme Court, in giving the opinion of the Court, said that the stockholders were the "beneficial owners" of all of the corporate property. He said:

"It is true that a corporation holds the legal title of and the right to manage, control, convey its property and that a stockholder is without that title and right. But after all, the corporation is nothing but the hand, or tool of the stockholders in which they hold its property for their benefit. They are the equitable beneficial owners of all of its property and it is the mere holder and manager of it for them. . . . So in reality as against its stockholders, a corporation has no, and they have all the beneficial interest in its property. Even substantial increase in the value of its property immediately and proportionately increases the actual value of their stock and every substantial decrease of its value immediately decreases the actual value of the stock."

Mr. Justice Sanborn, in this case, while characterising the stockholder's interest in the assets as "beneficial ownership" conceded at the same time that "a stockholder has no legal title or right to the income, gains, or profits of his corporation until the dividends of that income, or of those gains or profits, have been declared". Furthermore, in the case of *Watson* vs. *Bonfils* (116 Fed. Rep. 157) the same judge (Sanborn) held that where one corporation owned all of the stock and was the sole creditor of another, the two are "existing entities as distinct and separate from their stockholders and creditors as is one individual from another."

Obviously, therefore, Judge Sanborn, like Mr. Morowetz, while recognising the limitations of the stockholders rights which are laid down in the decisions referred to by the counsel of the Reparation Commission, regarded "beneficial ownership" as an appropriate term to describe the stockholders' substantial interest which carried important attributes of a beneficial and proprietary character which the law enforced.

In *Brock* vs. *Poor*, 216 New York 387 (1915) page 401, the Court refers to the stockholders as "the ultimate or equitable owners of its (the corporation's) assets", in the very sentence in which it affirms the principle "that the corporation in respect of corporate property and rights is entirely distinct from the stockholders who are the ultimate or equitable owners of its assets; that even complete ownership

of capital stock does not operate to transfer the title to corporate property and that ownership of capital stock is by no means identical with or equivalent to ownership of corporate property".

In *Flynn* vs. *Brooklyn City R. R. Co.*, 158 N. Y. 493, the same Court in recognizing the right of a stockholder to sue on behalf of all of the stockholders to set aside a fraudulent lease of the corporate assets made by the directors, said at page 504:—

"The stock owned by the plaintiff made him the equitable owner of an undivided fractional part of the entire assets of the Company".

It is evident therefore, that there is no inconsistency between the decisions which designate as "beneficial ownership" the shareholders' interest in the corporate assets and the decisions which hold that the shareholders have no present legal or equitable estate in and to the corporate assets.

If text writers and courts use "beneficial ownership" to refer to the foregoing economic interest and to the attributes of a beneficial or proprietary character which renders the stockholders the real (as distinguished from the technical) parties in interest in matters affecting the corporate assets, this Tribunal ought not to strain to find that the term was used in a technical sense in an international agreement whose purpose was remedial, in that it accorded to the "beneficial owner" rights and remedies not recognized under existing law, that is, the right of the "beneficial owner" to full ownership and the remedy of present possession in full ownership.

If, as I conclude, the expression "beneficial ownership" as applied to the stockholders interest in the assets does not mean that they are vested with an estate legal or equitable therein, then it would be irrelevant whether the Standard Oil Co. did or did not argue that stockholders, in addition to the other attributes of stock ownership, were vested with such an estate. But my colleagues are mistaken, I believe, in assuming that the claimant did so argue. The quotations from the brief, upon which they rely, separated from their context, do not reproduce the claimant's real meaning.

The paragraphs quoted or referred to are 17 [*16?*], 17, 18 and 19 at pages 114, 115 of the claimant's brief. Read together, the basis of the claim of "beneficial ownership" namely the "lucrative or economic interest" is fairly set forth; the legal title of the corporation in the corporate property is fully recognised, and the right of beneficial enjoyment and ultimate possession are the attributes to which especial reference is made. The statement of the brief that the interest which carries the above attributes "reaches the property itself" does not necessarily imply a claim to a present "legal or equitable estate" in and to the property in the technical sense, for it fairly refers to the right of

the stockholder ultimately on dissolution to possess the assets in full ownership.

In paragraph 17, it is fairly conceded that beneficial ownership of the assets is subject to the control and use of the property through the agencies prescribed by the corporate organisation, and the final statement of the paragraph that the shareholders "as the ultimate owners have a distinct and positive right of property which the law recognises and protects" is another way of saying something, which if put in a slightly different form, no one would, I think, deny, namely, that the right of the shareholders, after the dissolution of a corporation and the payment of its debts, to the possession and ultimate ownership of the corporate assets is a distinct and positive right of property which the law recognises and protects.

It is misleading, I think to read the words which are used to characterise the right separately and apart from the entire context which limits and describes the right which is thus characterised.

There is nothing in Paragraph 18 and 19 of the S. O. Co.'s brief inconsistent with the definition of "beneficial ownership" as I have interpreted it.

Paragraph G

Altho the claimant was led to believe, during the negotiations of the Treaty, that its claim would receive equitable consideration under the terms of Para. 20 of Annex II, I am obliged, for the technical reasons set forth by my colleagues, to concur in their interpretation of that paragraph as limited to estates in property legal or equitable in the technical sense of that expression. Paragraph 20 does not therefore afford any equitable relief for the damages suffered by shareholders on account of the inequitable taking of the corporate assets.

I do not, however, concur in the views of my colleagues regarding the equities of the claim for financial reimbursement, but refer to my views on that subject set forth in my above opinion regarding the application of Paragraph F.

Conclusion

For the foregoing reasons I am of the opinion that, by "its claim to beneficial ownership of all or any of the tankers", as used in Paragraph F of the agreement of 7 June, 1920, the High Contracting parties must be held to have meant the Standard Oil Co's claim that it was proprietor of the entire economic and substantial interest in the tankers, arising from its ownership of substantially all of the securities of the corporation in which at the relevant date the legal ownership of the tankers was vested.

Having established its foregoing interest in all of the tankers except the *Riedemann*, I am of the opinion that the claimant is entitled, under the agreement, to an award of the tankers *Niobe*, *Pawnee*, *Hera*, *Loki*, and *Wotan*, and of the proceeds of their operation, and of the proceeds of the sale of the tankers *Helios*, *Mannheim* and *Sirius*.

The present dissenting opinion is drawn in two duplicate originals, each signed by Hugh A. Bayne.

One copy is deposited at the General Secretariat of the Reparation Commission at Paris, and the other copy is delivered to the Government of the United States of America, by the intermediary of Mr. Hill, Unofficial Delegate of the said Government to the Reparation Commission.

Done and signed at Paris, the 5th day of August 1926.

HUGH A. BAYNE

[Appendix A]

In *Ludvigh* vs. *Woolen Co.* 159, Fed. Rep. 796: The Court said:

"For purpose of equity courts will look behind that artificial personality, and, if need be, ignore it altogether."

In *Anthony* vs. *American Glucose Co.* 146 N. Y. 407 (1895), the Court said:

"We have of late refused to be always and utterly trammeled by the logic derived from the corporate existence where it only serves to distort or hide the truth."

In *U. S.* vs. *Milwaukee Co.* 142 Fed. Rep. 247, the Court said:

"When the notice [*notion*] of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of individuals."

Cook, in his work on *Corporations* (6th ed.) par. 663 at page 1983 says:

"The abstractions of the corporate entity should never be allowed to bar out or pervert the real and obvious truth."

"The chief application of this statement of law is in cases of fraud, but there is a line of cases which apply this rule where there is no fraud, and where the owner of the stock is held liable merely because he owns all of the stock of the corporation.

"Thus, it has been held that where a railroad company causes a telegraph company to be incorporated, and subscribes to all its stock, and appoints all its officers, and holds it out as the future owner of a telegraph system which the railroad owns, and then sells that system to some one else, a person contracting with the telegraph company on the faith of the scheme being carried out may hold the railroad company liable on the contract, on the principle of a principal being liable on the contract, of its agent. It has also been held

that where the corporation does business by organising branch corporations, and the stockholders in the latter are disregarded, and the main corporation pays up the stock and manages it without regard to its corporate character, the property of the branch corporation is subject to the debts of the parent company. A corporation organized by a patentee to infringe a patent, which he sold, is estopped the same as he would be to deny its validity. And there are other decisions to practically the effect that the courts will ignore the corporate existence under certain circumstances".

And at page 1986–7 (and see p. 1987)

"Where one corporation is merely a 'dummy' of another corporation, a mortgage on the property of the latter may attach to property of the former, even in priority to a new mortgage on the property of the former."

Citing *Central Trust Co.* vs. *Kneeland* 138 U. S. 414

And at page 1972:

"Where a bankrupt practically owns the entire capital stock of a corporation, the bankruptcy court will consider the corporation as merely an agent of the partnership and will extend its jurisdiction over its property and determine in the bankruptcy proceedings the respective rights of the creditors of both concerns."

The Court said: "The fiction of legal corporate entity cannot be so applied by the partners as to work a fraud on a part of their creditors, or hinder and delay them in the collection of their claims, and thus defeat the provisions of the bankrupt act. The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud." (In re *Rieger* 157 Fed. Rep. 609).

362.115 St 21/432 : Telegram

The Chargé in France (Whitehouse) to the Secretary of State

PARIS, *October 2, 1926—2 p. m.*

[Received October 2—10 : 55 a. m.]

371. [From Hill.] H–152. Department's H–80 [18] received while in Reparation Commission meeting today.

Commission decided to attribute tankers to Great Britain and indicated willingness that that Government should arrange with us for delivery. British delegation believes British Board of Trade will act. I will confirm this. Hill.

WHITEHOUSE

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[18] Not printed.

362.115 St 21/449 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *November 10, 1926—7 p. m.*

286. For Hill. H–92.

1. Upon formal assurances from the Reparation Commission that such action on the part of the United States shall in no sense be construed by that Commission as an admission on the part of this Government of the correctness of the view of the Finance Service that the amount due for the expenses incurred on account of the *Loki* and *Wotan* should not be deducted from the proceeds of the operation of all five tankers, the Government of the United States is prepared to deliver immediately to Great Britain the three tankers, *Pawnee*, *Hera* and *Niobe*.

2. Upon the condition that the *Loki* and the *Wotan* are deemed to be also tendered by the United States for delivery to the Reparation Commission with the offer on the part of the United States that the *Wotan* be held in the custody of the Standard Oil Company, out of commission, as at present, at Baltimore, and the *Loki* in like possession and condition at Hamburg, subject to the order of the Reparation Commission, provided that all the expense thus incurred shall be chargeable to operating proceeds accrued under tanker agreement from operation of all tankers, delivery of the *Pawnee*, *Hera* and *Niobe* is to be made.

3. The Shipping Board is advised by the Standard Oil Company that, with respect to expenditures on the *Loki* and the *Wotan*, the *Loki* has from time to time required extensive repairs in order to keep that vessel in operation. She had her final break-down of machinery in the North Sea in September 1925, at which time the Standard Oil Company recommended that she be re-engined. The Reparation Commission refused to approve the expenditure of $300,000, which repairs could have been made for approximately that amount at that time. She probably would have now been in operation and making a profit had she been re-engined as recommended. The *Wotan* has not been operated since her arrival owing to fundamental defects but she was used for a time as a storage hulk. She was brought here at a heavy expense due to the preparation for the voyage and operating difficulties en route. The expenditures incurred on the *Wotan* since her arrival have been limited to managing fee and the ordinary care of a laid up vessel. In view of the probable delay in obtaining permission of the Reparation Commission and expected early decision of independent tribunal, the Standard Oil Company, while it did consider recommending the sale of the

vessel, felt that it was not worth while to attempt its sale. The tribunal's decision has been delayed many months longer than had been anticipated.

4. It would appear that the British are still in agreement with the view of the Finance Service regarding the nondeduction from the proceeds of operation of expenses incurred on the *Loki* and *Wotan*. You should in any informal conversation on this matter, if you have not already done so, impress clearly the fact that the Government of the United States disagrees definitely with the view of the Finance Service. It appears to be quite unwarranted to make such an interpretation of the tanker agreements.

KELLOGG

362.115 St 21/451 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *November 17, 1926—1 p. m.*
[Received 6:42 p. m.]

430. [From Hill.] H–175.

1. Upon receipt of Department's H–92, November 10, I furnished British [a copy?] and issued a circulated statement contained in paragraphs numbered 1 and 2.

2. At meeting of general secretaries last evening question was raised as to whether Department's paragraph 2 should be taken to mean that Reparation Commission is free to take immediate possession of *Wotan* and *Loki* and to sell them if it sees fit, the question of principle raised by Finance Section remaining wholly reserved.

3. The British understood the paragraph in this sense and on this understanding were willing to accept the proposal contained in the two paragraphs with following reservation: "In taking delivery of the *Hera*, *Niobe* and *Pawnee* and in assenting to the arrangement proposed by the Government of the United States as to the *Loki* and *Wotan* or taking delivery of those two ships or either of them, the Reparation Commission is not to be understood as abandoning or making any admission with reference to the correctness of the view of the Financial Statistics Section above referred to".

4. [Paraphrase.] Second paragraph in the Department's telegram not quite clear to me. Was it Department's intention in tendering *Wotan* and *Loki* and holding them subject to Reparation Commission's order, that they would be delivered only upon payment of expenses incurred to date, or did Department intend to indicate willingness to deliver upon demand without such payment being made?

5. Should we return the ships without conditions we would lose certain securities, in view of the fact that others acknowledge that

this country has a lien on the ships for sums expended upon them and at the same time the Finance Section and the British are of the opinion that we are not entitled to recoup ourselves for sums expended from the sums earned by the other tankers. [End paraphrase.]

6. In discussion Aaron of French delegation suggested that if two vessels were immediately delivered to Reparation Commission for sale United States might be asked to cooperate in sale if it desired. Do not know just how this might be done. His idea however was that this would enable United States to see that best price possible had been obtained. He pointed out that immediate sale would prevent further expenses in respect of these two vessels. He also made suggestion that the proceeds of the sale of the two might be held by Reparation Commission for disposition in accord with settlement of question in dispute. No action was taken by others on Aaron's statements.

7. All of us understand that words "expenses thus incurred" in the Department's second paragraph relate to expenses to be incurred by further retention of vessels and have no bearing on previous expenses. On this understanding there was no objection to stipulation in last sentence of paragraph. Believe could obtain adoption of similar provision with regard to expenses of sale.

8. Upon receipt of Department's instructions will call another meeting of the delegations.

9. British expect to sell other three upon delivery. Hill.

HERRICK

362.115 St 21/451 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *November 24, 1926—noon.*

294. For Hill. H–94. Your H–175, November 17, 1 p. m. In view of numerous questions which have arisen, Department considers it desirable to re-state its position as follows:

1. This Government does not countenance view of Finance Section and declares that it has no lien on *Wotan* and *Loki* because all disbursements on those two vessels are properly chargeable to and have been deducted from proceeds of all five vessels. The provision for a lien was agreed upon only as additional security at a time when large advances became necessary for interim expenses, repairs and possible operating deficits. It was intended to become operative only in the event that the proceeds of operation from all vessels should not be sufficient to cover disbursements on account of all vessels.

2. This Government, in view of the award of the tribunal, must insist upon surrender to Reparation Commission of all five vessels and is prepared to make promptly a substantial payment from net operating fund ascertained as indicated in preceding paragraph and to pay balance as soon as all current accounts of the five vessels shall have been adjusted. *Niobe*, *Hera* and *Pawnee* will be delivered promptly to Great Britain if Reparation Commission so orders, and *Loki* and *Wotan* will be delivered as ordered by the Commission.

3. Surrender and acceptance of all five vessels shall be respectively without prejudice to the contentions or rights of either the Reparation Commission or this Government under the original and supplemental agreements regarding the vessels, provided, however, that the proceeds of the sale of *Wotan* and *Loki* shall be regarded as having been substituted for said vessels.

4. While the disposition to be made of the *Wotan* and *Loki* is a matter entirely within the control of the Reparation Commission, this Government considers that, in view of the existing favorable market conditions, these two vessels should be promptly sold at public sale. While neither this Government nor the managing operator would desire to participate in carrying out the sale of the vessels, this Government would desire to be informed in advance of the date and place thereof.

5. Department desires that this Government's position regarding deduction of expenses from proceeds of operation of all vessels should be clearly and definitely re-stated to interested parties, and that there should be no indication of any departure therefrom.

The foregoing has been agreed upon in conference with Shipping Board and Standard Oil.

KELLOGG

362.115 St 21/454 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Extract]

PARIS, *November 29, 1926—4 p. m.*

[Received 4:03 p. m.]

445. [From Hill.] H–184. Department's H–94.[19]

1st. Have sent Commission letter embodying substance of paragraphs 2, 3 and 4 and also stating, as indicated in the Department's H–80, October 1st,[20] that when in a position to do so my Government will furnish Commission with accounting for tankers. Did not embody statement contained in paragraph 1 of Department's telegram, since our position has already been made clear and since

[19] *Supra.*
[20] Not printed.

Legal Service has unanimously decided that we have right to be reimbursed expenses properly incurred in management of fleet of tankers out of earnings of fleet taken as a whole.

. . . . . .

Hill
HERRICK

362.115 St 21/456 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *December 3, 1926—3 p. m.*
[Received 11:50 p. m.]

457. [From Hill.] H–188. My H–184, November 29.

1. As result of meeting of the general secretaries authorized at the last meeting of Reparation Commission have received today letter, dated December 2, from Secretary General informing me that: (*a*) Commission accepts the conditions with respect surrender five tankers indicated in my letter of November 26 and is in accord with the understanding of my Government on this subject; (*b*) Commission further accepts offer of the United States "to make at an early date a substantial payment from the net operating fund remaining after deducting the expenses incurred in respect of all the tankers" which will be placed in a suspense account until its final destination; (*c*) "Reparation Commission has authorized the British Government to take delivery of the steamers on its behalf and also to give discharge therefor"; (*d*) Commission is requesting British to advise us in advance of place and date of sale.

2. Believe statement in paragraph (*c*) gives Shipping Board sufficient authority to arrange details of delivery and surrender of vessels to the British Board of Trade and take release from British Government on behalf of the Commission without having further recourse to Commission.

3. As soon as information received will advise Department of the manner in which payment referred to in paragraph (*b*) should be made. Hill.

HERRICK

362.115 St 21/457 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *December 4, 1926—8 p. m.*
[Received December 5—10:15 a. m.]

461. [From Hill.] H–192. Department's H–100.[21]

1st. Commission today adopted opinion Legal Service that we have a right to be reimbursed expenses properly incurred in management

[21] Not printed.

of fleet of tankers out of earnings of fleet taken as a whole. It also approved retroactively letter of Secretary General of December 2 communicated in my H–188.[22]

2. Since British now fully authorized to act for Commission in taking delivery and giving discharge, delivery can immediately be made to British without further recourse to Commission being necessary.

3. Understand Lord Inchcape will act in sale which British anxious to have [at] earliest moment. We will be duly informed of date and conditions of sale which will be by tender and not at public auction.

4. Regarding immediate payment substantial part earnings Secretary General requests this be made to account "D" of Reparation Commission at the National City Bank of New York. He further requests advice as to date of payment, amount and by whom effected.

Hill
HERRICK

362.115 St 21/469 : Telegram

The Acting Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *December 20, 1926—7 p. m.*

337. For Hill. H–110. Your H–200, December 17, 1926, and Department's 330 of December 18, 6 p. m.[23]

Department advised that Standard Oil made payment of $400,000 December 20 to National City Bank account Reparation Commission.

GREW

POLICY OF THE DEPARTMENT OF STATE REGARDING AMERICAN BANKERS' LOANS TO GERMAN STATES AND MUNICIPALITIES[24]

862.51/2143 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

[Paraphrase]

WASHINGTON, *February 8, 1926—7 p. m.*

6. Reference your reports on German borrowings in this country.

1. Letter dated January 4 from Dr. Schacht, President of the Reichsbank, to Governor Strong of the Federal Reserve Bank at New York states that Council for Foreign Credits examines requests with greatest care, that material restriction has been made in amount requested, and that only $161,000,000 had been authorized of the $218,-

[22] *Supra.*
[23] Neither printed.
[24] Continued from *Foreign Relations*, 1925, vol. II, pp. 172–187.

000,000 requested. Of the amount authorized only $19,000,000 had not yet been floated.

2. According to information received by the Department the amount of German loans floated in this country in 1924 was $15,000,000 and the amount in 1925 was $226,000,000, of which about $131,000,000 was to states and municipalities. Practically all, if not all, of the latter loans were apparently submitted to the German Council.

3. Department wishes you to telegraph your comments on any matters pertinent to these loans, particularly with reference to extent of control which you think is being exercised and will probably be exercised.

KELLOGG

862.51/2195 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, *February 12, 1926—noon.*

[Received 5 p. m.]

23. Your telegram No. 6, February 8, paragraph 2: I believe figures you give for long-term loans made in 1925 are correct for all practical purposes. Your paragraph 3: In view of widespread pronouncements by Dr. Schacht when he returned from the United States (see my despatch 511, November 24[25]), both the German Government and German industrial and financial circles generally then came to realize that there was real need for stopping the scramble of cities and states for loans, and soon the impression was created throughout the Reich that German public corporations must for the time being at least desist from their efforts to borrow abroad. Since then, therefore, the Advisory Board has received but few applications. I am as yet, however, unconvinced that considering internal political conditions and inherent constitutional difficulties described previously it will be possible to adhere to this new policy definitely. I fear that many public corporations in Germany have by no means relinquished their hopes of profiting at some opportune future time at the expense of foreigners, though Schacht himself, I believe, is convinced that to revert to former comparatively free policy of foreign borrowing by public corporations is absolute folly. Estimates of German private and public long-term loans floated abroad in 1925 are set by the semiofficial Reichkreditag Bank at 951 million marks in the United States, 122 million in Great Britain, 153 in the Netherlands, 69 million in Switzerland, and 25 million in Sweden.

[25] *Foreign Relations*, 1925, vol. II, p. 187.

Schacht stated recently in speech that Germany's total foreign indebtedness was between 3,000 million marks and 3,500 million marks, but this indebtedness is placed by the *Frankfurter Zeitung* at 6,000 million marks, half of it being floating debt.

SCHURMAN

862.51/2220 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

BERLIN, *March 5, 1926—7 p. m.*
[Received 9:30 p. m.]

36. From Gilbert.[26] As you will have noticed from my confidential telegram to Governor Strong,[27] I have been devoting considerable time and effort since my return to question of German borrowings abroad and have had satisfactory discussions with the new Finance Minister and with the Reichsbank. Am not yet satisfied however that the Beratungsstelle is exercising an effective control over borrowings of states and municipalities. To some extent this is due to defects in the form of organization which make it difficult for it to resist political pressure. Hope that situation can be corrected but pending further developments I do not suggest any change in the Department's letter about German loans in American market.[28]

For your confidential information. Believe special care should be taken regarding proposed loans to Prussian State and Reichspost in view of possible difficulties under article 248 of the Treaty of Versailles.[29]

SCHURMAN

862.51 P 95/–

Harris, Forbes & Company to the Secretary of State

NEW YORK, *September 1, 1926.*
[Received September 2.]

SIR: We beg to advise you that we and our associates are considering the purchase and offer to the public of $20,000,000 principal amount, 6½% Sinking Fund Gold Bonds, due in 1951, of the Free State of Prussia, of the German Reich.

These Bonds will be issued by the State upon approval by the Beratungsstelle (Council of Foreign Loans) of the Ministry of Finance of the German Reich. We are advised that the proceeds of the pro-

[26] S. Parker Gilbert, agent general for reparation payments.
[27] Not printed.
[28] See letter to Harris, Forbes & Co., Nov. 21, 1925, *Foreign Relations*, 1925, vol. II, p. 186.
[29] Malloy, *Treaties*, 1910–1923, vol. III, pp. 3329, 3439.

posed issue of Bonds will be expended on the development of the electric power properties of the State and to finance the development and improvement of harbors, all of which should increase the value and earning power of the State property.

Our negotiations for the purchase of the bonds have reached a point where it is necessary to indicate definitely our position in the matter and accordingly we trust that the Department will find no objection to the flotation of this proposed loan in the American market. We shall be greatly obliged if you will so advise us immediately, telephoning your advice at our expense.

We are [etc.] HARRIS, FORBES & COMPANY

862.51 P 95/–

The Acting Secretary of State to Harris, Forbes & Company

WASHINGTON, *September 2, 1926.*

SIRS: I beg to acknowledge the receipt of your letter of September 1, 1926, regarding your interest in a proposed loan of $20,000,000 to the German State of Prussia, for the purposes and under the terms set forth therein.

In this connection I desire to refer to the Department's letter to you of November 21, 1925,[30] regarding a loan to the City of Duisberg and to state that the Department's views with respect to German financing remain as set forth in that letter.

In addition to the considerations pointed out in that letter, however, the Department believes that, in view of the fact that Prussia is one of the constituent States of the German Empire, you should give careful consideration to the provision of Article 248 of the Treaty of Versailles under which "a first charge upon all the assets and revenues of the German Empire and its constituent States" is created in favor of reparation and other treaty payments, subject "to such exceptions as the Reparation Commission may approve".

While, as indicated in the Department's letter of November 21, 1925, the considerations referred to above 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 again calling these 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.] JOSEPH C. GREW

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[30] *Foreign Relations*, 1925, vol. II, p. 186.

OBJECTION BY THE DEPARTMENT OF STATE TO PROPOSED LOAN BY LEE, HIGGINSON & COMPANY TO THE GERMAN POTASH SYNDICATE

862.51 D 481/–

Memorandum by the Economic Adviser, Department of State (Young)

[WASHINGTON,] *November 23, 1925.*

PROPOSED POTASH LOAN

(1) Lee, Higginson and Company have consulted the Department regarding a loan to the German "Kalisyndikat", the amount of which would be $50,000,000 authorized and $25,000,000 immediately to be issued. The purchase of the loan would be to pay off $20,000,000 of indebtedness (in Germany, Switzerland and elsewhere), leaving about $3,000,000 for "current construction". It is stated further that the Syndicate expects an increase in demand for potash which will necessitate an improvement of the plants.

(2) The potash syndicate was organized under German legislation dating back at least to 1910, which vested the exclusive sale of potash at home and abroad in a syndicate composed of all producing firms. The syndicate is controlled by a Government commission which "has the power to fix prices, both domestic and export. It is understood, however, that the actual price fixing is not done by the Kalirat but by the producers themselves." (Report April 14, 1925, from American Consul at Bremen.[31]) The report of October 7, 1924, from a Trade Commissioner of the Department of Commerce enclosed with report No. 64, August 22, 1924, from the American Embassy at Berlin,[31] states on page 10 that "prices are fixed with reference to the production costs and profits of the least efficient small producers".

It appears that each potash producer is assigned its "quota" of production.

(3) In the summer of 1924 the Department received reports of a Franco-German potash combination for the purpose of regulating sales in the United States. Although it proved difficult to get reliable information and impossible to procure a copy of the agreement, an examination of the files leaves no doubt that such an agreement was made. It appears that the agreement allows to the Germans 62.5% and to the French 37.5% of the American market over a three-year period from May, 1924.

On receiving reports concerning this agreement, the Department, on January 30, 1925, asked the comment of the Departments of Com-

[31] Not printed.

merce and Agriculture.[37] The former Department did not formally reply, but a letter dated February 6, 1925, from the "Liaison Officer" [37] stated that prices had not advanced nor declined since the agreement, but that "There is a general feeling that with the world's supply so closely held we may expect to see an increase in the price of potash at some time in the future."

The letter of the Acting Secretary of Agriculture dated February 17, 1925,[37] stated that while the combination would probably result in higher prices than would otherwise exist, the American farmer would not be greatly burdened, since potash is only one element in fabricated fertilizers, and that higher prices would tend to stimulate domestic production of potash and tend to make the United States less dependent on foreign sources.

(4) A further Franco-German agreement appears to have been made last May. The Consul General at Paris telegraphed on May 7, 1925,[37] that this agreement "assures a durable fusion of interests for the future and regulates in particular all export prices". Information concerning these agreements is, however, not very satisfactory, not withstanding the fact that the Department has issued several instructions to different diplomatic and consular missions calling for investigation. The interested producers seem unwilling to disclose much concerning agreements.

(5) It is alleged that prices of potash are now lower than before the war, and that the syndicate will keep them low in order to broaden consumption. The determination of price, however, is in the hands of the foreign monopoly, and the American Consul General at Berlin stated in despatch No. 1861 of November 7, 1924,[37] that "There are very strong indications that both the French and the German syndicates will advance prices as rapidly as they believe the market can stand".

The draft prospectus of the loan transmitted by Lee, Higginson and Company [37] states that the Franco-German agreement "provides for the division of the whole world into sales districts".

(6) About a year ago certain credits, about $6,000,000, were extended to the Potash Syndicate by the Chase National Bank and the International Acceptance Corporation. The American Consul General at Frankfort reported (No. 668, June 4, 1925 [37]) that he had seen certain of the papers relating to these advances and added:

"These papers contained no provision that the loan should not be used for purposes inimical to the United States or its citizens, or American industries. Such a clause might well have been inserted by the Bank group."

[37] Not printed.

RECOMMENDATION

The views of the Department of Commerce have already been informally asked with regard to this loan. It is suggested that the attached letter [38] be sent to the Department of Commerce.

In view of the position of the Department in regard to the coffee loan,[39] it seems doubtful, pending the views of the Department of Commerce, whether this Department properly can refrain from objecting to this loan. The principal question seems to be whether it would be practical to utilize the desire of the Potash Syndicate to procure this loan in order to get assurances that the Syndicate will not take action by virtue of its monopoly that would adversely affect American consumers.

A. N. Y[OUNG]

862.51 D 481/–

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

[WASHINGTON,] *November 28, 1925.*

MY DEAR MR. SECRETARY: With reference to your consideration of the proposed loan of $25,000,000 to the German Potash Syndicate, of which I spoke to you some days ago, I am enclosing a copy of the advance prospectus which was received from Lee, Higginson and Company.[40]

It has occurred to me that the desire of the German syndicate to obtain a loan might perhaps offer occasion for an inquiry as to what assurances they can give against restriction of production or taking of other measures that might raise the price of potash marketed in the United States. I shall be glad to receive such comment and suggestions in the matter as you may care to make.

I am [etc.] FRANK B. KELLOGG

862.51 D 481/4

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

WASHINGTON, *November 28, 1925.*

MY DEAR MR. SECRETARY: I am greatly obliged for your letter of the 28th instant in reference to the German Potash Syndicate. I agree that an inquiry on the lines that you suggest would be useful. I have the feeling that we should not by any manner or means give any present encouragement to this loan.

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[38] See letter to the Secretary of Commerce, November 28, *infra*.

[39] See *Foreign Relations*, 1925, vol. I, pp. 533 ff.

[40] Not printed.

I notice in the prospectus particulars that there occur the following expressions:

"The Potash Syndicate was organized as a 'legal entity' under a law of the Reich."
"The members of the Syndicate, producers and manufacturers, are obliged to place all their products at the disposal of the Syndicate for sale. The law also requires that all imports of potash and potash products must be handled by the Potash Syndicate."
"The German Potash Syndicate has made an agreement with the French organization for the Alsatian potash mines, which agreement has been signed by the French State. This agreement reserves for the German Potash Syndicate the exclusive supplying of the German market, and as far as Alsace is concerned, the exclusive supplying of the French market, and provides for the division of the whole world into sales districts."
"Besides the Potash Syndicate, the Reich Potash Council has certain powers in the management of the potash industry."
"The Reich Potash Council is a legally constituted body of officials. . . . It determines the price of potash in Germany. . . . The resolutions of the Reich Potash Council can, of course, be repealed by the Ministry of Labour for the Reich, should there be a danger that they would imperil the prosperity of the country."

From all the above it is obvious that this is a governmental monopoly of the most vicious order, and that the German Government takes the precaution to maintain public control of the prices at which it may sell its products in Germany and apparently gives it full liberty to milk the rest of the world.

Yours faithfully,

HERBERT HOOVER

862.51 D 481/1

The Secretary of State to Lee, Higginson & Company

WASHINGTON, *November 30, 1925.*

SIRS: I beg to refer to your letters of November 5 and November 25, 1925,[41] concerning your interest in a proposed loan to the German Potash Syndicate, of which it is proposed to issue $26,000,000 at the present time in the United States and additional amounts, up to a total of $40,000,000 and £2,000,000, in Great Britain, Holland, Sweden and Switzerland.

The Department notes the following statements in the draft prospectus which accompanied your letter of November 5, 1925:

"The Potash Syndicate was organized as a 'legal entity' under a law of the Reich. . . .
"The members of the Syndicate (producers and manufacturers) are obliged to place all their products at the disposal of the Syndicate for sale. . . .

[41] Neither printed.

"The German Potash Syndicate has made an agreement . . . with the French organization for the Alsatian potash mines, which agreement has been signed by the French State. This agreement reserves for the German Potash Syndicate the exclusive supplying of the German market, and as far as Alsace is concerned, the exclusive supplying of the French market and provides for the division of the whole world into sales districts. . . .

"Besides the potash syndicate, the Reich Potash Council has certain powers in the management of the potash industry. . . .

"The Reich Potash Council is a legally constituted body of officials. . . . It determines the price of potash in Germany. . . . The resolutions of the Reich Potash Council can, of course, be repealed by the Ministry of Labour for the Reich, should there be a danger that they would imperil the prosperity of the country."

It appears from the foregoing that the Syndicate in question is monopolistic in nature and that an agreement has been entered into which extends to the sale of potash in the United States. It is further noted that, while the German Government appears to maintain a control with respect to the prices that might be charged in Germany by the Syndicate, that organization is free to control the prices at which it markets its goods in the United States.

In these circumstances, this Department, in connection with its consideration of the matter, has to inquire what assurances the Potash Syndicate is prepared to give against restriction of production or the taking of other measures with a view to regulating the price of potash marketed in the United States.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

862.51 D 481/3

Lee, Higginson & Company to the Assistant Secretary of State (Harrison)

NEW YORK, *December 2, 1925.*
[Received December 3.]

SIR: On November 5th, 1925, we informed the Department of State [42] that we had been asked to make a loan to the Potash Syndicate of Germany, and forwarded to you at that time such data as we had at hand. At later dates, we furnished you with additional information concerning this business.

We wish to acknowledge receipt of your letter of November 30th, 1925, asking for further information.

[42] Letter not printed.

As the Potash Syndicate has felt that it is inadvisable to delay longer the matter of the loan and as we are advised that European bankers have determined to proceed forthwith, we wish to withdraw our request for Departmental comment.

Respectfully yours,

LEE, HIGGINSON & Co.

862.51 D 481/6

Memorandum by the Secretary of State

[WASHINGTON,] *January 22, 1926.*

Mr. E. K. Howe, of the Potash Importing Corporation of America, came in at the suggestion of Mr. Hoover and explained to me that he handled the potash sold by the Potash Syndicate and sold it to the manufacturers; that he thought if loans could be raised in this country, he could use that influence to keep down the price of potash. I asked him if he meant by that that if we would not object to loans they could make a bargain with the Potash Syndicate that they would not charge more than a certain price. He said that if he did it, he would do it entirely separate from the Government; that he was interested in keeping down the price though he did not think the manufacturers were particularly interested. I suggested to him that I thought the farmers were; that the attitude of this Government in regard to such monopolies was that we did not in any case fix prices, limit production or control by governing the prices or production in any way; that it was a policy with us; that we had adopted the policy of requesting the bankers to notify the State Department in order that the Department might, if it desired, make any suggestions as to whether there was objection to the loans; that I was satisfied that if we had not done this, we would not have been able to negotiate our foreign debts and he admitted that that was true and that it was wise. Mr. Howe did not pretend to defend the rubber monopoly [43] or others but said in this case they had always controlled the price by the Governments and he thought it was better to loan them money and in that way get a lower price. I told him that we could not become parties in any way to any agreement as to prices by any foreign monopoly; that if we withdrew our objection to the potash loan, we would have to do it to other monopolistic loans and there would be public agitation injurious not only to the bankers but severe criticism of the Department and quite likely legislation in Congress to control such loans; that the potash matter had been settled by Mr. Hoover, Mr. Mellon [44] and myself in con-

[43] See *Foreign Relations*, 1925, vol. II, pp. 245 ff.

[44] Andrew W. Mellon, Secretary of the Treasury.

sultation with the President and I could not give him any encouragement that it could be changed. The only possible thing that might be done would be that when we collected all our debts, we might reexamine the question as to whether we would request the bankers to submit loans or have anything to do with them.

Mr. Howe left with the full understanding with me that at present this would not be changed.

F. B. K[ELLOGG]

862.51 D 481/8

Memorandum by the Assistant Secretary of State (Harrison) of a Conversation With Messrs. Gray and Simpson of J. Henry Schroder & Co.

[WASHINGTON,] *February 26, 1926.*

Mr. Gray, who alone spoke during the interview, stated that he had called for the purpose of a little informal chat with regard to the possibility of bringing out in this country the remaining 35 million dollars of the potash loan, and referred to Mr. Simpson's conversation with me of yesterday.[44a]

Mr. Gray stated that he had received a letter from Lee, Higginson and Company to be presented to the Department in response to the Department's letter of November 30, 1925, but that subsequent to Mr. Simpson's conversation with me and his talks with the Department of Commerce, he had thought it preferable not to present the letter but rather to discuss the matter further in an informal manner. He made it clear that he did not wish to present the letter unless there was some certainty that it would elicit a final and satisfactory response. In other words, he did not wish to present a letter and have us turn it down by reason of some objection that might be raised in other quarters. His desire was, through informal conversations, to reach a formula which might be acceptable to all the interested Departments of the Government.

Mr. Gray explained that while Lee, Higginson and Baron Schroder, of London, were quite prepared and ready to bring out the remaining 35 million dollars, both Baron Schroder and the London branch of Lee, Higginson and Company were anxious to have the business done in the United States, as they were anxious to interest American capital, and they thought that it would be to the best interests of all concerned. As pointed out in the memorandum,[45] he felt strongly that as a practicable matter it would be far more advantageous in the last analysis for the American purchasers to have the American

[44a] Memorandum of conversation of February 25, not printed (file No. 862.51 D 481/27).

[45] Memorandum handed to the Secretary of Commerce by Mr. Simpson, a copy of which was also given to the Assistant Secretary of State on February 25; not printed.

bankers interested in this financing. If any control could be exercised over price it certainly could be done in that way if at all.

Mr. Gray said that he thought that they had been successful in establishing in a satisfactory manner the fact that this was not a Government controlled monopoly. For his present purposes, however, he did not wish to argue this specific point. He did feel, however, that he had made it clear that the purpose of the Syndicate was to keep down prices. They wanted to increase their sales in the United States. To that end they wished to have the necessary funds to improve their facilities for production, and to increase their sales they had to keep down the price. In other words, he argued that if this was a monopoly it was a good monopoly. It was not a bad monopoly such as the rubber and coffee monopolies.

In order to facilitate his present purposes, he wished to hand me, and did so, a draft of a paragraph to be incorporated, after confirmation by the Potash Syndicate, in a letter to be written by Lee, Higginson and Company of Boston to the Department. He hoped that I would give this my consideration and that I would not hesitate to blue pencil this suggestion.

I told Mr. Gray that I would be glad to consider his suggestion, and that I understood that his present proposal amounted to this: That Lee, Higginson wished to make a reply to the Department's inquiry of November 30; that he felt that he could get certain assurances from the Potash Syndicate, and that he was now in an informal manner endeavoring to obtain some indication of what the Department would consider as a satisfactory form of assurance in response to the questions raised in the Department's letter.

Mr. Gray stated that he expected to see Mr. Hoover again tomorrow (Saturday), and that he would be at the Mayflower and would be glad to come to the Department at any time for further consultation if I desired to see him.

L[ELAND] H[ARRISON]

[Enclosure]

Draft of Paragraph To Be Included in Proposed Letter From Lee, Higginson & Company to the Department of State

February 26, 1926.

Lee, Higginson and Company are prepared to incorporate the following statement in a letter to the Department in case the potash loan matter could be reconsidered:

"It is the purpose of the Potash Syndicate to utilize the proceeds of this loan, after paying off floating indebtedness, in developing and improving the physical properties of its members in order to increase and cheapen production. It is not the intention of the Potash Syndi-

cate to restrict production or raise prices to the detriment of American consumers. This is of course not to be construed as a specific price guarantee, which it doubtless will be agreed no business organization could properly give. However, this is to be considered as a formal communication by the Potash Syndicate to its bankers setting forth the Syndicate's intention and policy."

862.51 D 481/29

Memorandum by the Assistant Secretary of State (Harrison)

[WASHINGTON,] *March 23, 1926.*

The Secretary handed me back the attached papers this afternoon and informed me that this matter of the potash loan had been discussed with the President and Mr. Mellon (Mr. Hoover being absent), at Cabinet this morning. In the circumstances, it was decided that our policy should remain unchanged.

By direction of the Secretary, I telephoned Mr. Jerome D. Greene, of Lee, Higginson and Company, that our policy remains unchanged. Mr. Greene stated that he regretted that this was so.

All the papers may now go to IB for indexing and file.

L[ELAND] H[ARRISON]

GREAT BRITAIN

CLAIMS OF AMERICAN CITIZENS AGAINST GREAT BRITAIN ARISING OUT OF THE WAR, 1914–1918[1]

441.11 W 892/7 : Telegram

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

[Paraphrase]

LONDON, *November 3, 1925—4 p. m.*

[Received November 3—3:45 p. m.]

344. Chamberlain[2] requested me to see him this noon. He was in a highly emotional and excited condition because Howard[3] had intimated that the Department soon intended to ask payment for the claims due to the blockade precedent to our entering the war. In such event he despaired of maintaining friendly relations between the two countries. I must realize that the extremely burdensome debt settlement of Great Britain was considered morally unjust by many here. It was almost unbelievable that they should be confronted in the present situation by a new claim. He reminded me that if our claims were recognized, all neutral powers would feel the door was open to similar claims. Although this would be serious, he considered the real danger was the fact that the whole matter of British naval law during the war would be involved in a discussion of the claims. How serious a matter that might prove was difficult to emphasize. He added that they had been led to believe by the attitude of President Wilson at Paris that the whole subject would not be disturbed.

I told him the Department had not instructed me regarding such a move. In a brief discussion of the debt situation I mentioned that we also had to consider public opinion, that if just claims existed someone should meet them.

I do not hesitate to state, however, that I fully agree with the Foreign Minister's estimate of the result, if the British people, seven years after the war and in their present strained and unhappy mood,

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[1] See report of the Secretary of State to President Wilson, Mar. 3, 1921, *Foreign Relations*, 1920, vol. II, p. 646.

[2] Sir Austen Chamberlain, British Secretary of State for Foreign Affairs.

[3] Sir Esme Howard, British Ambassador in the United States.

are forced to consider a new group of debts originating in at least a partial condemnation of their wartime naval conduct. It will produce a wave of bitterness and anger against us whose duration and effect will be difficult to measure.

HOUGHTON

441.11 W 892/8

Memorandum by the Secretary of State

[WASHINGTON,] *November 4, 1925.*

The British Ambassador called on me this afternoon and read me a note from Chamberlain which he did not leave with me but which he is going to discuss with me at some future time when I send for him. He wanted to present the note to the President. I told him there was no objection but that he had better present it to me first and he said that he intended to of course. The note was in substance a protest against the United States presenting the claims growing out of the war against the British Government along the lines of Houghton's telegram No. 344, dated November 3, 4 P. M. It was a little more elaborate but seemed to strike the Secretary of State for Foreign Affairs of Great Britain as an entirely new thing, something that had never been heard of or thought of before. I told him that I did not have time to discuss it with him this afternoon nor the information on which to base a discussion; that in a general way I had presented some claims while I was Ambassador and I described to him the Standard Oil claim for destruction of oil wells in Rumania [4] and a claim which I think was for the destruction of cotton in a ship taken by the British Government and run on the rocks in Northern Scotland, which the British never acknowledged and said there was no question about the claim but insisted that the Statute of Limitations had run and I told him that as the British Government had put the proof [on] consignors or consignees where they were [*sic*], we thought they ought to pay the balance, as there was no question whatever about the liability. He seemed to think that these were all claims growing out of the British blockade. I told him I had no knowledge personally of that. There was a large number of claims here by American citizens and corporations against the British Government arising during the War and some claims by British nationals or the British Government against the United States but I had not received a survey or analysis of these claims; that the Solicitor's Office was making a survey of them with a view of getting them into classes so that we could see what the nature of the claims was and the amounts. I told him it was impossible, of course, for

[4] See pp. 308 ff.

me to examine every claim but if they could be arranged in classes so I could know under what claim of right they arose, I could give some opinion about it; that these claims had been presented and undoubtedly many of them had been the subject of communication heretofore between the two Governments. I told him that when Sir Cecil Hurst was here this Summer, Mr. Hyde[5] came to me and said that Sir Cecil had suggested to him the discussion of the subject of an appointment of a Joint Commission; that I would have to look up the memoranda to refresh my memory but, as I recollect, he asked me if I had any objection to his talking with Sir Cecil Hurst. I told him that I had not. I did not understand, of course, that Sir Cecil spoke for his Government authoritatively but simply informally to Mr. Hyde and that Mr. Hyde spoke the same way and the proposition, as I understood it from Sir Cecil Hurst, was that each government should appoint one or two commissioners to get together and consider the claims and allow such claims as they thought should be paid. I told him that I had suggested to Mr. Hyde that we would have no objection to that proceeding. If the claims are not agreed on by the Commission, they could be disposed of by a third arbitrator to be called in. The Ambassador said "Well, then, there is no rush about this. There is no immediate intention of presenting the claims". I said "No, not until we have examined them". He said that he was going away for a week and I told him that he need not worry about the claims being presented in his absence and that I would discuss the matter with him before doing anything at all. I told him I did not think there was any occasion for getting excited about it.

441.11 W 892/10

Memorandum by the Assistant Secretary of State (Olds)

[WASHINGTON,] *November 24, 1925.*

The British Ambassador came in [today] to discuss the pending legislation in Mexico. . . .

As the Ambassador arose to go he mentioned casually the subject of the blockade claims. He said he hoped that his telegraphing London on that subject after his informal conversation with me had caused no complications or embarrassments. I assured him that on the contrary it seemed to us in every way desirable to have this subject considered and all risk of any misunderstanding eliminated as soon as possible. He went on to say that the matter had come to his attention some time before his conversation with me, and that he had been on the point of talking to the Secretary about it. My

[5] Charles Cheney Hyde, Solicitor of the Department of State, Feb. 6, 1923–June 30, 1925.

mention of the claims had brought the subject again forcibly to his mind and he had accordingly cabled London. Proceeding, he said that naturally it would be very difficult indeed for them to get the British public to understand why the United States should have any claims growing out of the blockade, since we had afterwards come into the war with England and participated in the maintenance of the blockade on a more extensive scale than before. The Ambassador also said that the British had been led to believe that the blockade claims would be dropped. The subject had been broached in Paris by President Wilson who first stated definitely that the claims would be presented against England. Later, according to the Ambassador, President Wilson intimated that the claims would be dropped. I pointed out that so far as I had been advised the State Department had never had any other intention than that of presenting the blockade claims and said I was sure that the course of action between the two Governments had always been based upon that assumption. I referred to Sir Cecil Hurst's conversation with Mr. Hyde last spring to the effect that the British Government itself had, by direct negotiation with the claimants, dealt with some of the claims, and to the existence of some notes which had passed referring to such claims. The Ambassador said that he was quite certain Sir Cecil Hurst in talking with Mr. Hyde never had in mind blockade claims, but was referring only to general claims. I then asked the Ambassador what he thought about the suggestion made by Sir Cecil for referring all claims between the two Governments to a joint commission. He agreed that the principle was sound, but he refrained from expressing any opinion as to whether the blockade claims should be dealt with in that way or in any other way.

I inquired whether there had been any further developments since he had read Mr. Kellogg the note from his Government, and asked whether any note had been delivered to the President. He replied that there never had been any idea of delivering a note; he was simply directed to read over textually a telegram which he had received. He did not say whether he had read it to the President.

441.11 W 892/18

Memorandum by the Secretary of State

[WASHINGTON,] *February 4, 1926.*

The British Ambassador called today and left an *aide memoire* which is attached.[6] He explained that what he meant was that we would first take up the inter-governmental claims. I suggested to him that all claims ought to be taken up. He thought this might be

[6] *Infra.*

embarrassing to the Government to appoint commissioners to negotiate the settlement of all claims but would be willing to do it first as to inter-departmental claims.

It seems to me that we should insist that all claims be taken up by the joint commission or representatives to examine them and, if possible, to obtain an agreement to arbitrate any of those where the two representatives do not agree.

I said that I did not know how many claims the Government of the United States had against Great Britain or Great Britain against the United States but that there were a large number of private claims by citizens which necessarily the Government must present; that about many of these claims there could be no question. The Ambassador answered in the affirmative saying that some of the claims were for properties taken by the prize courts and which had not been paid for and undoubtedly should be. I told him that many of the claims filed were in the form of letters without stating the amount or circumstances or details sufficient to present; that it seemed to me the only possible way was for experienced men to sit down and take them up one by one and see if some adjustment could not be made.

The Department should make some reply to this *aide memoire*. I do not remember the exact terms of the reply in relation to the governmental claims referred to.

I suggest that this would be an opportune time to remind the British Ambassador that we have never had a reply to the various notes about the Romano-Americana Oil Company in Rumania.[7]

441.11 W 892/19

The British Embassy to the Department of State

AIDE-MÉMOIRE

On the 27th October last, Captain McNamee, United States Naval Attaché in London addressed a letter, copy of which is attached, to Sir Oswyn Murray of His Majesty's Admiralty,[8] stating that he had been directed to inform the latter that, after full consideration, the Naval Department of the United States Government had reached the conclusion that satisfactory settlement of all claims and demands in law and equity arising out of the operation of naval forces of the United States and Great Britain during the period from April 6th, 1917, to March 3rd, 1921, remaining unsettled may be effected by correspondence. His Majesty's Ambassador at Washington is now

[7] See pp. 308 ff.
[8] Not printed.

authorized to inform the Secretary of State that His Majesty's Government agree to this proposal and, further, consider that it would be advisable, in the interest of all concerned, that the same procedure, i. e. direct negotiation between the competent British and American departments concerned, should be adopted forthwith for the settlement of all intergovernmental claims arising out of the war.

His Majesty's Government believe that the United States Government will approve of the uniform adoption of this procedure by all the departments concerned, but would be glad to receive from the Secretary of State a formal assurance to that effect in order that the long outstanding intergovernmental claims may be disposed of at an early date.

WASHINGTON, *February 4, 1926.*

441.11 W 892/20

The British Ambassador (Howard) to the Secretary of State

No. 186 WASHINGTON, *March 16, 1926.*

MY DEAR MR. SECRETARY: I see from today's papers that Senator Borah [9] yesterday introduced a resolution into the Senate which was referred to the Foreign Affairs Committee and is likely to be considered this week, asking the State Department to advise the Senate, if not incompatible with the public interest, what steps you are taking to negotiate claims conventions with London and Paris.[10] Senator Borah went on to explain that these claims grew largely out of the seizure by the British and French of shipments of American goods to European neutrals, which seizures were made on the ground that the supplies were ultimately destined for Germany. As you are aware from previous conversations and from what I had the honour to say to the President during my audience with him on the 7th of November last, feeling in Great Britain is particularly sensitive with regard to the presentation of such claims by the United States Government, which, as I pointed out, would seem to be an unprecedented action on the part of a country which afterwards became associated in the war with Great Britain and therefore actually benefited by the blockade measures taken by Great Britain.

I am unfortunately going to Chicago this afternoon and cannot therefore call on you this morning to ask you to be so good as to let me know what action you propose to take in view of the Senate resolution which will in any case not reach the State Department,

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[9] Chairman of the Senate Foreign Relations Committee.

[10] For text of resolution, adopted June 15, 1926, see telegram No. 103, June 16, 1926, to the Ambassador in Great Britain, p. 238. For text of the Secretary's report, submitted in response to this resolution, see S. Doc. 155, 69th Cong., 1st sess.

I presume, before the end of this week. In these circumstances, I should be most grateful to you if you would postpone taking any action till after the 24th instant, when I shall be back from Chicago, and when I hope to be able to call on you at the State Department. My train arrives in Washington at 9 a. m. on the morning of the 24th and I shall be ready to call at the Department at any time after 11 a. m. that will be convenient to you. I shall be grateful if you will kindly let the Embassy know the hour.

Believe me [etc.] ESME HOWARD

441.11 W 892/25 : Telegram

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

LONDON, *March 20, 1926—5 p. m.*

[Received 5:22 p. m.]

62. Your 44, March 19, 1 p. m.[11] *Morning Post* maintains strongly anti-American attitude. Precedent of American action during Civil War against English shipping is brought out. Claims for damages are characterized as frivolous and it is pointed out that other neutrals such as Sweden and Brazil have presented no demands.

The *Times* of March 19th contains an editorial entitled "Indefinable [*Indefensible*] Claims" and states "there is no doubt that public opinion in this country has been genuinely shocked by Senator Borah's resolution" and adds that the British people do not found their attitude upon law alone but upon the broadest grounds of natural justice and common sense upon which they contend that the power which joined them and their allies in the later stage of the war has no sort of right to claim reparation for violations of alleged neutral rights in its earlier stage. Even if the Allies committeed in this stage any acts so described, for which compensation has not been made, America condoned these acts when she entered the war as their associate. The editorial closes with: "Our people cannot bring themselves to believe that it (the Borah proposal) will receive serious support from any quarter in America".

The *Daily Telegraph* on Friday printed an article headed "Surprise in America. Untimely practical joke".

Friday's *Manchester Guardian* prints a letter from London stating: "No serious person with whom I have discussed the matter in London could bring himself to believe that the United States of all countries could claim damages against Great Britain for an operation of the war, which soon afterwards, she herself was performing against other countries".

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[11] Not printed.

An editorial in the *Westminster Gazette* alludes to the fact that American merchants made great profits in the supply of food and munitions and now that England is repaying her war debt, these facts will flit through the mind of the average British citizen on learning of the new claims now under consideration.

Today's *Morning Post* contains another extravagant article from its Washington correspondent.

STERLING

441.11 W 892/33

Memorandum by the Secretary of State

[WASHINGTON,] *March 25, 1926.*

The British Ambassador called to discuss with me the general question of claims. I informed the Ambassador that I had talked with Senator Borah and told him that in 1921 a similar resolution was passed by the Senate and in response thereto the Secretary of State had made an elaborate report to the Senate upon the American claims.[12] I did not think the report had ever been made public; it certainly had never been printed. We then engaged in a very general discussion of the claims and I told the Ambassador in a general way that some of the American claims did not pertain to the blockade. I specially explained the claim of the Standard Oil Company for destruction of wells in Rumania and the claim of the St. Paul Fire and Marine Insurance Company for destruction of cargo, the cargo not being contraband, and that the British Government had acknowledged its liability and paid certain of the consignors but not all of them; that some of the other claims were for cargos seized and sold by the British Government, there could be no question about the liability of the British Government, at least for the value of the cargo. The Ambassador said that this, of course, was true and that the British Government did not deny liability for the cargo actually taken. I said that other claims pertain to contracts between the British Government and British manufacturers and American manufacturers which had been suspended by order of the British Government. Mr. Phenix joined in the conversation and explained in a general way various of the claims.

I suggested to the Ambassador that he or one of his secretaries should make a preliminary survey of these claims on both sides and he is accordingly going to ask instructions from his Government. I also suggested to him that the best way to proceed was to appoint a commissioner or commissioners on each side to consider all the claims by the British Government against the United States Gov-

[12] *Foreign Relations*, 1920, vol. II, p. 646.

ernment, the United States Government against the British Government and the citizens of each country against the other and to settle such claims as they could agree on; those that could not be settled to be sent to arbitration. He suggested that he thought it would be preferable to first take up the claims between the two governments, that is, not the claims of private citizens. I told him that it seemed to me the best way would be to settle the whole matter by going into all the claims, and, if possible, arbitrate those claims which could not be agreed on. I told him there were a good many claims by British citizens against the United States where the amount had not been stated and in the same way by the citizens of the United States against Great Britain.

I told him that I would reply to his note of February fourth in relation to the adjustment of the claims as soon as possible; and, in the meantime the Ambassador is going to ask instructions from his Government.

441.11 W 892/37

Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds

[WASHINGTON,] *March 29, 1926.*

The British Ambassador called by appointment to see the Secretary this morning and discussed with him further the claims question. Mr. Phenix was present during a part of the conversation.

The British Ambassador referred to his conversation of last Thursday with the Secretary and said that he had concluded that he could not recommend to his Government that any steps be taken looking to a discussion of the embargo claims arising out of the operations of the British Navy in preventing commodities necessary in Germany's conduct of the war from reaching that country. He said that he did not see how the United States could now put forward any claims of that character. In reply to a question as to what he meant to imply by the word "now", Sir Esme stated that the United States by entering the war on the side of the Allies gained the benefit of the British blockade policy without which the defeat of Germany would have taken much longer and cost the United States much more in money and lives. In this same connection he also said that the United States after its entry into the war cooperated with Great Britain and the Allies in the economic blockade of Germany, and through rationing agreements and other measures applied the principle of the economic blockade even more rigidly than had theretofore been done. In these circumstances Sir Esme stated that his personal opinion was that the United States was scarcely justified in seeking

to collect damages from Great Britain on account of the particular claims in question. It was suggested to the Ambassador that while the measures taken by the United States had for their purpose preventing necessary commodities from reaching Germany, and to that extent were comparable to the measures taken by Great Britain to that end, the actual steps taken by the United States were different in that they did not involve the seizure of vessels and cargoes on the high seas. Sir Esme replied by referring to the Allied blockade councils upon which the United States was represented, and repeated his belief that our participation in these blockade measures made it very difficult for his Government to see any merit in the claims and damages arising out of the blockade prior to our entry into the war.

The Secretary summarized the facts in certain of the cases presented to the Department and handed to the British Ambassador informally brief memoranda setting forth the facts in five cases presented to the Department.

The British Ambassador asked again if it would not be possible to settle the intergovernmental claims concerning which there was no substantial dispute before considering further the private claims, and he was again told that the preferable procedure seemed to the Department to be to consider all claims at the same time.

The position taken by the British Ambassador indicated that were the Department to address a formal note to the British Government suggesting the examination of all claims by commissioners representing the two governments and the arbitration of those concerning which no agreement could be reached, the British Government would reply that it would not consent to the consideration of the so-called blockade claims. Sir Esme pointed out that the average Englishman would be unable to understand why such claims were presented and why his Government should consider them, indicating that the state of public opinion in Great Britain was very sensitive on this point. It was observed that the United States had its public opinion also, and that apart from the question of payment of individual claims was a larger question of principle underlying the blockade operations of the British forces.

Since it appeared that the initiation of formal exchanges on the subject of these claims might not lead to a satisfactory adjustment of the questions at issue, the suggestion was made, very informally, and without indicating that it was a policy which the Department was willing at the moment to adopt, that the whole matter remain the subject of informal treatment in the hope that during such informal consideration a solution of the vexing problem might be reached. It was suggested more specifically that a representative of the British Embassy call at the Department and be informed of the general cate-

gories of claims which had been presented by American nationals, so that the scope of these claims might be more clearly understood by the British Government. It was also suggested that the Department might, provided it received some assurance from the British Government that this procedure would be acceptable, undertake to make a preliminary survey of the claims now on file with it for the purpose of eliminating from further consideration those claims where in all the circumstances the claimants did not appear to be entitled to the Department's support; that in respect of the remaining claims it endeavor to bring its information up to date and that having done so it send a representative, or representatives, with all the relevant documents to London (where the records of the British Government and of the prize courts are easily accessible) for the purpose of discussing informally and without publicity with representatives of the British Government the various claims; that the representatives of the two Governments endeavor to agree in as many cases as possible and that an effort be made in respect of particularly contentious cases to provide for their adjustment through a lump sum settlement, rather than by agreement as to the individual cases.

Sir Esme stated that a procedure along the foregoing lines seemed to him to have considerable merit, and he intimated that it might be viewed with sympathy by his Government. The Secretary said he would consider the question more carefully and see if it would be feasible for him to propose such a procedure in a more formal manner. Sir Esme suggested that if this could be done it might take the form of an *aide memoire* which he could telegraph to London. The Secretary said that at all events he would reply to Sir Esme's recent communications on this subject as soon as he possibly could.

S[PENCER] P[HENIX]

441.11 W 892/37

The Department of State to the British Embassy

AIDE-MÉMOIRE

The question of adjusting between the Government of Great Britain and the Government of the United States those pecuniary claims which have their origin in events subsequent to August 18, 1910, the date of the last claims agreement between the two Governments, has been the subject of numerous informal discussions. This question was raised again in an *aide memoire* from the British Ambassador dated February 4, 1926, in which reference was made to certain unset-

tled claims and demands arising out of the operation of naval forces of the United States and Great Britain during the period from April 6, 1917, to March 3, 1921, and to other claims between departments of the two Governments. The British Ambassador suggested that these claims be settled by direct negotiations between the departments concerned.

As the British Government has heretofore been informed and as has recently been orally pointed out to the British Ambassador, there are other claims in which the two Governments are interested and which, in the opinion of the Government of the United States, should be considered with a view to their settlement at the same time as the interdepartmental claims. Pending an understanding on this point, therefore, the Department of State is taking no steps looking to the settlement of the strictly interdepartmental claims only, and in recent notes to the British Ambassador [13] this position of the Department of State has been set forth.

There is on file in the Department of State a considerable number of papers relating to alleged claims of American nationals against the Government of Great Britain or its nationals, and no doubt His Majesty's Government has record of many claims against the Government of the United States which have not as yet been presented to the latter through diplomatic channels. The papers filed with the Department of State relate to a great variety of circumstances such as alleged breaches of contracts, personal injuries, and losses due to import restrictions, to maximum price orders and to the requisition, use or expropriation of private property, as well as to losses said to have been suffered through other exceptional war measures.

The Government of the United States realizes that some of the claims filed with the Department of State involve questions of very great delicacy. It feels, nevertheless, that it would be desirable from the standpoint of both Governments if the question of these claims could be explored in the near future for the purpose of arriving at a mutually satisfactory arrangement for their ultimate disposition. Accordingly, in a conversation on March 29, 1926, the Secretary of State outlined tentatively and informally to the British Ambassador a form of procedure which, if agreed to by His Majesty's Government, he believes might well afford a basis for the adjustment of the existing differences of opinion.

The procedure thus orally outlined to the British Ambassador is submitted below in more specific form for the consideration and comment of the British Government. It is briefly as follows:

[13] Not printed.

That the Department of State and the appropriate Department of His Majesty's Government undertake at once a preliminary survey of all claims now on file with each Government against the other Government or its nationals with a view to eliminating from further consideration those claims where, in all the circumstances, the claimants do not appear to be entitled to diplomatic support.

That in respect of those claims which appear prima facie to be meritorious the two Governments bring their information down to date with a view to ascertaining whether the subject matter of the claim has not been so disposed of as to obviate the necessity for further diplomatic intervention.

That informally designated representatives of the two Governments meet as soon as can conveniently be arranged, to discuss informally and sympathetically the claims remaining for disposition.

It is believed that an informal and friendly consideration of the question pursuant to a procedure similar to that outlined above will go far towards settling the perplexing questions now outstanding between the two Governments and will promote their mutual interests. The Government of the United States has no intention of holding rigidly to the procedure suggested above and will gladly consider any modifications therein which the British Government may believe will facilitate the adjustment of this important and delicate question without friction and possible misunderstanding. It is the earnest desire of the Secretary of State that a common ground may soon be found for the examination and adjustment of this whole matter and he has no doubt that the British Government will approach the problem with equal good will.

WASHINGTON, *April 7, 1926.*

441.11 W 892/43 : Telegram

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

[Paraphrase]

LONDON, *April 14, 1926—11 a. m.*

[Received April 14—9:05 a. m.]

73. Chamberlain tells me he has cabled Howard to the effect that he is in sympathy with informal investigation of claims situation provided this can be carried on in Washington and without publicity. His attitude is much more conciliatory.

HOUGHTON

441.11 W 892/37

Memorandum by the Secretary of State

[WASHINGTON,] *April 29, 1926.*

Mr. Chilton[14] called to see me this morning accompanied by Mr. Broderick.[15] He said that his Government had received my *Aide Memoire* of April 7, 1926, regarding the claims in question and that Mr. Chamberlain was most appreciative of its friendly tone. He said that he had been authorized to state that his Government was prepared to enter at once upon a preliminary examination of the papers bearing on these claims and that Mr. Broderick would undertake such an examination on behalf of the British. I observed that as there were many cases in which the Department did not have complete information regarding the disposition of the subject matter of the claims, it would probably be impossible to reach a determination about many of them without having access to records in the files of the Procurator General in London, the British prize courts and the American Consulate General. Mr. Chilton agreed that this might be the case, but explained that at the present time his Government preferred that the matter be explored in Washington rather than in London. I, of course, acquiesced and arranged for Mr. Broderick to make an appointment with Mr. Phenix to start the work with the understanding that the matter would be pressed to completion as rapidly as possible.

Mr. Phenix subsequently informed me that Mr. Broderick would commence the joint examination of the papers with Mr. Phenix next Monday morning and that he would be able to devote an average of three days a week to this work.

441.11 W 892/37 : Telegram

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

[Paraphrase]

WASHINGTON, *May 14, 1926—7 p. m.*

73. British Embassy, on behalf of British citizens and British Government, is pressing Department for adjustment of various claims against the United States. In one instance of a private bill now pending in the House, the Department has elicited the information that there would be difficulty in having the House pass the bill since Representatives would not understand why payment should be made by the United States for claims in which the British Gov-

[14] Henry Getty Chilton, Acting Counselor of the British Embassy.
[15] John Joyce Broderick, Commercial Counselor of the British Embassy.

ernment is interested, while, as they believe, no steps are being taken by that Government to settle the claims in which the United States is interested.

The Department's records disclose that only one of the various claims against the United States concerning which there has recently been correspondence between the Department and the British Embassy, can be settled without special legislation. This situation is presented to the British Embassy in a note dated today and the Embassy is informed in part as follows:[16]

"These cases have been considered by the appropriate Departments of the United States Government, but it appears that even if those Departments were prepared to admit the meritoriousness of the claims in question, no relief, except in one case, can be accorded to the claimant without the passage of special legislation by the Congress. As indicated above, bills providing for the relief of several of these claimants are now pending in the Congress. However, in view of the sentiment which apparently exists in certain quarters in that body, the Department is of the opinion that no good purpose would be served by urging at this time either the passage of the pending bills or the enactment of additional legislation for the benefit of the above-mentioned claimants, or of others similarly situated.

"I am not unmindful of the friendly response which on April 29, 1926, the British Government made orally through Mr. Chilton to my *Aide Memoire* of April 7, 1926, regarding the general claims situation. The informal discussions which have subsequently taken place between Mr. Broderick and Mr. Phenix seem to have been productive of a better understanding of some of the questions involved, and these discussions, I understand, are continuing as rapidly as the necessary examination of the cases permits, and should be concluded next month. It is, therefore, my intention to send Mr. Phenix to London in June with data regarding those claims concerning which further information is desired, both with respect to the final disposition by the British Government of the subject matter thereof, and with respect to the further consideration which that Government may be prepared to accord to those classes of claims regarded as meritorious by the Government of the United States. It is hoped that such progress can be made during the informal and discreet consultations which Mr. Phenix will have with the appropriate authorities at London that it will be possible for the Department to present to the Congress during its next session information regarding the general claims situation between the two Governments which will cause that body to look with favor upon any proposal for the enactment of legislation for the benefit of British claimants which may be approved by the Department of State."

The British Embassy is also being informed that in the case of the claim which does not require congressional action steps are being taken to effect its prompt payment.

[16] Extract from note not paraphrased.

You are instructed to inform Chamberlain in the foregoing sense and ascertain whether in July Phenix will find British officials familiar with the situation available for consultation. Phenix will have brief summaries of the cases which require further information and in consultation with you will classify those which appear meritorious in order to ascertain the views of the British Government regarding them.

It might be added that much of the correspondence can be disregarded as not setting up a valid claim in all the circumstances, according to indications after a preliminary examination of the claim files. Although I do not therefore anticipate any considerable number of disputed cases, nevertheless until further data are available I can have no definite views on this point.

Referring to confidential instruction of May 7, 1926,[17] Navy has informed Department that they will not send representative to London this summer because their cases are not completely prepared.

KELLOGG

441.11 W 892/48 : Telegram

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

[Paraphrase]

WASHINGTON, *June 1, 1926—3 p. m.*

86. You are instructed to see Chamberlain at once and endeavor to obtain his consent to the proposed examination this summer of British prize court and similar records. If he should suggest postponement please inform him that I earnestly hope he will not press that suggestion. I feel it is most desirable that there should be a prompt adjustment of the entire question, but no agreement will be possible without further data upon which to base my judgment. I particularly need to know the British Government's disposition of the subject matter of the various claims or complaints which have been brought to the attention of the Department. Such information could of course be obtained by circularizing the interested individuals, but obviously, in all the circumstances, it would be preferable at this time to consult the British Government's records. It is my understanding that much if not all of the necessary data is contained in the special ledgers maintained by the Marshal's and Accountant's offices of the Admiralty Registrar. You will also inform Chamberlain that if the work cannot be done this summer the whole plan for seeking a solution of the problem through informal examination and discussion may have to be postponed indefinitely as it would probably be impracticable except during the summer

[17] Not printed.

months to spare Phenix from the Department. In view of the progress which has already been made toward a mutual understanding, I feel such an interruption would be most regrettable. Cable Chamberlain's response immediately. It is very difficult to obtain steamer passage and there may be great delay if Phenix is unable to leave as planned on June 10. I will of course urge the point no further for the present if Chamberlain persists in objection or request for postponement.

KELLOGG

441.11 W 892/50 : Telegram

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

[Paraphrase]

LONDON, *June 4, 1926—5 p. m.*

[Received June 4—3:30 p. m.]

116. Your 86, June 1. Chamberlain was evidently somewhat disturbed when I saw him this morning. He did not understand why Phenix should come here until he had completed his work in Washington unless perhaps on a fishing excursion and especially why the original plan was changed by which the naval delegates were to accompany Phenix. Chamberlain wired Howard that he could see no gain in Phenix's visit and he regretted he must tell me as much. I replied that you do not intend to send Phenix on a fishing excursion, that I thought he had gone as far as he could in Washington, and that you must secure the necessary additional information either by circularizing many thousands of claimants, with the accompanying publicity, or in the way you suggested. I stressed the fact that both sides were working in good faith and stated that if his present position was maintained it would result in precisely those unpleasant factors he hoped to avoid. He finally told me, after half an hour's talk, that he desired to reserve the privilege of reconsidering his answer if after reading my cable and hearing personally from Howard you still felt Phenix ought to come.

HOUGHTON

441.11 W 892/50 : Telegram

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

[Paraphrase]

WASHINGTON, *June 5, 1926—1 p. m.*

89. Your 116 of June 4. I am wholly unable to understand either Chamberlain's language or his attitude. His language might well

be regarded as insulting if taken literally. You are instructed to read him the following message from me at your early convenience:

"Mr. Houghton has reported his conversation with you on June 4 regarding my proposal that an examination should be made in London this summer by an officer of the Department of State, of prize court and related records bearing on the subject matter of the complaints and claims submitted by American citizens arising out of the British Government's exceptional war measures. This examination would be for the purpose of supplementing the Department's data in such manner as to facilitate an agreement between the two Governments relating to the disposition to be made of such complaints or claims.

It is my understanding that you can perceive no gain in the proposed examination, that it is regarded by you as partaking of the nature of a mere fishing excursion, and that you are not willing to consent to it. I understand, however, that you reserve the privilege of reconsidering your decision if, after receiving Houghton's report and hearing again from Howard, I still felt the proposed examination should be made.

I have not the least intention to ask that your decision be reconsidered. If the procedure which I have suggested constitutes, in your considered judgment, a mere fishing excursion on the part of the Government of the United States, nothing I can say at this time will disabuse you of that misapprehension. There must be confidence and good will on both sides if the claims question is to be settled through informal discussions. The object for which I had believed we were both striving will be defeated by reluctance to cooperate and suspicion as to motives. It has been my sincere endeavor to do all that I could to prepare the way to appropriately settle the claims question. It has been repeatedly pointed out that the Department has on file a considerable number of so-called claims. There is no information, in many instances, as to the actual disposition of the subject matter of such claims. An adjustment satisfactory to the claimant may already have been made by the British Government, or the Department might be prepared to regard the disposition made by the British Government as suitable in all the circumstances and agree to present no claim therefor, if it knew all the facts. I am in no position to make any decision as to the merit of many of the claims, without further information on these points. I can get the necessary information from the claimants or from the British Government's records. The second procedure I considered would be more acceptable to you but I was apparently in error. My duty is to see that claims of American citizens against foreign governments, not excepting claims against the British Government, are given appropriate consideration. I must of course pursue a more formal policy, if the British Government is not disposed to cooperate in an informal procedure calculated to minimize friction and irritation. Prior to the next session of Congress, I shall, however, have to make a report to the President on this subject.

The informal examination which Mr. Broderick has been making of the Department's records is useful only in that it informs him of the nature of the so-called claims with which we have to deal.

The principal question towards settlement is not being advanced, however, since the inadequacy of our information does not permit me to pass definitely on the merit of particular claims. As Mr. Broderick has already seen several hundred cases and as such cases appear to be typical, I felt it unnecessary to delay procuring further information until his examination was complete. The essential part of his work could be finished in June and while the Department was making its investigation in London, I felt he could continue scrutinizing our records during the summer, thus saving much time.

I shall not urge this procedure further for, of course, in the absence of cordial cooperation by both Governments, the plan cannot be made successful. It would be useless for me to send anyone to London under present conditions. I shall of course be regretful if my earnest and sincere efforts of the past few months are now to prove abortive, but I can at least feel that I have done everything that, with dignity and propriety, could be done to facilitate a settlement by informal negotiation. The reservations for Phenix have been canceled and, in the existing circumstances, neither he nor any other representative of the Department will proceed to London in the matter. Our previous informal undertakings I shall necessarily regard as of no further effect and I shall feel free to plan for proceeding in any appropriate manner with the claims in question."

KELLOGG

441.11 W 892/50 : Telegram

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

[Paraphrase]

WASHINGTON, *June 5, 1926.*

90. My 89, June 5, in answer to your 116, June 4. After I had signed and sent my 89, Howard called to see me. I read the message to him. He said he was sure that Chamberlain, by using the phrase "fishing excursion", had not meant to give offense. During our conversation of about an hour's length he repeatedly asked that I wire you to withhold communicating my reply to Chamberlain. Finally, I agreed to do so and, until further instructed, you are requested to take no action on my 89. It is my understanding that Howard is cabling London renewing his recommendation that the proposed examination be agreed to, and suggesting that Broderick accompany Phenix and that the examination take place later in the summer. I have not changed my views as set forth in telegram No. 89 but if I should be approached by the British of their own notion with a suggestion of the above nature, I should consider it and regard the incident as closed. Please acknowledge this telegram by cable.

KELLOGG

441.11 W 892/51 : Telegram

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

[Paraphrase]

LONDON, *June 7, 1926—2 p. m.*

[Received 3:15 p. m.]

117. Your 90, June 5. The interview I had with Chamberlain was carried on in the most friendly spirit. The phrase he used to which you refer was quoted in my telegram merely to show his perplexity, after the withdrawal of the naval delegates, as to the exact object of the proposed visit of Phenix and to indicate the desirability of more closely defining that object. I concluded the interview, fully believing that if this could be done Chamberlain would accept your proposal. You will recall that since Olds' informal talk with Howard, there has been widespread suspicion here that we would make some sort of effort to question the validity of the British blockade decrees. That subject is not here regarded as open for discussion and any effort to open it will be sharply resented. In spite of these difficulties I think Chamberlain has tried to meet us fairly. Obviously there are limits beyond which neither he nor any British Minister can go and although I have read him your statement as to the object of Phenix's trip and given him such assurances as I personally could, he evidently believes there should be a more exact definition of that object. I feel this should be done.

You state that you have read your 89 of June 5 to Howard. He has probably communicated its contents to the Foreign Office. Chamberlain is now in Geneva and on his return I believe he will wish to comment regarding it. Please instruct me as to my reply.

HOUGHTON

441.11 W 892/51 : Telegram

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

[Paraphrase]

WASHINGTON, *June 10, 1926—10 a. m.*

93. Your 117 of June 7.

1. Chamberlain's language was most unfortunate, whatever his intention. In connection with such circumstances as (*a*) his attitude as reported in your telegram of November 3, 1925,[18] (*b*) the fact that, except by a noncommittal oral message delivered by Chilton, he has failed to reply to my *aide-mémoire* of April 7, (*c*) the fact that since

[18] *Ante*, p. 214.

May 18 he has known that I desire to make rapid progress during the summer by sending someone to London, but for more than two weeks gave no answer, and (*d*) the fact that Howard had strongly recommended that my program be accepted, his language inevitably conveyed the impression that he was not only unprepared to cooperate actively, but that he was obstructing progress deliberately. The further report in your telegram of June 7 does not alter this impression materially, except that it helps overcome my reluctant belief that Chamberlain intentionally was discourteous.

2. It is difficult to understand how there can reasonably be any doubt in London about the purpose of Phenix's visit. It had never been connected with the Navy negotiations and it was planned to take place simultaneously with the latter in the interest of the British, who wished to be able, in case there was publicity in England, to direct attention to the Navy negotiations, thus covering the work of Phenix in London. The decision of the Navy not to participate this summer in a conference with the British authorities completely surprised the Department, which had pointed out the desirability therefor. The British Embassy was promptly advised informally of that decision and of the Navy's reasons, which were that their cases were not ready for presentation. Department's 73 of May 14 conveyed the same information to you.

3. From our point of view, Chamberlain's second point as to the completion of the work in Washington before anything was done in London, is no more substantial. The procedure suggested in my *aide-mémoire* of April 7 has never been formally accepted by the British. They have done nothing but authorize Broderick to examine our records. Since I regarded that as some progress, I arranged to make our files available to him. It soon appeared, however, that many months would be necessary for Broderick to go over all the papers and that such a policy would really waste his time. I then had prepared synopses of the cases, copies of which have been furnished him and he has gone over many of them with Phenix. About 800 have been submitted to Broderick. Since these cases seemed to be typical, and in view of the importance of being able in December to report real progress, it did not appear necessary to postpone commencement of the work in London until Broderick could see all the summaries, particularly since no progress was being made toward actual settlement. He, for instance, had no authority to bind his Government, and I was insufficiently informed as to the disposition of the subject matter of the various complaints or claims to enable me to decide the Department's position. Therefore, it was my plan that Phenix should take with him the thousand or so summaries that would be ready when he left and start work on them in London this summer

while Broderick was examining our records here. The remaining summaries when ready would be sent Phenix and simultaneously given Broderick. The two Governments would thus have in the autumn sufficient information to proceed with the question of what acceptable bases of settlement could be found. The summaries should all be prepared by August. This seemed a most expeditious procedure.

4. There was nothing ulterior in the proposed trip of Phenix. The main purpose of the trip would have been to obtain information in regard to specific cases for use as the basis for eliminating cases from further consideration wherever such a cause seemed justified. For example, I was in general disposed to agree to regard as satisfactorily closed any case where the London records revealed that the subject matter, or its value, had been released to the claimant. A secondary purpose was to ascertain, if possible, what satisfactory formula could be devised to cover cases deserving further consideration. I realize the political difficulties in London surrounding this question, but I realize also that in Washington there are corresponding difficulties. I have earnestly hoped to find a common basis upon which a satisfactory settlement can be negotiated. I have never intended that either Government should be irrevocably committed by anything Phenix might do or say in London, but I could get a definite idea of what the next step should be from his report and your recommendations.

5. You will recall that when you were in Washington this entire question was discussed at length with you and that you strongly urged that Phenix be sent to London. Howard warmly endorsed the same idea in talking with me March 29 and subsequently. Chilton, in replying orally to my *aide-mémoire*, agreed that an examination in London might be necessary but stated that his Government preferred first exploring the matter here. As above stated, Broderick has been going through our records for his Government's information. I have never raised any question about his examination even though, so far as official word from the Foreign Office is concerned, it is more ill-defined and vague as to purpose than that proposed for Phenix.

6. For definite information regarding the nature of the proposed mission of Phenix see my *aide-mémoire* of April 7 sent with instruction 469 of April 9.[19] The Department has been doing the work indicated in paragraph 6 of the *aide-mémoire*. The object of Phenix's examination of the records in London is outlined in general terms in paragraph 7. The preliminaries described in paragraphs 6 and 7 must precede and not follow the procedure in paragraph 8.

[19] Instruction not printed.

See also my 73 of May 14, and my 86 of June 1. The scope and purpose of the proposed examination in London is defined as clearly as is now possible, in these communications. It is all very informal and simple, and I see no reason for Chamberlain to be disturbed.

7. As stated in my 90 of June 5, I understand Howard cabled London at length after his interview with me. In the circumstances I prefer at present to leave the matter for settlement between the Foreign Office and Howard. He is deeply impressed with our earnestness of purpose and with the unfortunate impression created here by Chamberlain's apparent attitude throughout, and upon receiving Howard's report Chamberlain should be equally impressed. I am inclined to the belief that the incident may result in clearing the atmosphere and promoting an ultimately satisfactory adjustment of the whole question. Certainly the British cannot misunderstand the importance which we attach to the matter.

8. If Chamberlain approaches you in regard to Howard's message, you should merely say that you have received a telegram containing my reply to his remarks to you, which indicates that I have been greatly disturbed thereby, and that subsequently you received a second telegram in which, complying with the urgent request of Howard, I instructed you to withhold delivery of my message pending further instructions. Beyond this you are to make no comment to Chamberlain at this time on my telegrams Nos. 89 and 90. However, you may in your discretion, use as coming from yourself as much of the first six paragraphs of this telegram as you think would help give Chamberlain an accurate understanding of our position.

KELLOGG

441.11 W 892/52 : Telegram

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

[Paraphrase]

LONDON, *June 15, 1926—2 p. m.*

[Received June 15—11:55 a. m.]

128. I have carefully read your cables regarding Phenix's visit. It seems to me, as it does to you, merely a logical continuation of the Washington negotiations. My interview with Chamberlain was carried on in the most friendly spirit, as I have previously stated. Had there been any suggestion of casting suspicion on your motives in sending Phenix here, I would have been the first to resent it. I feel, however, Chamberlain's real attitude is this: he did not will-

ingly enter upon these negotiations; he agreed to them partly to gain time and is now fearful lest, having agreed to an informal exploration, he may be unable to find a logical point at which to end these negotiations, before the whole subject of blockade restrictions becomes involved. Under these conditions, unless I make the initial move, I have some doubt if Chamberlain will again refer to the matter. He seems to fear most keenly a public demonstration and is unwilling to consider these claims at all because this doubtless would bring down on him a storm of protest. Unless he sends for me within the next two weeks, I suggest that I go to him and frankly say that if he does not permit Phenix to come as proposed, political conditions at home will force you, despite unavoidable publicity, to circularize the many hundreds or thousands of claimants to ascertain the facts; and repeat to him that many American claims had no connection with the blockade. It will probably be difficult for me to see Chamberlain within the next two weeks because of the approaching visit of the French President.

HOUGHTON

441.11 W 892/53 : Telegram

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

[Paraphrase]

LONDON, *June 16, 1926—6 p. m.*

[Received June 16—4:30 p. m.]

131. This morning Chamberlain sent for me and after some discussion stated that he had decided to withdraw his objection to Phenix's visit and had just cabled Howard that Phenix might come in September if the naval delegation could accompany him. Chamberlain added that he would not object if Phenix came without the naval delegation or if he preferred coming in August, although he believed September preferable. As you know August is the worst possible month for Phenix's visit, owing to vacations. Chamberlain incidentally remarked that before he went to Geneva he instructed Tyrrell [20] to withdraw all objection to Phenix's visit if, after Howard's interview and receipt of my telegram, you still thought it desirable.

HOUGHTON

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[20] Sir William G. Tyrrell, British Permanent Under Secretary of State for Foreign Affairs.

441.11 W 892/52 : Telegram

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

[Paraphrase]

WASHINGTON, *June 16, 1926—7 p. m.*

103. Your 128 of June 15. The Senate yesterday passed following resolution introduced March 15 by Borah: [21]

"Whereas the claims of American citizens against Great Britain and France arising out of violations of the rights of neutrals between August 1, 1914, and April 6, 1917, have not yet been brought to settlement: Therefore be it RESOLVED, That the Secretary of State be requested, if not incompatible with the public interests, to inform the Senate what steps he is taking to negotiate claims conventions with Great Britain and France for the arbitration and settlement of the claims above mentioned."

Last March I discussed this resolution with Borah and explained the whole situation including my conversations with Howard. When I left him I was under the impression that he was not expecting to press the resolution for passage and its adoption yesterday completely surprised me. I shall again discuss the matter with Borah and explain the present situation. I do not desire you at this time to raise the claims question with Chamberlain; but should a favorable opportunity occur, you may state informally that you understand I was surprised at the adoption of the resolution but the nature of my response to its request for information necessarily depends upon the position Chamberlain takes respecting the informal exploration of the claims question about which you have already spoken with him. Have heard nothing further from Howard since I talked with him on June 5.

KELLOGG

441.11 W 892/56

The British Ambassador (Howard) to the Secretary of State

No. 413 MANCHESTER, MASS., *June 17, 1926.*

[Received June 18.]

MY DEAR MR. SECRETARY: With reference to recent correspondence and interviews relative to the general claims situation, I have the honour to inform you that I did not fail to make known to His Majesty's Principal Secretary of State for Foreign Affairs the substance of my conversations on the morning of the 6th [*5th*] instant with you, and later with Mr. Olds and Mr. Phenix, when we discussed in detail your proposal to send Mr. Phenix to London and

[21] Resolution not paraphrased.

the misapprehension to which that proposal had given rise. I advised Sir Austen Chamberlain that your suggestion had been put forward in a most sincere and friendly effort to arrive at an amicable solution of the numerous difficulties the situation presented, explaining to him that the whole object of Mr. Phenix's suggested journey to London was simply to obtain information, not elsewhere available, regarding the disposal of certain cargoes and consignments of goods shipped from this country to Europe during the course of the war, and, by informal discussion of the status of such cargoes and consignments, to reduce to the lowest dimensions the actual claims in which your Government might feel disposed to take an interest, thus arranging, if possible, for the settlement of such claims as are agreed by both Governments to be meritorious. I laid stress on the assurances I had received from you, from Mr. Olds and from Mr. Phenix that all publicity would be avoided in connection with the visit since we all recognised that publicity would almost certainly defeat the friendly purposes you had in view.

I am now directed by Sir Austen Chamberlain to inform you that he fully appreciates and reciprocates the friendly spirit in which you have approached this difficult matter. He also holds strongly to the opinion that any publicity respecting the informal examinations that have been taking place or those informal enquiries or discussions that may take place during Mr. Phenix's stay in London would, in all probability, create in the mind of Congress or of Parliament or of the general public of both countries serious misunderstandings with regard to the attitude of either or both Governments in the matter of the so-called blockade claims. In all the conversations and correspondence between us I have, with a view to the removal of all doubt as to the position of His Majesty's Government, made it clear that they could not, and why they could not, consider blockade claims and you will appreciate that their attitude in that regard remains unaltered. His Majesty's Government are, however, endeavouring in all sincerity to meet the friendly intentions of the President of the United States and of yourself in avoiding all unnecessary controversy. When a visit to London by Mr. Phenix was originally suggested, it was expected, in the first place, that the preliminary joint examination by Mr. Broderick and himself of the files of correspondence in the State Department archives hitherto known as "claims" files would have been concluded this month and, in the second place, that Mr. Phenix's visit would synchronize with visits from representatives of the United States Navy Department commissioned to settle mutual claims between that Department, the Admiralty and other Departments of His Majesty's Government. Mr. Phenix himself felt that the visit of the Navy Department representatives would be helpful in

deflecting public attention from his own visit and preventing any misconstruction of it. It was because the journey of the Navy Department's delegates had been postponed on their own initiative that Sir Austen Chamberlain hesitated to accept the date of the 10th June as a suitable moment for the departure of Mr. Phenix. He felt, moreover, that it would be much better that Mr. Phenix before his departure should have sifted all the files of claims correspondence that remained to be examined since he would then be in a position to know more precisely the nature and extent of the information which His Majesty's Government might be able to place at his disposal, and would have very greatly reduced his list by the elimination of files which presented no claims at all or which put forward demands not considered by the Government of the United States to be worth putting forward.

I gathered during our conversations that, the original date of Mr. Phenix's departure having been deferred, you would be agreeable to its further postponement until after the preliminary examination of all the files had been completed. This course appears to Sir Austen Chamberlain to be preferable from every point of view, especially as he still feels that it would be advisable to make Mr. Phenix's visit coincide with that of the officials of the Navy Department in accordance with your original suggestion. He hopes you will concur in this opinion, and accept his assurances that he is prepared to cooperate with you in every way for the purpose of determining the status of the claims then sifted, arriving at a prima facie classification and reaching a satisfactory understanding for the settlement of non-blockade claims. He is also prepared to instruct Mr. Broderick to proceed to London with Mr. Phenix to assist him in securing the particulars he desires and to continue their informal discussions respecting the classification of the claims.

Believe me [etc.] ESME HOWARD

441.11 W 892/56

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *June 19, 1926.*

MY DEAR MR. AMBASSADOR: I have received your letter of June 17, 1926, with further reference to the claims question. I have also received a telegram from Ambassador Houghton reporting a conversation which, at Sir Austen Chamberlain's invitation, he had with him on June 16 in connection with the same matter. Mr. Houghton states that Sir Austen then informed him that he had decided to withdraw his objection to the proposed visit of Mr. Phenix to London and had cabled you that if the naval mission could accom-

pany him, it would be agreeable if Mr. Phenix should come to London in September. Sir Austen added, however, that he would raise no objection if Mr. Phenix came without the naval mission or if I preferred to have him come in August, though he believed September would be more desirable. I gather from this telegram that I am not to understand from your letter that your Government's agreement to the proposed examination in London of the records in which we are interested is conditioned on a favorable reconsideration by the Secretary of the Navy of his decision not to send a mission to London to discuss the claims between the Navy Department and the British Admiralty and other British Government departments. I quite agree, however, that it would be mutually advantageous if the suggested negotiations of the Navy Department could be carried on in London at the same time with the other work we have in mind, and I am approaching Secretary Wilbur again on the subject in the hope that he will find it possible to arrange for the dispatch of a suitable naval mission not later than September 1. I shall be glad to inform you promptly of the result of my efforts in this direction.

In the meantime I am instructing Mr. Phenix to complete as rapidly as possible the examination which he and Mr. Broderick have been making of the records here in Washington and to make his plans to be in London on September 1. I am very much pleased that Mr. Broderick will be instructed to join Mr. Phenix in London, to cooperate with him there in obtaining the data which I desire and to carry forward their informal discussions. Such an arrangement cannot fail to facilitate Mr. Phenix's mission and to promote the ends for which we are striving, particularly in view of Mr. Broderick's great familiarity with the circumstances out of which many of the cases arise.

I note your reference to the statements heretofore made on behalf of your Government to the effect that it could not consider what you designate as "blockade claims" and your further statement that Sir Austen Chamberlain's assurances that he is prepared to cooperate with me in every way for the purpose of determining the status of the claims, arriving at a prima facie classification thereof, and reaching a satisfactory understanding for their settlement extend only to "non-blockade claims". I do not feel that a discussion of these particular reservations at this time would assist us in finding the proper solution of the difficulties inherent in the general problem before the two Governments. Until we have agreed upon a definition of "blockade claims" and until I ascertain what claims (regardless of their character) are still unadjusted and appear worthy of this Government's support, I believe that we should do no more than reserve our respective positions in general terms. In this way we shall be free to

discuss concrete questions on their merits when the proper time comes. I am frank to say that for my part I regard our present agreement as purely procedural in nature and as binding neither Government to accept or reject the validity of any particular categories of claims.

I should be glad to have definite advice as to whether Mr. Broderick will be able to meet Mr. Phenix in London on September 1. As you know, I had hoped that the work in London might be carried on during the summer, and while I am quite prepared, in all the circumstances to agree to its postponement, I do not feel that its commencement should be set for a later date than the first of September. In this connection I might add that I am informed that the work of preparing summaries of the cases in the Department's files is well over half completed and that all the cases will be summarized not later than August first and probably earlier.

In view of the agreement which we have now reached with respect to the procedure next to be followed in our informal examination of the claims question, it would appear that the misapprehension which previously existed as to the nature of my proposals has been entirely removed and I am proceeding in the matter with the confident expectation that the authorities in London will cooperate cordially in promoting the work which remains before us. I am informing Ambassador Houghton in this sense and am directing him to regard as canceled the instructions contained in the telegram, the substance of which I read to you on June 5th.

I am [etc.] FRANK B. KELLOGG

441.11 W 892/53 : Telegram

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

[Paraphrase]

WASHINGTON, *June 21, 1926—4 p. m.*

108. Your 131 of June 16. In view of your message which indicates that Chamberlain has withdrawn all objection to the proposed inquiry in London and in view of the assurances contained in a recent letter from Howard, I have decided to agree that the plan for the continued informal exploration of the claims question be resumed. The instructions contained in my 89 of June 5 are therefore canceled. Howard informed me that Broderick will be instructed to proceed to London with Phenix to assist and cooperate in the work. I have written Howard that Phenix will be in London September 1, and that I am proceeding in the matter confidently expecting that the authorities in London will cordially cooperate in promoting the work.

The first moment that the British indulge in any obstructive tactics or show a disinclination to cooperate fully with us in a friendly and sincere effort to reach an amiable solution of the problem, I feel very strongly that we should break off our informal negotiations. I confess that I am not yet entirely satisfied that Chamberlain means to be really helpful, but I am willing to give him the benefit of the doubt and proceed with the informal preliminaries in the indicated manner, in view of his apparent change of mind which you and Howard report. I am forwarding by pouch copies of Howard's letter and my reply.

KELLOGG

441.11 W 892/61

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *July 12, 1926.*

MY DEAR MR. AMBASSADOR: You will recall that in my letter of June 19, 1926, regarding the claims question I told you I would approach Secretary Wilbur again on the subject of the proposal that a mission be sent to London to discuss the claims between the Navy Department and British Government Departments in the hope that he might find it possible to arrange for the despatch of such a mission not later than September 1.

Pursuant to that undertaking I spoke with Secretary Wilbur and received his oral assurance that arrangements would be made by the Navy Department to send a mission to London this fall so that its work might be carried on simultaneously with the work which Mr. Phenix is to undertake with Mr. Broderick. I have just received a letter from the Acting Secretary of the Navy giving further particulars as to the Naval mission. This letter states that the Navy Department will submit to the British authorities in London through the United States Naval Attaché the plan originally proposed and agreed upon to the effect that a conference be held in London between representatives of the Navy Department and representatives of the British Government Departments concerned for the consideration of the existing claims between the two Governments and that in the event the British authorities agree to accept the joint conference method of adjustment as proposed, the Navy Department will direct the following persons to proceed to London and begin preliminary conversations about the first week of September, 1926:

> Captain F. K. Hill, United States Navy, Retired, Commander Harry E. Collins, Supply Corps, United States Navy, Dr. R. D. Vining, Miss Jean Stevenson.

It appears from the foregoing that definite arrangements for this conference will be made through the United States Naval Attaché

in London and that further action by this Department is not necessary.

I have not yet received definite advice from you as to whether Mr. Broderick would be able to meet Mr. Phenix in London on September 1, but when he was recently in Washington he informed Mr. Olds that there was no question that the necessary authorization would be forthcoming from his Government. While I assume, therefore, that no difficulty may be expected in this connection, I should be glad to receive your confirmation of the fact as soon as you are in a position to send it.

I am [etc.] FRANK B. KELLOGG

441.11 W 892/63

The British Ambassador (Howard) to the Secretary of State

MANCHESTER, MASS., *July 15, 1926.*

[Received July 16.]

MY DEAR MR. SECRETARY: I did not fail to communicate by telegraph to my Government the views which you were so good as to express in your letter of July 12th, regarding the visit to London of officials of the United States Navy Department to discuss claims between the Navy Department and the interested Departments of His Majesty's Government.

I have pleasure in informing you that I learn from His Majesty's Government that they will be happy to give their careful consideration to the plan for a joint conference, mentioned in your letter, as soon as it is communicated to them through the United States Naval Attaché in London.

With reference to the last paragraph of your letter, I beg to state that I have now received definite authorization from my Government for Mr. Broderick to proceed to London in connection with Mr. Phenix' visit, and Mr. Broderick will meet Mr. Phenix in London on September 1st.

Believe me [etc.] ESME HOWARD

441.11 W 892/64b

The Secretary of State to the Assistant Secretary of State (Olds)

[WASHINGTON,] *July 20, 1926.*

SIR: You are requested to make such arrangements as may be necessary to enable you to reach London about September 18, 1926, where Mr. Phenix will report to you the results up to that date of the examination which, in collaboration with Mr. Broderick, Commercial Counselor of the British Embassy at Washington, he has been instructed to make of the records of the British Government with respect to the

claims and complaints of American citizens against that Government arising out of the war which have been filed with the Department of State.

When you have familiarized yourself with the situation as reflected by the information contained in the synopses prepared in the Department and amplified from the records of the British Government, summarizing the significant features of the complaints and claims which are the subject of the present instruction, you will arrange through the American Embassy at London for a conference with Sir Austen Chamberlain for the purpose of discussing with him in the light of the information before you and of the general position of this Government with respect to the above mentioned claims and complaints, those fundamental questions of policy which underlie the problem of settlement. I desire you to explore the situation fully and frankly with Sir Austen and to endeavor to obtain his approval of some definite procedure for the formal consideration by the British Government of those complaints or claims regarded as meritorious by the Government of the United States, and falling within those categories with respect to which liability may in all the circumstances properly be imputed to the British Government.

In your discussions with Sir Austen you should make it clear that you are acting as my personal representative and that you enjoy my fullest confidence in the matter. You should emphasize that my object in sending you to London was to expedite the conclusion of some satisfactory arrangement for disposing of all of the complaints and claims in question. You should impress upon Sir Austen the importance which I attach to the prompt adjustment of the matter through the conclusion of some agreement whereby provision can be made for the payment of compensation to claimants whose cases prove meritorious in all the circumstances. In your discussions with Sir Austen you will bear in mind the general principles which I have orally outlined to you with respect to the steps which this Government would be prepared to take to promote the settlement of the entire question.

I have [etc.] FRANK B. KELLOGG

441.11 W 892/73

The Assistant Secretary of State (Olds) to the Secretary of State

LONDON, *September 23, 1926.*[22]

DEAR MR. SECRETARY: This letter which I am dictating now in order to get it into the next pouch, is, of course, only a preliminary report on the matters mentioned. I have been in London less than

[22] Date of receipt not known.

two days and shall, of course, have more precise information before I leave.

(1) Immediately upon my arrival I had a brief conference with the Ambassador and Mr. Phenix and then went to the Foreign Office for a conference with Sir William Tyrrell at his request. Enclosed is my memorandum covering the conference at the Foreign Office. It is understood that after I have gone into matters more fully with Mr. Phenix, I shall have another talk with Sir William next week. Generally speaking, I find that the problem of the adjustment of the claims is surrounded by an atmosphere of optimism. Everybody here thinks that we are on the right track and that these perplexing questions will be speedily disposed of when the pending examination into the facts is concluded. It is estimated that this examination will come to an end about the third week in October. There may be some routine work after that but by the first of November we ought to be in a position to wind up the business. You will note that Mr. Vansittart, the head of the American Section of the Foreign Office is to be in Washington at that time and my understanding is that he will have authority to discuss the matter in the light of facts as they may then appear. The main favorable factor at this juncture is that the British Authorities are now fully convinced that our method of going at it is the right one and that they have perfect faith in our ability to reach a mutually satisfactory result. As we have long supposed, and as you told the British Ambassador in Washington, the so-called "war claims" in the aggregate will eventually boil down to a residuum which ought to present few difficulties. The brain storm phase is over and the British appear to be just as anxious as we are to have a clean up. Naturally they have been much relieved to find that our records and their own, when brought into comparison show that the volume of claims which must form the subject of real negotiation will be not at all what it had been assumed to be. Mr. Phenix tells me that so far as they have gone the records disclose settlements in one way or another of most of the claims which we had on our list. I expect to go into the details so far as I can within the next few days and make certain that we are not giving away any part of our case and that nothing in the present procedure will operate to embarrass us on any question of principle which may be involved. I am, myself, becoming convinced that we can find an ultimate formula for settlement which will not bring the two countries face to face on issues which cannot be conceded by either of them. The trick will be, through careful consideration of the individual cases left in dispute after the examination of facts is concluded, to dispose of them on grounds which will permit us to say that we have waived no question of principle, and at the same time enable the British Government to avoid an acknowledgment

on the record that the operations of the British Navy were necessarily invalid. Probably, as part of the settlement, an exchange of Notes between the two Governments can make all of this plain, and save the respective positions of the two Governments. The important thing for us is to get the record in such shape as to allow us to satisfy our own Congress that no question of principle has been directly or impliedly sacrified by us. I suppose it would be quite possible for our Government, if it wanted to do so, to take some of these claims and crowd the British Government into a most embarrassing and difficult position. As I have indicated in my memorandum of the conversation with Sir William Tyrrell, the Foreign Office recognizes that possibly we have this power, and it is stated flatly that if we proceeded to exercise it serious complications would ensue. Everybody I have talked with here agrees that the Baldwin Government would in all likelihood fall if it attempted to make an adjustment on any basis which would concede the invalidity of the blockade. It goes without saying that the affair must be handled with the utmost discretion, but I think that with the disposition which is now evidenced on both sides, the problem admits of fairly prompt solution. If we succeed it will be an exceedingly important and almost unprecedented accomplishment. At the Foreign Office the matter is apparently fully in the hands of Sir William Tyrrell who is following it closely. Unless it later drifts into the bitter controversial and political phase, probably Sir Austen Chamberlain and the rest of the British Cabinet will not be concerned with it. I am satisfied that Sir William is ready to go to great lengths to settle up everything on the merits.

. . . . . .

I think there is fully enough here to keep me busy for the next few days until I sail on the 30th. The Ambassador has already talked over a great many of his problems with me and I shall have much further information to convey to you when we meet. We may go up to Scotland for the week-end with the Ambassador and Mrs. Houghton. Our boat is scheduled to land us in New York the morning of the 8th of October, and I should like to come over to Washington immediately. If the usual Port courtesies can be arranged, it will enable me to save some time and be certain of arriving before night.

As ever [etc.] ROBERT E. OLDS

[Enclosure]

Memorandum by the Assistant Secretary of State (Olds) of a Conversation With Sir William Tyrrell, of the British Foreign Office, September 21, 1926

While I was in Paris I received a note from Sir William suggesting that when I came to London he would be glad if I could arrange to

have an informal talk with him. I replied, stating that I would of course communicate with him as soon as I arrived. Attached is the correspondence on that subject.[23]

Within an hour or two after my arrival in London on October [*September*] 21st, a telephone call was received at the Embassy from Sir William's office, suggesting that, if possible, we have an interview at 3:30 that afternoon. After a brief talk with Ambassador Houghton I went to the Foreign Office. The interview lasted a little less than one hour. Sir William received me with the utmost cordiality and talked with great freedom and frankness, not only on the subject of the pending claims between the two countries, but about other matters. He launched into a rather extensive dissertation on the relations between the United States and Great Britain and a good deal of what he said was virtually an *ad hoc* adaptation of the "hands across the sea" theme with which we are all so familiar. He touched upon a great variety of subjects in this connection, discussing what he designated as our Monroe policy, the fundamental causes for Britain's and our own entry into the World War, and so forth. He made no mention, however, of the Debt Question. Of course, he emphasized the importance at all times of having a complete understanding between the two Governments, and to that end of eliminating every conceivable cause of friction. In his view there would never be anything like a formal alliance between England and the United States. The English, he said, were no more enamoured of alliances than we are. The best sort of alliance, using the term in its broadest sense, was an understanding which would enable the two countries to stand together in any great international emergency. It went without saying, he asserted, that the peace of the world could be effectually preserved whenever England and America agreed to insist that it be kept.

Passing to the matter of the claims, Sir William stated that there was always much difficulty in getting such questions in shape to permit their discussion on the merits. There was always danger that controversies of this nature might, for one reason or another, be embarrassed and to some extent decided on extraneous issues. It seemed to him in the highest degree important that these claims be treated in such a way as to prevent political considerations from entering into the negotiations. He spoke about the difficulty which the Foreign Office had in explaining the situation fully to Parliament and I naturally interjected that we also had Congress to consider.

He then expressed the deepest satisfaction with the present stage of the proceedings. He said that the method now being employed, was in his judgment, perfectly sound and had every prospect of

[23] Not printed.

bringing about a complete adjustment. It was obviously necessary to ascertain all the facts so that both Governments might know exactly where they stood. His Government intended to cooperate to the limit for that purpose. I stated that I was informed by Mr. Phenix that he had met with nothing but the most whole-hearted co-operation and that the work of assembling all the data was proceeding without the slightest hitch. Sir William indicated that he had been following the operation very closely. He considered that this controversy was one of the most important ones which had ever arisen between the two countries because if the claims were not handled with the utmost discretion the two Government's might be brought face to face on certain issues which were vital: on the one hand there was our undoubted interest in maintaining neutral rights and on the other, England was bound to protect its position as a great maritime power. He made it clear that if the issue of the validity of the British blockade should be brought to the surface and presented in any definite way, the whole controversy would at once enter a political phase and the relations between the two countries would necessarily become difficult.

He believed, however, firmly, that when the pending examination is concluded it will be perfectly feasible for us to dispose of the residuum of claims which our Government might feel obliged to press without much trouble. He thought we ought to treat the whole matter as one of more or less routine business. While it was impossible, for the moment, to write a formula for the ultimate disposition of such claims, with the information now before him, he considered that it would be feasible to dispose of the claims on grounds which would not raise vital issues and which would at the same time permit both Governments to reserve their respective positions. He would not expect our Government to waive anything in principle nor did he think that we had any occasion to try to indict the British Government for violation of the principles of international law. He hoped that a way could be found to handle the situation practically as a bookkeeping operation. It was entirely possible considering the way in which the facts are developing that offsets could be made allowing an adjustment without putting the Foreign Office in the position of going to Parliament for a large sum to pay claims of the United States arising out of the War. He said flatly that if his Government had to go to Parliament to pay blockade claims as such, the present Government, in all probability would be thrown out and he did not see how any British Government could survive the attacks which would be made upon it in that contingency.

On the whole, we agreed that the outlook was most favorable and that we had no reason for taking anything but an optimistic point of view.

At the end of the conversation Sir William called in Mr. Vansittart, the head of the American Section in the Foreign Office and stated that Mr. Vansittart was sailing for the United States and would be in Washington when the "Phenix-Broderick" report is made. Both Sir William and Mr. Vansittart assured me that, at that time, they would be ready to work out a final formula for the disposition of the whole subject.

I gained the impression that Sir William and his associates have been greatly relieved by finding that the United States claims are not at all what they had at first feared and that the amounts involved are not going to be considerable in any event. When the subject was at first broached, they were naturally in the dark and there were rumors that our demands would run into huge sums. The demonstration now being made completely dissipates this anxiety and the general attitude of the Foreign Office is one of optimism and a disposition to go the limit in wiping the slate clean. Sir William agreed that under all of the circumstances the time had arrived to get rid of these claims, once and for all, and that it would be unfortunate to allow them to remain unsettled any longer.

I told him that we felt very strongly that it would be a great mistake for both Governments to delay matters and Sir William again emphasized the danger of permitting the situation to drift into the political phase.

R. E. O[LDS]

LONDON, *September 22, 1926.*

441.11 W 892/81

Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds, to the Secretary of State

[Extract]

WASHINGTON, *November 9, 1926.*

SIR: I have the honor to submit herewith a report on the subject of the claims and complaints against the British Government which have been lodged with the Department of State since August 18, 1910, the date of the last special agreement for the arbitration of pecuniary claims between the two Governments.[24]

. . . . . .

I have [etc.] SPENCER PHENIX

[24] *Foreign Relations*, 1911, p. 266.

[Enclosure]

Report Submitted by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds, on the Subject of the Claims and Complaints Against the British Government Lodged With the Department of State Since August 18, 1910

I

The Controversy Between the British and American Governments Prior to April 6, 1917, Over the Rights of Neutral Commerce

A state of war became effective on August 4, 1914, between Great Britain and Germany, and by a proclamation bearing that date the British Government specified the articles which it would treat as contraband of war. On August 6, 1914, the Department of State telegraphed to London, Paris, St. Petersburg, Berlin, Vienna and Brussels [25] to inquire whether the belligerent Governments were willing to agree that the laws of naval warfare, as laid down by the Declaration of London of 1909,[26] should be applicable to naval warfare during the conflict then in existence, stating that the Government of the United States believed that acceptance of those laws would prevent grave misunderstandings which might arise as to the relations between neutral powers and the belligerents. It will be recalled that the Declaration of London of 1909 was an instrument drawn up by representatives of the Governments of Germany, the United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, The Netherlands and Russia, who, as stated in the Preamble met

" . . . in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an international prize court; [27]

"Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral governments;

"Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;"

and

"Animated by the desire to insure henceforward a greater measure of uniformity in this respect."

[25] *Foreign Relations*, 1914, supp., p. 216.
[26] *Ibid.*, 1909, p. 318.
[27] For text of convention of Oct. 18, 1907, see *ibid.*, 1907, pt. 2, p. 1253.

The Declaration never became effective because never ratified by the Governments concerned.

The British Government replied to the Department's inquiry by a note dated August 22, 1914, reading in part as follows:[28]

"I have the honor to inform Your Excellency that His Majesty's Government, who attach great importance to the views expressed in Your Excellency's note and are animated by a keen desire to consult so far as possible the interests of neutral countries, have given this matter their most careful consideration and have pleasure in stating that they have decided to adopt generally the rules of the declaration in question, subject to certain modifications and additions which they judge indispensable to the efficient conduct of their naval operations. A detailed explanation of these additions and modifications is contained in the inclosed memorandum.

"The necessary steps to carry the above decision into effect have now been taken by the issue of an order in council, of which I have the honor to inclose copies herein for Your Excellency's information and for transmission to your Government.

"I may add that His Majesty's Government, in deciding to adhere to the rules of the Declaration of London, subject only to the aforesaid modifications and additions, have not waited to learn the intentions of the enemy Governments, but have been actuated by a desire to terminate at the earliest moment the condition of uncertainty which has been prejudicing the interests of neutral trade."

The response of the British Government to the Department's suggestions regarding the Declaration of London was not regarded as satisfactory by the Government of the United States, and on October 22, 1914, the Department telegraphed the American Ambassador at London to inform the British Government that[29]

"In the circumstances the Government of the United States feels obliged to withdraw its suggestion that the Declaration of London be adopted as a temporary code of naval warfare to be observed by belligerents and neutrals during the present war",

and that the United States would, therefore,

"insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States, irrespective of the provisions of the Declaration of London; and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated, or their free exercise interfered with by the authorities of his Britannic Majesty's Government."

Seven days later, by a proclamation dated October 29, 1914, the British Government revised the list of contraband of war, and by an Order in Council of the same date modified their position with

[28] *Foreign Relations*, 1914, supp., p. 218.
[29] *Ibid.*, pp. 257–258.

respect to the Declaration of London.[80] This Order in Council read as follows:

"Whereas by an Order in Council dated the 20th of August, 1914, His Majesty was pleased to declare that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force by His Majesty's Government; and

"Whereas the said additions and modifications were rendered necessary by the special conditions of the present war; and

"Whereas it is desirable and possible now to re-enact the said Order in Council with amendments in order to minimize, so far as possible, the interference with innocent neutral trade occasioned by the war;

"Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:

"1. During the present hostilities the provisions of the Convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and noncontraband, and to the modifications hereinafter set out, be adopted and put in force by His Majesty's Government.

"The modifications are as follows:

> "(i) A neutral vessel, with papers, indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.
>
> "(ii) The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy State.
>
> "(iii) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned 'to order,' or if the ship's papers do not show who is the consignee of the goods, or if they show a consignee of the goods in territory belonging to or occupied by the enemy.
>
> "(iv) In the cases covered by the preceding paragraph (iii) it shall lie upon the owners of the goods to prove that their destination was innocent.

"2. Where it is shown to the satisfaction of one of His Majesty's Principal Secretaries of State that the enemy Government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country, Article 35 of the said Declaration shall not apply. Such direction shall be notified in the 'London Gazette' and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture.

"3. The Order in Council of the 20th August, 1914, directing the adoption and enforcement during the present hostilities of the Con-

[80] *Ibid.*, pp. 261 and 262.

vention known as the Declaration of London, subject to the additions and modifications therein specified is hereby repealed.

"4. This Order may be cited as 'the Declaration of London Order in Council, No. 2, 1914.'

"And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers, and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain."

In view of the Department's telegram of October 22, 1914, a portion of which is quoted above, it would not be surprising if the British Government, notwithstanding the undertakings contained in the Order in Council of October 29, 1914, would refuse to recognize the right of the United States to make any claim on behalf of its nationals based upon the provisions of the Declaration of London.

The Order in Council and Proclamation of October 29, 1914, were followed by other proclamations adding articles to the contraband list, and other Orders in Council modifying still further the rules governing British naval operations. These changes and modifications, and the Orders in Council authorizing them, evoked frequent formal and informal protests from the Department of State against the application of such new rules and procedures to the prejudice of American shipping and commerce. These protests were directed principally against the Orders in Council, whose effect was to extend the doctrine of continuous voyage; to substitute for the recognized belligerent right of visit and search on the high seas a new practice under which neutral vessels were required to enter British ports for examination of their papers and cargoes; to enlarge the scope of contraband lists; to institute a novel form of naval blockade; and to cause great interference with the mails. The Orders in Council against whose strict enforcement the Government of the United States protested most frequently were those of October 29, 1914, (the "Declaration of London Order in Council No. 2, 1914, No. 1614" quoted above), of March 11, 1915 (the "Order in Council framing Reprisals for Restricting further the Commerce of Germany, 1915, No. 206")[31] and of July 7, 1916 (the "Maritime Rights Order in Council, 1916").[32]

During the period of American neutrality the Department of State was also in receipt of numerous communications from persons and firms in the United States complaining of the actions of the British authorities and requesting the assistance of the Department not only in obtaining the release of a specific vessel or consignment

[31] *Foreign Relations*, 1915, supp., p. 144.
[32] *Ibid.*, 1916, supp., p. 413.

of goods but also in bringing about a general relaxation of the British procedure under the regulations prescribed by the relevant Orders in Council in so far as that procedure adversely affected American interests. The substance of some of these complaints was incorporated in the notes which the Department addressed from time to time to the British Government on these subjects and such complaints were thus made the basis for formal diplomatic representations; other complaints were referred to the American Consulate General in London and handled informally by that office with the appropriate agencies of the British Government. Not infrequently a satisfactory adjustment of the complaint resulted from these formal and informal representations and in still other cases adjustments were effected by direct action of the British authorities or through London solicitors employed for the purpose by American persons or firms directly concerned.

The representations of the Department of State also resulted in certain general undertakings by the British authorities either to relax the stringency of their regulations in the interest of certain classes of American commerce or in the recognition by that Government of an obligation to compensate American firms or individuals wrongfully damaged by the acts of the British authorities. For example, in a note, dated January 7, 1915, Sir Edward Grey informed the Department of State as follows:[33]

"His Majesty's Government cordially concur in the principle enunciated by the Government of the United States that a belligerent, in dealing with trade between neutrals, should not interfere unless such interference is necessary to protect the belligerent's national safety, and then only to the extent to which this is necessary. We shall endeavor to keep our action within the limits of this principle on the understanding that it admits our right to interfere when such interference is, not with 'bona fide' trade between the United States and another neutral country, but with trade in contraband destined for the enemy's country, and we are ready, whenever our action may unintentionally exceed this principle, to make redress."

The same note also contains the following statement

"Pending a more detailed reply, I would conclude by saying that His Majesty's Government do not desire to contest the general principles of law, on which they understand the note of the United States to be based, and desire to restrict their action solely to interference with contraband destined for the enemy. His Majesty's Government are prepared, whenever a cargo coming from the United States is detained, to explain the case on which such detention has taken place and would gladly enter into any arrangement by which mistakes can be avoided and reparation secured promptly when any

[33] *Ibid.*, 1915, supp., p. 299.

injury to the neutral owners of a ship or cargo has been improperly caused, for they are most desirous in the interest both of the United States and of other neutral countries that British action should not interfere with the normal importation and use by the neutral countries of goods from the United States."

Again, in a note dated July 31, 1915, Sir Edward Grey stated:[34]

"In the note which I handed to Your Excellency on the 23rd July, I endeavoured to convince the Government of the United States, and I trust with success, that the measures that we have felt ourselves compelled to adopt, in consequence of the numerous acts committed by our enemies in violation of the laws of war and the dictates of humanity, are consistent with the principles of international law. The legality of these measures has not yet formed the subject of a decision of the prize court; but I wish to take this opportunity of reminding Your Excellency that it is open to any United States citizen whose claim is before the prize court to contend that any Order in Council which may affect his claim is inconsistent with the principles of international law and is, therefore, not binding upon the court. If the prize court declines to accept his contentions, and if, after such a decision has been upheld on appeal by the Judicial Committee of His Majesty's Privy Council, the Government of the United States of America considers that there is serious ground for holding that the decision is incorrect and infringes the rights of their citizens, it is open to them to claim that it should be subjected to review by an international tribunal."

"It is clear, therefore, that both the United States Government and His Majesty's Government have adopted the principle that the decisions of a national prize court may be open to review if it is held in the prize court and in the Judicial Committee of the Privy Council on appeal that the orders and instructions issued by His Majesty's Government in matters relating to prize are in harmony with the principles of international law; and should the Government of the United States, unfortunately, feel compelled to maintain a contrary view, His Majesty's Government will be prepared to concert with the United States Government in order to decide upon the best way of applying the above principle to the situation which would then have arisen. I trust, however, that the defense of our action, which I have already communicated to Your Excellency, and the willingness of His Majesty's Government (which has been shown in so many instances) to make reasonable concessions to American interests, will prevent the necessity for such action arising."

Of significance in the same connection is the following statement from the memorandum[35] accompanying the British Order in Council of July 7, 1916:

"The Allies solemnly and unreservedly declare that the action of their warships, no less than the judgments of their prize courts, will continue to conform to these principles; that they will faithfully fulfil

[34] *Foreign Relations*, 1915, supp., p. 496.
[35] *Ibid.*, 1916, supp., p. 414.

their engagements, and in particular will observe the terms of all international conventions regarding the laws of war; that mindful of the dictates of humanity, they repudiate utterly all thought of threatening the lives of noncombatants; that they will not without cause interfere with neutral property; and that if they should, by the action of their fleets, cause damage to the interests of any merchant acting in good faith, they will always be ready to consider his claims and to grant him such redress as may be due."

A memorandum transmitted to the Department by the British Embassy in London [*Washington*] on April 24, 1916,[36] embodying the reply of the British Government to certain representations made by the Government of the United States contains the following undertaking:

"The statements contained in paragraph 31 of the United States note have led to a careful review of the practice which is now followed in the British Courts with regard to vessels and cargoes which are released. It has been ascertained that in the case of vessels brought in for examination and allowed to proceed without discharging any part of their cargo no dues are charged. Where part of the cargo is discharged and passes into the jurisdiction of the prize court, the terms of the release are, of course, subject to the control of the court, and His Majesty's Government are therefore hardly in a position to give definite undertaking with regard to the incidence of the expenses and charges which may have been incurred. In general, however, they realize that in cases where goods are released and it transpires that there were no sufficient grounds for their seizures, no dues or charges should fall upon the owner. The statement that waivers of the right to put forward claims for compensation are exacted as a condition of release is scarcely accurate, but they are prepared to concede that such waivers would be a hardship to the owners of the goods released. In these circumstances His Majesty's Government will abstain from exacting any such undertakings in future, and will not enforce those which have already been given."

The general position of the United States, with respect to the liability of the British Government for such of its acts as appeared to be contrary to the then accepted principles of international law, was defined in the telegram from the Department of State to the American Ambassador at London, dated October 22, 1914, to which reference has already been made. This telegram stated, it will be recalled, that the Government of the United States "will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States irrespective of the provisions of the Declaration of London; and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with by the

[36] *Ibid.*, p. 368.

authorities of His Britannic Majesty's Government". The American position was also set forth in a note which, pursuant to the Department's instructions of October 21, 1915, the American Ambassador at London addressed to the British Foreign Office on November 5, 1915.[37] This note contained the following statement:

"This Government is advised that vessels and cargoes brought in for examination prior to prize proceedings are released only upon condition that costs and expenses incurred in the course of such unwarranted procedure, such as pilotage, wharfage, demurrage, harbor dues, warehouseage, unlading costs, etc., be paid [by the claimants or on condition that they sign a waiver of right] to bring subsequent claims against the British Government for these exactions. This Government is loath to believe that such ungenerous treatment will continue to be accorded American citizens by the Government of His Britannic Majestic, but in order that the position of the United States Government may be clearly understood, I take this opportunity to inform Your Excellency that this Government denies that the charges incident to such detentions are rightfully imposed upon innocent trade or that any waiver of indemnity exacted from American citizens under such conditions of duress can preclude them from obtaining redress through diplomatic channels or by whatever other means may be open to them."

These quotations are not an exhaustive summary of the correspondence between the two Governments on the subject. They have been included for the purpose of indicating and to some extent defining the positions of the British and American Governments prior to April 6, 1917, with respect to the liability of the former and the demands of the latter for reparation on account of damage to American interests. The net result of this correspondence seems to have been, first, the satisfactory contemporary adjustment of certain specific complaints; the enunciation of the principle that the United States reserved its rights as a neutral under international law, as it existed prior to 1914, and the admission by the British Government that they would make due reparation for damage to bona fide neutral interests. Had the United States maintained its neutrality throughout the entire period of the war there is no question that the record of its correspondence with the British Government prior to 1917 would afford ample grounds for a demand that there be an adjudication by a competent tribunal of the questions of international law raised by the British Orders in Council.

II

The United States as a Belligerent

With the entry of the United States into the war on April 6, 1917, a new situation was presented; it was one clearly not contemplated in the correspondence of 1914–1916. The role of the United States was

[37] *Foreign Relations*, 1915, supp., p. 578.

changed from that of the principal neutral power to that of an associate in the war against Germany and a beneficiary of the previous policies of the Allies. Moreover, the experience acquired by the Allies during the first three and a half years of the war was of great value to the United States in shaping its own policies. The American Government requisitioned American vessels for Government service and controlled the movements and operations of neutral vessels by rigorous restrictions as to the obtaining of bunkers and stores in American ports; trading with the enemy was prohibited by statute and heavy penalties imposed therefor; exports from, and imports into, the United States were subjected to control, and blacklists were formulated bearing the names of persons and firms suspected of assisting the enemy; the supply of commodities shipped to European neutrals was strictly rationed. In addition, the United States Navy cooperated with the Allied Navies and its operations during the war are described in letters from the Secretary of the Navy to the Secretary of State, dated January 6 and February 20, 1919, the texts of which are quoted below:[38]

"I have received your letter of December 28, 1918,[39] No. SO–763.72112/11092, relative to the inquiry of Mr. Frederick A. Pike of Saint Paul, as to the methods pursued by the American Navy during the war, and quoting an article in the St. Paul *Pioneer Press*.

"The U. S. Navy, in its war operations, was guided by the 'Instructions for the Navy of the United States governing Maritime Warfare', issued in June, 1917, a copy of which is enclosed. As will be noted in the introduction to this book, it was 'prepared in accordance with international law, treaties, and conventions to which the United States is a party, the statutes of the United States, and, where no international agreement or treaty provision exists covering any special point, in accordance with the practice and attitude of the United States as hitherto determined by court decisions and Executive pronouncements.'

"The Navy Department has no knowledge of any violations of these Instructions by U. S. Naval vessels.

"In general, U. S. Naval vessels in Europe carried out the following operations:—

"(*a*) A detachment of battleships operated with the British Grand Fleet from December, 1917, until December 1918. The mission of this force was to contain the German High Seas Fleet, or to engage it if opportunity offered.

"(*b*) A mine force was engaged from June, 1918, until November, 1918, in planting a mine barrage from Norwegian territorial waters to the Orkney Islands. This barrage was intended to prevent the exit of submarines from the North Sea. The barrage was planted in a duly proclaimed area.

"(*c*) Forces consisting of destroyers, yachts, gunboats, submarine chasers, and submarines operated from Queenstown, Plymouth,

[38] Also printed in *Foreign Relations*, 1918, supp. 1, vol. II, pp. 931 and 933.
[39] Not printed.

the coast of France, Gibraltar and Corfu. These vessels were engaged in escort duty for convoys and in direct operations against submarines.

"(*d*) U. S. Naval Air Stations were established in France, Ireland, England, and Italy for anti-submarine operations.

"(*e*) The forces in home waters were organized for anti-submarine work.

"(*f*) A division of battleships operated from Berehaven, Ireland, in October–November, 1918, as a protection for convoys against enemy raiders.

["] By the time the United States entered the war, all enemy surface craft, with the exception of an isolated raider in the Pacific, had disappeared from the sea, and the main naval effort was directed to anti-submarine warfare."

"I have to acknowledge receipt of your letter dated January 30, 1919, So 763.72112/11186,[40] in which you request to be informed whether the naval vessels of the United States cooperated with the British naval vessels in the execution of the plan of seizure and search which was contested in the note on the subject which the American ambassador at London on October 21, 1915, was instructed to deliver to the Foreign Minister of Great Britain, copy of which you enclosed.[41] You also ask that your Department be furnished with additional information regarding the activities of the United States Navy during the war, with special reference to the matter of search and seizure discussed in the note to the British Government mentioned above.

"As is well known to you, the Navy of the United States was associated in cooperation with the British, French, and Italian navies in order to bring about a successful conclusion to the war as far as such conclusion might be attained through lawful maritime operations.

"Inasmuch as full and detailed reports of the operations of our several fleet units, major and minor, during the existing war have not yet been received, studied, and digested, it is not possible at the present time to state categorically that in no instance has a vessel of our Navy taken part, direct or indirect, in any matter of search and seizure of the character discussed in the State Department's note of October 21, 1915, addressed to the British Government.

"I may, however, safely reiterate the statements concerning the war operations of United States naval vessels contained in my letter to you under date of January 6, 1919, a copy of which is enclosed herewith.

"As being of interest, and of possible elucidation in the matter under consideration, I give you the substance of a memorandum prepared in the Office of Naval Operations, which may furnish some explanation affecting apparent coercion of merchant vessels in relation to ports of call, travel in convoy, diversion from usual routes, points of rendezvous, and so forth.

"From and after May, 1917, convoys of merchant vessels were permitted to assemble in our ports, proceeding therefrom under escort and according to convoy rules issued by the British Admiralty and approved by our Navy Department; it does not appear that any of

[40] *Foreign Relations*, 1918, supp. 1, vol. II, p. 932.

[41] *Ibid.*, 1915, supp., p. 578.

these rules were in conflict with the principles contended for in the diplomatic note of October 21, 1915.

"Vessels traveling in convoy were required to follow certain routes, and in some cases were required to put into a port of call prior to the port of ultimate destination; but the only grounds for such definition of route or for putting into a port of call in which we concurred were for the purpose of giving safe routing instructions through dangerous sea areas, or for the purpose of furnishing escort, or for modified orders concerning destination.

"Concerning routing instructions: The reason for establishing definite routes for vessels was solely for the purpose of making the voyage as safe as possible from enemy activities. In order to warn vessels of dangers in their presumed or established routes we required them to speak our Speaking Stations along the coast. We also concurred in British Admiralty instructions requiring vessels on long voyages to stop at some outlying routing station if they had sailed from a port at which no routing officer was stationed. At times this requirement caused diversion from the direct route to destination; but the only purpose for this diversion in which we concurred was to enable the vessel concerned to pursue a safe route.

"Prior to the beginning of German submarine activity along our Atlantic coast about the first of June, 1918, this Department gave no routing instructions at all except to our men of war going abroad; instructions for these vessels were in accord with advices received from the Commander of U. S. Naval Forces Operating in European Waters. Before that time we concurred in and indorsed the British routing instructions by allowing their routing officers to be established in our ports and by advising American vessels to obtain routing instructions from these officers. In all such cases, however, the only purpose for which we indorsed the routings was in order to furnish such vessels the safest possible course through waters rendered dangerous by the activities of the enemy. They were never indorsed for the purpose of causing vessels to be taken into port with the object of visit and search therein. Routing instructions were in all cases secret and committed to paper to the very smallest extent; no copies of such instructions are available for consultation at the present time.

["]In the course of study for the preparation of this reply to your letter a vague impression has been gained that some of the instructions given or concurred in by this Department may have required merchant vessels under the Spanish flag to obtain final clearance at New York upon their voyage from the West Indies to Europe; I have not, however, anything definite on this subject, and I should be glad to receive from you any specific instance of which you may possess knowledge tending to confirm this vague impression in order that if there be cause for such it may be further investigated."

Even if it be a fact that "in no instance has a vessel of our Navy taken part, direct or indirect, in any matter of search and seizure of the character discussed in the State Department's note of October 21, 1915, addressed to the British Government"—and it should be noted that the Secretary of the Navy was unable on February 20, 1919, to state that fact categorically—it does not appear that the Government

of the United States failed to adopt measures having the same object as those put into force by the British authorities in 1914, 1915, and 1916, and strongly protested by the United States.

It would seem, therefore, that the right which the United States undoubtedly had prior to its entry into the war on April 6, 1917, to contest the validity of the British Orders in Council, underwent a considerable practical change as a result of our entry into the war, and the policies adopted by the United States Government subsequent thereto. It is not impossible, moreover, that, were the United States to open up for general discussion the question of neutral rights during the World War, certain Governments which remained neutral throughout the entire period of hostilities might be moved to enter claims against the United States for damages alleged to have been caused by American interference with neutral trade and commerce. The interests of belligerents and neutrals inevitably clash in any great conflict, and it may well be questioned whether the United States could successfully maintain before any international tribunal that its nationals are entitled to damages for losses suffered through belligerent interference with neutral commerce, without admitting at the same time liability on its own account for such losses as may have been occasioned to Scandinavian and Swiss nationals, for example, through its own belligerent operations. A very important question of policy, as well as of principle, is presented by this consideration.

Subsequent to April 6, 1917, practically no new complaints were received by the Department. A considerable correspondence, however, continued between the two Governments covering questions as to the release of goods detained or seized by the British authorities prior to the entry of the United States into the war. As a result of this correspondence, of certain test cases heard and determined by the Prize Court, and of the efforts of the American diplomatic and consular representatives in London, many of the outstanding complaints were adjusted. The termination of hostilities afforded an opportunity for the settlement of still other cases, and on December 29, 1919, the American Consul General at London reported to the Department [42] in part as follows:

"I have the honor to refer to my telegram of December 22, 1919,[43] in regard to Prize Court matters in which I set forth the procedure indicated by the Procurator General as necessary in order to effect the release of the consignments described by the Foreign Office in Lord Curzon's note of December 4 [6], 1919.[44] The Department will have noted from my telegram that practically all east bound goods will be released on presentation of documents of title and full

[42] *Foreign Relations*, 1920, vol. II, p. 632.

[43] Not printed.

[44] Quoted in telegram No. 3510, Dec. 10, 1919, from the Ambassador in Great Britain, *Foreign Relations*, 1920, vol. II, p. 632.

sets of bills of lading, together with invoices when possible; but as to certain cases the Procurator General desires to obtain Prize Court decisions in order to clear up the principles involved. As to west bound goods, these will be released on evidence of payment having been made; deposits will be released on proof that the goods has been paid for prior to the deposits having been made; and goods bought on running account will be released when it can be shown that the running account really effected payment.

"In view of this understanding with the Procurator General I am now prepared to receive applications for the release of goods, or the re-imbursement of deposits."

From this report and from the fact that no subsequent complaints were ever received by the Department from many of the persons who had requested its assistance during the early years of the war, it seemed reasonably certain that a satisfactory adjustment had been made of many of the cases contained in the Department's files, but as very few of the complainants took the trouble to inform the Department when their cases were settled, there was little evidence in the files to show what final disposition of the various cases had been made. As a result the entire mass of war-time correspondence dealing with these complaints was kept in the Department's active files and classified as claims against the British Government.

It should be noted, however, that the United States never enjoyed as favorable a position under Allied prize procedure as did the Allied Governments. On November 9, 1914, a Convention was signed at London between the United Kingdom and France "Relative to Prizes Captured during the Present European War".[45] This convention was ratified December 21, 1914, and acceded to by Italy on January 15, 1917. Article 2 and paragraph 3 of Article 5 read as follows:

"In case of the capture of a merchant vessel of one of the allied countries, the adjudication of such capture shall always belong to the jurisdiction of the country of the captured vessel. In such case the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

"When a merchant vessel of one of the allied countries, whose original destination was an enemy port, and which is carrying an enemy or neutral cargo liable to capture, has entered a port of one of the allied countries, the prize jurisdiction of that country is competent to pronounce the condemnation of the cargo. In such case the value of the goods, after deducting the necessary expenses, shall be placed to the credit of the Government of the allied country whose flag the merchant vessel flies."

"3. If, in accordance with Article 2, paragraph 1, a capture, made by a cruiser of one of the allied countries, shall have been adjudicated by the Courts of the other, the net proceeds of the prize, after

[45] *British and Foreign State Papers*, vol. CVIII, p. 361.

deducting the necessary expenses, shall be made over in the same manner to the Government of the captor, to be distributed according to its laws and regulations."

By an exchange of notes between the United Kingdom, France and Russia in 1915 and 1916,[46] Article 2, quoted above, was modified in the following sense:

"By exchange of notes (15th February–27th April, 1915) between His Majesty's Government and the French Government it has been agreed that, where both vessel and cargo are proceeded against under Article 2 of the Convention of the 9th November, 1914, the provisions of paragraph 1 of that Article shall be held to apply in all cases. Where only the cargo of the vessel is concerned, however, it has been agreed that, in addition to the specific case provided for by Article 2, paragraph 2—viz., where the original destination of the vessel was an enemy port—the principles laid down in that paragraph shall apply also to cases of contraband consigned to a neutral port, and to cases of enemy property where the original destination was not a hostile port.

"By exchange of notes (31st May, 1915–26th October, 1916) between His Majesty's Government and the Russian Government it has been agreed that a similar interpretation of Article 2 of the Convention shall be held to apply in the cases above referred to."

III

The Efforts of the Department of State Since the War To Settle Outstanding Claims With Great Britain

As indicated in the preceding section, the Department of State was able after the Armistice to obtain the agreement of the British authorities to a plan for the adjustment of individual cases where complaint had been made by an American national against the interference by the British Government with goods or vessels in which he claimed an interest. The Department was not, however, always informed by the interested parties when a final adjustment of the complaint had been effected, and as a result there remained on record in 1920 a considerable number of cases which prima facie seemed to involve possible claims against the British Government. Consequently a note was addressed by the Department to the British Government on August 18, 1920,[47] inquiring whether that Government was prepared to enter into an appropriate arrangement with the Government of the United States for the adjustment of meritorious claims growing out of the acts of the American and British authorities incident to the war. No final reply to this inquiry has ever been received from the British Government.

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[46] *British and Foreign State Papers*, vol. CX, p. 521.

[47] *Foreign Relations*, 1920, vol. II, p. 648.

During the next five years no substantial progress was made towards the consummation of an agreement with the British Government for the consideration and settlement of claims between the two Governments and their nationals, having their origin in events subsequent to the agreement of 1910, although the question was considered at various times.

On January 28, 1921, the Senate adopted a resolution (No. 438) requesting the President, if not incompatible with the public interest, "to inform the Senate whether any, and if any, what measures have been taken relating to claims and complaints of citizens of the United States against the British Government growing out of restraints on American commerce, and the alleged unlawful seizure and sale of American ships and cargoes by British authorities during the late war, and communicating to the Senate a copy of any instructions which may have been given by the Executive to the American Ambassador at London on the subject on and after October 21, 1915, and also a copy of any correspondence which may have passed between this Government and that of Great Britain in relation to that subject since that time", and on March 3, 1921, the Secretary of State transmitted to the President,[48] with a view to its communication to the Senate, a report containing the requested information. I am informed that the Senate Committee on Foreign Relations plans to have this report printed as a public document during the forthcoming session of the Congress.

During the period from 1920 to 1925 independent negotiations took place between Departments of the British Government and Departments and Agencies of the Government of the United States, which resulted in the adjustment of certain categories of cases, such as claims between the two Governments for balances due on accounts between the War Department of the United States and the Shipping Board on the one hand, and the British War Office and Ministry of Shipping on the other hand. In addition, bills were introduced from time to time into Congress authorizing relief in one form or another for British nationals who had presented claims against the Government of the United States. Furthermore, communications were not infrequently received during this period by the Department of State from the British Embassy urging that consideration be given to specific cases in which British subjects were interested as claimants. No indication was ever given, however, that the British Government would be inclined to consider the claims of American nationals against it, and in the spring of 1925 the Solicitor of the Department of State discussed informally with the British Agent and Counsel, under the 1910 arbitration agreement, the question of adjusting the pecuniary

[48] *Ibid.*, p. 646.

claims outstanding between the two Governments and not covered by the 1910 agreement, referring particularly to the claims arising out of the war. No official recognition was, however, ever given by the British Government to this discussion and, as stated above, no final reply was ever made by that Government to the Department's formal inquiries on this subject. Accordingly, in the fall of 1925, the subject was informally broached to the British Ambassador by Assistant Secretary of State Olds, whom you had instructed to reopen the matter with a view to reaching a settlement of the problem.

This conversation marked the beginning of the present phase of the question. It was followed by a discussion between the British Secretary for Foreign Affairs and the American Ambassador at London, and by a formal interview between the British Ambassador at Washington and the Secretary of State, during the course of both of which expression was given to the surprise of the British Government that the Government of the United States should have opened this question. In addition, Sir Austen Chamberlain informed the American Ambassador at London that the British Government had been led to believe by President Wilson's attitude at Paris during the Peace Conference that the entire subject matter would be left undisturbed. In a later conversation between the British Ambassador and Assistant Secretary Olds the former stated that it would be very difficult indeed for the British public to understand why the United States should have any claims growing out of the blockade, since the United States had later come into the war with England and participated in the maintenance of the blockade on a more extensive scale than before. The British Ambassador repeated that his Government had been led to believe that the blockade claims would be dropped since President Wilson had intimated in Paris that such claims would not be presented. The Ambassador was informed that so far as the Department knew, there had never been any other intention than that of presenting claims, and reference was again made to the conversation between Sir Cecil Hurst and Mr. Hyde in the spring of 1925 on the subject of the formation of a Joint Commission to consider claims between the two Governments.

These conversations resulted in no progress toward a mutual understanding, serving only to emphasize the unwillingness of the British Government to agree to any procedure looking to an adjudication of any large mass of pecuniary claims against it arising out of its belligerent operations.

On February 4, 1926, the British Ambassador left with the Secretary of State an *aide memoire* referring to previous negotiations between the British Admiralty and the Navy Department regarding the settlement by correspondence of all claims and demands in law

and in equity arising out of the operation of naval forces of the United States and Great Britain during the period from April 6, 1917, to March 3, 1921, and stating that the British Government not only was prepared to agree to such a procedure but considered that it would be advisable if the same procedure, i. e., direct negotiation between the competent British and American Departments concerned, should be forthwith adopted for the settlement of all inter-governmental claims arising out of the war. In presenting this *aide memoire* the British Ambassador explained that what he meant to suggest was that purely inter-governmental claims should first be taken up. This suggestion was not approved by the Department, and the Ambassador was informed that in its opinion all claims should be considered, including those of private citizens. The Ambassador indicated, however, that he believed that his Government would not be willing to agree to such a procedure.

In view of the unsatisfactory situation resulting from the conversations and discussions outlined above, it seemed to the Department that it should not approve the settlement of any British claims against the United States until the British Government manifested a willingness to consider such claims as the Department might be disposed to put forward on behalf of American nationals who alleged damage through the war measures of the British authorities. Accordingly the Navy Department was requested to take no further steps looking to the actual settlement of its claims from and against the British Admiralty, and all communications from the British Embassy requesting relief for British nationals with claims against the United States were answered with the statement that the Department of State was not disposed to take any action in the premises until arrangements had been concluded for the consideration of all claims between the two Governments.

The situation was briefly discussed again by the British Ambassador and the Secretary of State, and in an interview on March 29, 1926, the former stated that he had concluded that he could not recommend to his Government that any steps be taken looking to a discussion of the claims arising out of the operations of the British Navy in preventing commodities necessary to Germany's conduct of the war from reaching that country. The Ambassador asked again if it would not be possible to settle the inter-governmental claims concerning which there appeared to be no substantial difference of opinion before considering further the question of the private claims, and he was again informed that it seemed preferable to the Department to have all claims considered at the same time. The position taken by the British Ambassador indicated that were the Department to address a formal communication to the British Government suggest-

ing the examination of all claims by commissioners representing the two Governments and the arbitration of those concerning which no agreement could be reached by the commissioners, the British Government would reply that it would not consent to the consideration of any of the so-called blockade claims, and that consequently the initiation of formal exchanges on this subject would lead to no satisfactory adjustment of the questions at issue. Accordingly the suggestion was made that the whole question remain the subject of informal treatment in the hope that during such informal consideration a solution might be reached. The specific suggestion was made that a representative of the British Embassy call at the Department and be informed in detail of the general categories of claims which had been presented by American nationals, so that the scope of these claims might be more clearly understood by the British Government, and that a preliminary survey of the papers in the claims files be undertaken for the purpose of eliminating from further consideration those claims or complaints where, in all the circumstances, the claimants did not appear to be entitled to the Department's support. The foregoing suggestions were based upon the results of an intensive examination of a considerable number of cases taken at random from the claims file. This examination indicated that in all probability a very small percentage of the cases listed by the Department as claims, or potential claims, would be able to survive a rigid inquiry into their merits. It appeared, for example, in many instances that the complainant had addressed no communication to the Department in 10 or 12 years, that no specific claim had been stated, that a trifling amount was involved, or that for some other reason it was extremely doubtful whether the Department would feel justified in formally espousing a claim based upon the facts as set forth in the papers in the files. The Department felt that it would be most unfortunate if there should be a definite break in the negotiations between the Government of the United States and the Government of Great Britain over the claims question since, as a matter of fact, it appeared highly probable that the number and value of meritorious claims were relatively insignificant.

These considerations were pointed out to the British Ambassador who stated that a procedure such as that suggested seemed to him to have considerable merit and might be viewed favorably by his Government. He asked, therefore, that an *aide memoire* embodying the above suggestions be transmitted to him for communication to his Government in London. Accordingly, under date of April 7, 1926, the following *aide memoire* was despatched to the British Ambassador:

[Here follows the text of the *aide-mémoire* printed on page 224.]

On April 29, 1926, the Department of State was informed that the British Government was prepared to enter at once upon a preliminary examination of the papers bearing on the claims in question pursuant to the procedure suggested in its *aide memoire* of April, and that J. Joyce Broderick, Esquire, Commercial Counselor of the British Embassy, had been instructed to undertake this examination for the British Government in conjunction with a representative of the Department of State. The British Government's acceptance in principle of the plan outlined by the Department's *aide memoire* of April 7, 1926, marked the first real progress toward a solution of this problem.

In the meantime, the Department of State had undertaken a thorough re-examination of the papers in its claims files. This examination indicated that the volume of correspondence was so great that it would be most confusing were an effort made to deal with it in its existing form. Accordingly a staff of assistant solicitors was instructed to go through all the files and summarize in brief memoranda the significant facts in each individual case. This work required several months time and resulted in the preparation of about 2200 separate memoranda, or synopses, many of which covered more than one complaint since frequently a single complainant would be interested in several different ships or consignments. Some of them also were duplicates of others since complaints regarding a single consignment were sometimes made by more than one party. A careful examination was then made of these memoranda as rapidly as they were prepared for the purpose of determining the probable merit of the individual cases on the basis of the facts stated. This examination confirmed the belief that a very considerable proportion of the cases might properly be eliminated from further consideration either because no specific claim had ever been made, the amounts involved were trifling, the Department had received no communication from the complainant in the past ten or twelve years, the subject matter of the complaint had been adjusted, or for some other equally valid reason.

The duty of representing the Department of State in the joint informal conferences with Mr. Broderick was assigned to me, and, in the light of the facts disclosed by my examination of such memoranda as had then been prepared, I was authorized provisionally to withdraw from consideration during our conferences all cases falling within the following categories, and to state that they would not be presented by the Department if a satisfactory general agreement were reached by the two Governments:

1. Cases involving an actual loss of $500 or less.
2. Cases arising from the inclusion of names in the so-called "black lists" unless special grounds for espousal exist.
3. Cases involving alleged wrongful detention, expulsion or mistreatment of American citizens unless there is clearly evidence of injustice resulting in substantial loss or injury, or of needlessly harsh or arbitrary action.
4. Cases involving claims for purely speculative profits.
5. Cases involving losses due to British export or import or bunker restrictions or maximum price orders unless there has been discrimination against the American interests involved.
6. Cases where without unreasonable delay or expense the subject matter has been released to the interested party in good condition, or its fair cash value paid over to him.

This section of the report should not be concluded without reference to a resolution introduced into the Senate on March 15, 1926, and adopted on June 15, 1926, requesting the Secretary of State, if not incompatible with the public interests, to inform the Senate what steps he was taking to negotiate claims conventions for the arbitration and settlement of claims of American citizens against Great Britain and France "arising out of violations of the rights of neutrals between August 1, 1914, and April 6, 1917". On July 2, 1926, the Department transmitted to the President with a view to its communication to the Senate a reply to this resolution. This reply has been printed as Senate Document No. 155, Sixty-ninth Congress, First Session. It outlined briefly the status of the claims question and stated that the Department was endeavoring to assemble all available information regarding the subject matter of the various complaints and claims filed with it against the British Government, with a view to determining what cases justified further affirmative action and could properly be made the subject of negotiation with the British Government.

IV

The Joint Examination of the Claims Files and Its Results

Mr. Broderick and I were in frequent consultation during May, June, and July. As rapidly as the Solicitor's Office completed the memorandum summaries, copies were informally made available to him, and in addition he was permitted to examine the supporting data in such detail as he desired. He was soon impressed, however, with the adequacy of the memoranda and satisfied that there was no desire on the part of the Department to suppress any information which might be useful in reaching a settlement of the controversy. Not only did Mr. Broderick and I make independent examinations of these memoranda but we also discussed them together in detail.

We found that in a very considerable number of cases the files contained no information as to the ultimate disposition of the subject matter of the complaint. The question then arose as to the next step that should be taken, that is to say, whether the missing information should be obtained by circularizing the complainants or whether it should be sought from the records of the British Government in London. A considerable correspondence on this point took place between the Department and the British Foreign Office, the outcome of which was that the latter agreed to make available in London any data contained in the files of the British Government covering the claims and complaints which were the subject of Mr. Broderick's and my joint labors. Mr. Broderick was instructed by his Government to meet me in London on September 1, 1926, and I was, in turn, instructed to be in London on that date ready to commence an investigation into the British records.

The work of summarizing the cases in the claims file and of preparing memoranda was completed in July, and as soon as these memoranda had been arranged alphabetically and numbered serially, Mr. Broderick and I made a rapid review of them all for the purpose of applying the six rules above mentioned wherever the facts justified. We found that nearly 50 per cent of the cases presented in the summaries could be eliminated by the application of these rules or for equally valid reasons. The remaining 50 per cent consisted principally of cases where the Department's information was inadequate to permit the application of any recognized rules, and it was with respect to this residue that the examination of the records in London was undertaken.

The work of consulting the records of the British Government in London was carried on during September and the first three weeks of October. The archives of the offices of the Admiralty Marshal and of the Procurator General were placed unreservedly at the disposal of Mr. Broderick and myself. In addition, such information as was necessary from the Foreign Office, the War Office, the Admiralty, the Board of Trade, the Custodian of Enemy Property, and other British Departments and offices was promptly obtained and furnished. Had it not been for the cooperation of these Departments and the fact that officers of the British Government were assigned to assist in obtaining and interpreting the information from the files of the Admiralty Marshal's office and the Procurator General's office, it would not have been possible to complete the inquiry in the short space of seven weeks.

The most fruitful source of information proved to be the records of the Admiralty Marshal's office, and Mr. Broderick and I spent much of our time in the Royal Courts of Justice where that office

is located. An official of the British Government, thoroughly familiar with the records in question, was detailed to our assistance, and rendered invaluable aid. Our procedure was briefly as follows:

During August Mr. Broderick had had prepared a series of schedules classifying under general headings the 1100 or so cases concerning which information was to be sought in London. These schedules gave the serial number of the case, the name of the vessel, a description of the goods involved, and other helpful data. The schedules listing cases dealing with East and West bound commerce which had been diverted or otherwise interfered with by the British naval forces, or which had come within British jurisdiction for other reasons, were taken by us to the Admiralty Marshal's office, and there, by reference to the great loose leaf ledgers recording all goods which came under the Marshal's authority, and by examination of copies of ships manifests and other records, we succeeded in identifying most of the items concerning which we had record of a complaint to the Department of State. When the items were identified, it was a simple matter to ascertain their disposition. The information thus obtained was entered briefly on the schedules and later transcribed by me on to the original memorandum summaries brought from Washington. A permanent record has thus been made from original sources in London showing the disposition of the subject matter of most of the cases concerning the disposal of which the Department's files are otherwise silent.

Where the records of the Admiralty Marshal proved inadequate, recourse was had to those of the Procurator General, from which office valuable general information dealing not so much with specific cases as with general procedure, and the conclusion of agreements between the British authorities and American shippers was obtained. In addition, the Foreign Office, the Board of Trade, the Custodian of Enemy Property, and other Departments of the British Government conducted independently a search in their archives for data concerning cases falling within their jurisdiction, and this information as rapidly as obtained was communicated to Mr. Broderick and to me, and its substance transcribed on the memorandum summaries. In only a relatively few cases was it impossible to identify from the records of the British authorities shipments concerning which complaint had been made to the Department. This failure was due in most instances to the inadequacy of the information supplied to the Department by the complainant, but as a check on the completeness of the British records I chose three cases at random from those with respect to which no information had been obtained and consulted the records of the American Consul General in London, through whose office, it will be recalled, many cases were handled during and

after the war. I found that not even his records contained any data showing the seizure or detention of these three items.

On September 21, 1926, Assistant Secretary Olds arrived in London pursuant to your instructions, and I reported to him in detail the result of my work up to that time. I also took him to the office of the Admiralty Marshal and showed him the procedure by which we were obtaining the information which was being entered on the summaries, and upon the basis of which the Department would be called upon to determine the disposition which should be made of the complaints. Mr. Olds also discussed the general questions involved with Sir William Tyrrell, and reached an informal understanding as to the consideration which would be given to such cases as might appear to be meritorious at the conclusion of my mission in London.

The most impressive single fact revealed by my examination of the British records was the extent to which individual complaints had been settled by the British authorities through one expedient or another. In a great number of cases, for example, the goods, their proceeds or their value were released many years ago to the owners who, it might be mentioned in passing, frequently proved not to be the American complainant whose complaint the Department has on file, but a European vendor or vendee; in other cases a general settlement had been effected as, for example, the so-called "Swedish settlement"; in still others private agreements were negotiated and the British Government holds the receipts of American complainants expressly stating that full and final settlement had been made of their claims. (Copies of many such receipts covering the purchase by the British authorities of cotton cargoes have been brought by me back to Washington); other cases were disposed of in other ways or are still open to adjustment upon proof of title.

My examination of the British records was completed during the third week of October and Mr. Broderick and I then went over a second time the entire lot of cases for the purpose of reconsidering them in the light of the additional information obtained in London, and of applying the rules of provisional exclusion to which reference has already been made. During this review of the cases the number of the applicable rule was entered by me on the original summary, and when that work was completed I prepared a list of all of the 2658 cases showing with respect to each the rule of exclusion, if any, which had been applied.

This list will be found in Appendix A of this report.[49] The cases are identified by the serial numbers as they appear in the memoranda summarizing the facts, and opposite each case number appears the

[49] Not printed.

number of the rule which has been provisionally applied. The scope of Rules 1 to 6 is explained on page 30 of this report.[50] Wherever Rule 7, the general rule, has been applied, the specific reason for its application has been entered under the heading "Remarks". In view of the number of Rule 7 cases it seemed desirable to make a subdivision thereof, and the following 9 classifications have been chosen as most illustrative of the facts:

1. Cases where the owner of the goods has never complained to the Department.
2. Cases where the goods, their proceeds or invoice value are still in court or in the hands of the custodian of enemy property, and available on proof of title.
3. Cases where the title to the goods appears to be in aliens.
4. Cases adjusted by the so-called "Swedish Settlement".
5. Cases adjusted by agreement with the interested parties.
6. Cases where the goods were condemned and there was no appeal or subsequent complaint to the Department of State.
7. Cases where no formal claim has been presented and where the complainant has not communicated with the Department in 10 or more years.
8. Cases where no evidence has been found that the goods were seized by the British authorities.
9. Cases where rejection is indicated for other reasons (e. g., where the claim is against France, Italy, or one of the self-governing dominions; where the claimant has withdrawn his claim; where data requested by the Department have never been supplied; where there is no evidence of British responsibility.

The following table summarizes the facts contained in Appendix "A" and shows the number of cases which may be dropped because they fall under Rules 1 to 6 and the 9 subdivisions of Rule 7. It will be noted that 2501 of the total of 2658 cases can thus be disposed of, leaving as a residue only 157:

Cases which may be dropped

1. Those involving an actual loss of $500 or less. 211
2. Those arising from the inclusion of names in so-called "black lists" and where no special grounds for espousal appear. 102
3. Those involving alleged wrongful detention, expulsion or mistreatment of American citizens where there is no evidence of injustice resulting in substantial loss or injury or of needlessly harsh or arbitrary action. 36
4. Those involving claims for purely speculative profits. . . . 9
5. Those involving losses due to British export, import or bunker restrictions or maximum price orders where there is no evidence of discrimination against American interests 29

[50] See p. 270.

6. Those where without unreasonable delay or expense the subject matter has been released to the interested party in good condition or its fair cash value paid to him. . . . 838
7a. Those where the owner of the goods has never complained to the Department. 237
7b. Those where the goods, their proceeds or invoice value are still in court or in the hands of the Custodian of Enemy Property and available on proof of title. 172
7c. Those where the title to the goods appears to be in aliens. . 76
7d. Those adjusted by the so-called "Swedish Settlement". . . 34
7e. Those adjusted by agreement with the interested parties. . 175
7f. Those where the goods were condemned and there was no appeal or subsequent complaint to the Department of State. 110
7g. Those where no formal claim has been presented and where the complainant has not communicated with the Department in 10 or more years. 25
7h. Those where no evidence has been found that the goods were seized by the British authorities. 153
7i. Those where rejection is indicated for other reasons, (e. g. where the claim is against France, Italy, or one of the self-governing dominions; where the claimant has withdrawn his claim; where data requested by the Department have never been supplied; where there is no evidence of British responsibility. 294

Total. 2501

While the merit of these provisional rules of elimination is doubtless sufficiently apparent from a mere inspection of the statements in which they are embodied, the following brief argument in support thereof may be helpful:

Rule 1. It is believed that claims involving $500 or less are too trifling to be made the subject of international reclamation where the facts are so complicated as in the cases now under consideration and so long a time has elapsed since the act complained of took place. The cost of adequately preparing and judicially determining such cases would be out of all proportion to the amount of a possible award. Irrespective of any question of merit, therefore, and in the interest of a speedy adjustment of the entire problem, such cases should be eliminated. It should be noted, however, that many of the cases provisionally eliminated under this rule would doubtless fall under one of the other rules were they carefully examined into. 86 percent of the 2658 cases examined into proved to be susceptible of elimination under Rules 2 to 7, inclusive. Assuming that the same percentage is applicable to the cases which have been provisionally eliminated because they fell within Rule 1, 178 of the 211 cases eliminated by the application of Rule 1 could be eliminated under Rules 2 to 7. As the time was not taken in London, however, to search the records of the British Government with respect to this class of cases, no definite information can be given with respect thereto.

Rule 2. After the United States entered the war it adopted and enlarged the British black lists. In these circumstances it seems neither proper nor safe to take the position that the British Government is under any liability to make compensation for either direct or indirect losses alleged to be due to the inclusion of the names of American firms on British black lists. As a practical matter, moreover, such cases do not lend themselves to a judicial determination since it would be impossible to establish affirmatively that a claimed loss was attributable solely to the inclusion of the claimant's name on the black list. Too many other factors necessarily enter into the profits and losses of a business, particularly during a great war, and no tribunal could determine accurately the amount of possible lost profits through the blacklisting of a firm or individual. It is also a question whether such black listing affords a basis for a diplomatic claim. The effect of the black list was to make it an offense for a British subject to have dealings with the black listed firm or individual. The prohibition ran against the British subject and not against the black listed person, and it would be difficult to establish that a Government did not have the power to control during war the commercial operations and connections of its own nationals.

Rule 3. It cannot be expected that travel through a war zone will be convenient, comfortable, or even safe. The personal convenience of the traveler must necessarily be subordinated to the exigencies of the war, and in the absence of conclusive evidence of substantial actual loss or physical injury or of wantonly harsh or arbitrary action, it is difficult to see on what ground a diplomatic claim against Great Britain could properly be based in cases of this nature.

An illustrative case in this category is No. 1756, where the facts are briefly as follows:

A person with a German name claiming American citizenship was a passenger on the S. S. *Rotterdam*, was removed from that vessel by the Plymouth military authorities on September 23, 1914, and detained in the naval detention barracks until September 26, 1914, when he was returned to the vessel. A claim of $25,000 for the arrest and detention and for $11,077.50 for alleged losses to his business has been submitted to the Department by memorial.

A claim typical of several others within this category which have been submitted to the Department is No. 1326, where the facts are briefly as follows:

An American citizen was a passenger on a German vessel which sailed from Philadelphia for Hamburg on July 23, 1914. The vessel arrived at Falmouth, England, at midnight August 3, 1914, and the claimant alleges that British officers assumed control of the vessel prior to the declaration of war, disabling the wireless apparatus, thus making communication between the passengers and shore impossible, denying the passengers the right to depart from the vessel, and preventing the crew and stewards from cleaning the vessel. The claimant alleges that a guard of British soldiers patrolled the vessel day and night, disturbing the passenger's sleep, that the passengers were annoyed and threatened with violence, and were not allowed to leave the vessel until the afternoon of August 8, 1914, when the American passengers were permitted to go ashore but were landed in the rain and compelled to seek shelter in an open shed without food. A claim

for $1291.75 for this detention has been filed with the Department. In this connection it might be pointed out that according to the Prize Court record covering this vessel, it entered Falmouth Harbor voluntarily on August 3, 1914, and on the afternoon of August 4, 1914, the master was informed that his ship was unconditionally released and free to leave at once. The vessel nevertheless remained in Falmouth and was there at 11 p. m. when war began between Great Britain and Germany. She was seized as prize at 5 a. m. on August 5. (Lloyd's *Prize Cases*, Volume 4, Page 361).

Rule 4. The Government of the United States cannot undertake to guarantee to American nationals that they will realize the full profit they expect from their foreign ventures. Business during a great war must be predicated upon possible delays and interruptions of normal communications. The fact that war conditions have caused a delay in the receipt of merchandise which, if received earlier could have been sold for a higher price, does not in itself afford a proper ground for a valid claim against a belligerent government. There is a very real difference between an actual out-of-pocket loss due, for example, to the sinking of a vessel, and a failure to realize speculative, prospective, or contingent profits. It is also difficult, if not impossible, to establish in a given case that the act of one of several belligerents has been the sole and proximate cause of the alleged loss. Cases illustrative of those falling within this category are No. 366 and No. 942. The facts in the former are briefly as follows:

The claimants alleged that shipments of dolls, toys, fancy goods, and china ware intended for the Christmas trade had been delayed owing to the detention in England of the vessels carrying these shipments, with the result that the goods reached them too late for the holiday trade. It was alleged that in consequence the claimants' customers refused to receive the goods and as there was no market for them after the holidays, they lost several thousand dollars. No formal claim has ever been filed with the Department.

Case No. 942 involves a formal claim for $28,000 representing losses alleged to have been sustained by reason of British interference with claimants' trade with foreign ports, covering specifically the alleged seizure or detention by the British authorities of various shipments of laces purchased by the claimants in Belgium and Germany while en route to the United States.

Rule 5. A sovereign government has an absolute right to enact such domestic legislation as seems to it appropriate and so long as such legislation does not discriminate against nationals of one foreign government in favor of nationals of another, and so long as there is no violation of a fundamental social right, there would not seem to be any ground for an international pecuniary claim. Export and import restrictions, bunker regulations, and maximum price orders all involve questions of domestic policy, and unless it can be shown that there has been discrimination against the American interest as such, or other special facts exist giving the complainant a peculiar equity, the Department would not be justified in my opinion in pressing claims falling within this category. Cases illustrative of those within this category are Nos. 56, 1293, and 2035.

In case No. 56, an American firm shipped to English ports for trans-shipment to Rotterdam cargoes of packing house products.

These cargoes were detained in England because of British regulations controlling the export of such goods from England. The Department's assistance in obtaining the release of these shipments was requested at the time, but no formal claim has ever been submitted.

The allegations in case No. 1293 are to the effect that an American firm purchased wool in South Africa which was sent to London for trans-shipment to the United States. The export of wool from England being subject to Government regulation, these shipments were detained in London pending the granting of export licenses. The complainant requested the Department's assistance and expressed a desire to file a claim against Great Britain for damages resulting from the detention of the wool. No formal claim has, however, been submitted and the last correspondence in the files is dated April, 1915.

In case No. 2035 it is alleged that a shipment of buttons consigned by an American firm to a foreign port was seized in England on the ground that the buttons in question were prohibited imports and that no import license had been obtained. No claim or notice of claim having been made to the British Government within the statutory period provided for in the customs law, the seizure became absolute and the goods were disposed of for the benefit of the Crown. No formal claim has ever been submitted to the Department of State.

Rule 6. Where the complainant has accepted the return of his goods, their value or the proceeds realized from their sale in settlement of his claim or complaint, the matter should obviously be regarded as ended so far as any pecuniary claim against the British Government is concerned. The propriety of this position was recognized by the Department 8 years ago when in a telegram to the American Embassy at London, dated July 12, 1918,[51] it stated that it would be willing to come to an understanding with the British Government to the effect that when owners of goods seized would be willing to receive them under certain conditions including an understanding that no claims resulting from their seizure would subsequently be made on the British Government, the Government of the United States would regard such cases as finally adjusted so far as concerns pecuniary claims therefor.

Rule *7a*. This category speaks for itself. In these cases information regarding the alleged seizure or detention was furnished to the Department from the American Embassy at London. It was communicated to the reputed American party at interest but never acknowledged or made the basis of any complaint.

Rule *7b*. I was informed in London that in cases falling within this category it is still possible for an American claiming title to obtain the release of his goods or their proceeds by proving his title through appropriate proceedings in the Prize Court, or before the Custodian of Enemy Property to whom many such items have been transferred as of presumed German ownership for credit in accordance with the provisions of the Treaty of Versailles. In these circumstances an adequate remedy is still available for the adjustment of complaints of this nature.

Rule *7c*. There is clearly no ground for action by the Department of State in cases falling within this category.

[51] *Foreign Relations*, 1920, vol. II, p. 616.

Rule 7*d*. These cases were settled by direct negotiation between the British and Swedish Governments, the latter representing the Swedish owners or insurers of the goods in question. It would thus appear that there is no American interest involved.

Rule 7*e*. These cases include those covered by the Packers Agreement and the arrangement under which the British authorities purchased cotton cargoes. As stated above, I have copies of the receipts given by American shippers acknowledging full and final settlement of all claims arising out of the cotton arrangement.

Rule 7*f*. In these cases the complainant has had his day in court and has been content to abide the result. There is no reason why the Department of State should seek to reopen them.

Rule 7*g*. In these cases the complainants may properly be held to have slept on their rights, if any.

Rule 7*h*. This rule is self-explanatory.

Rule 7*i*. This rule is self-explanatory.

It will be noted from the data on page 38 [52] that of the 2658 cases which have been the subject of my inquiries, 2501 are susceptible of elimination by the application of the above mentioned rules. This leaves a residue of 157 cases for further consideration, included in which are 62 concerning which information has not yet been obtained from the British authorities. The appropriate Departments of the British Government are examining their records with reference to 9 of these cases (Case Nos. 78, 285, 539, 1082, 1300, 1334, 1396*a*, 1696*a*, 1949) in respect of which data may prove to be available in London, and will report thereon as soon as they have completed their search. None of these 9 cases involves the blockade question in any way. Information with respect to the other 53 can only be obtained from the sources indicated below:

South Africa Prize Court
23II, 437, 825, 851I, 1244, 1898, 2061I, 2065I, 2087I, 2089.
Gibraltar Prize Court
113, 254, 521I, 555I, 586, 613, 667, 708VII, 708VIII, 821, 851II, 878, 895, 1034, 1043, 1081, 1207, 1302, 1420, 1687, 1773, 1983, 2072, 2118.
Malta Prize Court
119, 984, 985, 986.
Calcutta Prize Court
521II, 521V, 1601.
Bombay Prize Court
531.
Egypt Prize Court
1338, 1361, 1467II.
Melbourne Prize Court
1895.

[52] See pp. 274–275.

Adelaide Prize Court
2090.
Halifax Prize Court
1554.
Hongkong
324.
Shanghai
861.
Trinidad
1599.
British East Africa
1183, 1422A.

Of the 53 cases listed immediately above, 33 are no more than contemporary requests for the Department's assistance in obtaining the release of shipments made prior to August 4, 1914, on German vessels and detained on such vessels. In none of these 33 cases has any complaint been made to the Department within the last 10 years, or has a formal claim ever been filed with the Department. The other 20 cases present a variety of facts but in only one instance has a formal claim been filed, and in only one other case has the complainant written to the Department as recently as 1921, most of the correspondence terminating in 1919 or before. It does not appear, therefore, that any serious questions are presented by these 53 cases.

This leaves for further consideration at this time only 95 cases, and these are listed and classified in the following table, which also shows the amount claimed by the complainant wherever such amount has been stated.

DETENTION OF SHIPS AND CARGO—43 CASES

Case No.		
18	Detention of goods ex S. S. *Ogeechee*	$962.41
31	Detention of S. S. *Ausable*	15,153.90
95 XIII	Detention of S. S. *Camino* and crew	18,053.39
188	Detention of S. S. *Seguranca*	81,000.00
564 I	Detention of S. S. *Alfred Noble*	302,296.00
564 II	Detention of S. S. *Bjornstjerne Bjornson* . .	329,265.00
564 III	Detention of S. S. *Fridland*	255,244.00
564 IV	Detention of S. S. *Kim*	359,464.00
564 IX	Detention of S. S. *Sandefjord*	
564 X	Detention of S. S. *Fram*	
698	Detention of schooner *Richard W. Clark* (£1755), say	8,500.00
703	Detention of S. S. *Leelanaw*	14,400.00
710 IV	Detention of cargo ex S. S. *Leelanaw* . . .	38,295.60
805–819	International Harvester Co. claims	100,236.75
829	Detention of S. S. *Chr. Knudsen*	12,259.98
830	Detention of S. S. *Aztec*	5,196.60
833	Detention of S. S. *F. J. Lisman*	622,871.68
834	Detention of S. S. *Seaconnet*	506,132.00
883	Detention of cargo ex S. S. *Celtic King* . . .	2,959.29
903 I	Detention of cargo ex S. S. *Aenne Rickmers*	

Case No.		
903 II	Detention of cargo ex S. S. *Helgoland*	
903 III	Detention of cargo ex S. S. *Derflinger*	
903 IV	Detention of cargo ex S. S. *Altair*	
1270	Detention of schooner *Speedwell*	$9,056.02
1306	Detention of goods ex S. S. *Ogeechee*	855.37
1397	Detention of S. S. *Ogeechee*	12,166.67
1881	Detention of S. S. *Olaf*	4,183.33
2017	Detention of S. S. *Southerner*	81,010.93
2063	Detention of S. S. *Olaf*	1,358.98

REQUISITION OF VESSELS CHARTERED BY AMERICANS—20 CASES

82	Requisition of chartered S. S. *Glenroy*	20,000.00
84	Requisition of chartered S. S. *Adriatic*	
95–VIII	Requisition of chartered S. S. *Vienna*	11,292.81
95–IX	Requisition of chartered S. S. *Bellorado*	111,221.95
95–X	Requisition of chartered S. S. *Strathcarron*	118,227.63
95–XI	Requisition of chartered S. S. *Bellasco*	59,704.09
95–XII	Requisition of chartered S. S. *Bellagio*	
137	Requisition of chartered S. S. *Heighington*	
436	Requisition of chartered S. S. *Vienna*	40,194.53
564–VI	Requisition of chartered S. S. *Isle of Mull*	
564–VII	Requisition of chartered S. S. *Frankmere*	
585	Requisition of chartered S. S. *Duffield*	
828–I	Requisition of chartered S. S. *Rosalind* (£153,463) say	750,000.00
828–II	Requisition of chartered S. S. *Georgian Prince* (£190,619) say	900,000.00
1367	Requisition of chartered S. S. *Eupion*	
1654	Requisition of chartered S. S. *Jerseymoor*	6,609.56
1710	Requisition of chartered S. S. *Sowell*	100,000.00
1780	Requisition of chartered S. S. *Maresfield*	
1959	Requisition of S. S. *Canastota*	
2062	Requisition of chartered S. S. *Windermere*	60,220.98

SEQUESTRATION OF PROPERTY (DEBTS)—3 CASES

74	Austro-American Magnesite Company claim for debt owed to it and taken over by Custodian of Enemy Property—£994.11.6 say	4,500.00
165	Claim on Custodian of Enemy Property £1435.3.7, say	7,000.00
1027	Claim for £203.16.11 sequestered by Custodian Enemy Property, say	1,000.00

LOSS OF VESSELS AND/OR CARGO—10 CASES

10–I	S. S. *Canadia*, loss of cargo	11,022.00
242	S. S. *Canadia*, loss of	154,470.00
315	S. S. *Jacob Luckenbach*, loss of	
612–XIII	S. S. *Edna* case	
766	S. S. *Edna*	670,807.50
800	S. S. *Canadia*, claim by insurance company	

Case No.		
1006	S. S. *Jacob Luckenbach*, loss of	$814,032.91
1135	S. S. *Edna* case	
1736	S. S. *Llama*, loss of	148,000.00
1789	S. S. *Edna*	670,807.50

LOSSES FROM SEIZURE, CONDEMNATION AND/OR SALE OF GOODS—15 CASES

27	Formal claim of American Smelting & Refining Company on account of condemnation 350 tons lead ex. S. S. *Kronprinzessin Cecilie* £6,862.19.11 say	35,000.00
1015 I	Losses on fruit sold ex S. S. *Albis* (£1621.15.2) say	8,000.00
1015 II	Losses on fruit sold ex S. S. *Cygmus* (£43.19.2) say	200.00
1015 III	Losses on fruit sold ex S. S. *Lapland* (£990.12.10) say	4,900.00
1015 V	Losses on fruit sold ex S. S. *Seguranca* (£1109.0.5) say	5,500.00
1015 VI	Losses on fruit sold ex S. S. *Gerd* (£234.11.6) say	1,100.00
1015 VII	Losses on fruit sold ex S. S. *Soerland* (£179.3.6) say	800.00
1088	Sale of parcel post packages, loss from . .	2,019.20
1470	Robert College claim for loss of goods . . .	4,921.68
1753	Condemnation of goods, loss from	2,992.00
1951	Condemnation of goods, loss from	850.45
2074	Seizure of shipment ladies' shoes	2,250.76
2103	Cargo condemned ex S. S. *Falk*	15,076.60
2104	Cargo condemned ex S. S. *Seaconnet* . . .	31,988.66
2105	Cargo condemned ex S. S. *Taurus*	6,442.97

PERSONAL INJURIES—1 CASE

543	Personal injuries in occupied Germany . .	5,000.00

REQUISITION OF PROPERTY IN ENGLAND—2 CASES

1137	Midland Linseed Products Co. claim (£72,825.7.6) say	360,000.00
1943	Requisition of S. S. *San Pablo* at shipyard	

DESTRUCTION OF OIL WELLS IN RUMANIA—1 CASE

1754	Rumanian oil wells, Destruction of	

Many of these 95 cases have been retained in the residue of cases calling for further consideration principally because they have been made the subject of a formal claim to the Department. I do not, however, regard them all as possessing such merit as to call for espousal by the Department of State or even for formal discussion

with the British authorities. My views with respect to them are as follows:

1. *Cases Involving Detention of Ships and/or Cargo.*

I was informed in London that the British Prize Court has jurisdiction over all claims for damage due to interferences with ships or their cargo and can not only decree the restitution of the ship or the release of the cargo, but can also award damages arising out of the detention. Every claimant in this group of cases, therefore, has had available to him an appropriate local remedy for the injuries complained of. As there is no stipulated time limit within which an action of this kind must be brought in the Prize Court, this remedy is still available. My feeling is that in all the circumstances the claimants interested in this class of case should be required to press their claims in accordance with the established British procedure, and that in the absence of a conclusive showing that there has been a denial of justice, as that term is understood in international law, such judicial determination of the cause should be regarded by the Government of the United States as finally disposing of the claim.

Regardless of the question of general principle, however, any examination of these cases on their merits could not but result in the elimination of a considerable number. For example, the interested party in the cases involving the detention of the *Alfred Noble*, *Bjornstjerne Bjornson*, *Fridland*, *Kim*, *Sandefjord*, and *Fram* is the Gans Steamship Company, a concern which was almost wholly German in its interests and affiliations. Even if the fact of its American incorporation affords technical justification for the espousal of its claims by the Department of State, the record of its activities during the war and the German nationality of practically all of its stockholders make it difficult to see how the Government of the United States can properly press claims against the British Government for the benefit of that corporation. These vessels and their cargo were the subject of protracted litigation in the British Prize Court with the result that in nearly every instance there was a decree of condemnation. In the case of the *Fram*, the Gans Steamship Company made claim in the Prize Court on June 22, 1916, for detention damage, but after the British authorities had filed an affidavit of defense (See Appendix B for the text of this affidavit[58]) the company withdrew its claim and paid the Crown's costs without further ado.

In the case of the claim for the detention of the *F. J. Lisman*, the facts as reported to me by the Procurator General's office indicate that the vessel entered the port of London voluntarily on June 8, 1915, and thus came within British jurisdiction as the result of its

[58] Not printed.

own option. A large part of the cargo was seized and part of the seized cargo was later condemned. The vessel was released July 10, 1915. A claim for detention damage was filed in Prize Court and dismissed November 19, 1919. Leave to appeal was granted March 9, 1920, but no appeal was taken.

In the case of the *Seaconnet*, the vessel was detained from June 14, to July 8, 1915. A large part of her cargo was seized and condemned. A claim in Prize Court for detention damage was dismissed September 21, 1920. Leave to appeal was granted, but no appeal was taken.

The other cases in this category involve relatively small amounts.

2. *Cases Involving the Requisition of Vessels Chartered by Americans.*

As a matter of policy I feel that this Government should not question the right of a sovereign nation to requisition in case of national emergency vessels registered under its flag, and chartered to aliens, without exposing itself to claims for damages due to loss of profits which might otherwise have accrued to the charterers. This is a right which the United States may well desire to exercise in the future. The 20 cases in this category should not, therefore, in my opinion be pressed against the British Government.

As a matter of law, the same conclusion seems to follow from the decision of Judge Hough in *The Claveres*[*k*] (264 Fed. 276) to the effect that the charter party under which that vessel was operating in the service of an American corporation was terminated by frustration immediately upon the requisition of the vessel by the British Government. It seems to be recognized that in the case of ordinary commercial charter parties not amounting to charter parties by demise—and I understand that the charter parties under which the requisitioned vessels were operating in the service of the American charters were in the ordinary commercial form—the charterers have no property in the vessel but only a contractual right to order the master to perform voyages with her for their benefit and profit. In legal contemplation, therefore, Judge Hough held that the chartered vessel when requisitioned was taken or received from the owner and not from the charterer. He stated that "subject to the chartered rights of the Earn Line the ship master was the owner's master and the ship through that master in the owner's possession" (264 Fed. 276, 280). Further information on this subject is contained in a memorandum which I brought with me from London citing certain British authorities, and also in the texts of two decisions of the defense of the Realm Losses Royal Commission denying compensation to the charterers of requisitioned vessels. Copies of these decisions are also among my papers.[54]

[54] Not printed.

3. *Cases Involving the Sequestration of Property.*

The three cases in this category present the same question, namely, the nationality that should be attributed to a corporation organized under the laws of one country but owned by nationals of another country. The corporations in these three cases were either German or Austrian, but were owned by Americans. Property belonging to the corporation was sequestrated by the British authorities as being enemy property, and has been dealt with under the appropriate provisions of the Treaty of Versailles. The action of the British authorities is consistent with the generally accepted rules, and I am not in favor of espousing these cases.

4. *Cases Involving the Loss of Vessels and/or Cargo.*

These 10 cases all involve the loss of the *Canadia*, the *Jacob Luckenbach*, and the *Llama*, or the case of the *Edna*. I regard the British Government as properly chargeable with the damages sustained by American nationals in connection with these cases, and I recommend their formal consideration.

5. *Cases Involving Losses From Seizure, Condemnation, and/or Sale of Goods.*

None of the 15 cases in this group impresses me as conspicuously meritorious. In 9 cases the issue has been heard by the Prize Court which rendered a decision adverse to the claimant, and in only 1 case (No. 27) was an appeal taken. This appeal was not successful. I have read the decisions in that case (Lloyd's *Prize Cases*, Volume IV, pages 409 and 425) and am of the opinion that the evidence justified the Crown's contention that the lead in question was enemy owned when seized. I find, therefore, no denial of justice. The other 6 cases involve alleged losses due to the sale of fruit at prices less than the shipper expected to receive at destination. In one case the fruit was sold in Copenhagen and in the others in England where the proceeds were released to the claimant. No formal claim has ever been presented to the Department, the nearest approximation to a statement of a specific claim being a one page tabulation submitted in 1919 by the claimant's London representatives to the American Consulate General setting forth the amounts of the alleged losses. With respect to one of the shipments listed in that tabulation it appears from the records of the Admiralty Marshal that the claimants two years later gave a receipt acknowledging full settlement by the British Government.

6. *Personal Injuries.*

This case presents no particular difficulty. It should be discussed with the British Government and either settled or withdrawn as the facts may justify.

7. *Requisition Cases.*

I regard the claim of the Midland Linseed Products Company as meritorious. It should be reserved for formal consideration. The other case in this category has never been made the basis of a claim and there has been no correspondence with the complainant in the past 10 years. It seems reasonably certain, therefore, that the owners have been compensated by the British Government for the requisition of the S. S. *San Pablo* at the shipyard where she was constructed. I have not as yet, however, any definite information on this point.

8. *Destruction of Rumanian Oil Wells.*

The last note from the British Foreign Office on the subject of this claim makes it difficult, if not impossible, for the Department to press it further as a claim against the British Government.[55] In the absence of any evidence from the Standard Oil Company throwing a different light on the case, I feel that the matter should be dropped so far as presentation of a claim against Great Britain is concerned.

Conclusion

As indicated above, I am of the opinion that 83 of the 95 cases which have been reserved for the Department's further consideration can properly be eliminated for the reasons stated. The remaining 12 cases include 11 which seem to me to possess conspicuous merit, namely, the case of the Midland Linseed Products Company and those involving the *Canadia*, the *Jacob Luckenbach*, the *Edna*, and the *Llama*. The twelfth case is No. 543 and is based upon alleged personal injuries in occupied Germany. It should be easily disposed of.

I should not close this report without recording the fact that I was accorded the most whole-hearted and cordial cooperation by all officials of the British Government with whom I came into contact during my mission. At no time did I find any reluctance to supply the information I desired or any unwillingness to discuss fully the effects and implications of the facts disclosed by my inquiry. I cannot speak too warmly of the spirit with which my investigation was met or of the unfailing courtesy which was displayed by everyone. In my discussions with responsible officials like Sir William Tyrrell I gathered the impression that the British Government was keenly desirous of reaching a settlement which would close once and for all the question of war time claims between the two Governments, and I am confident that if the problem can continue to be examined with good will on both sides, a satisfactory formula will be found for its solution. As pointed out, however, in the report which I

[55] See pp. 322 ff.

submitted to Mr. Olds in London last September,[55a] there seem to be two fundamental considerations in the minds of the British authorities. The first is that the British Government will not admit that the legality of any of its acts in blockading Germany is open to question by the Government of the United States, and the second is that in view of the political dangers inherent in this entire problem, any settlement requiring an appropriation of funds by Parliament to pay "blockade" claims as such, would, as a matter of practical politics, be impossible. It seems to be generally felt that any British Government which requested an appropriation for this purpose would fall, as would any Government which admitted that the legality of the British Navy's operations during the war was open to question. In these circumstances it seems certain that any proposal by the Government of the United States for the settlement of the claims question which does not take full account of these two elements of the situation will be foredoomed to failure. On the other hand it seems to me that the British Government will accept a formula which does not raise the question of the validity of the blockade, and which permits the settlement of meritorious claims, either through a lump sum adjustment, or through a balancing of accounts between the two Governments.

There is one further aspect of the matter to which the Department should give attention and that is the position of the United States as a belligerent in the next war. We are one of the principal naval forces of the world and should we be involved in another war it would be to our interest to have our naval forces free to operate in any way which would render them most effective against the enemy. We shall undoubtedly find it necessary to restrict neutral maritime commerce with our enemy, and I think it can safely be said that our efforts in that direction might be wholly ineffectual if we limited ourselves to visit and search on the high seas. We shall unquestionably want to pursue very much the same procedure as that followed by the British. In these circumstances we should take no general position in our present discussions which might later hamper our freedom of action in case of emergency.

441.11 W 892/84

Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds, to the Secretary of State

[WASHINGTON,] *November 13, 1926.*

SIR: In the report which I submitted under date of November 9, 1926, on the subject of the claims and complaints against the British

[55a] Memorandum of Sept. 18, 1926, not printed (file No. 441.11 W 892/73).

Government, which have been lodged with the Department of State since August 18, 1910, I pointed out that of the 2658 cases summarized by the Solicitor's Office 2501 could be eliminated by the application of the provisional rules of exclusion described therein. Of the remaining 157 I pointed out that information had not been obtainable with respect to 62, but that none of these 62 seemed to present serious questions of principle or policy. I then listed in the report the residue of 95 cases which seemed to me to require further consideration by the Department of State, pointing out that in my opinion only 11 cases possessed conspicuous merit.

I realize that it will be difficult for any one who has not gone through the cases as carefully as I to accept the validity of any procedure which results in the survival of only 11 out of 2658 cases. The natural, and almost inevitable, conclusion of a thoughtful person confronted with so extraordinary a result is that there must be some underlying fallacy or error in a procedure permitting such an outcome. I must admit that even I am surprised by the smaller number of conspicuously meritorious cases. I have gone over the ground repeatedly, however, and I am satisfied that I have committed no substantial error in reaching the result set forth in my report of November 9, 1926. The only reservation that I feel that I must make is to the effect that my recommendations are based wholly upon the information contained in the memoranda prepared by the Solicitor's Office. I have not personally examined the original documents in all the cases.

In view of the surprising nature of my conclusions, it seemed to me desirable to test them by approaching the problem from an entirely different point of view. Accordingly, I requested the British Claims Section of the Solicitor's Office to furnish me with a list of all the formal claims against the British Government which had been filed with the Department. I received this list the day before yesterday. It covered 39 cases. The disproportion between 2658 cases, which were the subject matter of my inquiry, and the 39 cases which are the basis for formal complaint to the Department is almost as startling as that between the total number of cases and the 11 which I regard as meritorious. In the Department's reply of last July to the Senate Resolution for information regarding the British Claims situation,[55b] the statement was made that included in the mass of correspondence and papers dealing with these claims, "less than 100 represent claims that have been formally presented to the Department with the necessary supporting evidence". This figure was given me by the Claims Section at the time the Department's reply was prepared, but the difference between 39 and "less than 100" seemed

[55b] For text of the Secretary's report, see S. Doc. 155, 69th Cong., 1st. sess.

so great that I made further inquiry, and was told that, in addition to the formal claims filed on the Department's regular forms, there were other claims which had been presented in memorial form, a method permissible when the claim accrued, but no longer permissible now that the Department has adopted its regular claim form. Upon examination of the claims files it appeared that 96 cases had been submitted in memorial form, making a total of only 134 cases where the claimant has adopted the least formality in presenting his claim. These so-called memorials in numerous instances are no more than affidavits of fact, accompanied by supporting documents. Necessary proof of citizenship or title, and of other vital facts is frequently missing.

The 39 cases covered by formal claims are listed below, together with a brief statement of the disposition which my report of November 9, 1926, shows that I recommended in the light of the provisional rules of exclusion, which you orally approved prior to my departure for London, and in the light of the information which I obtained from the British records. This list shows that I have retained in my residue of 95 cases 11 of these 39 formal claims, that 2 of them fall within the group of cases concerning which I was unable to obtain information in London, and that the remaining 25 have been eliminated through the application of rules 1 to 7.

Case Nos.

10–I This is a claim for loss of cotton on the S. S. *Canadia.* I have retained it as meritorious.

10–II This is a claim on account of cotton shipped on the S. S. *Maud* to Gothenborg and purchased by the British Government. I have recommended the elimination of this claim because I have a copy of a receipt given by the claimants' attorneys to the Board of Trade acknowledging full and final settlement of the claim.

50 This is a claim for the loss of 6 registered letters, each containing a check for $25, mailed from New York to Germany. I have recommended the elimination of this claim under rule 1, since the total amount involved is only $150, even admitting that the claimant suffered a total loss.

162 This is a claim for the sequestration by the Australian Government of a one-half interest in a saw mill company in New Guinea. I have recommended the elimination of this claim because it runs against Australia and not against the British Government. The operations of the Australian Government with respect to enemy property seized by it during the war are not subject to control by the London authorities.

188 This is a claim for the detention of the S. S. *Seguranca.* I have retained it in my residue of 95 cases for the Department's further consideration. I stated in my report, however, that I recommend the elimination of such detention cases on the ground that the claimant should pursue his legal remedy before the Prize Court. In this case I was informed in London that the period of detention was from March 31,

Case Nos.

to April 19, that no detention damage claim was ever made in prize court, and that the detention took place pending the reconsignment of the cargo on this vessel to The Netherlands Overseas Trust.

447 This is a claim for $64,307 on account of claimant's arrest and detention in Ireland and subsequent deportation to the United States. It appears that the deportation was in pursuance of an order issued on the recommendation of the Irish Government. I was told in London that the Irish Free State should be approached in a claim of this sort, rather than the British Government. Accordingly, I have recommended the elimination of this claim. Rule 3 is also applicable.

473–*a* This is a claim on account of damage to property in Monastir, which was occupied by Bulgarian troops, and subjected to bombardment by the British, French and Italian warships. This claim, if valid, lies no more against the British Government than against the French and Italian, and I have recommended its elimination, for that reason, as well as for the reason that I do not believe it affords any basis for diplomatic reclamation.

539 This is a claim for $3175 for personal injuries suffered by the three claimants while visiting in the kitchen of the British Light Cruiser *Curacao*. It appears that the cook demonstrated an oil stove in such a manner as to cause a flame to shoot out and burn the claimants. This case is one concerning which I am expecting information from the Admiralty.

550 This is a claim for $50,000 compensation for the detention of the claimant by the British authorities from September 12, 1914, to January 5, 1915. I have recommended its elimination under rule 3.

751 This is a claim for $400 on account of the loss of a shipment on the S. S. *Santa Catharina*. I have recommended its elimination under rule 1 as involving an amount less than $500.

766 This is a claim arising out of the S. S. *Edna* case. I have retained it as meritorious.

775 This is a claim for $30.481.33 on account of profits lost on contracts with British and other concerns, the fulfillment of which had been prevented or impeded by the war. I have recommended its elimination under rule 5 as a claim involving losses due to domestic British legislation. It also falls under rule 4 as a claim for speculative profits.

828–I This is a claim arising out of the requisition of the British S. S. *Rosalind* under charter to the claimant. I have retained this case in the residue of 95 cases which seemed worthy of further consideration, but I have recommended that it, together with all other requisitioned vessel claims, be eliminated.

828–II This is a claim arising out of the requisition of the British S. S. *Georgian Prince* under charter to the claimant. Otherwise the same observations apply as in Case No. 828–I.

Case Nos.

833 This is a claim for the detention of the S. S. *F. J. Lisman.* I have retained it in the residue of 95 cases submitted for the further consideration of the Department. I have recommended, however, that it be eliminated, together with other detention cases, on the theory that the claimant should prosecute his legal remedy before the Prize Court, and the Privy Council.

834 This case involves the detention of the S. S. *Seaconnet.* The same observations apply as in Case No. 833.

835 This is a claim for $5400 on account of the claimant's detention by the British authorities when a passenger on the S. S. *Carpathia.* I have recommended its elimination under rule 3.

916 This is a claim for $105,134.50 on account of the arrest of the claimant in England and his detention for 9 days. I have recommended its elimination under rule 3.

1052 This is a claim for £5,000,000 sterling, in which the claimant alleges that the British Government got possession of his death ray apparatus and refused to return the papers. I have recommended the elimination of this case on the ground that it is too fantastic for serious consideration. I might add that the War Office has absolutely no information regarding the claimant or his alleged apparatus.

1088 This is a claim for $2019.20 on account of the sale by the Prize Court of property allegedly owned by the claimant. I have retained it in the residue of 95 cases submitted for further consideration. I am not impressed with its conspicuous merit, but it certainly is entitled to examination.

1183 This is a claim for $1492.92 on account of the loss of personal property through fire in British East Africa. It is a case concerning which no information is obtainable in London.

1314–I This claim is on account of the sale by the Prize Court of goods consigned to the claimant by a German firm. I learned in London that the proceeds from this sale have been transferred to the Custodian of Enemy Property and are available to the claimant upon proof of title. Accordingly, I have recommended the elimination of this case.

1314–II This case presents the same facts as Case No. 1314–I, except that the proceeds of the sale are still in Prize Court, where they are available to the claimant upon proof of title. It should be noted, however, that the claimant claims $9736.50, whereas the proceeds of both shipments of goods aggregated only £43 4s. 8d.

1387 This is a claim for $2210.83 representing losses on account of the sale of evaporated apples shipped by the claimant to Sweden and detained at Liverpool. I learned in London that these goods had been sold and that the proceeds, £86 19s. 11d. had been released to the consignees' representative. Accordingly, I have recommended the elimination of this case, believing that title to the shipment was in the Swedish consignee and not in the American shipper.

Case Nos.

1388 This is a claim for $2064.94 on account of losses due to the seizure of a shipment of apples to a Swedish consignee. I learned in London that this shipment was condemned in November, 1920, and that the claimant made no appearance in the Prize Court. As his claim to the Department was submitted March 6, 1920, I have recommended the elimination of this case on the ground that he made no complaint to the Department after the adjudication of his case. Included in this case is a claim for $267.51 on account of another shipment which was released. This claim is covered by rule 1.

1427 This is a claim for $3337.40, representing a loss alleged to have been incurred by the claimant, whose business of shipping balsam from Prague to the United States was interfered with by the British authorities, who are said to have detained such shipments in Rotterdam. I have recommended the elimination of this case because I see no ground for claim against the British authorities, since the latter certainly had no official jurisdiction over the port of Rotterdam.

1447 This is a claim for $10,000 on account of the detention of the claimant for three days at Suez and Port Said. I have recommended its elimination under rule 3.

1470 This is a claim for loss on account of the condemnation of a shipment found by the Prize Court to be the property of a firm with a commercial domicile in enemy territory. The claimant is the Robert College in Constantinople. I have retained this case in the residue of 95 cases submitted for further consideration by the Department, but on the facts as stated I do not see how the claimant could succeed. The goods in question were claimed in Prize Court by the consignor.

1522 This is a claim for $101.76 on account of the non-receipt by the addressee in Germany of 2 drafts mailed by the claimant. I have recommended its elimination under rule 1, since the amount involved is less than $500.

1628 This is a claim for $585.04, representing extra charges on account of a shipment from Germany which was detained in England but subsequently released. I have recommended its elimination under rule 6.

1640 This is a claim for $53,000 on account of the arrest and detention of the claimant in England, and subsequent deportation. I have recommended its elimination under rule 3.

1709 This is a claim for $851.67, representing loss of household goods during the claimant's banishment from Jerusalem by the Turkish military authorities, under suspicion of having acted in the British interests. I have recommended the elimination of the case because in my opinion it affords no ground for any claim against Great Britain.

1753 This is a claim for $2992 on account of the condemnation of a shipment of oil. I have retained this in the residue of 95 cases submitted for further consideration, but I am not impressed with its merit. The fact of the seizure was notified to the claimant's manager in Greece in 1916. The shipment was condemned in 1918. No claim was made before the

Case. Nos.

Prize Court by the claimant, or by any other party, and no representations regarding the matter have ever been made to the Procurator General.

1873 This is a claim for loss on account of a shipment of goods to England which were seized and sold by the British authorities because no import license had been obtained. I have recommended its elimination under rule 5.

1951 This is a claim for $850.45 on account of the seizure and sale by the British authorities of a shipment of goods to Germany. I learned in London that these goods had been sold and the proceeds condemned May 10, 1915. I have retained the case in the residue of 95 cases submitted for further consideration.

2011 This is a claim for $12 on account of the loss of a package of harmonicas. I have recommended its elimination under rule 1 as involving less than $500.

I have also made an examination of the 96 memorials, and I find that the cases referred to therein are disposed of under my report of November 9, 1926, as follows:

34 cases are retained by me in the residue of 95 cases submitted for the Department's further consideration.

2 fall within the group concerning which information was not obtainable in London.

The other 60 were provisionally eliminated under the 7 rules. The number falling within each rule is shown below:

Rule 1	4	Rule 4	3
Rule 2	1	Rule 6	15
Rule 3	20	Rule 7	17

I have not taken the time to treat in this report these 96 cases in the same detail as I have treated the 39 formal claims, but I can do so if you wish me to. For the purpose of the record I am, however, listing below the case numbers of each, together with the disposition thereof which would follow from the acceptance of the recommendations in my report of November 9:

[Here is omitted the list of cases and their disposition.]

The only case in the foregoing list which is not included in the residue of 95 cases submitted for the further consideration of the Department, and which, in my opinion, may possibly have merit, is No. 295, where £1428 18s. 2d. is claimed on account of losses alleged to have been sustained by the claimant through the detention in Ireland and ultimate sale in England of a shipment of rosin and turpentine consigned on a British vessel to Germany. I am not, however, satisfied that there is ground for a valid claim against Great Britain, in the absence of a showing of negligence, and of this there is no evidence. The shipment was made from the United States on July 29, 1914, before the outbreak of war. After the out-

break of war it would have been illegal for a British vessel to have carried a cargo to Rotterdam for a German consignee, as that would have been trading with the enemy. The interruption of the voyage, therefore, was not unreasonable and subsequent losses due to the failure of the consignee to accept drafts covering the shipment, as well as losses through leakage, pending the disposition of the cargo, are scarcely attributable to the British Government.

The result of the foregoing study serves to confirm me in my opinions expressed in my report of November 9, 1926. I am still of the impression that the 11 cases listed therein as possessing conspicuous merit are substantially all, if not all, of such a character.

I am [etc.] SPENCER PHENIX

441.11 W 892/95

Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds

[WASHINGTON,] *December 8, 1926.*

THE CONFERENCES OF DECEMBER 5, 1926

On Sunday, December 5, 1926, a conference was held at Mr. Chilton's house on the subject of the suggested formula for the settlement of the British claims question which Mr. Olds had informally handed to Mr. Vansittart on November 18.[56] There were present at this conference Mr. Chilton, Mr. Vansittart, Mr. Broderick, Mr. G. H. Thompson, Mr. Olds, and Mr. Phenix.

Mr. Vansittart advanced the points which had been made by the Foreign Office and there was a general discussion of the suggested formula. The Foreign Office requested specifically that the agreement be drafted so as to exclude cases in which the Dominions, or India, might be interested, cases involving sequestrated property held by the respective Custodians of Enemy Property, cases involving user of inventions, and damage by, or salvage services rendered to, Government vessels. Mr. Vansittart was informed that the Department had already decided that it would suggest the exclusion of Dominion and Alien Property cases. The British request for the exclusion of the other two categories of case was caused by the belief that British nationals did not enjoy the same rights against the Government of the United States that American nationals enjoyed against the British Government. It was therefore felt that the British Government should not waive diplomatic presentation of claims of this nature. These two suggestions were accepted by Mr. Olds.

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[56] Annex 1.

The most serious question raised by the Foreign Office was in respect of possible double payment, that is to say, that the "insurance fund", consisting of sums due to the British Government but waived by it under the proposed agreement, might be used by the United States to pay claims without substantial merit, and that claimants having meritorious claims would be referred to the British courts and might recover therein. The position of the British Government was that the "insurance fund" was intended to cover meritorious claims. The Foreign Office suggested, therefore, that the "insurance fund" be constituted as a suspense account from which would be paid any judgment recovered against the British Government within a certain stipulated period of time in respect of claims within the scope of the agreement. The impracticability of this procedure was demonstrated to the satisfaction of Mr. Vansittart and Mr. Broderick. The suggestion was then made that the United States give, if possible, written, and if not, oral assurances that the "insurance fund" would in fact be used by the United States Government to settle those claims which were regarded as conspicuously meritorious. In response to this suggestion it was pointed out that any such procedure would expose the Department to the criticism of secret diplomacy, that no claim could be paid without action of Congress, and that such assurance from the Department would therefore be utterly valueless. Mr. Olds stated, however, that the Department wished it to be clearly understood that it was not interested in making money at the expense of the British Government, and that it would use its every endeavor to see that the fund in question was equitably apportioned.

No agreement was reached on this question before lunch, but after lunch a further brief conference was held by Mr. Vansittart, Mr. Olds and Mr. Phenix, at which the suggestion was made that as a practical dollar and cents solution of the difficulty the Department would be willing to waive the payment by Great Britain contemplated by the first paragraph of the draft formula, the amount involved therein being approximately the amount by which the total of those claims regarded as possibly meritorious by the British representatives fell short of the total cash payments from the United States waived by the British Government under the proposed formula. Mr. Vansittart stated that this seemed to him a very happy suggestion and that as a matter of fact the Foreign Office had asked him to request the United States to withdraw the first paragraph of the formula, as it seemed unfair to the Foreign Office that the British Government should be called upon to make any cash payment to the United States in the circumstances. It might be noted at this point that in a telegram from the Foreign Office to Mr. Vansittart it was stated further examination of the cases being negotiated for the Navy Department in

London by Commander Collins indicated that the British Government had made a premature payment to the Navy, and that the estimated total due from the British Government to the Navy Department on the cases discussed by Captain Hill and Commander Collins should be reduced proportionately. It was then arranged that Mr. Vansittart, Mr. Broderick, and Mr. Phenix would meet again at 7 o'clock and endeavor to agree upon a new formula for communication to the Foreign Office, and that were they successful in this endeavor that it be submitted to Mr. Olds prior to the despatch of the telegram to London.

At the evening conference Mr. Phenix submitted a new draft formula embodying the changes agreed upon during the afternoon conference.[57] This was agreed to by the British representatives with slight textual changes, and was submitted in the late evening to Mr. Olds together with the substance of part of Mr. Vansittart's proposed report to the Foreign Office. In the meantime Mr. Olds had been in conference with the Secretary and had been authorized by the latter to agree to an arrangement along the lines of the settlement reached during the afternoon. Accordingly the new formula and the substance of that portion of Mr. Vansittart's telegram dealing with the understanding reached earlier in the day were approved by Mr. Olds.

Mr. Vansittart undertook to recommend to the Foreign Office the acceptance of the new formula and agreed to point out the insuperable obstacles to the establishment of the suspense account suggested by the Foreign Office, or to the exchange of assurances beyond those mentioned above which would limit the action of the United States with respect to any claim or group of claims. He undertook to report that the Department had assured him that no question of making money entered into its consideration of the problem and that he had reached a gentleman's understanding with the Department's representatives that every effort would be exercised to assure the equitable utilization of the "insurance fund". He also said that he would advise his Government that he had been informed by the Department that in the event the agreement were signed, the latter contemplated making a re-examination of its files with a view to the submittal of a recommendation to Congress for the appropriation of specified sums in satisfaction of such claims as proved to be meritorious, at which time Congress would be informed of the agreement between the two Governments. Mr. Vansittart expressed complete confidence in the good faith of the Department, and repeated that he would recommend earnestly the approval of the agreement.

[57] Annex 2.

The Events of December 7, 1926

In the afternoon of Tuesday, December 7, 1926, Mr. Broderick and Mr. Thompson of the British Embassy called on me to ask certain questions at the instance of the Foreign Office regarding the legal remedies open to British nationals interested in the miscellaneous list of claims of which the Department had record, and brief descriptions of which had been furnished to the British Embassy. It appeared that in many of the more substantial cases the claimant was a citizen of one of the Dominions, and his case therefore excluded from the pending agreement. In other cases it appeared to the satisfaction of Mr. Broderick that there was no discrimination against a British national in favor of an American national. Mr. Hackworth [57a] came in during part of the conference and explained the legal situation. It appeared as a result of this conference that the British representatives would telegraph a satisfactory assurance to the Foreign Office in respect of these cases and Mr. Vansittart, who called upon Mr. Olds in the late afternoon and subsequently upon me, indicated that he expected a favorable response from London very shortly.

About 11:20 p. m. last evening I received a telephone message from the British Embassy stating that an urgent telegram had been received from London, and asking if I could come to the Embassy to confer with Mr. Vansittart and Mr. Broderick regarding the answer which should be made. I went to the Embassy and we considered for a little more than an hour the situation presented by this telegram and the nature of the reply that should be sent. It appeared that the Foreign Office desired further assurances regarding the question of possible double payment. The request was made that Mr. Vansittart endeavor to suggest an alternative formula which would take this question more specifically into account and safeguard the British position with respect thereto. Neither Mr. Vansittart, Mr. Broderick, nor I was able to suggest any new formula. We canvassed the situation and agreed informally, as Mr. Broderick and I had already informally agreed as a result of our investigations in London, that the conspicuously meritorious cases from the point of view of the United States were only 11 in number and involved only the cases of the *Llama*, the *Luckenbach*, the *Canadia*, the *Edna*, and the case of the Midland Linseed Products Company. I was asked if the Department could give any assurances that the "insurance fund" would be used to meet these cases, and I replied in the negative, pointing out again that any appropriation for the settlement of any case must be made by Congress, and that it was impossible to restrict that body's rights to appropriate money

[57a] Green H. Hackworth, Solicitor of the Department of State.

from the Treasury as it saw fit. I called attention to the fact that the so-called "insurance fund" did not consist of funds actually supplied by Great Britain, but because of the peculiar nature of the proposed formula consisted of funds saved to the United States. I also pointed out that the Department could not undertake responsibility for the payment of cases where there had been no adjudication before a British court, and where the merits could be determined only after consideration of evidence available solely to the British authorities. I pointed out, for example, that in the cases of the *Llama* and the *Luckenbach* there had been no adjudication, that the question was as to the negligence and responsibility of British officers, and that the Department would be hopelessly handicapped were it to try to settle such cases after hearing only the claimant's side. I stated, however, that the danger to which the British Government would be exposed in respect of the 11 cases should it agree to the proposed agreement was practically negligible. I pointed out that the Midland Linseed Products Company apparently had no legal remedy in Great Britain, and in the case of the *Edna* the claimant had exhausted his legal remedies by carrying the matter to the Privy Council, so that any compensation awarded to the claimants in those two cases would necessarily have to be appropriated by Congress and find its justification in the existence of the so-called "insurance fund". I also said that in view of the fact that the Department had no record of any protest by the owners of the *Luckenbach* since the original complaint in 1920, and of the further fact that the Standard Oil Company had shown no real disposition to prosecute the case of the *Llama* in the British courts, it seemed unlikely that such actions would ever be brought. This view was concurred in by Mr. Broderick and Mr. Vansittart. I added with respect to the *Canadia* that the Department could assure them that it would use its best endeavors to obtain a settlement out of court with the claimants. I gave that assurance relying upon the views expressed by Mr. Olds and by the Secretary with respect to the validity of the British position regarding double payment and the readiness which the Secretary expressed to agree to any reasonable formula which would exempt the British from that liability. I pointed out that the *Canadia* could be distinguished from the *Luckenbach* and the *Llama* because in the case of the *Canadia* the British Government had already made *ex gratia* payments to certain of the cargo owners, and that such payments could properly be regarded by the Department as a sufficient determination of the merits of the case, thus leaving to the Department only the task of agreeing upon the quantum of damages. Mr. Vansittart and Mr. Broderick both thought that a presentation of these facts to the Foreign

Office would go far to tranquilize the latter and I outlined them in writing for incorporation in Mr. Vansittart's reply to the Foreign Office telegram. When I left the Embassy about half past twelve this morning, I understood from Mr. Vansittart that he expected to receive a definite reply from the Foreign Office today or tomorrow, and that he hoped that it would authorize the acceptance of the proposed formula.

While Mr. Vansittart's messages to the Foreign Office have expressed in detail the views advanced by Mr. Olds and myself with respect to this matter, there can be no misunderstanding as to the significance of those views. In the conferences on Sunday and again last night it was made clear that the Department could give neither written nor oral binding assurances as to the utilization of the "insurance fund" and the political and legal situations which made such binding assurances impossible were fully expounded. On the other hand both Mr. Olds and I have stated unequivocally that so far as it lay within our power the Department would do its best to assure the equitable apportionment of the "insurance fund" and to prevent exposing the British Government to a double liability. We approached the matter with entire good faith and have no mental reservations of any kind as to the language we used or as to the procedure we outlined. The British representatives realize the impossibility of any collateral agreement restricting the liberty of Congress in the premises, and can point to no commitment on this subject by either Mr. Olds or myself. The substance of our statements to the British is that the Department was not seeking to make money at the expense of the British Government, that everything possible would be done to prevent double payment or double liability, and that the Department would never pursue the policy of selecting weak and unmeritorious claims for settlement out of the "insurance fund", saving the strong ones for adjudication by the British courts, and that its viewpoint of the primary purpose of the proposed agreement was the same as that of Mr. Vansittart, namely, the amiable and unostentatious settlement of a question presenting potentialities of serious political complications which might disturb the relations between the two Governments, and that financial considerations were purely secondary. The only other undertaking by the Department was that expressed by me last night to the effect that the Department would use its best endeavors to obtain a settlement of the *Canadia* claims out of court, payment thereof to the extent found justified to be recommended by the Department from the "insurance fund".

Copies of the suggested formulae of November 18, 1926, and December 5, 1926, are attached hereto, together with the estimated

statement of account as of December 4, 1926,[58] and as of December 8, 1926,[59] after the receipt of the London Embassy's telegram No. 266, December 8, 11 a. m.[60]

S[PENCER] P[HENIX]

[Annex 1]

Suggested Formula of November 18, 1926, for the Settlement of Claims Between Great Britain and the United States

The Government of Great Britain agrees to pay to the Government of the United States the claims of the Navy Department of the United States against departments or agencies of the British Government in the amounts approved by the joint conference which convened at London in September, 1926.

With the exception stated in the preceding paragraph the Government of Great Britain and the Government of the United States each agrees

1. That it will make no future claim against the other on account of supplies furnished, services rendered, or damages sustained by it in connection with the war, all such accounts to be regarded as closed and settled.

2. That (except for the claim of the Government of the United States on behalf of the Standard Oil Company for the destruction of certain property in Rumania,[61] which claim is excluded from the present agreement) it will make no diplomatic claim and request no international arbitration on behalf of any national alleging loss or damage through the war measures adopted by the other Government, any such national to be referred for remedy to the appropriate judicial or administrative tribunal of the Government against which the claim is alleged to lie, and the decision of such tribunal or of the appellate tribunal, if any, to be regarded as the final settlement of such claim; provided, however, that neither Government will deny to the nationals of the other the same rights and privileges as would be possessed by its own nationals in similar circumstances, and provided further that neither Government will plead laches or the statute of limitations as a defense to any such action or proceedings brought within one year from the date of this agreement.

3. That the right of either Government to maintain in the future such position as it may deem appropriate with respect to the legality or illegality under international law of measures such as those giving rise to the claims in question is fully reserved, it being specifically

[58] Statement of December 4 not printed.
[59] Annex 3, *infra*.
[60] Not printed.
[61] See pp. 308 ff.

understood that the juridical position of neither Government with respect to such questions is prejudiced by the conclusion of this agreement.

[Annex 2]

Suggested Formula of December 5, 1926, for the Settlement of Claims Between Great Britain and the United States

ARTICLE I

With the exceptions stated in Article II hereof the Government of Great Britain and the Government of the United States agree

1 That neither will make further claim against the other on account of supplies furnished, services rendered or damages sustained by it in connection with the prosecution of the recent war, all such accounts to be regarded as definitively closed and settled

2. That neither will present any diplomatic claim or request international arbitration on behalf of any national alleging loss or damage through the war measures adopted by the other, any such national to be referred for remedy to the appropriate judicial or administrative tribunal of the Government against which the claim is alleged to lie, and the decision of such tribunal or of the appellate tribunal, if any, to be regarded as the final settlement of such claim, it being understood that each Government will use its best endeavors to secure to the nationals of the other the same rights and remedies as may be enjoyed by its own nationals in similar circumstances, and that the Government of Great Britain agrees not to plead laches as a bar to the institution in its prize courts of any action or proceedings within the scope of the present agreement.

3 That the right of each Government to maintain in the future such position as it may deem appropriate with respect to the legality or illegality under international law of measures such as those giving rise to claims covered by the immediately preceding paragraph is fully reserved, it being specifically understood that the juridical position of neither Government is prejudiced by the present agreement.

ARTICLE II

Nothing contained in this agreement shall be construed to annul, alter, modify or in any way affect the rights of nationals of either Government or to prevent the presentation of diplomatic claims based thereon, in respect of

1 The user of inventions by the other Government in connection with its prosecution of the war

2 Damage caused by or salvage services rendered to a vessel belonging to the other Government.

It is expressly understood that the provisions of this agreement do not apply to (1) claims by the Government of the United States, or its nationals, against the Government of any British Dominion or of India or the nationals thereof, or to claims against the Government of the United States by the Government of any British Dominion or of India, or by the nationals thereof.

(2) Claims on behalf of either Government or of its nationals in respect of sequestrated property held by the Custodians of Enemy Property in Great Britain and the Alien Property Custodians in the United States.

NOTE

The exclusion of the DAPG tanker and the Rumanian oil well cases to be covered in a separate exchange of notes.[62]

[Annex 3]

Statement of Account—December 8, 1926 (Estimated)

Nature of Claim	Amount payable by Great Britain	Amount payable by United States
Claims negotiated by Captain Hill	$18,000	$535,000
Claims negotiated by Commander Collins	211,000	660,000
Detention of "Imperator" Group	----------	730,000
Sub-charter of Uruguayan ships	570,000	----------
Total	$799,000	$1,925,000
Less	----------	799,000
Net balance payable by the United States	----------	$1,126,000

If the validity of the British claim for reconditioning the *Santa Elena*, the *Patricia*, and the *Prinz Friedrich Wilhelm* can be established, the foregoing figure of $1,126,000 should be increased by £372,733 6s. 1d., or at $4.86 to the pound sterling, $1,811,000, making a grand total of approximately $3,000,000.

During the conference on December 5 reference was also made to a claim of the British Government for approximately £400,000 on account of earnings lost to it through the detention of the Imperator group of ships. If this claim could be substantiated it means that the British Government under the proposed agreement waives the recovery of a further sum of $2,000,000, making a possible total of approximately $5,000,000 saved to the Government of the United States.

[62] See pp. 166 ff. and pp. 308 ff.

441.11 W 892/95

Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds

[WASHINGTON,] *December 14, 1926.*

At the request of Mr. Vansittart I again went to the British Embassy during the evening of December 10 to discuss with him the changes in the proposed formula which had been suggested by the British Foreign Office. These changes involved only slight modifications of the text, and I informed him that I had no doubt they would be acceptable to the Department. At this conference reference was also made to the position of the Foreign Office in respect of the Swedish Iron Ore settlement, a matter which did not fall within the scope of the draft agreement. I telephoned Mr. Olds from the Embassy late in the evening and told him that in my opinion none of the suggested changes were objectionable. He then arranged to meet with Mr. Vansittart Saturday morning prior to the latter's departure for New York.

At the meeting in Mr. Olds' office Saturday morning, December 11, 1926, attended by Mr. Olds, Mr. Vansittart, Mr. G. H. Thompson and Mr. Phenix, the modified text of the agreement was discussed and agreed upon. The question then came up as to the procedure to be followed in recording the informal understanding between the representatives of the two Governments as to the manner in which the United States would operate under the agreement. Mr. Olds pointed out the difficulty of entering into any binding collateral agreement, and the suggestion was made that there be incorporated in the note, which would be sent by the Department to the British Embassy embodying the text of the agreement, some explanatory paragraphs setting out the agreed interpretation thereof reached by the representatives of the two Governments in their discussions. It was decided that if such paragraphs could be drafted in a satisfactory manner that it would be the best way of handling the situation, since the agreement would then carry with it its own interpretation. Mr. Phenix undertook to attempt to draft the paragraphs in question and discuss them with Mr. Broderick on Monday.

Mr. Vansittart raised again the question of the *Llama* case, stating that the Foreign Office attached great importance to the procurement, if possible, of some kind of an undertaking by the Government of the United States to endeavor to settle this case out of court in the same way as the *Canadia* case. Mr. Olds and Mr. Phenix again pointed out the obstacles in the way of any such arrangement, and no agreement was reached on that point. It appeared, however, that the

Foreign Office had agreed to the proposed formula, and that regardless of the decision reached in the *Llama* case the controversy could be regarded as settled.

On the afternoon of December 13 Mr. Broderick and Mr. Thompson called at my office and we discussed the paragraphs of interpretation which I had drafted over the weekend. With one or two minor changes they met with the approval of Mr. Broderick, and these having been approved in turn by Mr. Olds, Mr. Broderick undertook to telegraph the text to London. Mr. Broderick also raised the question of the *Llama* case, pointing out that the Department of Justice had rendered an opinion to the effect that the owners of the *Llama* could bring no action for damages in the British Prize Courts. He suggested that in these circumstances the Department might be willing to rely on that opinion and settle the case with the owners as one where no legal remedy existed and, therefore, as one within the terms of the interpretative paragraphs. This ingenious suggestion was discussed later by Mr. Broderick and Mr. Olds, and Mr. Broderick was authorized to inform the Foreign Office that the suggestion had been advanced by him and that, if after further examination into the facts of the case the Department could conscientiously adopt the position indicated, it would do so and endeavor to settle the claim out of court. It was made clear to Mr. Broderick, however, that no formal commitment could be given on this point any more than in the case of the *Canadia* claims, but that the Department would bear in mind the equities in reaching its final decision. Mr. Broderick stated that the Admiralty attached considerable importance to the *Llama* case, and that as the Admiralty was making a considerable financial sacrifice through the waiver by it of its claims against the Navy Department it seemed to feel entitled to special consideration.

The net result of the conference of December 13, 1926, was an agreement as to the form of the interpretative paragraphs, the informal understanding that the Department would endeavor to effect a settlement out of court of the *Canadia* claims, and the payment thereof by Congress, and that in the case of the *Llama* the same procedure would be followed if, after further examination, the Department could conscientiously predicate its action on the above-mentioned opinion from the Department of Justice.

The agreed upon text of the note to be sent to the British Embassy, together with the text of the formula, as modified by the Foreign Office and agreed to by the Department, is as follows:[63]

"I have the honor to incorporate herein the text of an arrangement for the disposal of certain pecuniary claims arising out of the recent war, in which His Majesty's Government in Great Britain and the

[63] The exchange of notes, signed May 19, 1927, is printed as Department of State Treaty Series No. 756.

Government of the United States are interested, either as principals or on behalf of their respective nationals. This arrangement which, I understand, has been agreed upon by representatives of both Governments, has been approved by the Government of the United States. The terms of the arrangement are as follows:

ARTICLE I

With the exceptions stated in Article II hereof His Majesty's Government in Great Britain and the Government of the United States agree:

(1) That neither will make further claim against the other on account of supplies furnished, services rendered or damages sustained by it in connection with the prosecution of the recent war, all such accounts to be regarded as definitively closed and settled.

(2) That neither will present any diplomatic claim or request international arbitration on behalf of any national alleging loss or damage through the war measures adopted by the other, any such national to be referred for remedy to the appropriate judicial or administrative tribunal of the Government against which the claim is alleged to lie, and the decision of such tribunal or of the appellate tribunal, if any, to be regarded as the final settlement of such claim, it being understood that each Government will 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, and that His Majesty's Government in Great Britain agrees that fullest access to British Prize Courts shall remain open to claimants subject to the right of the British authorities to plead any defences that may be legally open to them.

(3) That the right of each Government to maintain in the future such position as it may deem appropriate with respect to the legality or illegality under international law of measures such as those giving rise to claims covered by the immediately preceding paragraph is fully reserved, it being specifically understood that the juridical position of neither Government is prejudiced by the present agreement.

ARTICLE II

Nothing contained in this agreement shall be construed to annul, alter, modify or in any way affect the rights of nationals of either Government or to prevent the presentation of diplomatic claims based thereon, in respect of:

(1) The user of inventions by the other Government in connection with its prosecution of the war;

(2) Damage caused by or salvage services rendered to a vessel belonging to the other Government.

It is expressly understood that the provisions of this agreement do not apply to (1) Claims by the Government of the United States, or of its nationals, against the Government of any of His Majesty's self-governing Dominions or of India, or British nationals resident therein, or to claims against the Government of the United States by the Government of any of His Majesty's self-governing Dominions or of India, or by British nationals resident therein, and (2) Claims on behalf of either Government or its nationals for the release of property held by Custodians of Enemy Property in Great Britain and Northern Ireland and all British Colonies and Protectorates, and by the Alien Property Custodian or the Treasurer of the United States.

If the foregoing arrangement is acceptable to your Government, a note from you to that effect will be considered by this Government as completing the understanding and the arrangement will thereupon be regarded by the Government of the United States as having come into force.

In order to obviate the possibility of future misunderstanding as to the purpose or interpretation of the arrangement, I desire to state that the Government of the United States regards it not as a financial settlement but as the friendly composition of conflicting points of view which seemed to lend themselves to no other form of adjust-

ment. It is my understanding, in these circumstances, that the present agreement will be construed by both Governments with full regard for the equities of all parties concerned. The Government of the United States realizes that by the terms of the agreement His Majesty's Government waive their right to receive a net cash payment on account of certain claims recognized by the United States as just and proper, and also their right to press certain other claims, liability for which has not been formally admitted by this Government, but which involve considerable amounts. I desire to record the fact that the Government of the United States will regard the net amount saved to it through the above-mentioned waiver by His Majesty's Government of outstanding claims against the Government of the United States as intended for the satisfaction of those meritorious claims of American nationals falling within the scope of paragraph (2) of Article I of the agreement, where the claimant has exhausted his legal remedies in the British courts, where no legal remedy is open to him, or where for other reasons the equitable construction of this agreement calls for such a settlement. Consequently, I take pleasure in assuring you that the Government of the United States will recommend such action by Congress as will insure the utilization for the purpose just mentioned of the sums saved to the United States under the provisions of the present agreement, and that it will also safeguard His Majesty's Government against possible double liability by exacting an assignment to the Government of the United States of all of a claimant's rights and interests in the claim in question as a condition precedent to the allowance of any compensation in respect thereof.

Furthermore since it appears that American citizens with claims against His Majesty's Government which do not fall within the scope of the present agreement enjoy certain rights of access to the British judicial or administrative tribunals not enjoyed in similar cases by British citizens seeking remedy against the Government of the United States, I take pleasure in extending to the cases of British claimants whose claims are not covered by the present agreement, the assurance contained in paragraph 2 of Article I of the agreement in question, that is that the Government of the United States will use its best endeavors to secure to British nationals the same rights and remedies as may be enjoyed by its own nationals in similar circumstances, and in such cases the Department of State will be happy to give active support to a request to the Congress for appropriate remedial legislation."

S[PENCER] P[HENIX]

441.11 W 892/95

Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds

[WASHINGTON,] *December 21, 1926.*

Mr. Broderick of the British Embassy called yesterday afternoon and told Mr. Olds and me that the Foreign Office had telegraphed its approval of the text of the proposed note, with one minor change

in the next to the last paragraph. The version as telegraphed to London was as follows:

". . . as intended for the satisfaction of those meritorious claims of American nationals falling within the scope of paragraph (2) of Article I of the agreement, where the claimant has exhausted his legal remedies in the British courts, where no legal remedy is open to him, or where for other reasons the equitable construction of this agreement calls for such a settlement."

The change suggested by the Foreign Office was as follows:

". . . as intended for the satisfaction of those claims of American nationals falling within the scope of paragraph (2) of Article I of the agreement, which the Government of the United States regards as meritorious, and in which the claimants have exhausted their legal remedies in British courts, in which no legal remedy is open to them, or in respect of which for other reasons the equitable construction of the present agreement calls for a settlement."

The reason for the proposed change was stated by Mr. Broderick to be that the Foreign Office wished to avoid any possible future construction of the agreement by students of international law to the effect that the British Government recognized that any of the claims in question were meritorious. Mr. Olds concurred in the proposed change and the final text of the note to the British Ambassador has been prepared accordingly. Mr. Broderick is to submit today the text of the proposed reply from the British Ambassador to the Department's note. These drafts will then be laid before the Secretary for discussion with the President.

During his conversation Mr. Broderick referred again to the case of the *Llama*, stating that the Foreign Office had repeated its desire that some means be found to settle this matter out of court, in view of the insistence of the Admiralty, and that it hoped his suggestion of December 13th might afford a solution of the matter. He was informed that the examination which I had made since our last conference indicated conclusively that it would not be possible for the Department to adopt his suggestion. It is clear from "Tiverton's Prize Law" that the Prize Court has jurisdiction over such cases, and an examination of the "Manual of Emergency Legislation, 1914" and its supplements, shows no change in the legal situation. Further evidence of this fact is found in the decisions by the Prize Court in the cases of the *Oscar II*, (Lloyd's *Prize Cases* IX, page 267) and the *Bernisse and Elve* (Lloyd's *Prize Cases* IX, page 243), in which the Prize Court took jurisdiction and awarded damages in similar circumstances.

Mr. Broderick made it clear that the approval of the Foreign Office was not conditioned in any way upon favorable action on its request with regard to the *Llama*, but expressed great disappoint-

ment that the situation was such that we could not undertake to make an effort to reach a settlement out of court. He then asked if the Department could refrain from stirring up the interest of the Standard Oil Company in this case for as long a time as possible and informally advise him before taking any affirmative action with respect to the case, either in response to a letter from the claimants, or of its own motion. This was agreed to.

S[PENCER] P[HENIX]

441.11 W 892/95

Memorandum by Mr. Spencer Phenix, Assistant to Assistant Secretary of State Olds

[WASHINGTON,] *December 22, 1926.*

Mr. Broderick called yesterday afternoon and left the draft text of the proposed note from the British Ambassador.[64] It is merely a paraphrase of the note which is to be signed by the Secretary and no objection is perceived thereto. He also suggested the omission from the second sentence of the first paragraph of both of the notes of the words "I understand". This has been agreed to and the sentence now reads, "This arrangement which has been agreed upon by representatives of both Governments has been approved by" (the Government of the United States) (His Majesty's Government in Great Britain). It was also agreed to change the phrase "British citizens" in the next to the last paragraph to "British subjects".

S[PENCER] P[HENIX]

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

441.11 St 23/2a : Telegram

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

[Paraphrase]

WASHINGTON, *May 16, 1924—2 p. m.*

124. From information in its possession Department is led to believe that Great Britain is negotiating with Rumania for the cancelation of Rumania's war debt to Great Britain provided Rumania indemnifies British companies for their petroleum properties destroyed in 1916. The Department does not know but it fears that Great Britain may endeavor to place the entire burden on Rumania

[64] Not printed.

for the losses sustained by the Standard Oil Company of New Jersey by reason of the destruction of the plants, wells, etc., of the Romano-Americana, its subsidiary in Rumania, late in the year 1916.

Inform the Foreign Office at your early convenience that the United States feels itself obliged to interpose in behalf of the Romano-Americana for the losses which it sustained, for which, it is believed, Great Britain is responsible; that the United States desires to have the opportunity for a conference with a view to negotiating a basis of equitable adjustment, the said conference to be between an official designated by the Foreign Office and one representing the American Embassy to be accompanied by a representative of the claimant. The Department believes that the claim can be adjusted by direct negotiations, and that every effort should be made in the first instance to reach an amicable settlement by that method.

Kindly endeavor to have Foreign Office name an official to negotiate as stated above, and telegraph disposition of Foreign Office in this regard. You can expect extended statement by pouch regarding basis of claim.

GREW

441.11 St 23/10

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

No. 779 LONDON, *October 10, 1924.*

[Received October 17.]

SIR: I have the honor to refer to the Department's telegraphic instruction No. 124 of May 16, 2 p. m., 1924, and subsequent correspondence with regard to the claim of the Standard Oil Company of New Jersey against the British Government for the destruction in Roumania of property belonging to the Romano-Americana, the Roumanian subsidiary of the Company.

Since then the following developments have occurred. Upon receipt of the instruction under reference a member of the Embassy called at the Foreign Office in order to discuss the situation and to request that a Conference should be held with a representative of the Standard Oil Company. Subsequently the request for a Conference was confirmed in writing to Sir William Tyrrell on May 27;[65] to this communication I received a reply, dated June 23, from Sir Eyre Crowe re-stating the position of the British Government and offering to hold a Conference although he believed that no useful purpose would result therefrom. A copy of Sir Eyre's note is enclosed.

[65] Not printed; Sir William G. Tyrrell was British Assistant Under Secretary of State for Foreign Affairs.

Mr. Hayes, representative of the Standard Oil Company appeared in London at this juncture and after going into the whole subject very thoroughly with him, and, as you will recollect with you also during your stay in London as President of the American Bar Association, I deemed it wise to confer with the Minister of Foreign Affairs personally.

On September 23 I placed before the latter a full presentation of the American contentions and on that day also wrote you a confidential letter giving the details of my conversation with Mr. MacDonald.[66] Mr. MacDonald promised to go into the matter personally. He has now written me under date of October 6, a copy of which is also enclosed, giving reasons in detail why the British Government cannot alter its position in the premises. Mr. Hayes, having been informed of the contents of Mr. MacDonald's communication, is considering what action can now be taken and will consult further with me.

I venture to invite your serious consideration to this adverse decision and to request your further instructions.

I have [etc.]

For the Ambassador:
F. A. STERLING
Counselor of Embassy

[Enclosure 1]

The British Permanent Under Secretary of State for Foreign Affairs (Crowe) to the American Ambassador (Kellogg)

No. C 9478/8593/37 LONDON, *23 June, 1924.*

MY DEAR AMBASSADOR: Sir W. Tyrrell referred to me your letter of the 27th May[66] regarding the compensation claimed by oil companies operating in Roumania for the destruction of their properties by the Allies in 1916.

The attitude of His Majesty's Government towards this very complex matter was set forth in two notes addressed to your Embassy on November 19th, 1919, and July 2nd, 1920,[66] respectively, in answer to questions (similar to those raised in your letter of May 27th) put forward by your predecessors, enquiring as to the arrangements which were being made for compensating American companies whose properties, in common with others, were destroyed during the critical days following the defeat of the Roumanian armies in 1916. For convenience of reference I enclose copies of these notes.

[66] Not printed.

When the Roumanian oil fields were in hourly danger of occupation by the Germans, the British, French and Russian representatives in Bucharest, for reasons of urgent military necessity, urged the Roumanian Government to destroy such oil properties as were likely to fall into German hands, and a general arrangement was made whereby such destruction could be put immediately into effect. At that time events followed each other in such rapid succession that there was no time for the Allied Governments to enter into separate compensation agreements with each individual company, nor was it either desirable or possible that they should do so, as it clearly rested with the Roumanian Government, under whose aegis and in whose territory foreign companies were operating, either to consent or to refuse to destroy the properties. After a good deal of urgent negotiation, the Roumanian Government agreed to the destruction of the wells, plant etc. and *ipso facto* became responsible for any subsequent liability towards individual companies.

In order to secure the cooperation of the Roumanian Government, without which this essential step was impossible, it was necessary for the Allied Governments to compensate the Roumanian Government for any losses which might fall upon it as the result of the exercise of its sovereignty. In 1916 the intention was that the British, French and Russian Governments should each bear one third of the compensation to be eventually paid and His Majesty's Minister at Bucharest notified the Roumanian Government in general terms and in writing of the willingness of His Majesty's Government to compensate them. But neither then nor since have His Majesty's Government ever intimated that they could be considered as having incurred direct liability towards individual companies. They have consistently maintained their attitude towards all British and foreign companies alike from whom compensation claims have been received.

The effect of the undertaking given by His Majesty's Government to the Roumanian Government was thus solely to create a potential claim against His Majesty's Government by the Roumanian Government, which was indebted to His Majesty's Government in considerably larger sums in respect of war advances. In 1920 therefore an agreement was reached between His Majesty's Government on the one hand and Monsieur Titulesco, representing the Roumanian Government, on the other, whereby it was laid down that sums owing by His Majesty's Government to the Roumanian Government in respect of compensation for the destruction of oil properties should be set off against a corresponding total of the debt owing by the Roumanian Government to His Majesty's Government. The relevant portion of this arrangement reads as follows: "The Chancellor of the Exchequer and the Roumanian Minister of Finance agree in principle that it is

desirable that the sums due by the British Government to the Roumanian Government in respect of damage done to Roumanian oil wells at the time of Roumania's entry into the war should be set off against a corresponding total of the Roumanian Government's debt to the British Government, subject to satisfactory arrangements being made for the settlement, as between the Roumanian Government and the proprietors of the oil wells, of the claims of the latter against the Roumanian Government for compensation in respect of damage to the wells." It is further agreed that it is for the "Roumanian Government and not the British Government to arrive at an arrangement for settlement of claims for compensation above-mentioned".

Having adopted this principle in regard to our own and foreign companies, His Majesty's Government cannot possibly make an exception in the case of American claims. The Conference which you suggest in your letter would no doubt afford an occasion to restate and to explain our attitude, but I fear that there is no prospect whatsoever of our being able to modify it. If you feel that a Conference would none the less be of use to you, I have little doubt that arrangements could readily be made to suit your convenience.

Believe me [etc.] EYRE A. CROWE

[Enclosure 2]

The British Secretary of State for Foreign Affairs (MacDonald) to the American Ambassador (Kellogg)

LONDON, *6 October, 1924.*

MY DEAR AMBASSADOR: Since our conversation on 23rd September at which you raised the question of compensation for the destruction of certain oil properties in Roumania, I have examined all the papers bearing on the subject and have seen in particular a letter addressed to you by Sir Eyre Crowe on the 23rd June last.

I need scarcely tell you that in studying the question afresh I have made every endeavour to keep in mind the point of view of your government and of the American company which is primarily concerned.

On thoroughly examining the question, and having due regard to the actual circumstances in which the destruction was carried out I cannot but again endorse the views set out in Sir Eyre Crowe's letter, and I trust that you also will on consideration come to admit that no government, with the facts before them, could decide otherwise than we have felt bound to decide.

The contention of the Standard Oil Company is roughly as follows:—

(1) That they possess no legal remedy in this country, and that they must therefore formulate their claim through the diplomatic channel.

(2) That there exists a moral liability upon His Majesty's Government to make good the damage which they practically forced the Roumanian Government to inflict and which was in fact largely carried out by British officers.

(3) That the promise which was made, to repay the Roumanian Government the costs of compensation, was in substance a joint and several guarantee to compensate the companies concerned, and that His Majesty's Government are not justified in setting a liability arising out of this destruction against the Roumanian war debt to us, which arose from quite distinct and different circumstances.

(4) The company therefore suggest that the matter should be submitted to arbitration.

These points call for the following observations:

(i) It is inaccurate to say that the Standard Oil Company are debarred from action in the British Courts. There is nothing to prevent a foreign company from bringing a petition of right against the Crown, and His Majesty's Government would not dream of resisting a petition on the ground of the nationality of the Company.

(ii) The Standard Oil Company, while stating that they have no legal remedy against His Majesty's Government (which as I have shown is inexact), proceed to admit, as far as I understand their argument, that their claim is not a legal but a moral one. I am unable to follow them for these reasons:—

(*a*) The Romano-Americana Company, even were its capital one hundred per cent. Standard Oil, was, and is, a Roumanian and not a United States corporation. The Standard Oil Company, in reaping the benefits accruing from the operations of such a corporation in Roumania, must have been prepared to accept all the risks of trading in a country which, from the outbreak of the war, had every appearance of becoming involved in the general hostilities.

(*b*) The only part which His Majesty's Government played in the matter of destruction was to place at the disposal of the Roumanian authorities an efficient weapon of destruction. Whatever influence may have been exercised by the Allied ministers at Bucharest, the legal position is unaltered. The Roumanian Government were directly responsible for the measures carried out under the Roumanian prerogative in the interests of all the Allies, measures from which the United States themselves benefited when they entered the war a few months later.

(*c*) The British agreement in respect of compensation for the Roumanian Government was, by way of indemnity, given to the Roumanian Government conjointly with other Allies, and not by way of guarantee to the Companies or persons affected by the destruction. When the Standard Oil Company were asked whether they were causing representations to be made to the French Government similar to those which were being made in London, they admitted that they were not taking any such steps.

(iii) His Majesty's Government have always declared that no sort of guarantee was assumed by them in regard to the several companies. The Courts have upheld this view, and the Standard Oil Company themselves admit that there exists no contract on the basis of which they could bring legal action.

(iv) As regards arbitration, His Majesty's Government fail to see on what basis a recourse to arbitration could be founded. How could His Majesty's Government and the United States Government go to arbitration in regard to damage done, under the authority of the Roumanian Government, to a Roumanian company? And how could His Majesty's Government accept arbitration as between His Majesty's Government and the United States Government unless the French and Russian Governments, who are in exactly the same position as ourselves, were also involved?

Such, my dear Ambassador, are the specific arguments with which His Majesty's Government justify the attitude they have adopted. They appear to me to be conclusive. Indeed I must ask you to place yourself for a moment in our position. If, in our desire to meet the wishes of your government, (and, as you know, such a desire is ever present with us) we were to make *ex gratia* payments to the Standard Oil Company, you will admit that we could not possibly refuse to do the same for all the other British and foreign interests involved. This would entail the payment on the part of the British tax payer of some ten million pounds or more. Do you really expect that the House of Commons would approve such a payment, when the Courts in this country have expressed the definite opinion that His Majesty's Government are under no liability to make it, and when, even if there did exist such a liability, it would have to be shared by France and Russia? Nor do I quite see how we could defend such a proposal by contending that the cancellation of a portion of the Roumanian war debt equivalent to the compensation to be paid by the Roumanian Government to the companies is not a real compensation but represents merely a paper arrangement. To do this would be to establish a theory that we do not regard Allied debts as having any existence in fact—a theory which no creditor government would wish to father, and which has indeed been frequently and unequivocally repudiated by the Government of the United States.

I have explained to you frankly the considerations on which our attitude is based, since I conceived it better that you should know all our arguments and all our difficulties. To me these arguments appear incontrovertible and these difficulties inevitable. If, however, you can devise some means by which the difficulty can be turned, such as joint action on the part of the creditor states to oblige Roumania to pay the compensation which is legally incumbent upon her, then I should be most ready to consider your suggestions with every desire to reach an agreed solution.

Believe me [etc.] J. RAMSAY MACDONALD

441.11 St 23/13

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

WASHINGTON, *January 31, 1925.*

MY DEAR MR. KELLOGG: May I refer to despatches from your Embassy No. 779 of October 10, 1924; No. 801 of October 21, 1924; No. 819 of October 28, 1924, together with your personal and confidential note of October 21, 1924,[69] and to the various enclosures accompanying these communications, in relation to the claim of the Standard Oil Company of New Jersey against Great Britain arising from the destruction of the properties of its subsidiary, the Romano-Americana Company, in Roumania. I advert particularly to Mr. Ramsay MacDonald's note to yourself of October 6, 1924,[70] and to your comments thereon.

I share your view as to the weakness of Mr. MacDonald's note. It . . . calls for a careful and detailed reply. I assume that the opinion of the Honorable Geoffrey Lawrence [71] accompanying your despatch of October 28, 1924, satisfied the doubts which you earlier expressed as to whether there was a remedy in the British courts against the British Government for the destruction of property unless based on contract. Should the Foreign Office still assert that the claimant could maintain a petition of right under the issue as we have defined it, the Attorney General might, nevertheless, take a different stand and even challenge the jurisdiction of the court, or the court itself might do so. It would be unreasonable to force a foreign claimant into a domestic tribunal where the matter of jurisdiction remained an unsettled question. We have been, as you know, confronted with such a situation with respect to the case of *Swift and Company* v. *the Board of Trade.*

I enclose a memorandum setting forth what, in my judgment, might well be communicated to the Foreign Office for the purpose partly of making our record clear, and partly of emphasizing the basis of our contention and the nature of the redress desired. You will observe the extent to which it reflects your own strictures upon Mr. MacDonald's note. In view of your close knowledge of the case and of your understanding of the relation which it bears to other American claims against Great Britain, you will, of course, exercise discretion with respect to the wisdom of submitting the document to the Foreign Office at the present time.

Should our request for reconsideration of the matter and for arbitration be refused, the path would be clear for the further mutual

[69] Despatches Nos. 801 and 819, and confidential note of Oct. 21, not printed.
[70] *Supra.*
[71] Counsel for the Standard Oil Co. of New Jersey.

consideration of this and numerous other British claims arising from the war. These are vast in number and present a problem demanding a fair and conciliatory attitude on the part of both countries. The Department is undertaking a survey of these claims with the expectation of ultimately gaining British acquiescence as to some amicable mode of adjustment. To that end it would be useful at this time to draw out the views of the British Government in the present case as a means of accentuating the issue involved, and as a preliminary step toward the solution of the larger question in relation to which the Standard Oil case is merely an incident. Our immediate need is to secure acknowledgment by Great Britain of its obligation to give American claimants who deny the propriety of the acts of Great Britain while a belligerent or who assert that the commission of those acts was productive of an obligation to pay compensation for losses occasioned thereby, their day in court before some international forum. That forum should be one the scope of whose jurisdiction should not be challenged by Great Britain or by the tribunal itself.

If arbitration be refused, there remain other available modes of adjustment, such as recourse to a Joint Commission. At the present time, however, it seems to me worth while to make a definite request for arbitration, regardless of the consequences, and as the initial step in the direction to be generally followed.

In the hope that you may share my views in regard to this matter, I am [etc.]

CHARLES E. HUGHES

[Enclosure]

Memorandum by the Solicitor of the Department of State (Hyde)

[WASHINGTON,] *January 31, 1925.*

The note from Mr. Ramsay MacDonald of October 6, 1924, in relation to the claim of the Standard Oil Company of New Jersey for compensation for the destruction of oil properties in Roumania, has received the most attentive consideration of the Government of the United States. My Government feels that the precise contention of the claimant has been misunderstood by His Majesty's Government; and that, therefore, the analysis of it by Mr. Ramsay MacDonald and the conclusions which he draws therefrom fail in a large degree to meet the precise issue involved.

Mr. Ramsay MacDonald states, first, that the contention of the Standard Oil Company is, roughly, "that they possess no legal remedy in this country, and that they must therefore formulate their claim through the diplomatic channel". This is believed to be substantially correct.

He states that the company contends, secondly, "that there exists a moral liability upon His Majesty's Government to make good the damage which they practically forced the Roumanian Government to inflict and which was in fact largely carried out by British officers". The Standard Oil Company does not rest its claim upon a moral liability, but upon a legal basis, asserting that the British Government is under an obligation imposed by international law to make compensation for the losses sustained by the company. This contention was, moreover, made clear by the American Ambassador in the course of his conference with the Foreign Secretary.

It is said that the company contends, thirdly, "that the promise which was made, to repay the Roumanian Government the costs of compensation, was in substance a joint and several guarantee to compensate the companies concerned, and that His Majesty's Government are not justified in setting a liability arising out of this destruction against the Roumanian war debt to us, which arose from quite distinct and different circumstances". With respect to this statement it may be said, briefly, that the Standard Oil Company is not understood to be claiming under this agreement. It asserts that no contractual relationship between Great Britain and Roumania has any bearing on the legal obligation of Great Britain toward the claimant. On the other hand the company has contended that it would be inequitable for Great Britain to point to an agreement with Roumania as a means of encouraging claimants to proceed against that country if in fact through any process of set off by reason of Roumania's debt to Great Britain, Roumania was to receive no funds from Great Britain to enable her to pay claimants against herself.

The statement that the company suggests, fourthly, that the matter be submitted to arbitration, is correct, although the reasons for that demand differ to the degree that has been noted from those imputed to the claimant.

The observations of Mr. Ramsay MacDonald respecting the claim deserve close examination. He states, first, that it is inaccurate to say that the Standard Oil Company is debarred from action in the British courts; that there is nothing to prevent a foreign company from bringing a petition of right against the Crown; and that His Majesty's Government would not dream of resisting a petition on the ground of the nationality of the company. This statement is believed to be based on the theory that the claim is one founded on an express contract. The claim of the Standard Oil Company is, in fact, however, based primarily upon a different theory—upon the contention that for the destruction of its properties caused by or directly resulting from the acts of British authorities, the British Government is burdened with an obligation under international law to make full compensation.

It is unnecessary to discuss whether the conduct productive of this obligation was essentially tortious. The Government of the United States is advised that for a claim based on such a theory no legal remedy exists in the British courts. Thus, the statement in Mr. Ramsay MacDonald's note with respect to the right of a foreign claimant to bring a petition of right against the Crown seems to be inapplicable to the present case, at least in so far as the claimant may be unable to prove the existence of an express contract.

It would seem unnecessary to make response to Mr. MacDonald's point "a" of his second main contention—that the company's claim has a moral rather than a legal basis; for, as has been observed, such is not the fact. Having what is believed to be a solid legal foundation, this Government cannot admit that the fact that the Romano-Americana Company (which is wholly owned by the Standard Oil Company of New Jersey) is a Roumanian corporation has any bearing on the question of the liability of the British Government. The views of Lord Salisbury expressed September 10, 1889, with respect to the Delagoa Bay Railway case[72] are in harmony with the view that the state whose nationals are the owners of the shares of a foreign corporation may interpose in their behalf in case the corporation suffers wrong at the hands of a foreign state when those nationals have no remedy except through the intervention of their own Government.

In this connection, it is contended by Mr. MacDonald that the Standard Oil Company in reaping benefits accruing from the operations of the Roumanian corporation must have been prepared to accept all the risks of trading in a country which, from the outbreak of the war, is said to have had every appearance of becoming involved in the general hostilities. Such an assumption of risk cannot be admitted, if at least it is to be implied thereby that the neutral owners of the shares concerned relinquished by reason of their corporate investment in Roumania rights which their neutral sovereign might have normally preferred against a belligerent had they made their investment there as individuals. In a word, the Roumanian corporate garb of the American interest did not free the British Government from any obligation to make reparation which it would normally have owed to any neutral national doing business in Roumania. To such a national there long engaged in profitable enterprise involving the use and development of immovable property, the foreign belligerent destroyer of that property owed a distinct obligation to make reparation for the loss which it occasioned. That

[72] Quoted in part in *Foreign Relations*, 1902, p. 850; the case is discussed in John Bassett Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party*, vol. II (Washington, Government Printing Office, 1898), pp. 1865 ff.

obligation was imposed by the law of nations; and the neutral national assumed no risk that the belligerent destroyer would not fully respect it. Nor can it be admitted that an American neutral corporation engaged in business in Roumania through a Roumanian subsidiary lost any rights for reimbursement for property destroyed by a belligerent through the circumstance that the country within whose territory plants were owned and stocks accumulated ultimately had the appearance of becoming involved in the general conflict.

It is asserted by Mr. MacDonald in his point "b" that the only part which His Majesty's Government played in the matter of destruction was to place at the disposal of the Roumanian authorities an efficient weapon of destruction; and that whatever influence may have been exercised by the Allied Ministers at Bucharest, the legal position was unaltered. He contends that the Roumanian Government were directly responsible for measures said to have been carried out under the Roumanian prerogative in the interests of all the Allies, and that in these measures the United States was itself the beneficiary when it subsequently entered the war. This statement is not believed to reflect accurately either the situation as it was in November 1916 or the law applicable to the present claim.

The British Government, learning of the offensive designs of the enemy in Roumania, evolved the plan of destroying the oil properties therein in order to prevent them from falling into the hands of the enemy. The British authorities were determined to carry out that plan regardless of the approval of Roumania. The properties of the Romano-Americana Company were accordingly destroyed under the direction of British military authorities; much of it being destroyed before the Roumanian Government consented to destruction, and practically all of it was destroyed under the direction of British rather than Roumanian officers. The work of destruction was thus an essentially British war measure carried out pursuant to a deliberate British policy under British direction on Roumanian soil. It reveals a situation where a strong belligerent for a purpose primarily its own arising from its defensive requirements at sea, compelled a weaker Ally to acquiesce in an operation which it carried out on the territory of that Ally. Instead of placing an efficient weapon of destruction at the disposal of Roumania, Great Britain itself made use of that weapon on Roumanian soil and compelled Roumania to yield consent. From that consent no freedom from responsibility was attained by the primary actor.

Mr. Ramsay MacDonald contends in his point "c" that the British agreement in respect of compensation for the Roumanian Government was, by way of indemnity, given to the Roumanian Government conjointly with other Allies, and not by way of guarantee to the

companies or persons affected by the destruction; that when the Standard Oil Company was asked whether it was causing representations to be made to the French Government similar to those which were being made in its behalf in London, it admitted that it was not taking such steps. This contention is deemed wholly irrelevant. As has been noted above, it is not understood that the Standard Oil Company makes any claim under this agreement. Moreover, the Government of the United States is unable to see how any agreements between Great Britain and the Roumanian Government, whether or not conjointly with its other Allies, have any bearing upon the legal rights of the Standard Oil Company to obtain satisfaction from the British Government for the consequences of its action. Nor is it believed that the rights of the Standard Oil Company with respect to Great Britain were affected in any degree whatever by the absence of representations made in its behalf to the French Government. For the conduct of Great Britain producing the destruction for which reparation is sought, no contractual arrangement between Great Britain and its Allies offers an avenue of escape from responsibility.

Mr. MacDonald states as his third point that His Majesty's Government have always declared that no sort of guarantee was assumed by them in regard to the several companies, that the courts have upheld this view, and that the Standard Oil Company itself admits that there exists no contract on which it could bring legal action. The Government of the United States is not prepared to admit that this statement accurately reflects either the views of the British courts or expressions made in behalf of the Standard Oil Company. Moreover, as the contention of Mr. MacDonald appears to be based wholly on the denial of a contractual obligation on the part of Great Britain, the facts in support of it would not appear to be decisive of what should be the appropriate treatment of the claim of the company in so far as it rests upon a different theory.

Mr. MacDonald states, fourthly, that, as regards arbitration, the British Government fail to see on what basis recourse thereto could be founded. He inquires how Great Britain and the United States could agree to arbitrate in regard to damage done, under the authority of the Roumanian Government, to a Roumanian company. He raises the question "How could His Majesty's Government accept arbitration as between His Majesty's Government and the United States Government unless the French and Russian Governments, who are in exactly the same position as ourselves, were also involved?"

In response to the first query it may be said that either the United States or Great Britain might fairly be called upon to go to arbitration in regard to damage done with the approval of the Roumanian Government to a Roumanian corporation owned exclusively by

nationals of a third state, if that state could establish that that damage was the immediate consequence of acts on account of which the law of nations imposed upon the actor an obligation to make reparation. The second question is believed to be irrelevant, because the Government of the United States cannot deem either France or Russia to be in the same position as Great Britain with respect to the claim under discussion. Great Britain is regarded by the Government of the United States as the direct and proximate cause of acts of a belligerent character committed on Roumanian soil which were productive of the destruction of American-owned property and for which reparation is chargeable to herself. The precise issue here involved is whether she is liable, under international law, for what she accomplished. No contractual relations between Great Britain and her Allies serve to obscure that issue, or, in the judgment of the United States, to weaken the reasonableness of the demand that it be adjudicated in an international forum. Moreover, the reasonableness of that demand is not believed to be affected by the extent of the burden which a decision in favor of the claimant might serve to impose upon the British taxpayer.

The question here involved and as hereinabove defined is not understood to have been the subject of a definite opinion expressed by the British courts. It does not, in the opinion of the Government of the United States, concern France or Russia; and it is wholly unrelated to the matter of the cancellation of the Roumanian war debt. The issue between the United States and Great Britain is one which ought to lend itself to fair adjustment by judicial process and which, after proving incapable of settlement by diplomacy, would appear to fall within the contemplation of the arbitration treaty concluded between the United States and Great Britain April 4, 1908, and extended by the agreement between the Contracting Parties of June 23, 1923.[73]

Mr. MacDonald concludes with the final suggestion that if the Government of the United States could devise some means by which the difficulty could be solved "such as joint acts on the part of the creditor states to oblige Roumania to pay the compensation which is legally incumbent upon her", there would be a readiness to consider such suggestions with every desire to reaching an agreed solution. The suggested action with respect to Roumania would not touch the issue here involved and, therefore, could not be regarded by the Government of the United States as offering a solution thereof.

For the foregoing reasons, the Government of the United States finds itself unable to accept Mr. MacDonald's note of October 6, 1924, as a satisfactory response to the contentions which have been made

[73] *Foreign Relations*, 1908, p. 382; *ibid.*, 1923, vol. II, p. 315.

in conference in behalf of the Standard Oil Company. It feels obliged, therefore, to invite to the earnest consideration of His Majesty's Government the fact that an issue has arisen which is believed to impose upon Great Britain an obligation to give to the American claimant its day in court before an international forum whose sufficient jurisdiction is neither challenged by the respondent nor questioned by the tribunal itself. The Government of the United States accordingly proposes arbitration as offering an appropriate means by which the difficulty between the two countries may be fairly adjusted.

C[HARLES] C. H[YDE]

441.11 St 23/46

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

No. 1340 LONDON, *September 10, 1926.*

[Received September 20 (?).]

SIR: Referring to previous correspondence on the claim of the Standard Oil Company of New Jersey for compensation for the destruction of oil properties of its subsidiary in Rumania, the Romano-Americana, against the British Government, I have the honor to enclose copy in triplicate of Sir Austen Chamberlain's reply, dated April 15, 1926, to my representations of February 16, 1925, when I communicated to him a memorandum based on the memorandum prepared by the then Secretary of State, Mr. Hughes,[74] and transmitted by him to the then American Ambassador, Mr. Kellogg, with a personal letter dated January 31, 1925. Greatly to the Embassy's regret Sir Austen's reply had been mislaid in the Embassy and is only now forwarded to the Department.

I have [etc.]

For the Ambassador:
F. A. STERLING
Counselor of Embassy

[Enclosure]

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Ambassador (Houghton)

No. C 4421/1310/37 LONDON, *15 April, 1926.*

YOUR EXCELLENCY: In a memorandum communicated by Your Excellency's predecessor on February 16th last year, the United States Government renewed the claim put forward on behalf of the

[74] The reference is to the memorandum drafted by Mr. Charles C. Hyde, Solicitor of the Department of State, *supra.*

Standard Oil Company of New Jersey in respect of loss and damage done to the property in Roumania of the Romano-Americana Company (a Roumanian corporation in which the Standard Oil Company is a large share-holder) by belligerent operations during the war. The claim is put forward against the Government of this country on the ground of the destruction of the properties of the company caused by or directly resulting from the acts of British authorities, and it is upon this ground maintained that the Government of His Britannic Majesty are burdened with an obligation under international law to make full compensation. It is stated in the earlier part of the memorandum that the claim is framed upon a legal basis and it is there made clear that the Standard Oil Company does not rest its claim upon a moral liability on the part of the Allied Governments to make compensation for the war losses of which the oil properties in Roumania were the victims. At the close of the memorandum a reference of the dispute to arbitration is proposed.

2. As the claim is put forward on a strictly legal basis, it has been necessary for His Majesty's Government to consider the claim in all its bearings upon that basis and to arrive at their conclusions under the advice of the highest legal authorities of the country. It is to this cause that the delay in returning an answer to the memorandum of February 16th 1925 is due.

3. His Majesty's Government do not admit that any international responsibility for the destruction of this property rests upon or can be undertaken by this country. The memorandum based the claim on the destruction of property by a belligerent and maintained that the belligerent is under an obligation, imposed by the law of nations, to make reparation. His Majesty's Government agree that the destruction was an act of war. It arose out of acts of war committed in Roumania when Roumania was an active belligerent. The question of the nationality of the individuals who carried out the acts complained of is immaterial. The acts were carried out on Roumanian soil by individuals acting on behalf of and in co-operation with the military authorities of the country, and by the authority of the Roumanian Government. That Government approved of the steps which were taken and if and so far as there was need for them to do so they have ratified the acts in question in the most unequivocal manner. It follows, therefore, that if the acts complained of give rise to any claim for compensation on the part of those whose property was injured or destroyed, the party responsible is the Roumanian Government and it is against that Government that the claim must be brought.

4. There can be no doubt that this is also the view of the Roumanian Government. Roumania has openly proclaimed her respon-

sibility in this matter. In this connection I venture to quote an extract from a speech of the Roumanian Minister of Finance before the Chamber of Deputies, delivered on February 11th, 1925.

[Translation]

"From the very beginning we laid down the rule that we did the destruction in our territory and that we make compensation. We pledged ourselves to those who suffered damages and hence, the sums that become due under that head you must deliver to us.

"We cannot admit that those compensations be made directly as some States tried to do with their people.

"We have taken a pledge with the whole petroleum industry, and what is due to it must be given to us and it will be distributed by us to the sufferers".

and a further extract from an official Roumanian Government memorandum published in the Official Press of September 24th, 1925:—

[Translation]

"As a result of the pressure exerted and steps taken by the Allied Powers in November 1916, the Roumanian Government ordered the destruction of all plants for the extraction, transformation and transportation of petroleum, and also the destruction by fire of all the stores of crude oil and derivatives found in the yards, refineries and warehouses throughout the Muntenia and Dobrudja territory.

"The sole purpose of the destruction was to deprive the enemy of one of its best implements of war. It turns out that it was fully accomplished".

Your Excellency will note from these declarations that not only did the Roumanian Government declare that the work of destruction was undertaken by the orders of the Roumanian Government, but also that Roumania cannot admit the right of Great Britain or France or any other Power to negotiate directly with respect to compensation with the persons or companies whose properties were injured, and that they would regard any such action as a violation of Roumania's sovereign rights.

5. As such responsibility rests solely with Roumania, it is unnecessary for me to set out at length the other considerations upon which His Majesty's Government would be in a position to rely if a legal claim could properly be formulated against them. Nevertheless, I would invite Your Excellency's attention to a brief enumeration of some of the considerations of this character, though in so doing it must not be assumed that I waive any other objections which His Majesty's Government would be in a position to put forward.

6. In the first place, the destruction of this property, being, as your memorandum admits, an act of war, gives rise to no legal right to compensation. The principle that "war losses" do not give rise to a legal right to compensation is not limited to war losses in the sense

of loss or damage inflicted by the enemy, but covers also loss and damage which the commander in the field is himself obliged to inflict upon the owners of property in the area under his authority: see the decision of the Tribunal in the "Hardman" case in the arbitration between the British and United States Governments (*American Journal of International Law*, Vol. 7, p. 879). Secondly, His Majesty's Government would, if necessary, maintain that the claim, being in respect of damage to the property of a company incorporated in and still carrying on business in Roumania, must be regarded as a claim on behalf of a company which is a Roumanian national. The ownership of the shares, even if it extended to the totality of the shares, by an American corporation would not in the opinion of this Government justify the diplomatic protection of the Roumanian company by the Government of the United States on the footing that it was an American national.

7. The view of His Majesty's Government being that it is the Roumanian Government alone which can deal with a claim for compensation for the destruction of the property of the Romano-Americana Company, I would repeat what I think is already known to your government that the British, French and Russian Governments when inviting the Roumanian authorities to destroy the oil properties in Roumania to prevent them from falling into the hands of the enemy, agreed to compensate that Government for any loss which the latter might sustain as the result of their destruction and they have always been and still are willing to reduce their claims in respect of sums due to them by the Roumanian Government on this account. So far as His Majesty's Government are concerned the above arrangement has been carried out by a reduction of the Roumanian debt to this country. I would add, however, that the question of compensation is one to be arranged between the Roumanian Government and the various owners of the oil properties concerned, and the conclusion of any agreement between the Roumanian and the Allied Governments on the question cannot, in my view, be taken to prejudice the right of the Roumanian Government to maintain that if compensation is claimed on a strictly legal basis, the belligerent acts of destruction were not such as to give rise to any claims for compensation as of right.

8. If for one moment I may depart from the strictly legal considerations applicable to the case, I would ask you also to reflect how impossible it is for His Majesty's Government to admit that a claim can rightly be brought against them alone in respect of the destruction of these oil properties in Roumania, when their sole interest in the case is the undertaking which they gave jointly with France and Russia, and which is certainly, so far as France is concerned, a subsisting undertaking, to reimburse to the Roumanian Government any compensation which might be given to the owners of the oil properties.

9. In view of the preceding considerations, I trust that Your Excellency will agree with me that the claim of the Standard Oil Company is not one which lends itself to arbitration between the British and United States Governments.

I have [etc.] AUSTEN CHAMBERLAIN

441.11 St 23/46

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

No. 766 WASHINGTON, *December 6, 1926.*

SIR: The Department has received the Embassy's despatch No. 1340 of September 10, 1926, transmitting a copy of the note of the Foreign Office dated April 15, 1926 answering the Embassy's communication of February 16, 1925, in regard to the claim of the Standard Oil Company against the British Government growing out of the destruction of the property of Romano-Americana in Rumania in 1916.

You will please address a further communication to the Foreign Office textually as follows:[75]

I duly referred to my Government Your Excellency's note of April 15, 1926 setting forth the attitude of His Majesty's Government regarding the claim of the Standard Oil Company growing out of the destruction of the properties of Romano-Americana in Rumania in 1916, and am now in receipt of a reply from my Government directing me to discuss the matter further with Your Excellency in a note substantially as follows:

My Government regrets that the statements of fact purporting to set forth the circumstances under which the property was destroyed and the conclusions of law expressed in Your Excellency's note are such that my Government finds itself unable to concur therein. My Government recognizes the necessity of having an accurate exposition of the facts as a foundation for the discussion and application of legal principles. I am therefore directed to set forth at the outset my Government's version of the facts as revealed chiefly by the testimony presented at the hearings in the suit in His Majesty's courts of the Rumanian Consolidated Oilfields, Limited.

An examination of the testimony presented at the trial of the suit of the Rumanian Consolidated Oilfields, Limited, reveals that Colonel Griffiths, an officer in His Majesty's Army, was instructed by the highest authority of his Government to proceed to Rumania to destroy the oil properties there, including stocks, plants, equipment and wells; that he was authorized and commanded himself to accomplish the complete destruction of the property beyond the possibility of restoration to productivity, and that he was to accomplish his mission at any cost and by the employment of any means necessary to that end. It is obvious from the testimony that Colonel Griffiths and other officers in His Majesty's Army, planned the work and supervised and wrought the destruction of the oil properties, includ-

[75] A note based on this instruction was presented to the Foreign Office on May 2, 1927.

ing the property of Romano-Americana, for the most part, against the opposition of the Rumanian authorities, and that in rendering the slight aid which the Rumanians gave Colonel Griffiths they were attached to Colonel Griffiths' staff or carrying out his wishes and were acting under his direction against the opposition of the Rumanian authorities, which continued until most of the property was destroyed. It is apparent from the testimony also, that the Rumanians did not desire the oil wells, plants and equipment destroyed but were willing that the stocks only be destroyed; that they did not take the initiative to accomplish the destruction, but that in several instances they opposed with force the prosecution of the work of destruction by Colonel Griffiths and his men. In the light of indisputable facts the acts of demolition can not be regarded as other than the acts of His Majesty's Government. The declared purpose of the destruction of the properties was to prevent their falling into the hands of the enemy.

The question presented for consideration by the clear and definite state of facts to which the present case is readily reducible, is whether His Majesty's Government is responsible, and obligated to indemnify the American company, for losses sustained through the destruction of the property of its Rumanian subsidiary by a high official of His Majesty's Army under specific instructions from His Majesty's Government to prevent the property from falling into the hands of the enemy.

My Government is confident that an examination and analysis of the evidence by His Majesty's law officers to whom Your Excellency states the case was referred, will convince them that the state of facts and the question for discussion are as described.

In proceeding to a discussion of the legal question which my Government concludes to be presented by the facts in the case, it is deemed necessary to consider two principal propositions advanced in Your Excellency's note of April 15, 1926.

1. In disclaiming liability to indemnify the Standard Oil Company for losses sustained under the circumstances of this case Your Excellency states:

> "The principle that 'war losses' do not give rise to a legal right to compensation is not limited to war losses in the sense of loss or damage inflicted by the enemy, but covers also loss and damage which the commander in the field is himself obliged to inflict upon the owners of property in the area under his authority".

The Hardman case is referred to as authority for this proposition.

2. Your Excellency states further:

> "His Majesty's Government would, if necessary, maintain that the claim, being in respect of damage to the property of a company incorporated in and still carrying on business in Roumania, must be regarded as a claim on behalf of a company which is a Roumanian national. The ownership of the shares, even if it extended to the totality of the shares, by an American corporation would not in the opinion of this Government justify the diplomatic protection of the Roumanian company by the Government of the United States on the footing that it was an American national".

These two propositions will be discussed in the order in which they are stated:

The Government of the United States does not assert that a belligerent is liable to indemnify property owners for property which may be destroyed by it as acts of war as that term is used to indicate acts for which no liability attaches. My Government has not admitted, as Your Excellency seems to think it has done, that the destruction of the property of Romano-Americana was an act of war as so understood. It is the view of the Government of the United States, which it is prepared to sustain with respectable authorities, some of which His Majesty's Government have had occasion to employ in support of claims of its nationals, that under some circumstances a belligerent is obligated to indemnify owners of property which it takes or destroys. The occasions on which private property may be taken and destroyed with or without compensation are authoritatively defined with clarity. The taking of property by a belligerent to prevent its falling into the hands of an enemy comes within the category of cases in which a belligerent is obligated to indemnify the owner.

Your Excellency refers to the Hardman case which was decided by the Tribunal established pursuant to the Convention between the United States and Great Britain concluded August 18, 1910.[77] In that case the military forces of the United States in Cuba destroyed houses for the purpose of preserving the health of the soldiers. Hardman, a British subject, had some furniture and other personal property in one of the houses, which was destroyed with the house. The law applicable to such a case is entirely different from the law applicable to the destruction of property to prevent its falling into the hands of the enemy. In the United States, and this appears also to be the rule in England, it is not obligatory on the government to compensate owners of property which it is necessary to destroy in time of peace to prevent the spread of a conflagration or the outbreak of disease. There is no more reason why a government should pay for property destroyed by its military forces as an act of war to prevent the outbreak or spread of disease than there is why it should pay for property destroyed for the same purposes in time of peace. Established principles of law exempt a government from payment for property destroyed to prevent the outbreak or spread of disease in times of war. Equally well established principles of law impose on a government an obligation to compensate the owner of property destroyed to prevent its falling into the hands of the enemy. The Hardman case being one in which the property was destroyed to prevent the outbreak of disease, and the case under discussion being one in which the property was destroyed to prevent its falling into the hands of the enemy, the distinction between them is obvious.

Happily, there is no dearth of respectable authority on the question of the liability of a government to indemnify owners of property destroyed to prevent its falling into the hands of the enemy. There have been several suits in the Courts of the United States in which this question was adjudicated. The earliest case was that of *Grant* vs. *United States* (1 C. C. 41). Property belonging to the claimant was destroyed to prevent its falling into the hands of the enemy. In a

[77] For text of convention, see *Foreign Relations*, 1911, p. 266.

well-considered decision in support of which quotations from Vattel and Grotius were liberally employed, the Court of Claims held that the Government of the United States was obligated to compensate the claimant for property destroyed to prevent its falling into the hands of the enemy, pointing out that writers on public law do not distinguish between property destroyed to prevent its falling into the hands of the enemy and property taken by a government for the actual sustenance of its military forces. It was stated in the opinion that the obligation of the government was conditioned on the justification of the destruction and that the danger which it was sought to avert by destroying the property must be immediate and impending. Inasmuch as the forces of the enemy were momentarily expected at the oil fields in Rumania when the work of destroying the property of Romano-Americana was under way, and since the work of destruction was scarcely completed before the enemy reached the oil regions and took possession of the ruins there seems to be no doubt that the circumstances of the case under discussion meet the condition laid down by the court as justification of destruction.

The case of Wiggins against the United States (3 C. C. 412) is of interest in relation to the claim of the Standard Oil Company to recover indemnity for the destruction of the property of its subsidiary in Rumania. In the Wiggins' case, as in the case of the Standard Oil Company, the property was situated in one country and destroyed by the forces of another. A large quantity of ammunition was stored at Punta Arenas, Nicaragua. Greytown, Nicaragua, had been bombarded by a United States ship of war. It was feared that the inhabitants of Greytown to avenge the bombardment might seize the powder and use it to destroy American property. The Commander of the United States ship of war seized the powder and cast it into the bay destroying it. Following the precedent in the Grant case, the United States Court of Claims awarded compensation for the property. The Court stated that the obligation to compensate resulted from the principles of natural justice and equity as well as from the constitutional injunction to pay for private property devoted to public ends.

The distinction between the destruction of property to prevent its falling into the hands of the enemy and the destruction of property as an act of war in military operations is shown by *Perrin* versus *the United States* (4 C. C. 453 [*543*]). Property for which the claimants sought compensation was destroyed in the bombardment of Greytown by a United States man-of-war. Suit was brought in the Court of Claims. The Court sustained a demurrer and dismissed the petition, distinguishing this case from those of Grant and Wiggins, discussed above, as being one in which the property was destroyed in operations against an enemy, while in the cases of Grant and Wiggins the property had been destroyed to prevent its falling into the hands of the enemy.

In the opinion of the Supreme Court of the United States delivered by Chief Justice Taney in *Mitchell* versus *Harmony* (13 Howard 115) the question of compensation for property destroyed to prevent its falling in the hands of the enemy was discussed as follows:

> "There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where

a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner; but the officer is not a trespasser.

"But we are clearly of opinion, that in all of these cases the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. It is impossible to define the particular circumstances of danger or necessity in which this power may be lawfully exercised. Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified."

In view of the verdict of the jury that circumstances warranting the seizure did not exist the defendant, Mitchell, was held personally responsible for his acts. This decision, however, is in no way contrary to the decisions of the Court of Claims in the cases of Grant and Wiggins, as is clearly apparent from the quotation set forth above giving the views of the Supreme Court on the question of the liability of the Government to indemnify owners for the destruction of property to prevent its falling into the hands of the enemy.

The question of the liability of a belligerent to indemnify owners for the destruction of property to prevent its falling into the hands of the enemy was considered by the Commission established pursuant to the Treaty of May 8, 1871, between the United States and Her Majesty's Government.[78] The case of *Turner* versus *the United States* was clearly in point and was described in the report of the British Agent, (*Mixed Commission on British and American Claims*) page 27, as follows: "Property destroyed by the United States Army to prevent its falling into the hands of the enemy". It is believed to be pertinent and appropriate, as well as useful, to set forth here the following excerpt from the brief of counsel for Her Britannic Majesty in this case:

"Upon the whole evidence there can be no reasonable doubt that the houses were destroyed by the Federal army to prevent their falling into the hands of the enemy with the hospital stores therein contained. It is, therefore, precisely within the principle settled by the Court of Claims in Grant's case heretofore cited. That judgment, as the Commission will recollect, was expressly founded, as well upon the principles of the public law as upon that clause of the Constitution of the United States which declares that private property shall not be taken for public use without just compensation. The destruction of Grant's property to prevent its falling into the hands of the enemy, was held to be a taking of private property for public use." (Volume IV, *British and American Mixed Commission.*)

[78] For text of art. XII, pursuant to which the Commission was established, see *Foreign Relations*, 1871, pp. 521-522; for report of the American Agent, see *ibid.*, 1873, pt. 2, vol. III.

An award in favor of Turner in a substantial amount was made by the Commission to indemnify him for the destruction of property to prevent its falling into the hands of the enemy.

Reference is also made to the brief of Her Britannic Majesty's counsel in the case of *Haddon* versus *the United States* before the same Commission. The following quotations from that brief are set forth because of their reference to the decision of the Supreme Court of the United States in the case of *Mitchell* versus *Harmony*, and the decision of the Court of Claims in the case of *Grant* versus *the United States:*

> "The case of *Mitchell* v. *Harmony*, grew out of facts which occurred, not in the United States, but in Mexico, with which the United States were then engaged in war. The effect of this case is not to be avoided by the assertion that the language of the Chief Justice is merely *obiter dictum.* In no just sense is it liable to such criticism. It was of the very essence of the question whether the destruction of the property in that case was in the public service or by an unwarrantable private trespass, and it was only because the Court held that the act complained of was not required by the public service, that the defendent was held to be personally responsible in that action. He had set up the ground in his defence that the Government and not he was liable; it became, therefore, necessary for the Court to consider and determine the effect of this defence and how far it applied to that case, and in determining that, the Court used the language which the Counsel for the United States characterizes as *obiter dictum.* Subsequently, however, the United States believing the officer to have acted bona fide, and for the public good, assumed the responsibility and paid the judgment which had been rendered against him.
>
> "The case of *W. S. Grant*, v. *The United States*, (1 Court of Claims, 41), heretofore cited, does certainly decide that property destroyed under the same military necessity as is here alleged by the United States, and to prevent its falling into the hands of the same belligerent in the same war, was property taken for public use. The language of the Constitution is simply that private property shall not be taken for public use without just compensation. We suppose it is to be admitted on all sides, and settled by repeated decision[s] of this Commission, that the property of Her Majesty's subjects in the United States, whether in the insurgent or loyal States, was not liable to be taken by the United States for public use without just compensation; and Grant's case is a direct and controlling authority to show that property destroyed as was that of these claimants, is property taken for the public use. But the opinion of the Court in that case is not based exclusively on the Constitution or laws of the United States. It proceeds upon the doctrines of the public law common to all civilized nations. The Court in that case, after citing authority from the publicists, said: 'The limitation imposed on the Government of the United States in the exercise of its right of eminent domain by the fifth article of the Consti-

tution is a solemn recognition of this settled and fundamental law of the States, and binds the Government to the observance of the principles of justice and right in its dealings with the citizen with the force of organic law.'

"It is plain, therefore, that these cases do not depend upon the doctrine of eminent domain, but rest upon the broader foundation of the public law and the principles of natural justice and equity.' (Report of British Agent, page 432, 433)

It will be perceived from the foregoing discussion that according to the most eminent authorities on international law, by decisions of courts of the United States which His Majesty's Government has seen fit to endorse and employ in supporting claims of its nationals, and by at least one decision of the Commission established pursuant to the Treaty of May 8, 1871, between the United States and Her Majesty's Government, the liability of a government to indemnify owners of property destroyed to prevent its falling into the hands of the enemy is established. There seems to be no occasion to doubt that the claim of the Standard Oil Company falls within the declarations in decisions cited.

Adverting now to the second of the propositions enumerated above, namely, that in the opinion of Your [*His?*] Majesty's Government, the Government of the United States is not justified in according diplomatic protection to the Rumanian company notwithstanding that all its shares were held by an American company, it is observed that the Government of the United States is seeking to recover for the American company indemnity for losses sustained by it through the destruction of the property of its Rumanian subsidiary. In the exercise of its discretion to protect American interests abroad, my Government, like His Majesty's Government, does not withhold protection from American interests merely because those interests happen to be represented in corporations of foreign states. The practice of the Government of the United States in this regard is not unlike that of His Majesty's Government. There are numerous precedents showing the practice of governments to intervene in behalf of stockholders of foreign corporations. Among those may be mentioned the Delagoa Bay case (Moore's *International Arbitrations*, Volume 2, page 1872 [*1865*]); El Triumpho case (*Foreign Relations of the United States*, 1902, page 873 [*838*]); the Alsop case (*Foreign Relations of the United States*, 1910, page 138, and 1911, page 38); and the Tlahualilo case (*Foreign Relations of the United States*, 1913, page 993).

The prominence which these cases have attained as precedents and the familiarity of His Majesty's Government with them renders unnecessary any extensive discussion of them. In the Delagoa Bay case the Government of the United States and Her Majesty's Government intervened jointly as well as severally in behalf of American and British stockholders in a Portuguese corporation. In the El Triumpho case the Government of the United States pressed to arbitration the claim of its nationals, shareholders in a Salvadoran corporation, against the Government of Salvador. The Honorable Henry Strong, Chief Justice of the Dominion of Canada, was one of the arbitrators and joined in an award granting compensation to the nationals of the United States who were shareholders in the Salva-

doran corporation, to indemnify them for losses resulting from the destruction of the property of the Salvadoran company. The Alsop case against Chile was pressed to settlement by the Government of the United States and the case was submitted to His Majesty King Edward VII as an *amiable compositeur*, to determine the amount due the American claimants. In the report of the Committee appointed by His Majesty to study the case it was stated:

> "The Chilean Government, in the case presented to Your Majesty, again suggest that, as the firm was registered in Chile, and is a Chilean company, their grievances can not properly be the subject of a diplomatic claim, and that the claimants should be referred to the Chilean courts for the establishment of any rights they may possess.
>
> "We hardly think that this contention is seriously put forward as precluding Your Majesty from dealing with the merits of the case. It would be inconsistent with the terms of the reference to Your Majesty, and would practically exclude the possibility of any real decision on the equities of the claim put forward.
>
> "The remedy suggested would probably be illusory, and, so far from removing friction, an award in this sense, transferring the real decision from an impartial arbitrator with full powers to the courts of the country concerned, which in all probability have no sufficient power to deal equitably with the claim, could afford no effective solution of the points at issue or do otherwise than increase the friction which has already arisen between the two states.
>
> "We are clearly of opinion, looking to the terms of reference and to all the circumstances of the case, that such a contention, if intended to be seriously put forward by Chile, should be rejected. We think that it may be disregarded by Your Majesty."

The Tlahualilo case was that of a Mexican corporation, the preponderant interest in which was British. In answering the declination of the Mexican Government to settle or arbitrate the case because the Tlahualilo company was a Mexican company, established in accordance with Mexican laws, His Majesty's Government stated in a note to the Mexican Government dated August 2, 1911, as follows:

> "His Majesty's Government being desirous to cause no additional embarrassment to the Mexican Government during the period of political unrest in the Republic, delayed for a time their reply to the above note, but I am now instructed to inform you that they can not accept the validity of the second contention put forward by the Mexican Government, namely, that the Tlahualilo Company being a Mexican Company is not susceptible of intervention in its affairs on the part of a foreign Government. While His Majesty's Government are prepared to await the result of the suit in the Court of Appeal, yet, should the verdict not give the Company that relief to which they are entitled, they will feel obliged to make diplomatic representations on behalf of the British interests which are involved."

The practice of Governments to protect their nationals in the matter of losses sustained by them through damages suffered by foreign corporations in which they are interested, is exemplified by the provisions of the Treaty of Versailles. Article 297, paragraph E, and the first paragraph of Article 298 of that Treaty may be cited.[79] Conventions recently concluded between the United States and Mexico regarding claims,[80] contain provisions contemplating the adjudication of claims of American and Mexican citizens for damages suffered by them as a result of losses sustained by corporations in which they are interested. It is understood that other Governments have concluded conventions with the Government of Mexico containing similar provisions.

It would seem from the foregoing that the failure of Governments to protect their nationals in any case rests on other grounds than that their interests are represented in foreign corporations and that it is the established practice of Governments to protect the interests of their nationals in foreign corporations in appropriate cases.

Your Excellency states that the acts of destruction were carried out in Rumania by individuals acting on behalf of and in cooperation with the military authorities of that country and by the authority of the Rumanian Government; that the Rumanian Government approved and ratified the acts of destruction and that therefore if the acts of destruction gave rise to any claim, the Rumanian Government is the responsible party. As indicated above, my Government does not entirely concur in Your Excellency's version of the facts nor does it concur in the conclusions of law set forth in Your Excellency's note. The evidence reveals beyond any occasion for doubt that His Majesty's Government sent a high officer of His Majesty's Army, many thousand miles on a perilous journey for the declared purpose and with positive instructions to accomplish the destruction of oil properties in Rumania. This destruction was to be accomplished with or without the consent of the Rumanian Government. That the Rumanian Government was not in sympathy with Colonel Griffiths' mission is apparent from the testimony of Colonel Griffiths and other evidence which is available.

Neither approval by the Rumanian 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 Rumanian Governments,—agreements to which Your Excellency refers—relieves His Majesty's Government from liability to idemnify the owners of 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 agreements among several governments. It is not believed that His Majesty's Government will seriously urge as a legal proposition that one government can enter into agreements with other governments contemplating the destruction of property belong-

[79] Malloy, *Treaties*, 1910–1923, vol. III, pp. 3329, 3462, 3464.

[80] General Claims Convention, signed Sept. 8, 1923, and Special Claims Convention, signed Sept. 10, 1923; *Foreign Relations*, 1923, vol. II, pp. 555 and 560.

ing to persons or concerns who are not a party to the agreements and whose government is not a party thereto and can plead such agreements as a defense to claims for damages. This is a novel proposition in support of which my Government knows of no existing authority. These contracts established no privity between either of the parties to them and the Romano-Americana which was not party to such contracts. Persons or concerns whose property is destroyed pursuant to such agreements are entitled to look to the Government whose agencies are responsible for the destruction of the property. The responsible government must look to other parties to the contracts for contribution if the burden of indemnification is to be distributed. His Majesty's Government having ordered the destruction of the oil properties in Rumania and agencies of His Majesty's Government having effected the destruction, American nationals who have suffered losses as a result of the destruction of that property and the Government of the United States in their behalf, are entitled to look to His Majesty's Government for relief.

My Government feels that the facts of the present case are so clear and the applicable principles of law so elementary that there is occasion only for discussion of the amount of indemnity to be paid. My Government hopes that Your Excellency's Government will see its way to authorize a representative to meet a representative of the Government of the United States for the purpose of discussing the amount of indemnity to be paid. Should Your Excellency's Government be unwilling to participate in such a discussion, my Government feels that it is under the necessity of insisting that the question of the liability of His Majesty's Government in the premises and, if liable, the question of the amount of indemnity to be paid be submitted to arbitration pursuant to the Agreement of April 4, 1908 between the Government of the United States and His Majesty's Government, which was extended by the Agreement between the two Governments concluded June 3 [*23*], 1923.

I am instructed to add in conclusion that it would be a source of keen regret to my Government were his Majesty's Government to decline to adjust this claim or to submit the question of liability and the amount of damages to arbitration.

There is enclosed an excerpt from testimony given by Colonel Griffiths at the hearing in the case of the Rumanian Consolidated Oilfields, Limited, referred to above and comments thereon for use by you in any discussions which you may have with the British authorities.[81]

I am [etc.] FRANK B. KELLOGG

[81] Not printed.

COOPERATION OF THE BRITISH GOVERNMENT WITH THE AMERICAN GOVERNMENT TO PREVENT LIQUOR SMUGGLING INTO THE UNITED STATES

811.114C.G.44/29½

Memorandum by Mr. William R. Vallance, Assistant to the Solicitor of the Department of State

[WASHINGTON,] *December 2, 1925.*

MEMORANDUM OF CONFERENCE REGARDING (1) PRESENCE OF COAST GUARD VESSELS AT GUN CAY WITHOUT PRIOR PERMISSION OF BRITISH AUTHORITIES, AND (2) SEIZURES UNDER THE BRITISH LIQUOR TREATY AND CONSTRUCTION THEREOF

DATE—December 2, 1925, 10 A. M.
PLACE—Room 214, State Department.
PRESENT—
Representing the British Embassy:
Sir Esme Howard, the British Ambassador;
The Honorable H. W. Brooks, First Secretary;
Mr. G. H. Thompson, Second Secretary.
Representing the United States:
State Department—Mr. William R. Vallance, Assistant to the Solicitor.
Treasury Department—Rear Admiral F. C. Billard, In charge of the Coast Guard Service; Lieut. Commander C. B. Root, Intelligence Officer, Coast Guard.
Department of Justice—Mrs. Mabel Walker Willebrandt, Assistant Attorney General; Mr. Arthur W. Henderson, Special Assistant to the Attorney General.

1. *Coast Guard Activities*

The conference was opened by Mr. Vallance, who stated that he understood the British Ambassador wished to bring up for discussion the question of the presence of Coast Guard vessels at Gun Cay without previously having given notice of their arrival to the Bahaman authorities. The Ambassador stated that he had received some communications from the Governor of the Bahamas on the subject and that they were considerably disturbed about the operations of the Coast Guard vessels in British territorial waters without being advised that the armed vessels were coming there in accordance with the usual practice.

Admiral Billard stated that he would like to explain exactly how the matter started. He stated that he was at Miami last April and was going over the general smuggling situation from the Bahama Islands into Florida, with a view to working out a suitable blockade to prevent such smuggling operations. He was informed that the island of Gun Cay was approximately forty-two miles from the

Florida coast and that it was an uninhabited coral island without any vegetation but with a harbor in which several large supply ships were anchored and from which speed boats from the Florida coast were loaded and departed at night for the Florida coast. The Admiral stated that he issued orders to two or three of their seventy-five foot launches to proceed to Gun Cay and to observe the conditions there and ascertain, if possible, the names of the vessels which were being loaded with liquor for the Florida coast. Specific instructions were given to the effect that no Coast Guard activities of any kind were to be carried on in British territorial waters and that complete recognition was to be given to British sovereignty there. The Admiral explained that there were no British authorities on the island and consequently there was no one to whom the Coast Guard vessels could report. The Ambassador stated that the Admiral was, of course, familiar with the international practice of giving advance notification of the intended arrival of armed foreign vessels within territorial waters of another country. The Admiral replied that he was familiar with the practice but that he felt there was no particular reason for notifying the State Department of his proposal and having it relayed by the State Department, through the Embassy at London, to the British Foreign Office and thence back to the Governor of Nassau—that the presence of three 75-foot boats in the territorial waters adjoining an uninhabited island did not seem to him of sufficient concern to warrant all that fuss. The Ambassador replied that, of course, the matter might seem trivial, but still there was a well established practice that had been developed and he believed it was generally recognized to be advisable to adhere to that practice of giving advance notice, as it avoided any misunderstandings as to possible assumption of jurisdiction over islands, et cetera. The Admiral stated that he regretted it very much if the British authorities objected to the presence of these vessels and that he would see to it in case such a technical stand was taken that no further Coast Guard vessels visited the Bahama Islands. The Ambassador replied that there was no desire to prevent the visits of these vessels to the islands but simply to have acquiescence with the regular procedure.

Mr. Vallance referred to the fact that, during the Ambassador's conference with the Secretary of State on November 16, 1925, the Secretary had suggested that it might be possible to arrange for a blanket license for designated Coast Guard vessels to enter these territorial waters with the understanding that they would have the right to obtain fuel or other assistance or supplies in case of distress and that it would not be necessary each time to give advance information to the Governor of the Bahamas. It was pointed out that it would be provided that while in British territorial waters such United States vessels would perform no Coast Guard duties or other functions which might

be considered an interference with British sovereignty. The Ambassador stated that he would be glad to see whether such an arrangement would be acceptable to the Bahaman authorities, but that of course it was a departure from the regular procedure and exceptions in favor of vessels of one nationality were difficult to explain to other governments when their vessels were concerned. However, he would be glad to see what could be done.

Admiral Billard stated that the situation at Gun Cay was very similar to that at Detroit, in which Coast Guard vessels crossed from Detroit to Windsor simply by notifying the Canadian Collector of Customs at Windsor upon their arrival. He stated that he believed that it would be an undue formality to have the officers in charge of the Coast Guard vessels at Detroit notify the State Department and have the State Department notify the Canadian Government at Ottawa and the Government at Ottawa notify the Collector of Customs at Windsor every time a trip was contemplated. He expressed the opinion that some simple formula should be worked out dealing with the situation at Gun Cay similar to that between Detroit and Windsor. Commander Root referred to the fact that the Canadian authorities had arranged at Victoria and Vancouver so that Coast Guard vessels entering these ports merely reported to the collectors of customs their arrival and departure. The Ambassador stated that he would see what could be done.

The Ambassador stated that one cause of particular irritation had been the fact that a vessel carrying Mr. Moore, a member of the Executive Assembly, was stopped by a Coast Guard vessel and at another time the Coast Guard vessel played its searchlight on the wheelhouse of a vessel on which a Bahaman Government representative was traveling, causing difficulty of navigation and great danger to the vessel on account of the shoals and channels that had to be navigated. Commander Root stated that he had these reports examined carefully and that they were probably correct. He further stated that the Coast Guard officers acting in this manner had been censured and instructed to be very careful in the future. Commander Root pointed out that the whole cause of the difficulty was that seven or eight large hulks had been towed down to Gun Cay from Nassau loaded with liquor and that speed boats owned by American citizens arrived alongside these hulks and loaded liquor. The Coast Guard vessels got the names of these speed boats and, finding them along the Florida coast, seized them. The Ambassador asked whether it was not possible to conduct the operations entirely from the Florida coast and seize these vessels there. Commander Root pointed out that when the vessels left Gun Cay they spread out like a fan and, during the night, entered along the Florida coast over shoals and around small islands where it was practically impossible to navigate a Coast Guard cutter and, on account of

about a thousand miles of coastline to cover, it was practically impossible to make effective seizures. The Ambassador inquired whether these American vessels could not be seized on the high seas. Mr. Vallance stated that it was necessary to establish that the vessels were engaged in violating the customs laws in order that proceedings might be taken under the conspiracy statute, that the prohibition law extended only to the three-mile limit and it had been held by the Supreme Court of the United States that American vessels could transport liquors on the high seas between, say Nassau and Halifax and other foreign ports, without violating our laws.[82] The Ambassador stated that in the circumstances British vessels, under the liquor treaty, were being treated more severely than were American vessels. Mr. Vallance replied that it might seem that way but, as a matter of fact, the British vessels were the large supply vessels and no American vessels were engaged in the business of bringing liquor to the territorial limits and disposing of it because the masters of the vessels would be subject to prosecution under the statutes relating to conspiracy to violate the laws of the United States.

The Ambassador stated that he was going to the Bahamas for the Christmas holidays and, at his suggestion, the following four points were agreed upon as matters to receive further consideration with a view to avoiding difficulties with the Bahaman authorities.

1. Inquiries were to be made by the Ambassador with a view to ascertaining whether a blanket permit could be arranged for specified vessels of the Coast Guard to enter Gun Cay and adjacent islands for the purpose of obtaining supplies of food and fuel, et cetera, for rest [*refuge*] in case of storm, and for other similar purposes. It would be understood that while such vessels were in these waters they would carry on no Coast Guard activities, would refrain from interfering with vessels found there, and would cause as little inconvenience as possible to local shipping.

2. The Ambassador would make inquiries of the Bahaman authorities with a view to ascertaining whether they would be disposed to enter into a treaty or arrangement for the exchange of information similar to the treaty concluded on June 6, 1924,[83] between the United States and Canada covering this subject, i. e., exchange of information.

3. The Ambassador stated that he would also ascertain whether liquor smuggling ships were allowed to enter and leave Gun Cay and other Bahaman Islands without making entry and obtaining clearance papers and, if this was true, he would ascertain whether steps could be taken to stop this practice.

4. The Ambassador further stated that he would make inquiries to see what could be done under Bahaman law to prosecute masters of vessels who made false statements at the time of clearance to the effect that they were destined for St. Pierre or for ports in Honduras when, in fact, they well knew their destination was Rum Row.

[82] *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100.
[83] *Foreign Relations*, 1924, vol. I, p. 189.

2. *Liquor Ship Seizures*

The Ambassador then stated that his Government had been considerably disturbed at some of the seizures that had been made by the Coast Guard and, although realizing that his request was perhaps unusual, his Government had asked him to find out whether this Government would be good enough to let him see confidentially copies of the instructions that had been given to Coast Guard commanders. This was desired particularly with a view to ascertaining what instructions had been issued with regard to the ship liquor treaty.[84]

Mr. Vallance replied that of course these instructions were of a confidential nature and it would be most unusual for this Government to disclose the contents of such confidential instructions, but he would take it up with the Secretary of State and see whether the Ambassador's request could be complied with. Mr. Vallance pointed out that as far as the ship liquor treaty was concerned, he was sure that the instructions were in accordance with the provisions of the treaty.

. . . . . .

The Ambassador stated that he was glad to receive this assurance as some of the seizure cases had caused a feeling that the instructions were not in accord with the treaty.

Admiral Billard stated that he desired to remove any doubt in the Ambassador's mind on that subject, as he had been very meticulous to adhere to the treaty and that, in case of doubt, the Coast Guard commanders always referred the matter to Washington and he passed on it before the seizure was made, and that he could assure the Ambassador that he was very conservative in ordering seizures made. The Ambassador expressed appreciation for this assurance.

The Ambassador then suggested that if this subject had been satisfactorily discussed, he would like to bring up some seizure cases which had been causing the Embassy some embarrassment.

The Ambassador then referred to the case of the *Hazel E. Herman*[85] and stated that he understood that this seizure had taken place outside the limits provided for in the liquor treaty. Mr. Vallance stated that the reports had been rather slow in coming in on this case but that, according to a report just received, the vessel was cleared from Havre for Belize, Honduras, with a cargo of over 2,000 cases of liquor on board and had arrived off the mouth of the Mississippi River, where, according to the admission of the master, approximately 1,000 cases had been run ashore. The place at which the vessel was seized was apparently farther off shore than it could travel in one hour but evidence obtained from tests of a large number of speed boats used in running liquor ashore and previously seized showed

[84] *Foreign Relations*, 1924, vol. I, p. 158.
[85] See 19 Fed. (2d) 397; 24 Fed. (2d) 27.

that their speed was in excess of twenty miles per hour and consequently there was reasonable ground to believe that the 1,000 cases from the *Hazel E. Herman* had been run ashore in boats whose speed exceeded twenty miles per hour. The Ambassador stated that he was interested to get this information and wished that he had had it sooner. Mr. Vallance stated that some departments of the Government had been somewhat reluctant to have complete information furnished in these cases to the British Embassy because of the feeling that it might be forwarded on, through British Consuls, to the attorneys for the rum runners and thereby give them advance notice of what evidence the Government had prior to the actual trial of the case. The Ambassador stated that if the Department would indicate that it was desired that information of this character should be kept confidential in the note transmitting it he would give every assurance that it would be kept strictly confidential and that the consuls or other persons who brought the matter to the attention of the Embassy would be informed that the Embassy had information which caused it to hold that the case should proceed in the courts of the United States.

The Ambassador then referred to the arguments made by Assistant District Attorney Sheridan in the Circuit Court of Appeals at San Francisco in connection with the criminal cases arising out of the seizure of the *Quadra* [86] and stated that he believed it was very undesirable to have such representations made in our courts as they tended to bring about a disregard of the British ship liquor treaty. Mr. Vallance referred to the fact that these statements were made in a criminal case and that, under the decisions of both British and American courts, it had been determined that the judicial department would not go into the question of how the alleged criminal was brought within the jurisdiction of the court and that the only questions considered by the court were whether the person charged with committing the crime had committed acts which amounted to a crime punishable by the laws under its jurisdiction. Mr. Vallance stated that a note referring to some of the British and American authorities had been drafted and would probably go forward to the Ambassador in a few days. The Ambassador stated that he was not a lawyer and that he had difficulty in understanding how such a result could be reached and why it was deemed advisable to have the liquor treaty. Mr. Henderson pointed out that the liquor treaty dealt particularly with the forfeiture of vessels which was in the nature of an admiralty proceeding under an entirely different set of laws and principles from those governing criminal procedure. Mrs. Willebrandt also explained the situation to the Ambassador and

[86] See *Ford* v. *U. S.*, 273 U. S. 593.

pointed out that in forfeiture proceedings the courts had always recognized a distinction between property seized on land and property seized at sea or in navigable waters, and it was therefore necessary to establish at the outset where the property was seized as a jurisdictional question to be considered at the very beginning of the case. The Ambassador expressed surprise that the court should take this question into consideration in a civil proceeding and should not give consideration to it in a criminal case where personal rights and liberties were involved. He stated that he believed something should be done to correct this. Mrs. Willebrandt pointed out that the matter was taken care of by means of the diplomatic representations which the Embassy had been making in the various cases. The Ambassador stated that he would bear this point in mind in further cases that might come up.

The Ambassador then stated that it was his understanding that the United States was as much interested in maintaining the principle of the three-mile limit as was the British Government. He found that some of the court decisions in liquor cases apparently overlooked this fact. The Ambassador then quoted extracts from Moore's *International Law Digest*, setting forth the position taken by the United States when Mr. Seward was Secretary of State in connection with seizures by the Spanish Government of American vessels hovering off the coasts of Cuba. The extracts to which the Ambassador referred were from a note dated August 10, 1863, addressed by Secretary of State Seward to Mr. Garcia y Tassara, Minister of Spain at Washington. The note reads in part as follows:

"It cannot be admitted, nor indeed is Mr. Tassara understood to claim, that the mere assertion of a sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. His right to a jurisdiction of three miles is derived not from his own decree but from the law of nations, and exists even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He cannot, by a mere decree, extend the limit and fix it at six miles, because, if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at ten, or twenty, or fifty miles, without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained. . . .

"In view of the considerations and facts which have been thus presented, the undersigned is obliged to state that the Government of the United States is not prepared to admit that the jurisdiction of Spain in the waters which surround the island of Cuba lawfully and rightfully extends beyond the customary limit of three miles." (Moore's *International Law Digest*, Vol. 1, pp. 706–713)

The Ambassador expressed the opinion that in view of these statements the United States Government could not very well justify sei-

zures outside the three-mile limit except under and pursuant to a treaty, but that the judicial authorities of the United States did not seem to give proper recognition to these authoritative statements on the subject. Mr. Vallance stated that it was his understanding that the United States was in favor of the three-mile limit rule, but that in smuggling cases there had been a disposition among some international law authorities to hold that a government would not support its nationals in carrying on operations which had for their object the violation of the laws of a friendly power. Mr. Vallance stated that he believed that British international law writers had expressed this opinion. In making this statement he had in mind the following paragraph from Twiss' *Law of Nations:*

"If the revenue laws or quarantine regulations of a State should be such as to vex and harass unnecessarily foreign commerce, foreign nations will resist their exercise. If on the other hand, they are reasonable and necessary, they will be deferred to *ob reciprocam utilitatem.* In ordinary cases, indeed, when a merchant-ship has been seized on the open seas, by the cruiser of a foreign power, when such ship was approaching the coasts of that power with an intention to carry on illicit trade, the nation, whose mercantile flag has been violated by the seizure, waives in practice its right to redress, those in charge of the offending ship being considered to have acted with *mala fides* and consequently to have forfeited all just claim to the protection of their nation." Twiss, *Law of Nations*, Vol. 1, Sec. 181, p. 263.

The Ambassador then stated that he understood the United States had provisions of law which provide for seizures twelve miles from the shore. Mr. Vallance stated that these had precedents in British statutes which had been passed about 1736 and, at one time, provided for seizures one hundred leagues from shore. Mr. Vallance handed the Ambassador a copy of a memorandum containing British statutes relating to this matter and cases which had been decided in British courts under them. (811.114 Great Britain/63a [87]). The memorandum had been prepared at the direction of the Secretary and the Secretary had authorized Mr. Vallance to hand it to the Ambassador at the conference. The Ambassador stated that he would examine these statutes and cases with interest, as he had not had them brought to his attention before.

Mrs. Willebrandt explained that the provision in the Tariff Act of 1922 [88] dealt with violations of the customs laws and was not, therefore, limited to cases of smuggling of liquor but applied to all cases of smuggled goods, whether they involved the importation of prohibited articles, such as narcotics, liquors, et cetera, or covered the

[87] Not printed.
[88] 42 Stat. 858, 948.

importation of articles that were subject to the payment of duty. The statute was, therefore, much broader in its scope than the prohibition laws. She stated that the treaty had given rise to some difficulty owing to the different constructions placed upon it by different courts, depending to some extent on whether they were in so-called "wet" districts or "dry" sections of the country, that as soon as the cases got into the Supreme Court of the United States a uniform construction of the treaty would be worked out and the executive departments enforcing the treaty would know exactly where they stood. She further remarked that some of the provisions of the treaty were rather vague and that it was difficult for the enforcing officers to determine to what extent they were authorized to go under them. The Ambassador stated that the Embassy had also been endeavoring to obtain a construction by this Government of various provisions of the liquor treaty but so far has not obtained results. Mr. Vallance stated that, so far as he was aware, the only case in which the Embassy had specifically asked what construction this Government placed upon the liquor treaty was in the case of the *Hazel E. Herman* and in that case the opinion expressed by the Ambassador had been that the seizure was not justified by the liquor treaty because the court did not have definite evidence regarding the speed of a small boat that had carried liquor from the *Hazel E. Herman* to shore. Mr. Vallance stated that, of course, he could not state what the views of the Department were regarding the construction of this section of the liquor treaty, that this was a matter for the Secretary of State to pass upon, but that his personal opinion was that the treaty should be construed broadly to accomplish the purposes for which it was entered into. He outlined the situation at the time the treaty was drawn up, namely, that the British Government objected to the refusal of this Government to allow British ships with liquor on board either as stores or as cargoes to enter our ports on the ground that the Volstead Act prohibited the transportation of liquors within the three-mile limit. This action was taken as a result of the decision of the Supreme Court of the United States in the case of *Cunard* v. *Mellon*, 262 U. S. 100. The British Government felt that it should be allowed to transport cargoes of liquor under seal through our territorial waters when such cargoes were destined for ports foreign to the United States. The British Government also felt that British vessels should be allowed to carry liquor as sea stores through territorial waters of the United States under seal, in order that they might be used and served on the return voyage after leaving the United States. On the other hand there was considerable feeling throughout the United States that the large number of British vessels hovering off the coasts of the United States,

constituting rum row and engaged in smuggling liquor into the United States, was a national disgrace and that some drastic steps should be taken to put a stop to their operations. It was felt that the British Government ought not to support these persons who were engaged in violating our laws and make it necessary for the United States to expend large sums of money in increasing its Coast Guard and maintaining a patrol or blockade against these smugglers.

In order to meet both of these complaints the liquor treaty was negotiated, whereby British vessels brought liquors, both sea stores and cargoes, into American ports under seal and the enforcement authorities of the United States were allowed to seize smuggling vessels outside the three-mile limit. The authorities of the United States, in construing the provisions of the treaty which were in favor of British vessels, adopted a very liberal attitude and did not attempt to check up on British vessels arriving at the three-mile limit to ascertain whether their cargoes and sea stores were under seal and did not impose any technical requirements which would interfere with the free movement in and transit of American territorial waters by bona fide British vessels engaged in legitimate trade. The American authorities, on the other hand, felt that they were also entitled to a liberal construction of the provisions of the liquor treaty which authorized them to seize British smuggling vessels that were engaged in illegitimate trade. However, from the notes received from the British Embassy in some of these cases, it appeared that the British Government was disposed to apply a very technical construction to these sections of the treaty and that the case of the *Hazel E. Herman*, mentioned by the Ambassador, was a good example of this, that, as a matter of fact, the question came down to the character of evidence which should establish the speed of the vessel used in bringing liquor ashore, that apparently the British Embassy felt that the speed of some specific vessel should be proved at the trial, constituting direct evidence, whereas the authorities of the United States felt that, by means of circumstantial evidence showing the average speed of vessels engaged in this traffic, it could be established satisfactorily that the cargo had been brought ashore in vessels having the speed required by the liquor treaty. Mr. Vallance pointed out that in the case of the *Hazel E. Herman* it had been reported that six small vessels seized had an average speed of about twenty-two miles per hour, whereas the *Hazel E. Herman* was seized sixteen miles from shore, that the master had admitted that approximately 1,000 cases of liquor had been smuggled ashore while he was off the coast near New Orleans, and that the authorities of the United States therefore felt it was reasonable to assume that these 1,000 cases had been brought ashore in small boats that had a speed of more than sixteen miles per hour.

The conference closed with the understanding that the Department would hear further from the British Ambassador on the subjects above mentioned.

W. R. V[ALLANCE]

711.419/144

The British Embassy to the Department of State

AIDE-MÉMOIRE

His Majesty's Government had already for some months been devoting the most careful consideration to the question of adopting active administrative measures to assist the United States Government in their efforts to prevent the smuggling of liquor into the United States from the sea and the suggestions put forward by the United States Government as a result of the Conference between His Majesty's Ambassador and Representatives of the United States Department of State, the United States Treasury and the Department of Justice which took place on December 2nd last later received sympathetic attention.

His Majesty's Ambassador has now been instructed to notify the Secretary of State of the decisions arrived at by His Majesty's Government in this matter which include the adoption of the following administrative measures:

In the first place, in order to cooperate with the United States Government in the prevention of liquor smuggling from the Bahamas, His Majesty's Government are prepared, on account of the nature of the duties of the United States Coast Guard and the difficulties in the way of giving notice, through the usual official channels, of the intended visits of revenue patrol vessels to Gun Cay and the adjacent islands to permit specified United States cutters to enter British territorial waters at Gun Cay and the islands contiguous thereto without strict compliance with the Admiralty regulations governing visits of foreign armed vessels to British overseas ports. The only formality which His Majesty's Government desire to see observed in this connection is that the cutters in question should first call at Bimini to inform the Bahamas Commissioner of their intentions and that it should be understood that they will thereafter maintain a correct attitude and not use their lights to the danger of navigation. This concession is furthermore made on the condition that it be confined as to area to the Bahamas and that it be limited in duration to a period of one year—at the end of which time His Majesty's Government will be prepared to entertain a request for the continuance

of the arrangement—should the United States Government then deem this necessary.

Secondly, as regards administrative measures of more general application, His Majesty's Government have called upon Registrars of Shipping in the West Indies to take especial care to prevent transfers to the British flag of vessels intended for the smuggling trade—instructing them to make the most searching enquiries before permitting any vessel to be placed on the British register and to refuse to register a vessel unless they are completely satisfied as to the *bona fides* of the application. The attention of the Overseas Governments concerned has been drawn to the above mentioned instructions and they have been requested to accord to the local Registrars concerned the fullest measure of support which the law allows in the event of the latter's action being challenged in any individual case.

As an instance of the helpful and correct attitude of the Colonial Governments concerned, which it is felt will be as welcome to the United States Government as it is to His Majesty's Government, His Majesty's Ambassador has been instructed to bring to the notice of the Secretary of State two cases of recent occurrence in the Bahamas where the British registered owners of rum-schooners seized by the United States preventive authorities refused to provide bail for the crews on the ground that they had previously sold their vessels to United States citizens. When requested by the Bahamian authorities to explain why they had failed to record the sale of their vessels the owners in question pleaded ignorance of the law, notwithstanding which fact and although both men are prominent Nassau merchants, the Governor of the Colony has ordered legal proceedings to be instituted against them for an infraction of the Merchant Shipping Act.

The recent case of the *General Serret* provides another instance of the methods employed by the administrative officers of His Majesty's Government to hamper vessels engaged in liquor smuggling. Reports having been received that this vessel, whose provisional certificate was due to expire in four days, had loaded a cargo of whiskey at Antwerp and was bound for Halifax for orders, the competent authorities of His Majesty's Government, upon her arrival at Dover, insisted upon compliance with the requirements of the Merchant Shipping Acts before the voyage could be continued. These requirements included dry docking for inspection of draught—a formality normally postponed in the case of vessels with cargo on board; no such postponement was permitted the *General Serret* and, there being no dry-dock at Dover, the vessel was brought to London and there detained, her cargo of whiskey being landed.

His Majesty's Government are also prepared to take administrative action to prosecute masters for infraction of the Customs Act when reasonable grounds of suspicion are available to believe them guilty of making false declarations in regard to their destinations. In this connection, His Majesty's Government rely upon the United States Government to cooperate by supplying them, in any individual case, with sufficient incriminating evidence to enable legal proceedings to be instituted with a reasonable prospect of conviction; so too His Majesty's Government are willing to take steps to remove liquor smugglers from the British register upon production by the United States authorities of reasonably good evidence that the vessel concerned is really owned or controlled in America.

In approaching the Secretary of State on this subject, His Majesty's Ambassador has been instructed to explain that the measures which His Majesty's Government are prepared to adopt do not constitute a binding engagement but represent a spontaneous and voluntary offer of assistance on their part which is subject to withdrawal if not found to work satisfactorily in practice.

Finally, in the interests of closer cooperation, His Majesty's Government desire to extend an invitation to the United States Government to send a representative or representatives to London for discussion with the competent British authorities, to learn what are the latter's powers and limitations and to acquaint them with the nature of the information and assistance which the United States authorities are in a position to supply. It is felt that such a visit will materially contribute towards a full understanding and the efficient execution of this offer of cooperation which it is hoped that the United States Government will accept as proof of the desire of His Majesty's Government to render such assistance as it lies within their power to give.

WASHINGTON, *March 27, 1926.*

711.419/144

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *April 26, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of your *aide memoire* of March 27, 1926, setting forth administrative measures which your Government is prepared to adopt to assist the United States in its efforts to prevent the smuggling of liquor into the United States from the sea. In the last paragraph of this communication you state that in the interest of closer cooperation, His Majesty's Government desire to extend an invitation to the United States to send a representative or representatives to London for discussion with

the competent British authorities, to learn what are the latter's powers and limitations and to acquaint them with the nature of the information and assistance which the United States authorities are in a position to supply. It is stated that your Government is of the opinion that such a visit would materially contribute towards a full understanding and the efficient execution of the offer of cooperation which you request this Government to accept as proof of the desire of His Majesty's Government to give such assistance as it is possible to give in the circumstances.

I desire to express the deep appreciation of this Government for the offer of cooperation contained in the *aide memoire* in question. I feel certain that the administrative measures which you set forth will aid greatly in bringing about better enforcement of the laws of the United States prohibiting the importation of intoxicating liquors for beverage use. I have transmitted copies of the *aide memoire* to the interested authorities of this Government, and I can assure you that this Government will cooperate fully in assisting your Government in obtaining the necessary evidence on which to prosecute persons who violate British laws on the subjects mentioned. I also accept, on behalf of this Government, the invitation to send representatives to London, and shall at a later date advise you of the names of the persons who will be sent. It would be convenient for the representatives to leave the United States about the 22d of May, which would make it possible to arrive in London May 28. I should be pleased to be informed whether this would be satisfactory to the British authorities.

Accept [etc.] FRANK B. KELLOGG

711.419/218

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

No. 1245 LONDON, *July 31, 1926.*
[Received August 13.]

SIR: I have the honor to refer to my despatch No. 1229 of July 27, 1926,[89] relating to the report of the discussions between British and American officials with regard to liquor smuggling, and to forward herewith the original text of the memorandum signed by General Andrews and Mr. Vansittart, of the Foreign Office.

I have [etc.]

For the Ambassador:
F. A. STERLING
Counselor of Embassy

[89] Not printed.

[Enclosure]

Joint Report of Discussion Between British and American Officials With Regard to Liquor Smuggling

As vessels engaged in liquor smuggling frequently make use of the British flag and proceed from ports and places within British jurisdiction, questions have from time to time arisen between the Government of the United States and His Majesty's Government with regard to this traffic, and it was decided that a meeting should take place in London between officials of the two governments to go fully into the matter. Meetings took place in London in July 1926, and the following officials took part in the discussion:—

United States:

Brigadier-General L. C. Andrews, Assistant Secretary of the Treasury.
Rear-Admiral F. C. Billard, Commandant of the Coastguard, Treasury Department.
Mr. W. R. Vallance, Assistant to the Solicitor, Department of State.
Mr. Anslinger.[89a]
Mr. A. W. Henderson, Special Assistant to the Attorney-General, Department of Justice.
Mr. H. Keith Weeks, Treasury Department.

Great Britain:

Foreign Office:	Mr. R. G. Vansittart, C. M. G., M. V. O.
	Mr. R. I. Campbell.
Admiralty:	Captain H. P. Douglas, C. M. G., R. N., (Hydrographer of the Navy).
	Mr. W. H. Hancock.
Board of Trade:	Sir Charles Hipwood, K. B. E., C. B.
	Mr. N. A. Guttery.
	Mr. W. J. Wragge.
Colonial Office:	Mr. L. B. Freeston.
	Mr. A. C. M. Burns (Colonial Secretary of the Bahamas).
Board of Customs:	Mr. C. J. T. B. Grylls, C. B. E.
	Mr. E. S. Bertenshaw.

As the discussion was one between officials, no question of policy or politics could arise, nor was any past practice or incident called in question save with a view to avoiding future difficulties. The first object of those present was to ascertain all the facts so that both sides could understand clearly and fully exactly what was taking place. It was felt that if this were done with goodwill and in a scientific spirit it should be possible to devise means for meeting the difficulties that had been encountered in the respective countries in administering the law. The discussion was, therefore, of a very

[89a] Harry J. Anslinger, American consul at Nassau.

frank nature, every fact or difficulty in the minds of either side being brought forward and discussed without reserve.

The information in the possession of each side supplemented that possessed by the other, and attention was concentrated on the infringements of the law that have been, and are being, committed by the persons engaged in this traffic. In many cases the vessels have been placed on the British register illegally, and in certain cases where they use ports or places within British colonies there appears to be a failure to comply with definite provisions of the law relating to clearances, quarantine and other matters. The object of the officials was to secure that these infractions of the law shall be dealt with and shall cease. There is no question whatever of interfering in any way with legitimate trade, which should have no difficulty in distinguishing itself from the illicit traffic.

If the information possessed by both sides is pooled, and a close working liaison is established between the officers engaged in dealing with the traffic, so that each side knows what the other is doing and can render any proper and requisite assistance to the other, and if any additional force that may be necessary to secure the strict observance of the law is supplied, it should be possible to reduce very materially the causes for complaint or misunderstanding.

With this object the officials have formulated the following suggestions for the consideration of the governments, but they consider that these suggestions should not be made public in any case until they have been adopted and have become effective.

Suggestions

1. *Intelligence.*

As complete a record as possible of the ships engaged in the illicit traffic of importing liquor into the United States and of the persons engaged in this traffic should be prepared at some convenient centre. To this centre the British and American officials concerned could communicate either direct or through such channels as might be most convenient, any facts which may become known to them in regard to these ships and persons. It would be convenient if this record were prepared and kept in Washington and it has been suggested that the Treasury Department would be the most suitable Department.

Copies of this record should be transmitted from time to time to all the officers directly or indirectly concerned, including the British Embassy at Washington, so that each officer may have, in as convenient a form as possible, the fullest information in regard to the suspect ships and the suspect persons.

2. *Liaison.*

Arrangements have already been made by the United States government and the government of Canada for cooperation as regards

the suppression of smuggling operations.[90] It is desirable that a close working liaison should be established between the United States authorities and the proper officers in the Bahamas and any other British colonies which may be concerned. In the case of the Bahamas the officer concerned would be the Colonial Secretary, and the liaison should be established between this officer and the local American Consul. A similar liaison should be established in any other British colony in which this is necessary; and a liaison should also be established between the American and British Consular representatives at such ports as Hamburg, Antwerp and Havana. In every case the officers concerned should consult one another freely and inform one another at once of any matter of interest.

3. *Special Liaison in London.*

The United States Consul General in London should keep in touch with the Registrar General of Shipping and Seamen and other British government officers so that he may obtain on request on the usual terms:—

(*a*) Information as to whether a vessel flying the British flag has been given a provisional or permanent British Register.

(*b*) Information as to whether the name of a vessel flying the British flag has been changed lawfully.

(*c*) Information as to the names and addresses of the registered owner or owners and mortgagees of a vessel under the British flag, and if a company or corporation, the registered office of that company or corporation, as well as any information that can be given as to the shareholders.

(*d*) The Mercantile Navy List and monthly supplements.

(*e*) Certified copies of registers and of all documents relating thereto.

(*f*) Any information that can be given by reference to Lloyd's publications or otherwise, as to the movements of suspect vessels or cargoes.

4. *Prosecutions.*

Wherever there appears to be sufficient evidence to justify prosecution, either by the British authorities for infringement of the British law, or by the United States authorities for an infringement of the United States law, proceedings should be instituted.

Arrangements should be made under which the United States authorities furnish to the British authorities any evidence they may have tending to show that any British vessel concerned in the traffic

[90] See regulations agreed to by representatives of the United States and Canada embodied in Executive Order No. 4306, Sept. 19, 1925, *Foreign Relations*, 1925, vol. I, p. 573.

has infringed the British law in regard to registration, Customs clearances, quarantine etc., or any evidence tending to show that any person engaged on any such ship is using a forged or false certificate of competency etc. Similarly the British and American officials concerned should be instructed, upon request, to arrange for the attendance of witnesses and the production of such records, or certified copies thereof, as may be considered necessary in cases of prosecution, on the understanding that the cost of any transcripts of such records etc. and the expense involved in the attendance of witnesses be paid by the government responsible for the prosecution. In this connection, an attempt should at once be made to secure, if possible, the necessary evidence to enable proceedings to be instituted in the case of vessels known to be engaged in the traffic.

5. *British Patrol Vessel.*

The Colonial Secretary of the Bahamas stated that the provision of a suitable vessel would be of very material assistance in securing the strict observance of all the local laws relating to Customs, clearances, quarantine, etc. The provision of such a vessel should be considered.

6. *United States Patrol Vessels.*

With a view to enabling the United States authorities to secure evidence of the presence in the Bahamas of suspect United States vessels, it has already been agreed that while, so far as may be possible, a report will be made to the Government of the Bahamas whenever the United States Coastguard desire to send a patrol vessel to the Bahamas, such a vessel may, for a period of twelve months, enter British territorial waters in the Bahamas without the usual advance notice of visit, on the understanding that the vessel in question, will first call at Bimini and report to the Commissioner at that port. It was represented that if the United States patrol vessel were to be required to call first at Bimini on the occasion of each visit, the object of the visit would be defeated. It is therefore proposed that each vessel should, on the occasion of its first visit call on and report to the local commissioner, and that on each subsequent visit it will be sufficient if information of the intention to pay the visit should be telegraphed beforehand by the United States authorities to the American Consul at Nassau who would immediately notify the Colonial Secretary. It is understood that the United States Coastguard patrol vessels will limit their activities whilst in British territorial waters to observation and that these activities will not be extended to the waters of New Providence where satisfactory facilities for observation already exist.

7. *Entry From the High Seas.*

In the case of United Kingdom ports all vessels other than coasting vessels and fishing boats are required on arrival to make a statement as to the port or place from which they have arrived, and this requirement would not be fulfilled by an indefinite statement that they came "from the High Seas".

It is understood that the local law of the Bahamas permits of the entry of vessels as "from the High Seas" but that the master of a vessel so entering sufficiently often as to cause suspicion and with such regularity as to show system, might be prosecuted under the law relating to false declarations. The Governor of the Bahamas should be requested to ensure that a prosecution should be instituted in any case where the evidence appeared to justify this course.

8. *Diplomatic Support.*

When any complaint in connection with liquor smuggling, or suspected liquor smuggling operations, is made to one side against the officers of the other, the present practice might be continued of examining the record of the complainant and any other information that may be available before deciding whether under the terms of the existing Liquor Convention or on other grounds the case is one in which enquiry or eventual representations should be made.

LINCOLN C. ANDREWS
ROBERT VANSITTART

[LONDON,] *July 27, 1926.*

711.419/229

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *September 16, 1926.*

EXCELLENCY: Referring to your *aide-memoire* dated March 27, 1926, in which you were so good as to invite this Government to send representatives to London for discussion with the competent British authorities respecting administrative cooperation for the suppression of illicit liquor traffic, I have the honor to state that the suggestions submitted by the officials who participated in the Conference held in London in July, last, have been carefully considered by this Government. I take pleasure in advising you that in so far as the United States is concerned the suggestions are accepted and this Government is prepared to put them into effect immediately.

I shall be grateful if you will be so good as to inform me what the views of your Government are with respect to these suggestions and in case they are approved, on what date your Government will be prepared to consider them in effect.

Accept [etc.] FRANK B. KELLOGG

711.419/235

The British Chargé (Chilton) to the Secretary of State

No. 560 WASHINGTON, *September 29, 1926.*

SIR: I have the honour to acknowledge the receipt of your note No. 711.419/229 of the 16th instant notifying me that the suggestions made at the recent London conference for administrative co-operation on the part of the competent British authorities for the prevention of the illicit liquor trade have been carefully considered and accepted by the Government of the United States. In reply I am happy to inform you that these suggestions are also acceptable to His Majesty's Government, who are prepared to consider them in effect as from the date of this note.

For your information I beg leave to enclose copies of instructions which have been addressed to His Majesty's Consular Officers at Antwerp, Hamburg and Havana explaining the attitude which they are to adopt in cooperating with their United States colleagues in matters connected with the liquor smuggling problem.[91] Although in their conversations in London the American delegation only asked for close cooperation between His Majesty's and the United States Consular Officers at the three ports above-mentioned, it has occurred to Sir Austen Chamberlain[92] that the Government of the United States may desire similar cooperation between His Majesty's Consular Officers and the local United States officials at certain ports in the United States and/or in Southern or Central America. Should this cooperation be desired I am authorised to address appropriate instructions to British Officers concerned, on the lines of the enclosed despatches to Antwerp, Hamburg and Havana, at the same time supplying them with a copy of the Joint Report of the British and United States delegates to the recent London Conference.[93]

I should be most grateful if you would inform me at your early convenience whether you desire action to be taken as outlined above, and in that event I request that I may be notified of the posts to which it is desired that instructions be issued. In this connection you will, I feel sure, bear in mind that for purposes of the secrecy necessary to the success of the measures proposed, the number of copies issued of the Joint Report above referred to should be kept as low as possible.

I have [etc.] H. G. CHILTON

[91] Instructions not printed.
[92] British Secretary of State for Foreign Affairs.
[93] *Ante*, p. 350.

711.419/235

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *October 4, 1926.*

SIR: I take pleasure in acknowledging the receipt of your note No. 560, dated September 29, 1926, stating that His Majesty's Government accepts the suggestions made at the recent London Conference for administrative cooperation on the part of the competent British authorities for the prevention of the illicit liquor trade. You state that your Government is prepared to consider them in effect as from September 29, 1926.

With reference to your statement that it has occurred to Sir Austen Chamberlain that this Government may desire cooperation between His Majesty's consular officers and the local United States officials at certain ports in the United States and/or in South or Central America, I shall be grateful if you will be so good as to express to Sir Austen Chamberlain my thanks for this additional offer of cooperation, which has been brought to the attention of the interested authorities of this Government. Upon receipt of advice from them with regard to this matter I shall communicate with you again concerning it.

Accept [etc.] FRANK B. KELLOGG

811.114 Canada/3448

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *October 28, 1926.*

SIR: Referring to the suggestion of Sir Austen Chamberlain set forth in your note No. 560, dated September 29, 1926, that cooperation might be desirable between His Majesty's consular officers and the local United States officials at certain ports in the United States and/or in South or Central America, I take pleasure in stating that a communication has been received from the Secretary of the Treasury, reading in part as follows:—

". . . such cooperation is desirable at the following ports:

United States: Portland, Maine.
Boston, Massachusetts.
New York, New York.
Savannah, Georgia.
Miami, Florida.
New Orleans, Louisiana.
Seattle, Washington.
San Francisco, California.

Central or South America. It is thought that cooperation between British and American officials in the following countries

should be restricted to the heads of missions at capitals of these countries:

Mexico.
Honduras.
Salvador.
Panama.

"It would also be desirable to have this cooperation extended to Rotterdam, Netherlands; Lisbon, Portugal; and Havre, France.

"While it is assumed that cooperation in United States ports will be between British Consuls and Collectors of Customs, it is desirable that such cooperation at San Francisco, Savannah and New Orleans be accomplished with coordinators of this Department who are in charge of Customs, Coast Guard and Prohibition matters."

At the request of the Secretary of the Treasury I shall be grateful if you will convey to His Majesty's Government the keen appreciation felt by the Treasury Department for the splendid work accomplished by Mr. Robert Vansittart of the Foreign Office and by Sir Charles Hipwood of the Board of Trade in giving effect to the arrangement agreed upon at the London Conference.

Accept [etc.]

For the Secretary of State:
JOSEPH C. GREW

711.419/269

The British Chargé (Chilton) to the Secretary of State

[Extract]

No. 792 WASHINGTON, *December 8, 1926.*

SIR: I have the honour to refer to my note No. 684 of November 2nd last [94] on the subject of liquor smuggling cooperation and to inform you of the receipt of a communication from His Majesty's Government to the effect that they have issued appropriate instructions direct to His Majesty's Representatives at Mexico City, Tegucigalpa and Panama as well as to His Majesty's Consular officers at Rotterdam, Lisbon and Havre, in accordance with the request contained in your note No. 711.419/245 [95] of October 28th last.

. . . . . .

I have [etc.] H. G. CHILTON

[94] Not printed.
[95] File number changed to 811.114 Canada/3448.

711.419/269

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *December 17, 1926.*

SIR: I have the honor to acknowledge the receipt of your note No. 792, dated December 8, 1926, concerning instructions issued to certain representatives of His Majesty's Government regarding cooperation with officers of the United States in preventing liquor smuggling operations. The appropriate authorities of this Government have been informed of the action taken with respect to this matter.

I desire to express deep appreciation of the action taken by His Majesty's Government in this matter. I believe that the arrangements made will materially assist officers of this Government in their efforts to combat the illicit liquor traffic.

Accept [etc.]

For the Secretary of State:
JOSEPH C. GREW

EFFORTS BY THE UNITED STATES TO OBTAIN FOR AMERICAN RUBBER MANUFACTURERS RELIEF FROM BRITISH RESTRICTIONS ON THE EXPORT OF RAW RUBBER[96]

841.6176/84

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

No. 918 LONDON, *April 7, 1926.*
[Received April 20.]

SIR: Referring to the Embassy's telegram No. 372 dated December 4, 11 a. m., 1925,[97] in which the Ambassador gave the substance of his interview with Sir Austen Chamberlain concerning restrictions in the export of crude rubber and other raw materials, and when the Ambassador left with him a memorandum on the position of the United States Government,[98] I have the honor to enclose a copy, in triplicate, of a note just received from the Foreign Office dated April 6, 1926, in reply to the memorandum.

I have [etc.] F. A. STERLING

[Enclosure]

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Chargé (Sterling)

No. A 1353/10/45 LONDON, *April 6, 1926.*

SIR: I have the honour to inform you that the proposals contained in the *aide-mémoire* which the Honourable Alanson B. Houghton was

[96] Continued from *Foreign Relations*, 1925, vol. II, pp. 245–267.
[97] *Ibid.*, p. 265.
[98] Not printed; see telegram No. 352, Dec. 1, 1925, 3 p. m., to the Ambassador in Great Britain, *ibid.*, p. 264.

so good as to leave with me during our conversation on December 3rd have received from His Majesty's Government the closest consideration.

2. I am not altogether clear whether the joint arrangement which the United States Government have in view would aim at the suppression of all action, even of a purely private character, for enhancing prices, or be limited to an agreement on the part of governments to avoid action calculated to foster and encourage price fixing. If it is the former, I may say that however desirable it may be that commodities should be obtainable at no more than "competitive" prices, it is clear that neither His Majesty's Government nor the United States Government are in a position to bring about this state of affairs and that accordingly British consumers must be prepared on occasion to pay more than the competitive prices for essential commodities. Thus His Majesty's Government cannot unconditionally accept the principle that no more than competitive prices should be obtained for such commodities as this country and her colonies are able to supply in payment for the commodities which they consume.

3. As I understand it, however, it is an agreement of the second character that the United States Government have in view. On this proposal I beg leave to state that His Majesty's Government fully appreciate the importance of reducing as far as is possible the impediments of all sorts placed by Governments in the way of international trade under present conditions. His Excellency's *aide-mémoire* refers only to restrictions of production and exportation but looking at the general question in the widest aspect it is evident that difficulties placed in the way of import all the world over are a prominent feature of the problem to which the United States Government have called attention. His Majesty's Government would be glad to see any alleviation of these difficulties and would accordingly welcome any understanding with the United States Government which might conduce to that end.

4. If I say that in the opinion of His Majesty's Government, it is necessary to regard the question of high customs tariffs as an integral part of the general problem, the examination of which is suggested in the *aide-mémoire*, it is because this problem raises wide economical questions and cannot be regarded from only one angle but must be studied in the light of all contributory phenomena. High customs tariffs are one of the most important of these phenomena tending, as His Majesty's Government are convinced, to afford perhaps the most powerful support given by governments to price fixing combinations.

5. Ready as they are to study this problem with the United States Government, His Majesty's Government nevertheless feel bound to point out that restrictions and charges, whether on the importation

or exportation of goods, are now so world-wide and embrace such diversity of ends that any set of general propositions relating to them must almost necessarily be limited by such numerous exceptions that the general propositions themselves may become of somewhat doubtful value. In the case of export charges and restrictions, as in the case of import charges and restrictions, it is probably impossible to lay down rules which hold without exception. The observance of the same principles cannot be expected from a country whose revenue must, for a variety of reasons, depend upon charges on exports, and from a country which does not find it necessary or expedient to derive any of its revenue in this way. Nor again is it easy to define what the world's policy should be, having regard to the different natures of the articles of export to which the policy would relate. To take the specific case out of which the American representation on this matter has arisen, the rubber crop differs from other crops in a number of important respects which have a bearing on what the Government should or should not do in connection with it. It is not an annual crop, like wheat or cotton, the area of supply of which can be rapidly increased so that a reduction in any one year which has proved to be excessive can be corrected in time for the next season. Enterprise in rubber planting has to look many years ahead and consequently it follows that the planter's losses or absence of profit over a long period may result in a serious world shortage of rubber some years later which no action taken when the shortage is felt can correct. Consequently, there is an obligation upon responsible authorities in the case of rubber supplies which is absent, or at any rate present in a smaller degree, in the case of annual crops. Indeed, the need for the adoption of some conservation policy some time ago is already demonstrated by the high price of rubber, in view of which it will be generally agreed that any neglect on the part of the responsible authorities involving the abandonment of plantations and the cessation of planting would have been seriously detrimental to world interests.

6. It is, of course, impossible to argue that the present high price of rubber is attributable solely or even mainly to the operation of the rubber restriction scheme. It is due to the great expansion in the world's demand for and use of rubber and the insufficiency of present supplies to meet that demand adequately. That this is the root cause of the present position needs no demonstration, particularly in view of the fact that only about one half of the world's supply now comes from the restricted areas, and that the export from the restricted areas is to-day very little, if at all, less than it was before the restriction scheme came into operation. This special operation has been referred to not merely because the present proposal of the United

States Government arises out of it but also because it serves as an admirable illustration of the difficulty of generalising on the question of what should and should not be done in the matter of export restrictions and charges.

7. Leaving, however, this particular question on one side, His Majesty's Government desire to state that, whilst they cannot overlook the great difficulties of arriving at any tenable propositions respecting the legitimacy of particular Government policies in regard either to import or export restrictions, they recognise fully that nothing but good can result from an interchange of ideas about the problem raised by the United States, not merely in the more limited form, but also in its wider aspects as indicated above.

8. In this connection they desire to remind the United States Government that a preliminary conference, at which it appears possible that United States citizens may assist, will shortly be held under the auspices of the League of Nations for the study of international economic problems. As you are no doubt aware, this meeting is to take the form of a preliminary conference of unofficial experts from the various nations, and is intended, under the guidance of the Council of the League in committee, to prepare the ground for an international economic conference. It appears not unlikely that the subject of price-fixing agreements in international trade may figure amongst those to be considered at this conference, which in any case can hardly fail to discuss some of the larger questions referred to in this communication and in the *aide-mémoire*.

9. I should add that His Majesty's Government for their part consider that the subsequent plenary conference should be one of business and other interests, and that Governments should not be directly represented or in any way bound by the recommendations which it may make.

10. Reference is made in the second paragraph of the memorandum to the financing of price-fixing. I beg leave to inform you that, as regards the financing of commodities, His Majesty's Government have never undertaken any responsibility whatsoever (apart from war emergency measures). They are not in a position to exercise any influence over the action of international combinations by private traders and in particular they are not in a position to discourage the issue of loans by or on behalf of such combinations, since no control direct or indirect is exercised by His Majesty's Government over the issue of loans in the London market and it is the settled policy of His Majesty's Government not to intervene between would-be borrowers and potential lenders.

I have [etc.]

(For the Secretary of State)
ROBERT VANSITTART

CONTINUED NEGOTIATIONS TO ENSURE RECOGNITION OF THE PRINCIPLE OF THE OPEN DOOR IN THE TURKISH PETROLEUM COMPANY'S CONCESSION IN IRAQ[99]

890g.6363 T 84/236 : Telegram

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

[Paraphrase]

LONDON, *January 8, 1926—4 p. m.*

[Received January 8—3 : 30 p. m.]

5. Department's telegram No. 372 dated December 31, 9 p. m.[1] Late yesterday I saw Tyrrell [2] who informed me that the Prime Minister [3] had decided that the situation must be promptly cleared. Tyrrell said that Gulbenkian [4] had agreed to arbitrate and thought the Royal Dutch group would assent. The Anglo-Persian group has not given its assent. I asked Tyrrell if he thought that all four groups would agree to arbitrate. He replied that he had no reason to doubt that they would.

However, I have received information which is exactly to the contrary. Yesterday Montagu Piesse, attorney for the Standard group, saw me and stated flatly that owing to the undeveloped nature of the territory arbitration was impossible, and that none of the groups would arbitrate. If Piesse is speaking from knowledge, the present difficulty centers about the efforts of the groups involved to exclude Gulbenkian from royalty in territory other than that embraced by the Turkish Petroleum Company concession. Gulbenkian states that he originally held prior rights to the entire territory involved and that the groups' action in limiting the present scope of the Turkish Petroleum Company concession to twenty-four parcels of land is simply a scheme to obtain for themselves the remainder of the territory without royalty. Apparently Gulbenkian's position has a legal foundation. Therefore, a refusal on the part of the American interests to arbitrate, if the others agree to do so, will mean on its face either an attempt to force the Government of Great Britain to deny Gulbenkian his legal rights or an intention to withdraw from the negotiations entirely.

Chamberlain's [5] return to London is not expected until early in February.

HOUGHTON

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[99] Continued from *Foreign Relations*, 1925, vol. II, pp. 239–245.

[1] *Ibid.*, p. 245.

[2] Sir William G. Tyrrell, British Permanent Under Secretary of State for Foreign Affairs.

[3] Stanley Baldwin.

[4] Calouste Sarkis Gulbenkian, naturalized British subject, a minority stockholder in the Turkish Petroleum Company.

[5] Sir Austen Chamberlain, British Secretary of State for Foreign Affairs.

890g.6363 T 84/236 : Telegram

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

[Paraphrase]

WASHINGTON, *January 14, 1926—10 p. m.*

5. Embassy's No. 5 dated January 8, 4 p. m. As you are aware, the Department has consistently and firmly maintained that under the pre-war negotiations of the Turkish Petroleum Company no vested rights were acquired. At the same time, the Government of the United States has never interposed any objection to the Turkish Petroleum Company's proceeding to negotiate for a new concession, as they have done, with the understanding that such new concession should be in keeping with the principle of the Open Door and equality of opportunity as applied to mandate territories.

Unless the entire question of the validity of the 1914 Turkish Petroleum Company claim is revived, the Department does not see upon what basis Gulbenkian can now claim rights in addition to those of other stockholders. As you know, the Department as far back as 1921 proposed to the British Government that that issue be settled by arbitration.[6] To this the British Government would not consent. At a later date British interests, seemingly with the approval of the British Government, took an entirely different course, it being clearly understood that in any new concession a fair share of American participation would be provided. Now that it is asserted that the Bagdad Cabinet has granted that new concession to the Turkish Petroleum Company,[6a] Gulbenkian, a British subject, has come forward apparently in the desire to assert his claims both under the new concession and under the alleged pre-war grant to the Turkish Petroleum Company. It would be inconsistent with our earlier correspondence with the British Government to admit legal foundation of Gulbenkian's claim.

It is the understanding of the Department that the contemplated purchase of proffered stock in the Turkish Petroleum Company by the American Group was conditioned upon advance arrangements to put the Working Agreement into effect. The object of the proposed arbitration appears to be the settlement of differences between present stockholders in respect to the nature of such advance arrangements. These differences seem to have come about as a result of Gulbenkian's claims. The American Group has indicated to the Department that

[6] See note, Nov. 17, 1921, to the British Secretary of State for Foreign Affairs and the memorandum transmitted in Department's telegram No. 448, Aug. 4, 1921, *Foreign Relations*, 1921, vol. II, pp. 89 and 106.

[6a] Turkish Petroleum Company, Limited, *Convention with the Government of 'Iraq, made the 14th day of March, 1925* ([London,] Blundell, Taylor & Co. [1925]).

if the other groups should arrange with Gulbenkian on a basis which should impose onerous obligations upon the prospective stockholders of the American Group, it may decide that it is not worth while for it to go ahead with the project. It is the feeling of the American Group that it should not properly become involved as a party to the proposed arbitration, because by so doing it would commit itself beforehand to assuming onerous obligations if Gulbenkian's claims should be admitted. You appreciate of course that Gulbenkian is closely associated with British petroleum interests.

The Department summarizes its position as follows:

(1) It is not disposed at this time to acquiesce in the view that Gulbenkian on the basis of the alleged pre-war concession to the Turkish Petroleum Company can properly assert rights.

(2) It can see no reason why it should urge the American Group to enter an arbitration the outcome of which might be the imposition of heavy burdens of a business nature which would prejudice American interests in favor of British petroleum interests, that is, Gulbenkian interests.

(3) The position of the American Group, as the Department understands it, is that they can neither participate in nor oppose arbitration. Should the result of any arbitration be to impose additional burdens upon their prospective participation, they would be disinclined to take up their stock interest, and would reserve the right to negotiate separately.

The Department, therefore, does not feel that a refusal to arbitrate by the American Group would have the implications you have indicated. Nor does the Department feel that it can acquiesce in Gulbenkian's assertion of legal rights based on an alleged pre-war concession to the detriment of American interests. The Government of the United States has consistently denied the validity of this claim. It had been believed that the Government of Great Britain was not disposed to revive the matter at the present time.

GREW

890g.6363 T 84/236 : Telegram

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

[Paraphrase]

WASHINGTON, *January 23, 1926—5 p. m.*

9. Department's telegram No. 5 dated January 14, 10 p. m. Department has been informed by a representative of the American Group that the group believes that your representations to the British Foreign Office have resulted in pressure being used on British inter-

ests now in the Turkish Petroleum Company to make the necessary advance arrangements so that it will be possible for the American Group to take up its participation. Those advance arrangements of course would involve the adoption of the Working Agreement.

It is the belief of the American Group that Deterding[7] sincerely desires to facilitate the consummation of such arrangements. Teagle,[8] on January 14, cabled Deterding regarding Gulbenkian's position. The following is an extract of that cable closely paraphrased:

It is incomprehensible to me that the Government of Great Britain should adopt any position other than the position that these efforts toward international cooperation are too important to permit their failure simply because one . . . person continues to maintain an inflexible attitude. I doubt not that you concur in this belief.

Deterding in his reply expressed his complete agreement, and in a concluding statement in paraphrase said:

I believe that much wholesome good could be accomplished if the Department of State could be induced to express to the other interested Governments an opinion similar to that held by us.

Cable developments.

KELLOGG

890g.6363 T 84/238 : Telegram

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

[Paraphrase]

LONDON, *January 27, 1926—1 p. m.*

[Received 4:20 p. m.]

15. Embassy's telegram No. 5 dated January 8, and Department's reply. . . . I am laying the following considerations before the Department:

1. Aside from any claim he may set up based upon his pre-war interests Gulbenkian as a shareholder in the Turkish Petroleum Company undoubtedly has a legal claim in the so-called outside areas.

2. Gulbenkian would settle on the American terms if some effective guarantee could be given whereby he would be assured that the sales of the areas to be sold under the stipulations of article 6 of the convention would be bona fide and not carried out by the company in favor of its two groups in such a manner that the 5 percent of the sale price offered him would represent a false value.

3. . . . Gulbenkian claims that the American terms are really Royal Dutch terms. He had knowledge of them several months be-

[7] Sir Henri Deterding, general managing director of the Royal Dutch-Shell.
[8] Walter C. Teagle, president of the Standard Oil Co. of New Jersey.

fore they were received in London. As proof of this feeling Gulbenkian, who represents the minority shareholders of the McGowan Oil Company, will soon publish a strong statement indicating that oil has been improperly sold to the Royal Dutch interests which own a majority of the shares of the McGowan Company.

4. It has been intimated to me that no arbitration would take place despite assurances given me by the Foreign Office, because arbitration is not desired by any of the parties and because of the impossibility of reaching a solution by that means owing to the fact that the territory is unexplored. . . .

5. One can almost infer from this that the American Group knowing that the others would not arbitrate is employing American Government influence with the British Foreign Office to force Gulbenkian to lower his terms.

Nothing further heard from Foreign Office since my telegram dated January 8, 4 p. m.

HOUGHTON

890g.6363 T 84/239 : Telegram

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

[Paraphrase]

LONDON, *January 28, 1926—2 p. m.*

[Received 4:34 p. m.]

17. In Department's telegram No. 5 dated January 14, it is stated that the Department cannot see on what basis Gulbenkian can now claim rights additional to those of other shareholders. It was not my understanding that Gulbenkian claims any such rights.

(1) Leaving aside all previous negotiations the essential facts appear to be as follows:

Under the Iraq Convention of 1925 [9] the Turkish Petroleum Company obtained ownership in a certain 24 parcels of land. It was agreed that the balance of the territory involved should be sold by the Iraq Government to the highest bidder at the rate of one lot of 24 parcels each year. The proceeds from these sales were not to be retained by the Iraq Government which acts only as agent, but were to be delivered to the Turkish Petroleum Company as the virtual owner. It appears from this that Gulbenkian as a shareholder in the Turkish Petroleum Company has a right to his 5 percent share from the proceeds of all such sales.

[9] Turkish Petroleum Company, Limited, *Convention with the Government of 'Iraq, etc.*

2. This raises a practical problem. According to Gulbenkian the only possible purchasers are the four groups which are interested in the Turkish Petroleum Company. In the four groups is included the American Group. He is of the opinion that unless he is protected the four groups will enter into an agreement to sell to each other these yearly parcels of presumably oil-bearing territory at a nominal price. He maintains that in this way his share in the actual value of the territory to be disposed of would be reduced practically to nothing.

3. Gulbenkian has therefore taken the following position: If a method by which a fair and competitive sale can be devised, he will accept it. Because of the relations between the four groups no such effective guarantee has yet been discovered or proposed. In case no such guarantee should be forthcoming he will accept in place of his share of 5 percent of the purchase money a stipulated royalty on all oil produced within these given areas. Should no oil be found Gulbenkian will receive nothing. Should large quantities be obtained he will receive much.

4. The American Group, of course, is at liberty to enter the Turkish Petroleum Company on such terms as it sees fit or to stay out. The American Group in basing its decision on the premise that Gulbenkian ought to be eliminated from sharing in the returns from all territory except the original 24 parcels, is yet within its rights. When, however, it requests the Department to support it in this position which it has assumed not as a question of right but as one of bargaining, then in my opinion it is either requesting the Department to bring pressure on the Foreign Office to secure the elimination of Gulbenkian without adequate compensation or it is giving Gulbenkian an excuse for not participating equally with the other groups.

HOUGHTON

890g.6363 T 84/239 : Telegram

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

[Paraphrase]

WASHINGTON, *February 10, 1926—5 p. m.*

20. Embassy's despatch No. 715 dated January 19,[10] and telegrams 15 dated January 27, 1 p. m. and 17 dated January 28, 2 p. m. have been most helpful to the Department. Do you perceive any objection to presenting the general subject matter of this question informally to the American Group? Please telegraph.

Although the Department appreciates the point of view set forth in your telegrams, you will understand, of course, that this question has its international side. Should technical legal difficulties which

[10] Not printed.

involve the interests of British nationals be raised to defeat the prospect of a reasonable share of American participation in this enterprise and to augment the share of British participation, the Department deems itself justified in emphasizing the international side of the question and would not be prevented from doing so because of agreements reached by various British petroleum interests with which it is in no way concerned. It seems to the Department that if British nationals should attempt to avail themselves of the legal technicalities involved in the pre-war organization of the Turkish Petroleum Company—which at that time had received no concession—for the purpose of preventing American participation on a fair basis in this enterprise, it would have grounds for representations.

KELLOGG

890g.6363 T 84/241 : Telegram

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

[Paraphrase]

LONDON, *February 12, 1926—2 p. m.*

[Received February 12—12:02 p. m.]

30. Department's No. 20 dated February 10. I agree absolutely that we should maintain our established position to participate on an equal basis.

Positions of the Department of State and of the American Group are not necessarily identical. It seems to me that our efforts should cease when equal participation has been accorded to American nationals. The question of whether or not the American Group accepts the conditions offered, or endeavors to modify the conditions to its advantage, does not, in my opinion, lie within our proper field of representation.

I perceive no objection to the Department's suggestion . . .

HOUGHTON

890g.6363 T 84/237

The Department of State to the French Embassy

MEMORANDUM

In acknowledging the receipt of the Embassy's memorandum of December 18, 1925 with respect to the negotiations of the so-called "American Group" of oil companies for participation in the Turkish Petroleum Company,[11] the Secretary of State has the honor to refer to

[11] *Foreign Relations*, 1925, vol. II, p. 241.

the statements which were made to M. Daeschner at the time of the presentation of this communication, to the effect that the Department did not feel that it could appropriately intervene in questions of a business character which might have arisen between the various groups. At the same time, it was pointed out that this Government is deeply interested in the question of the application to mandate territories of the principle of the Open Door and of equality of opportunity in the development of the economic resources of such territories. Furthermore, this Government, as a participant in the common victory over the Central Powers has consistently maintained that, in accordance with those principles, American nationals should be assured of a reasonable opportunity to participate in the development of such resources.

Without undertaking to pass upon the questions of a business character which appear to have arisen and which have—it is to be hoped only temporarily—prevented the consummation of the project for the participation on a fair basis of various national groups in the development of the oil resources of Mesopotamia, this Government feels that it is fully justified in supporting the efforts of the interested American companies to secure participation in this enterprise, and will continue to exert its good offices to this end. It does not feel, however, that it could appropriately urge the American Group to take part in an arbitration which apparently would have as its object the regulation of various questions particularly affecting the pre-war participants in the Turkish Petroleum Company and arising out of agreements to which American interests were not a party.

WASHINGTON, *April 1, 1926.*

890g.6363 T 84/257 : Telegram

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

LONDON, *April 6, 1926—4 p. m.*

[Received April 6—1:27 p. m.]

69. Am informed by Teagle of the Standard Oil that Gulbenkian has agreed to a basis of settlement in the Turkish Petroleum matter which is satisfactory to the two English groups as well as to the American Group. The details of the settlement have been forwarded to French Group for approval. Teagle is hopeful for a final and favorable conclusion.

STERLING

890g.6363 T 84/269

The Counselor of Embassy at London (Sterling) to Mr. Allen W. Dulles [12]

LONDON, *July 26, 1926.*[13]

DEAR ALLEN: Perhaps you will inform the Department when you return to Washington of the present status of the Turkish Petroleum Company plans. Some months ago when Mr. Teagle was in London he told me by telephone that agreement had been reached between Gulbenkian and the British, American and Dutch groups and that he was leaving for Paris to consult with the French group, from whom he anticipated no obstacle.

I now learn from Mr. Piesse, Solicitor in London of the American group, that on the contrary agreement has not been reached. When it came to putting it down in writing the Royal Dutch have made objection to certain provisions and the whole matter is in process of negotiation anew. However, Mr. Piesse feels that real progress has been made and that it is only a question of proper wording before all parties will give their adhesion. Mr. Osborne of the Foreign Office more or less confirms the above.

F[REDERICK] A[UGUSTINE] S[TERLING]

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[12] Member of the Preparatory Commission on the Limitation of Armaments, and formerly Chief of the Division of Near Eastern Affairs, Department of State.

[13] Date of receipt not known.

GREECE

REFUSAL OF THE UNITED STATES TO JOIN IN REPRESENTATIONS TO GREECE REGARDING ALLEGED VIOLATIONS OF THE LOAN AGREEMENT OF FEBRUARY 10, 1918[1]

868.51WarCredits/396

The British Ambassador (Howard) to the Secretary of State

No. 1007 WASHINGTON, *November 23, 1925.*

SIR: Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that the attention of His Majesty's Government has been drawn to two contracts recently concluded by the Greek Government which appear to conflict with the obligations assumed by Greece under the agreement between that country and Great Britain, France and the United States of February 10th, 1918. You will recollect that Article 4 of the above agreement provides that until the repayment of advancements then made, no new security should be assigned to any external loan without the assent of the Governments of the three Powers. The Contracts in question are those of the Société de Commerce de Belgique in respect of the supply of Greek railway material,[2] and of the Foundation Company of New York in respect of the Salonica drainage scheme.[3]

Article 16 of the Convention providing for the former contract, which was signed at Athens on August 27th last provides that a "privilège du premier rang" shall be given to the Belgian Company on the receipts of the Greek State railways sufficient to secure the service of a loan.

Article 28 of the Foundation Company's contract signed at Athens on September 7th last provides that surplus revenue administered by the International Financial Commission and the proceeds of taxation of Salonica plain shall be a pledge for the service of a new loan.

I have the honour to state that, in the opinion of His Majesty's Government, these clauses constitute breaches of Greece's international obligations which should not be allowed to pass without a protest. His Majesty's Government accordingly desire to invite the

[1] For text of agreement, see *Greek Debt Settlement:* Hearings before the Committee on Ways and Means, House of Representatives, 70th Cong., 1st sess., on H. R. 10760 (Washington, Government Printing Office, 1928), p. 51.

[2] For extracts from the text of the contract which was dated Aug. 27, 1925, see *Greek Official Gazette*, Apr. 19, 1926 (vol. I, No. 132), p. 997.

[3] For text of the contract which was dated Sept. 7, 1925, see *ibid.*, Oct. 8, 1925 (vol. I, No. 295), p. 1996.

United States and French Governments to join with them in expressing to the Greek Government in clear terms their surprise and regret that they should thus ignore their obligations under the agreement of 1918, and in requesting the latter to take no further steps in the matter unless and until the assent of the three Governments has been given to the assignment of the proposed securities.

In the circumstances, I have the honour to ask that, if you see no objection, you will be so good as to send immediate instructions to the United States Minister at Athens to join with his British and French colleagues in representations to the Greek Government in the above sense.

I would add that His Majesty's Ambassador at Paris has been instructed to approach the French Government on the above lines.

I have [etc.] ESME HOWARD

868.51WarCredits/396

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *December 12, 1925.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's communication of November 23, 1925 in which you state that the attention of your Government has been drawn to the contracts recently concluded by the Greek Government which appear to your Government to conflict with the obligations assumed by Greece under the agreement between that country and Great Britain, France and the United States of February 10, 1918. The contracts to which Your Excellency's note refers are those of the Société Commerciale de Belgique à Ougrée and of the Foundation Company of New York.

With respect to the contract of the Belgian Company, the Department's information is not sufficient to enable it to judge whether new securities have already been effectively pledged within the meaning of the 1918 Agreement. A telegram has been addressed to the American Legation at Athens to secure further details on this point.[4]

With respect to the contract of the Foundation Company of September 7th, I desire to state that the Foundation Company informed the Department last summer of its negotiations with the Greek Government and at that time stated that they were aware of the provisions of the 1918 Loan Agreement with Greece and their bearing upon the flotation under the contract of an external loan.[5] So far as the Department is informed no external loan has as yet been floated as provided in Article 26; nor is the Department advised that final arrangements for such flotation have actually been made.

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[4] Telegram not printed.
[5] Correspondence not printed.

It would hardly appear that the mere conclusion of a contract which provides for an eventual loan flotation and the pledging of security therefor should be regarded as a violation by the Greek Government of its obligation under the 1918 Agreement.

This Department is disposed to consider that by the terms of the contract no new assets will in fact be pledged for an external loan within the meaning of the 1918 Agreement until the loan itself is made. The pledging of the securities would seem to be conditioned on the eventual flotation of the loan. If, therefore, the Greek Government requests and obtains the necessary consents prior to the actual flotation of the loan, in the opinion of this Government there would be no reason to complain that the 1918 Agreement had been violated.

In the event that the Greek Government should proceed with a loan flotation in connection with the contract with the Foundation Company or the contract with the Société Commerciale de Belgique à Ougrée without consulting this Government, the Department would be disposed to bring the matter to the attention of the Greek Government.

In this connection I may state that on August 14, 1925 the Legation at Athens in presenting a note to the Greek Government [6] with respect to the funding by the latter of its indebtedness to the United States was authorized to state that if the Government of Greece should make satisfactory arrangements for the funding of its debt to the United States this Government would be prepared, after consultation with the other powers parties to the 1918 Agreement, to examine the question of relieving that Government of its present obligation to obtain the consent of the United States to the pledging of any new securities for external loans.

Accept [etc.] FRANK B. KELLOGG

868.51WarCredits/437

The British Ambassador (Howard) to the Secretary of State

No. 512 MANCHESTER, MASS., *August 23, 1926.*

[Received August 25.]

SIR: I have the honour to refer to your note of December 12th last, and to inform you of the receipt of a cable from Secretary Sir Austen Chamberlain drawing attention to the fact that the supplementary contract concluded between the Greek Government and the Foundation Company of New York in connection with the Salonica plain drainage scheme [7] provides for an increase in the temporary loan made

[6] See instruction No. 237, July 31, 1925, to the Chargé in Greece, *Foreign Relations*, 1925, vol. I, p. 158.

[7] For text of the supplementary contract which was dated Apr. 14, 1926, see *Greek Official Gazette*, May 25, 1926 (Vol. I, No. 167), p. 1269.

by the Company from six hundred thousand to two million five hundred thousand dollars, secured on all revenues assigned as security for the long term loan contemplated in the original 1918 agreement. The said contract also grants a specific charge on the surplus pledged revenues administered by the International Financial Commission in the hands of the National Bank of Greece.

In the opinion of His Majesty's Government, the assignment of such security without the consent of the United States, French and British Governments constitutes a definite breach of the agreement of February 1918. In these circumstances, I am instructed to suggest that a joint protest be made to the Greek Government by the representatives of the above three first named Powers at Athens.

In requesting that you will notify me at your early convenience of the views of the United States Government upon the above suggestion, I beg leave to add that His Majesty's Ambassador at Paris has been instructed to make a similar proposal to the French Government.

I have [etc.] ESME HOWARD

868.51WarCredits/437

The Acting Secretary of State to the British Ambassador (Howard)

WASHINGTON, *September 1, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of August 23, 1926, suggesting that the representatives at Athens of the United States, France and Great Britain make a joint protest in connection with the supplementary contract concluded with Greece by the Foundation Company of New York with reference to the Salonica plain drainage scheme.

As His Majesty's Government is undoubtedly aware, Greece has lately more than once taken action contrary to the provisions of the Agreement of February, 1918. For example, the agreement signed on December 27, 1923, between representatives of Canada and Greece, relating to the settlement of certain indebtedness of Greece to Canada,[8] involved the pledge by Greece of new security in violation of the Agreement of February 1918. Also, pursuant to an agreement dated June 30, 1926, between the Hellenic Government and the Svenska Tandsticksaktiebolaget of Stockholm,[9] Greece similarly has taken action in violation of the 1918 agreement.

In connection with consideration of the proposed procedure, it would be helpful to learn the reasons which have led His Majesty's

[8] For text of agreement, see *Greek Official Gazette*, Aug. 20, 1924 (vol. I, No. 198), p. 1164. See also telegram No. 88, Dec. 6, 1924, to the Minister in Greece, *Foreign Relations*, 1924, vol. I, p. 139.

[9] For text of agreement, see *Greek Official Gazette*, July 2, 1926 (vol. I, No. 219), p. 1741.

Government to suggest the making of a joint protest at this time and the restricting of the scope of such a protest to the particular case mentioned in Your Excellency's note.

Accept [etc.] JOSEPH C. GREW

868.51WarCredits/439

The British Embassy to the Department of State

AIDE-MÉMOIRE

His Britannic Majesty's Minister has been instructed to invite the attention of the Secretary of State to correspondence ending with the Acting Secretary of State's note No. 868.51/957 [10] of September 1st last relative to a proposal on the part of His Majesty's Government that the representatives at Athens of the United States, France and Great Britain should address a joint protest to the Greek Government regarding the supplementary Contract concluded between the latter and the Foundation Company of New York. Inasmuch as Mr. Grew, in his above mentioned note, adverted to the Greco-Canadian Agreement of December 27th, 1923, and asked the reasons which had led His Majesty's Government to base the proposed protest specifically on the case of the Foundation Company, His Majesty's Government are desirous of offering the following detailed explanation of their attitude towards the various loans issued to the Greek Government:

His Majesty's Government were not aware of the terms of the Canadian agreement of the 27th of December, 1923, to which the Acting Secretary of State has been good enough to call their attention. They have made enquiries into the matter and find that it is the case that the Greek Government under this agreement assigned a charge on the surplus of the controlled revenues in favour of the Canadian loan without requesting the assent of the Powers concerned in the 1918 Agreement. It should, however, be borne in mind that the Canadian advances were made in 1919 to finance the purchase of food supplies by Greece while the Greek Government were maintaining their army on a war footing, pending the conclusion of peace with Turkey, and their character was therefore substantially analogous to that of the Allied war advances. Further, the original contract of the 21st of March, 1919, provided that the Canadian advances should have the same security as any future loan issued by the Greek Government and thereby entitled the Canadian Government to claim a charge on the surplus revenues if such a charge were granted by the Greek Government to any future loan. The terms of

[10] File number of note has been changed to "868.51 War Credits/437".

this contract were brought to the notice of His Majesty's Government at the time but they came to the conclusion that its terms could not be held to affect the rights of the Powers concerned in the Agreement of 1918. His Majesty's Government were not consulted before the conclusion of the Funding Agreement of 1923 and if they had been consulted they would certainly have taken steps to reserve the rights of the Allied Governments concerned in the agreement of 1918. Unfortunately no such action was taken at the time, and, apart from the long period that has elapsed, it appears to His Majesty's Government that the character of the Canadian loan and the terms of the original contract distinguish it from the cases now under consideration.

Moreover, the situation of the Greek Government *vis-à-vis* its war debts has been subsequently modified by the terms of the Geneva Protocol signed in September 1924.[11] By Article VI of this Protocol the Greek Government with a view to obtaining the International Refugee Loan undertook "not to create any charges on its revenues by way of security for any loans not intended either for productive purposes or for carrying out its obligations under the Treaties of Peace". This engagement would appear to debar the Greek Government thereafter from assigning special security for the repayment of its war debts, and, so far as His Majesty's Government are concerned, would appear to preclude any claims for such security. Impressed, however, with the political and humanitarian importance of assisting the Greek Government to cope with the influx of refugees, His Majesty's Government accepted the Protocol and gave their assent, under the agreement of 1918, to the assignment of special security to the Refugee Loan raised thereunder.

In April 1925, the Greek Government again sought the approval of His Majesty's Government for the assignment of special security for the loan of ten million dollars raised under an agreement with the American firm of Messrs. Ulen and Company, for the improvement of the Athens water supply. His Majesty's Government, after considering the matter, and having regard to the urgent need for the works in question, gave their assent to this loan.[12]

Similarly, in July last, the Greek Government duly asked for the consent of His Majesty's Government to the assignment of security in respect of the Swedish Match Company's loans to which attention has also been drawn by the Acting Secretary of State. In the case of this loan, a further difficulty arose in that it seemed doubtful

[11] See additional act signed at Geneva, Sept. 19, 1924, amending the protocol of Sept. 29, 1923, League of Nations, *The Settlement of Greek Refugees: Scheme for an International Loan* (C. 524. M. 187. 1924. II).

[12] See despatch No. 173, July 6, 1925, from the Ambassador in Great Britain, *Foreign Relations*, 1925, vol. II, p. 292.

whether it could be regarded as a loan for productive purposes within the meaning of the Protocol of the Greek Refugee Loan. This aspect of the matter was recently considered by the Financial Committee of the League of Nations and having regard to the financial difficulties of Greece, His Majesty's Government have now replied to the Greek Government that they are willing to waive any objections to the Swedish Match Loan in this sense and also to consent under the 1918 Agreement to the assignment of security for the loan subject to the receipt of assurances that the Greek Government will in future strictly observe the terms of Protocol of the Refugee Loan.

If the Greek Government confined its borrowings to the above loans, His Majesty's Government would not have wished to raise the general question of the execution of the Agreement of 1918. But they understand that there are a number of other proposals, e. g. for railway and harbour construction and for draining schemes not to mention credits for armaments and similar purposes which the Greek Government have had under consideration: and they are impressed with the danger both to Greek finances and to the creditors of Greece on account of war advances, if no check is placed on such indiscriminate borrowing. Having regard to the terms of the Geneva Protocol, the Allied war advances must presumably be regarded as unsecured debts. The Governments concerned have, however, in virtue of the Agreement of 1918 the right to prevent new charges being created, in favour of other loans, which would damnify the general security for the repayment of their war advances; this is the sole means by which they can maintain the effective character of their claims. His Majesty's Government do not suggest that the powers given by the agreement of 1918 should be so exercised as to preclude all further borrowings by the Greek Government: but they do consider that it is to the interest of the United States and of Great Britain to insist on a stricter observance of the terms of the agreement of 1918, so that, should it be necessary, a check can be imposed on the creation of new charges ranking before the repayment of their war advances.

Of the additional loan proposals, to which reference has been made, the Foundation Company's loan is the first case which, so far as His Majesty's Government are aware, has taken concrete shape and gives rise to objection, on the ground that the Greek Government purport to assign security to this loan without the consents required under the 1918 agreement. It appears to His Majesty's Government that unless that agreement is to be allowed to become a dead letter suitable representations should be made in this case.

His Majesty's Government have of course no desire to single out an American concession upon which to base their protest, and the

fact that they agreed without hesitation to the assignment of security for the Ulen Loan may be cited as evidence of their good faith in this matter. In this connection, it should be pointed out that the State Department in their note of the 12th of December, 1925, agreed that it would be disposed to bring to the attention of the Greek Government the violation of the 1918 Agreement if a loan were floated under the contract with the Foundation Company and security assigned without the required consent being obtained. As this eventuality has been brought about by the supplementary contract with the Foundation Company now in question, His Majesty's Government assume that the United States Government would now be willing to join them in making the proposed representations on the subject.

WASHINGTON, *November 25, 1926.*

868.51WarCredits/439

The Department of State to the British Embassy

AIDE-MÉMOIRE

The Department of State has given careful consideration to the *Aide Memoire* of November 25, 1926, communicated by His Britannic Majesty's Minister to the Acting Secretary of State, and is grateful for the full statement set forth therein concerning various aspects of the proposal of His Majesty's Government that the representatives of Great Britain, France, and the United States should address a joint protest to the Greek Government regarding the supplementary contract concluded between the latter and the Foundation Company of New York.

A careful re-examination of the Canadian Agreement of December, 1923, and of the contract of the Swedish Match Company of July last in the light of the considerations set forth in the *Aide Memoire* of His Britannic Majesty's Minister has failed to convince the Department of State that it should change its view as to the incompatibility of these transactions with Article 4 of the 1918 Loan Agreement.

With respect to the Geneva Protocol the commitments of His Majesty's Government and of the Government of the United States do not appear to be similar. In giving its consent to the pledging by the Greek Government of certain security for the purpose of floating the refugee relief loan the United States Government expressly and fully made reservation of all questions with respect to the Loan Agreement of 1918. His Britannic Majesty's Minister indicates that His

Majesty's Government defined its attitude towards the refugee loan along somewhat less reserved lines.

That the United States Government does not consider Article 4 of the 1918 Loan Agreement to be a dead letter is clearly shown by its protest concerning the Canadian Agreement [13] and by its communication to the Greek Legation in Washington on July 21 last,[14] in which it was pointed out that the contract of the Swedish Match Company was in violation of the 1918 Agreement.

The *Aide-Memoire* of November 25th of His Majesty's Minister, after making certain explanations as to the motives that led the British Government to refrain from opposing the Canadian and Swedish agreements, indicates that it is apparently the possibility that some tendency to indiscriminate borrowing might manifest itself in the future which has led His Majesty's Government to propose the making of a joint protest regarding the supplementary contract of the Foundation Company of New York. In considering specifically this proposal, the Department of State is impressed by the fact that the very considerations which influenced His Majesty's Government in giving its consent to the contract for the supplying of water to the city of Athens would seem to apply in an even greater degree to the Foundation Company's contract: namely, the undoubted and immediate practical utility to Greece of the projects provided for in these contracts. The project of the Foundation Company, which is for the reclamation of marsh land in the Salonica Plain area, would undoubtedly contribute to the solution of the difficult refugee problem in Macedonia. The importance of such work from the point of view of refugee settlement has recently been emphasized in a report to the League of Nations entitled "Greek Refugee Settlement". (Publications of the League of Nations. II. Economic and Financial. 1926, II. 32.) This project would therefore appear to have even greater humanitarian potentialities than the Ulen contract and in any event to justify a greater degree of consideration than the loan of the Swedish Match Company, concerning the productive character of which His Majesty's Government at one time apparently entertained some doubt.

In view of the fact that the position of the United States Government with respect to Article 4 of the 1918 Agreement has been brought to the attention of the Greek Government as recently as July 21 last, and particularly having in mind the humanitarian aspect of the

[13] See telegram No. 88, Dec. 6, 1924, to the Minister in Greece, *Foreign Relations*, 1924, vol. I, p. 139.

[14] Not printed.

Foundation Company's project, the Government of the United States does not perceive that the suggested representations on this subject would serve any useful purpose at the present time.

WASHINGTON, *December 27, 1926.*

REPRESENTATIONS BY THE UNITED STATES AGAINST THE NON-EXEMPTION OF AMERICAN CONSULAR OFFICERS IN GREECE FROM THE PROVISIONS OF THE FORCED LOAN OF 1926

868.51ForcedLoan,1926/1 : Telegram

The Minister in Greece (Laughlin) to the Secretary of State

ATHENS, *January 24, 1926—3 p. m.*

[Received January 24—2:37 p. m.]

6. Last night Pangalos published a decree, in special edition of *Official Gazette*,[15] imposing a forced loan, similar to that of 1922, amounting to one quarter of value of the bank notes, over 25 drachmas, now in circulation.

Bank deposits appear to be unaffected.

Minister for Foreign Affairs has announced in this morning's newspapers that foreigners will not be exempted.

LAUGHLIN

868.51ForcedLoan,1926/2 : Telegram

The Minister in Greece (Laughlin) to the Secretary of State

ATHENS, *January 25, 1926—3 p. m.*

[Received January 25—1:34 p. m.]

7. My 6, January 24, 3 p. m. Commercial attaché has telegraphed his Department fully with request to give you copy.

Spanish Minister[16] informs me that he and those of his colleagues whose countries have had treaties explicitly exempting their nationals from forced loans are jointly protesting accordingly.

I have as yet received no communication from Foreign Office on the subject, but I addressed a formal note to Minister for Foreign Affairs this morning, making provisional reservations against application to American citizens so as to permit whatever action you may instruct me to take.

LAUGHLIN

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[15] The decree was signed by Paulos Konduriotis, President of the Republic; T. Pangalos, President of the Ministerial Council; and the other members of the Ministerial Council.

[16] Cristobal Fernandez Vallin, dean of the diplomatic corps.

868.51ForcedLoan,1926/2 : Telegram

The Secretary of State to the Minister in Greece (Laughlin)

[Paraphrase]

WASHINGTON, *January 27, 1926—6 p. m.*

4. Your telegram No. 7 dated January 25, 3 p. m. Your action in making reservations against the application of Greek forced loan to American citizens is approved. If the representatives of foreign governments which have treaties with Greece exempting their nationals from forced loans should obtain exemption from this loan, you are instructed to insist that equality of treatment be extended to American citizens. In any case, you should use all proper means to obtain exemption of American nationals. Reference is made in this connection to the action of the Greek Government in exempting foreigners from the effects of the forced loan of 1922.

Inform Department fully of developments.

KELLOGG

868.51ForcedLoan,1926/5

The Minister in Greece (Laughlin) to the Secretary of State

No. 521 ATHENS, *February 25, 1926.*

[Received March 17.]

SIR: Adverting to my despatch numbered 498 of the 20th [*29th*] of January, last,[17] on the subject of the Forced Loan that was effected by a decree-law dated the 23rd of January, I have the honor to attach hereto the copy of the Foreign Office note No. 2991 of the 30th of that month apprising me of the Hellenic Government's intention, in carrying out the measure, to exempt from it only those persons who enjoy diplomatic privileges and only the Government funds in the coffers of foreign legations and consulates in Greece. The copy of my reply, No. 11, of February 1st, is also attached.

There could of course be no question of the fact that moneys so held were beyond the scope of the loan and I have taken the necessary steps to replace with legal tender currency the clipped or bond portions of the bank notes amongst the Chancery funds of the Legation on the 23rd of January and at that time in the official cash-boxes of the Consular establishments in Athens, Patras and Salonika.

The Hellenic Government has not given evidence of any disposition to exempt either foreign individuals or organizations, or foreign consuls *de carrière*, although an admission of the inapplicability in principle of such a loan to foreigners is implicitly made in the last paragraph of the above mentioned note from the Foreign Office,

[17] Not printed.

since it is therein stated that the non-exemption of foreigners is due only to the "insurmountable technical difficulties" that would otherwise result. You will observe that in the second paragraph of my reply I made due mention of the exact position admitted by the Hellenic Government. I tried to do so guardedly with the aim of not insisting upon it to such a point as to provoke a disavowal of the admission. I have received none up to the present time, and in the absence of any rejoinder on this point of principle it would seem that your way to maintain it is clear. If this can be done it seems to me that the chief end is attained, for as far as I can ascertain there has been but little inconvenience caused to American citizens by the operation of this fiscal measure, since it does not affect bank deposits. I have received scarcely any protests; the only one of any importance being from the banking division of the American Express Company, and that mainly on behalf of their Constantinople branch.

The collective action of the various heads of Diplomatic Missions in Athens in seeking to protect the interests of their respective nationals was briefly the following:

Three meetings of the Chiefs of Mission were held at the Spanish Legation, that country's representative being the Dean of the Corps. At the meeting of the 31st of January it was decided that the Dean should send to the Foreign Office a note dated the 1st of February of which the copy is herewith enclosed.[19] Enclosed also is the copy of the reply from the Foreign Office to the Spanish Minister, numbered 3571, and dated the 17th of February.[19] At this first meeting no agreement was reached as to joint action and a second one was held on the 13th of February at which a collective note was drafted, to the despatch of which the British representative would not consent without the explicit assent of his Government. This was not given and Sir Milne Cheetham so informed the Dean in a note, the copy of which is enclosed,[19] which he sent to the third meeting at the Spanish Legation held on February 20th. It was then decided that, in consequence of the position taken by Great Britain, no joint action could be taken and that each Government should make its own representations separately.

I had the honor to acquaint you with my own early action to reserve the rights of American citizens in the despatch to which I have referred above and to which my note to the Foreign Office, No. 7 of the 25th of January was attached.[20] I now append hereto for your further information on this subject a note from the Minister for Foreign Affairs addressed to me on the 17th instant, as well as

[19] Not printed.

[20] Not printed; but see telegram No. 7, Jan. 25, from the Minister in Greece, p. 380.

mine of the 22nd instant in reply thereto. In the latter I recapitulate the position I have taken in regard to the loan and inform Mr. Roufos that I have referred the matter to you for such examination as you may make into the principles involved and into the several questions that arise from the application of the decree.

I have [etc.] IRWIN LAUGHLIN

[Enclosure 1—Translation [21]]

The Greek Foreign Office to the American Legation

No. 2991

NOTE VERBALE

In the execution of the decree-law of January 23, 1926, by which the recent 6 percent forced loan has been imposed, the Ministry for Foreign Affairs has the honor to inform the American Legation that only the personnel of the diplomatic missions in Greece (those persons whose names appear in the diplomatic list) are exempted, as well as the cash boxes of foreign legations and consulates in respect to the Government funds therein. To this end the legations are requested to file a statement through this Ministry with the Treasury Department, confirmed and signed by the Chiefs of Mission, indicating the amount of bank notes of a denomination exceeding 25 drachmas in the possession of the personnel of the legation on the day following the promulgation of the above-mentioned decree-law, that is, on January 24, 1926. The same formality should be followed with respect to the Government funds which on January 24 were in the cash boxes of the foreign legations and consulates.

As to the exemption from this loan of all foreign nationals, the Treasury Department, to its profound regret, would be unable to grant it in view of the insurmountable technical difficulties which would arise resulting from the method of application of that loan which renders all control materially impossible.

ATHENS, *January 30, 1926.*

[Enclosure 2]

The American Minister (Laughlin) to the Greek Minister for Foreign Affairs (Roufos)

F. O. No. 11 ATHENS, *February 1, 1926.*

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of the *note verbale* No. 2991, which your Excellency was good enough to cause to be addressed to me on the 30th January, ultimo, with reference to the Hellenic Legislative Decree of the 23rd *idem* imposing the currency loan that was made available as from that date.

[21] Supplied by the editor.

I have taken due note of the sense of the last paragraph of that communication, which I shall not fail to impart to my Government, whereby your Excellency apprises me of the Hellenic Government's position in respect of the incidence of the loan upon foreigners. Your Excellency states that the non-exemption of foreigners from the operation of this forced loan is conditioned upon the technical difficulties that would arise in the practice of such exemption.

As to the bank notes of a denomination exceeding twenty-five drachmas that were on the 24th January, last, amongst the Chancery funds of this Legation and in the official cash-boxes of my Government's Consular establishments in Greece, as well as those in the possession of the personnel of this Mission who enjoy diplomatic immunities, I shall have the honor to address to your Excellency another note transmitting the desired declarations together with the clipped portions of the bank notes for redemption as soon as the Consul-General in Athens can furnish me with what is required from his office and those under his control.

In making this communication I reserve for future consideration the subject of the treatment which should be accorded the Consular Officers of my Government in Greece; a matter taken up in a note which the Dean of the Diplomatic Body in Athens had the honor to address to your Excellency on the 1st of this month.

I take [etc.] IRWIN LAUGHLIN

[Enclosure 3—Translation [22]]

The Greek Minister for Foreign Affairs (Roufos) to the American Minister (Laughlin)

No. 4976 ATHENS, *February 17, 1926.*

MR. MINISTER: In reply to notes Nos. 7 [23] and 11 which you were pleased to address to me on January 25 and February 1 of this year and with reference to *note verbale* of this Ministry No. 2991, of January 30, concerning the recent loan of January 24, 1926, I have the honor to reply as follows:

The loan in question, not affecting either deposits or credits and intended especially to reach institutions of deposit and not private deposits, cannot be considered as a forced loan of the kind covered in the treaties now in force. In reality, a forced loan is not involved in this case, but only a fiscal or monetary measure, rigorously limited to the money now in circulation. Consequently, in view of the nature and method of its operation, no exemption can be made in favor of foreign nationals.

[22] Supplied by the editor.

[23] Note No. 7 not printed; but see telegram No. 7, Jan. 25, from the Minister in Greece, p. 380.

As to the question of the exemption of consuls of career, this is covered in [24] *note verbale* No. 2991.

Accept [etc.] L. KANAKARIS ROUFOS

[Enclosure 4]

The American Minister (Laughlin) to the Greek Minister for Foreign Affairs (Roufos)

F. O. No. 18 ATHENS, *February 22, 1926.*

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of the note No. 4976 which you were so good as to address to me on the 17th of this month on the subject of the forced loan imposed on the 24th January, last.

I shall not fail to make its contents known to my Government for the examination the Secretary of State in Washington will make into the principles involved and the several questions that may arise from the application of the Decree-law as promulgated.

Pending such examination I have the honor to repeat to your Excellency the general and comprehensive reservations I have already made in respect of all rights possessed by my Government, or claimed by it for citizens of the United States of America, be these official or unofficial or juridical persons, resident in the territory of the Hellenic Republic or elsewhere, who might be held to be affected by legislation of the nature under consideration.

I embrace [etc.] IRWIN LAUGHLIN

868.51ForcedLoan,1926/5

The Secretary of State to the Chargé in Greece (Goold)

No. 328 WASHINGTON, *July 2, 1926.*

SIR: The Department has received the Legation's despatch No. 521, of February 25, concerning the forced loan imposed by the Greek Government on January 23, 1926 and enclosing copies of certain correspondence with the Greek authorities in connection therewith.

The Foreign Office Note No. 2991, of January 30, to the Legation does not appear to the Department to make specific provision for the exemption of foreign consular officers of career from the application of the loan. However, in its Note No. 3571, of February 17, to the Spanish Minister as Dean of the Diplomatic Corps,[25] the Foreign Office states definitely, in the third paragraph, that the exemption of foreign consular officers of career is provided for

[24] The French text reads: "celle-ci est prévue dans."

[25] Not printed; it was practically the same as note No. 4976 of the same date to the American Minister, p. 384.

in the Note No. 2991. This later commitment would seem to leave no doubt at least as to the intention of the Greek authorities in the matter and appears to be at variance with the statement of the Legation, on page two of its despatch under acknowledgment, that "The Hellenic Government has not given evidence of any disposition to exempt . . . foreign consuls *de carrière* . . ."

If the Greek Government should nevertheless attempt to apply the forced loan to American consular officers you should make a suitable protest, inviting the attention of the authorities to Articles II and III of the Consular Convention between the United States and Greece, concluded on November 19, 1902.[26] If the Greek Government should exempt any foreign consular officers from the provisions of the forced loan, American consular officers are entitled to exemption in accordance with the most-favored-nation provisions contained in Article II. It is believed that the Legation would be in a position to make a general claim also for the exemption of American consular officers, on the ground that the loan constitutes in effect a direct tax within the meaning of the term as used in Article III of the Consular Convention with Greece.

Referring to the failure of the Greek Government to exempt American companies and nationals from the present loan, you are informed that the Department has received a letter from the American Express Company regarding the enforcement of the loan upon the Greek currency held in its offices in Greece and at Constantinople. A copy of the pertinent part of the letter is enclosed, together with a copy of the Department's reply.[27]

The Legation is requested to submit at once to the Department a complete report of attempts which may have been made by the Greek Government to apply the forced loan to American nationals, with a statement whether it has been equally imposed upon the nationals of all other countries. In the event that the nationals of any other country have been exempted by reason of the provisions of a treaty or special arrangement, the Department desires to be fully informed in the matter. The Legation should report likewise in detail the action it has taken on behalf of the American Express Company and any other American nationals affected, together with the results achieved. Upon the receipt of this report the Department will be in a position to determine what legal basis, if any, there may exist, upon which this Government might insist upon the exemption of its nationals from forced loans in Greece.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

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[26] *Foreign Relations*, 1903, p. 565.
[27] Neither printed.

868.51ForcedLoan,1926/7

The Chargé in Greece (Goold) to the Secretary of State

[Extract]

No. 606 ATHENS, *July 22, 1926.*

[Received August 5.]

SIR: Adverting to your instruction No. 328 of July 2, 1926, relative to the forced loan of January, 1926, it would appear that there has been a misapprehension as to the meaning of the communication addressed to the Spanish Minister as Dean of the Diplomatic Corps by the Foreign Office in its note numbered 3571 of February 17th. The language used in the third paragraph of this note is to the effect that the question of the exemption of consuls of career is covered, or taken care of, or governed, by verbal note numbered 2991 of January 30th. Mr. Laughlin received a note from the Foreign Office numbered 4976 of February 17th, in identical language with that addressed to the Spanish Minister.

Although it seemed clear enough to me that consuls of career had been omitted from the number of those entitled to exemption in Foreign Office note numbered 2991 of January 30th, nevertheless on June 9th I addressed a verbal note to the Foreign Minister asking the specific question as to whether the provisions of the law (Forced Loan Decree of January 24, 1926) applied to the cash on hand of consuls of career or whether, on the other hand, these gentlemen were exempt from the operation of the law. On the 14th of June, the Foreign Office addressed the following reply:[28]

"In reply to your *note verbale* No. 61 of the 9th of this month the Ministry for Foreign Affairs has the honor to inform the Legation of the United States of America that consuls of career do not enjoy diplomatic prerogatives and cannot be exempted from the recent loan of 1926.

Moreover, the exemptions from that loan contained in note No. 2991 of this Ministry are precise: . . .[29] only the official personnel of diplomatic missions in Greece are exempted, as well as the cash boxes of foreign legations and consulates in respect to the Government funds therein."

I have therefore made the protest which you directed me to make in paragraph three of your instruction and have the honor to enclose a copy of it.

There has been no discrimination between the nationals of the various foreign countries in the execution of the law. The Greek

[28] The original of this quotation is in French; the translation has been supplied by the editor.

[29] Omission appears in the original despatch.

Government is desperately in need of money and is applying the loan to all foreigners. In this connection I have the honor to refer you to my despatch numbered 604 of July 16th.[30]

With reference to action taken by the Legation on behalf of American companies interested, I have the honor to state that on the 25th of January and 22nd of February, respectively, Mr. Laughlin reserved all American rights, informing the Hellenic Government in the first mentioned communication that pending instructions from you, he would "be unable to admit the application of such a measure to citizens of the United States of America." He duly referred the matter to you in his despatches numbered 498 of January 29th [30] and 521 of February 25th, respectively, and asked for your instructions.

. . . . . .

Mr. Consul Fernald of Saloniki had cut drachmas in the amount of 6,137.50. He told me the other day that he had sold these cut portions but I do not know what he got for them. A certain John Makato claims to have lost the sum of 2625 drachmas by virtue of the cutting of the drachmas he had on hand at the time the decree became operative.

I have [etc.] H. S. GOOLD

[Enclosure]

The American Chargé (Goold) to the Greek Minister for Foreign Affairs (Roufos)

F. O. No. 75 ATHENS, *July 30 [20?], 1926.*

YOUR EXCELLENCY: Adverting to your note numbered 17605 of June 14th last in which you state that consuls of career are not exempt from the provisions of the decree of January, 1926, levying a forced loan, I have the honor to inform you that I am directed by the Secretary of State to make protest on behalf of the Government of the United States against the application of the decree to American consular officers of career.

I have the honor to invite your Excellency's attention to the provisions of articles two and three of the Consular Convention between our two countries, concluded November 19th/December 2nd, 1902, and to state that my Government bases its protest in general on the language of those two articles and in particular on the provision by which consular officers of career are exempted from the payment of all direct taxes.

I embrace [etc.] H. S. GOOLD

[30] Not printed.

868.51ForcedLoan,1926/7

The Secretary of State to the Chargé in Greece (Goold)

No. 345 WASHINGTON, *August 25, 1926.*

SIR: Reference is made to the Legation's despatch No. 606 of July 22, 1926, indicating that the Greek Government has not exempted career consular officers from the provisions of the Forced Loan Decree of January 24, 1926, and transmitting to the Department the text of the Legation's note No. 75 to the Greek Foreign Office.

The Legation apparently misread paragraph 3 of the Department's instruction No. 328 of July 2, 1926. The intent of this paragraph was that you should base representations for the exemption of American consular officers of career from the Forced Loan on Article II of the Consular Convention only if career consular officers of another State had been granted exemption. The alternative provided, in the event the Greek Government had not accorded exemption to career consular officers of another State, was to claim exemption for American consular officers of career under Article 3 of the Consular Convention, which exempts such officials from direct taxes.

As it does not appear from your despatch No. 606 that any consular officers of career in Greece have been exempted from the provisions of the Forced Loan Decree, the reference to Article 2 of the Consular Convention in your note No. 75 to the Greek Foreign Office would not seem to be pertinent.

This reference to Article 2 of the Consular Convention may give the Greek Foreign Office an opportunity to make an unsatisfactory reply to the Legation's note and you are therefore instructed, in the event a reply has not been received from the Greek Foreign Office before this instruction reaches you, to supplement your note No. 75 by oral representations, emphasizing the application of Article 3 of the Consular Convention and referring to the principle now generally contained in consular conventions that foreign consular officers are subject to no public service, taxes, imposts and contributions in the country of their residence provided they derive no income from commercial pursuits in that country and do not own real property therein.

Should the Greek Government make a point of the administrative difficulties which would result from exempting career consular officers from the Forced Loan you should point out that the number of such officers in Greece is so small as to render this point of negligible importance. You report that the Greek Government is applying the provisions of the Forced Loan Decree to all foreigners in Greece without discrimination. It would therefore seem that there exists no legal basis upon which this Government might insist upon the exemption of its nationals residing in Greece from the provisions of the Forced Loan Decree. You should keep the Department fully

informed of any developments in the application of this decree, especially in so far as foreign residents of Greece are concerned.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

868.51ForcedLoan,1926/8

The Chargé in Greece (Goold) to the Secretary of State

No. 629 ATHENS, *September 13, 1926.*
[Received September 29.]

SIR: In reply to your instruction No. 345 of August 25th concerning the application of the Forced Loan decree of January 1926 to consular officers of career, I have the honor to state that I took this matter up with Mr. Xydakis, Chief of the Treaty Section of the Foreign Office, and pointed out to him that the protest of the United States was based on Article 3 of the Consular Convention of 1902 and not on Article 2.

Mr. Xydakis admitted that the Forced Loan Decree was in contravention of Article 3 of the Convention and observed that evidently officials had failed to examine treaties with sufficient care before the law was drawn. He stated—as you anticipated—that it would be highly inconvenient and it would greatly complicate matters if an exception were made of United States consular officers of career and added that the United States was the only nation which had protested against the application of the Forced Loan Decree to its consular officers. I pointed out that the complication feared would not be very great for the reason that there were few consular officers of career in Greece and further that the fact that no other nation had protested against the Decree indicated that the various foreign consuls of career had suffered but very little damage. While admitting the aptness of this observation Mr. Xydakis requested me to ascertain from you whether you would not be satisfied with a formal statement by the Greek Government in reply to the Legation's note No. 75 of July 20th, to the effect that the Hellenic Government would not consider the collection from Mr. Fernald of his portion of the Forced Loan as a precedent establishing the right of the Greek Government to levy a forced loan on an American Consular Officer of career.

I told Mr. Xydakis that I would submit this suggestion to you and duly inform him of your reply. As I pointed out in my despatch No. 606 of July 22, Mr. Fernald held cut drachmas in the amount of 6137.50. He sold the cut portions but I do not know what he got for them.

I have [etc.] H. S. GOOLD

868.51ForcedLoan,1926/8

The Secretary of State to the Chargé in Greece (Goold)

No. 357 WASHINGTON, *October 28, 1926.*

SIR: The Department has received the Legation's despatch No. 629, dated September 13, 1926, with further reference to the attitude of the Greek Government regarding the exemption of American consular officers stationed in Greece from the provisions of the Greek Forced Loan Decree of January 24, 1926.

It has been noted that Mr. Xydakis, the Chief of the Treaty Section of the Greek Foreign Office, has admitted in a conversation with you that the effort of the Greek Government to subject American consular officers in Greece to the operation of the Forced Loan was in contravention of Article 3 of the Consular Convention of November 19, 1902 between the United States and Greece. It has been noted, further, that Mr. Xydakis has stated that the Government of the United States is the only one that has made representations against the application of the Forced Loan to its consular officers in Greece and that it would be highly inconvenient for the Greek Government to exempt them from the Forced Loan. Pursuant to the suggestion of Mr. Xydakis, you inquire whether this Government would not be satisfied with a formal statement by the Greek Government to the effect that the Hellenic Government would not consider the collection from American consular officers in Greece of a contribution to the Forced Loan as a precedent establishing the right of the Greek Government to subject American consular officers in Greece to any future forced loans. Your despatch under reference indicates that Mr. Fernald held cut drachmas in the amount of 6,137.50, but neither this despatch nor your despatch No. 606 of July 22, 1926, contains any information regarding the amounts, if any, of cut drachmas which may have been held by other American consular officers in Greece.

With regard to the suggestion of Mr. Xydakis, mentioned above, you should inform the appropriate Greek authorities that the Government of the United States cannot agree to any exception to the principle that American consular officers in Greece are entitled to exemption from such forms of taxation as has been imposed through the Forced Loan. You should indicate that the Government of the United States expects the Greek Government to compensate American consular officers in Greece for any losses which they may have sustained as the result of the requirement of the Greek Government that they contribute to the Greek Forced Loan. You should at the same time bring the attitude of the Department expressed in this paragraph to the attention of American consular officers in Greece, with the exception of the Consular Agent at Kalamata, and request them

to furnish you with detailed information regarding the amounts which they may have been required to contribute to the Greek Forced Loan. After having ascertained the amounts of these losses you should notify the Greek Government of the amounts.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

868.51ForcedLoan,1926/9

The Chargé in Greece (Goold) to the Secretary of State

No. 669 ATHENS, *November 19, 1926.*
[Received December 2.]

SIR: In reply to your instruction No. 357 of October 28th, with reference to the application of the forced loan decree of January 1926, to American consular officers of career, I have the honor to state that I have duly made the prescribed representations to the Foreign Office.

In reply to the inquiry as to whether any consular officers other than Mr. Fernald were damaged by the operation of this decree, I have the honor to reply in the negative.

I have [etc.] H. S. GOOLD

GUATEMALA

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND GUATEMALA

711.142/1

The Secretary of State to the Guatemalan Minister (Latour)

WASHINGTON, *July 17, 1926.*

SIR: Referring to the suggestion for the conclusion of a Treaty of Friendship, Commerce and Consular Rights which for some time has been under consideration by this Government and your Government, I have the honor to inform you that this Government would be glad now to enter into the negotiation of such a Treaty.

The Treaty of Friendship, Commerce and Consular Rights, signed by this Government and Germany on December 8, 1923, a copy of which is enclosed for the information of your Government,[1] is representative of the type of Treaty which this Government considers appropriate for conclusion by the United States and Guatemala.

If it would be agreeable to your Government to enter into the negotiation of such a Treaty, I should be glad to submit a draft to you for the consideration of your Government, pursuant to the suggestion made in your note of December 28, 1923.[2] In a few particulars the text of the draft would differ from the Treaty of this country with Germany. As the negotiations may appropriately be carried on at this capital, I should be glad if it would be agreeable to your Government to follow such a course.

Accept [etc.] FRANK B. KELLOGG

711.142/5

The Guatemalan Minister (Latour) to the Secretary of State

WASHINGTON, *August 27, 1926.*

EXCELLENCY: Having communicated to my Government the contents of Your Excellency's esteemed note of July 17th. 1926 referring to the conclusion of a Treaty of Friendship, Commerce and Consular

[1] *Foreign Relations*, 1923, vol. II, p. 29.

[2] Note not printed; it stated that the Government of Guatemala desired to know the details of the treaty suggested by the Secretary of State and requested a draft for submission to the Government of Guatemala (file No. 711.142/1). Negotiations were suspended while the Senate had under consideration the treaty signed with Germany Dec. 8, 1923 (file No. 711.142/7).

Rights between Your Excellency's Government and the Government of Guatemala, I have the honour to inform Your Excellency that I have received an answer from the Minister of Foreign Affairs stating that my Government will be glad to enter into the negotiation of such a Treaty and I therefore respectfully request that Your Excellency be good enough to have a draft prepared of the Treaty and sent to me so that I may submit it to my Government, as suggested in Your Excellency's note of July.

My Government asks me to assure Your Excellency that it is always ready to do anything which tends to a closer relationship with this great Nation, through the development of their reciprocal commercial and spiritual interests on a convenient basis.

I avail myself [etc.] FRANCISCO SÁNCHEZ LATOUR

711.142/5

The Secretary of State to the Guatemalan Minister (Latour)

WASHINGTON, *September 20, 1926.*

SIR: Referring to your note of August 27, 1926, informing this Government that your Government will be glad to enter into negotiations for a Treaty of Friendship, Commerce and Consular Rights with this Government, and requesting that a draft of the treaty be sent to you so that it may be submitted to your Government, I have the honor to send you herewith two copies of the draft of such a treaty.[3]

This Government reciprocates the spirit of cordiality with which your Government views the negotiation of the Treaty. The provisions of the draft are designed to promote friendly as well as commercial intercourse between the peoples of the United States and Guatemala. An attempt has been made to express the several Articles in terms which definitely and clearly set forth the principles involved. By this means it is sought to avoid as far as possible danger of conflicting interpretations.

Article VII makes full provision for the enjoyment of the most favored nation clause in its unconditional form, as applied to persons, vessels and cargoes, and to articles which are the growth, produce or manufacture of the United States or of Guatemala. It will be seen that the most favored nation clause is applied to duties on imports and exports and to other charges, restrictions and prohibitions on goods imported and exported. The provisions of the Convention

[3] Not printed; the draft submitted to Guatemala was substantially the same as the one enclosed in instruction No. 189, Aug. 6, 1925, to the Chargé in Salvador, p. 931.

relating to the Tenure and Disposition of Real and Personal Property signed by the United States and Guatemala on August 27, 1901,[4] are reproduced with certain amplifications in Articles IV and XXII of the draft and it is provided by Article XXVIII that the Convention of 1901 will be supplanted from the date of the exchange of ratifications of the proposed treaty. This Government is hopeful that this proposal will meet with the approval of your Government.

Your Government will of course understand that this Government reserves the right to suggest minor changes in the draft in the course of the negotiations.

Accept [etc.] FRANK B. KELLOGG

711.142/6

The Guatemalan Minister (Latour) to the Secretary of State

WASHINGTON, *September 22, 1926.*

EXCELLENCY: I have the honour to acknowledge the receipt of Your Excellency's esteemed note of the 20th. instant and also of the draft of the Treaty of Friendship, Commerce and Consular Rights which Your Excellency was good enough to send me so that it may be submitted to my Government.

I beg to inform Your Excellency that I sent the draft of the Treaty to the Minister of Foreign Affairs of Guatemala by yesterday's mail with a request that it be studied and any suggestions for minor changes in it be conveyed to me so that I may have the pleasure of taking them up with the Department.

Thanking Your Excellency for Your Excellency's courtesy in this matter, I avail myself [etc.] [5]

FRANCISCO SÁNCHEZ LATOUR

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[4] *Foreign Relations*, 1902, p. 584.

[5] These negotiations did not result in the signing of any treaty.

HAITI

TEMPORARY WITHDRAWAL OF UNITED STATES WAR VESSELS FROM HAITIAN WATERS BECAUSE OF PRESIDENTIAL ELECTION

838.00/2185 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

[Paraphrase]

PORT AU PRINCE, *January 7, 1926—noon.*

[Received 8:15 p. m.]

2. President Borno verbally called my attention to the almost constant presence of American warships in Haitian waters, in Gonaives Bay particularly. Later he embodied his views in an official communication. The President believes that presence of these ships, even outside three-mile limit, is serving to strengthen the opposition here which is anti-Government and anti-American. The propaganda of that element is spreading rumor that secret treaty already exists under which the United States has obtained naval base in Haiti, and that the American authorities are merely taking advantage of rights conferred by this treaty. President Borno is not protesting, but he asks that consideration be given to delicacy of this situation in view of the coming elections. This request does not seem to me unreasonable, applying as it does only to period of a few months.

RUSSELL

838.00/2187 : Telegram

The Acting Secretary of State to the Chargé in Haiti (Merrell)

WASHINGTON, *January 15, 1926—5 p. m.*

2. For General Russell. Your telegram No. 2, January 7, noon. Secretary of the Navy has issued orders for withdrawal of vessels from immediate vicinity of Haiti.

GREW

838.00/2224 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *April 12, 1926—11 a. m.*

[Received April 14—8:15 p. m.]

37. President Borno reelected President for 4 years by National Assembly this morning by a majority vote of 19 out of 20 present, other vote was a blank. Session was held before the public, including the diplomatic corps, press and many of the candidates.

Immediately called on President Borno and congratulated him on his reelection. President Borno stated that he had decided to run for reelection for the sake of continuing [omission?] and that he was prepared to take all risks, even that of assassination.

Some excitement in the city among the opposition but do not anticipate any serious trouble as the *gendarmerie* is prepared to handle any that should arise.

RUSSELL

838.00/2244

The Secretary of State to the High Commissioner in Haiti (Russell)

No. 304 WASHINGTON, *May 19, 1926.*

SIR: The Department transmits herewith copy of a letter under date of May 10, from the Navy Department,[1] inquiring whether, in view of the conclusion of the elections in Haiti, the inhibition against the use of the waters adjacent to that country for the purposes of target practice and against the privilege of anchoring portions of the Fleet in Haitian waters is considered to be still existing. In this connection reference is made to your confidential telegram No. 2, January 7, 1926, noon.

Inasmuch as it was understood that the suspension of the former practice was to be for a period of only a few months, the Department assumes that its resumption at the present time would not be misinterpreted by the Haitian Government. The Department would be glad to have an expression of your opinion in order that an appropriate reply to the Navy Department may be made.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

838.00/2254

The Chargé in Haiti (Merrell) to the Secretary of State

No. 825 PORT AU PRINCE, *May 27, 1926.*
(The High Commissioner's Series) [Received June 5.]

SIR: In reply to the Department's Instruction No. 304 of May 19, 1920 [*1926*], addressed to the American High Commissioner, inquiring on behalf of the Navy Department if the inhibition against the use of the waters adjacent to Haiti for the purposes of target practice and against the privilege of anchoring portions of the Fleet in Haitian waters is considered to be still existing, I have the honor to refer to

[1] Not printed.

the High Commissioner's Despatch No. 813 of May 14, 1926,[2] which of course was not received before the Department's Instruction under acknowledgement was mailed.

In that despatch, General Russell reported as follows:

. . . I have the honor to inform the Department that in recent conversation with President Borno, he stated now that the elections were over, he had no objection, whatsoever, to the use of Gonaives Bay for target practice by the scouting fleet, or the use of that area for the anchorage of some of the combined fleet.

He remarked, however, that he expected that when shore leave was given to the crew to visit Haitian ports, that every precaution would be taken to guard against untoward incidents arising between the sailors and Haitians.

I have [etc.] GEORGE R. MERRELL, Jr.

VISIT OF PRESIDENT BORNO OF HAITI TO THE UNITED STATES

033.3811/1

The High Commissioner in Haiti (Russell) to the Secretary of State

No. 787 PORT AU PRINCE, *April 17, 1926.*

[Received May 6.]

SIR: I have the honor to report that this morning President Borno spoke to me about the possibility of his making a trip to the United States during the month of June, next.

He stated that it would be necessary to carry on negotiations with the United States Government in order to find out if such a trip would be acceptable or not. I told him that I felt that there would be no difficulty in obtaining such assurance and that I thought a short trip would be productive of excellent results but, of course, it would have to be made at the expense of the Haitian Government.

I suggested that in New York, President Borno would have the opportunity of talking with business men regarding conditions in Haiti and the policy of his Government, and that it might be of inestimable benefit by improving the commercial relations between the two countries.

President Borno also stated that he would like to have a long talk with President Coolidge, if he made such a trip but that he had as yet come to no decision in the matter and would talk to me later about it.

If President Borno decided to visit the United States, I have the honor to suggest that the Department consider the advisability of placing an appropriate United States Government vessel at his disposal to take him from Port-au-Prince to New York and return him to Port-au-Prince at the expiration of his visit, which I do not believe will be

[2] Not printed.

for a longer period than about two weeks. This suggestion is made as I believe that it would be deeply appreciated by President Borno, particularly as the accommodations on the regular steamers running from Port-au-Prince are unable to furnish appropriate accommodations and service for such a trip.

I have [etc.] JOHN H. RUSSELL

033.3811/3 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

[Paraphrase]

WASHINGTON, *May 20, 1926—7 p. m.*

34. General Russell's despatch No. 787, April 17, has received Department's attentive consideration.

The Government of the United States is gratified to learn of President Borno's desire to visit this country; should he do so he will receive a cordial welcome and will be shown proper courtesy and honor. It is not the practice of the Federal Government to invite Chiefs of State to visit the United States as guests of the Government, as no legal provision for it exists, but you may say to the President of Haiti that should he decide to come to Washington, President Coolidge will be most happy to receive him and that the Secretary of State will also be glad to welcome him.

In regard to the suggestion that this Government place at President Borno's disposal one of its vessels for this proposed trip, the Department feels that a precedent would be created which might prove very embarrassing; the Department hopes, therefore, that you may be able in proper manner to discourage this idea.

KELLOGG

033.3811/10 : Telegram

The Chargé in Haiti (Merrell) to the Secretary of State

PORT AU PRINCE, *May 28, 1926—5 p. m.*

[Received May 31—4:45 p. m.]

60. Department's 36, May 26, 7 p. m.[8] As closely as can now be determined President Borno's itinerary is as follows: Arrive at New York morning of June 11th, proceed at once to Washington by motor if weather permits. Remain in Washington until the afternoon of June 17th, arrive Chicago morning of June 18th, and [visit?] steel works at Gary and one of the packing houses. Proceed morning of June 20th, to San Francisco via Yellowstone Park, visiting hydro-electric plant and reclamation project while in the West. Return from San Francisco via Grand Canyon, arriving Chicago approxi-

[8] Not printed.

mately July 5th. Proceed immediately to Detroit for one day's visit at the Ford Motor Works, thence to Buffalo and from Buffalo to New York by motor via Schenectady for inspection of General Electric Company. Arrive New York approximately July 9th and sail from New York on the steamer *Ancon* about July 14th. Exact date when the boat will sail not yet determined.

It would be useful to know whether revenue cutter will meet President Borno at New York, who will be on board, where the President will land, and if necessary to arrange for automobile transportation in New York. Also desire to know if appropriate to proceed to Washington by automobile. At New York hotel accommodations being arranged at Plaza and at Washington Mayflower. New York arrangements in the hands of H. L. Hershey, 17 Battery Place, purchasing agent of the Bureau of Insular Affairs.

MERRELL

033.3811/10 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

WASHINGTON, *June 4, 1926—noon.*

42. Your 60, May 28, 5 p. m. The itinerary will be as follows: President Borno will land at pier where he will be welcomed by Assistant Secretary of State Wright, representing the President, and escorted by him to New York hotel. Presidential party will proceed to Washington by private car on train leaving New York Monday June 14 at 1 p. m.

On arrival at Washington party will proceed to hotel immediately after which President and Madame Borno will call upon the President and Mrs. Coolidge.

During stay in Washington opportunity will be afforded to visit all Governmental institutions including reclamation service of the Department of Agriculture.

KELLOGG

033.3811/37 : Telegram

The Chargé in Haiti (Merrell) to the Secretary of State

PORT AU PRINCE, *July 6, 1926—11 a. m.*

[Received July 7—noon.]

70. President Borno arrived yesterday and was given a very enthusiastic reception. He stated that he now has more affection than ever for the United States and that he is prepared to cooperate with American officials most loyally in achieving the ends of the treaty, which must be speedily accomplished.

MERRELL

AGREEMENT BETWEEN THE UNITED STATES AND HAITI ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED JULY 8, 1926

611.3831/22

The Secretary of State to the Chargé in Haiti (Merrell)

No. 649 WASHINGTON, *August 10, 1925.*

SIR: Reference is made to the Legation's despatch, High Commissioner's Series No. 608, of July 17, 1925.[4] The Department wishes you to open negotiations for the conclusion of a commercial *modus vivendi* with Haiti, to be followed by a general treaty of friendship, commerce and consular rights, reciprocally providing for unconditional most-favored-nation treatment. Upon assurance of a reply in like terms you may address the following note to the Minister for Foreign Affairs:

[Here follows text of note which is the same as that of the note exchanged July 8, 1926, printed on page 403, except for changes made in accordance with Department's instruction No. 692, June 29, 1926, printed on page 403.]

The above text is essentially the same as the text of *modi vivendi* recently concluded with nine American and European countries. The Department would prefer immediate effectiveness, but the stipulated delay of six months in the going into effect of the agreement would enable Haiti to terminate its treaty with France if desired.[5] The exception of Cuba and American dependencies from the operation of the proposed agreement is necessary because of the exclusive treaty with the former and the statutory requirements in regard to the latter. Should Haiti desire exception of a neighboring country, the Department would be prepared to consider the same.

The Department would welcome the conclusion by Haiti of an unconditional most-favored-nation agreement with France. Confidentially, the Department would not object if Haiti found it necessary to grant to France general most-favored-nation treatment in return for the lowest French duties on coffee or on coffee and other specified Haitian products.

I am [etc.] FRANK B. KELLOGG

[4] Not printed.

[5] Commercial convention of Jan. 30, 1907; *British and Foreign State Papers*, vol. c, p. 911.

611.3831/23 : Telegram

The Chargé in Haiti (Merrell) to the Secretary of State

[Paraphrase]

PORT AU PRINCE, *August 31, 1925—2 p. m.*

[Received 6:51 p. m.]

48. Department's 649, August 10. It is my opinion that President Borno will not wish, before election next year, to terminate treaty with France as it would be practically essential to do in order to conclude *modus vivendi* set forth in Department's instruction No. 649. Such termination will meet with popular opposition before December.

As President Borno has already postponed enactment of tariff law until next spring for political reasons, it does not appear that our Legation could afford to open negotiations for the *modus vivendi* unless Department is prepared to exert pressure. In any event it might be more practicable to start negotiations at time the tariff law is presented.

MERRELL

611.3831/23 : Telegram

The Acting Secretary of State to the Chargé in Haiti (Merrell)

[Paraphrase]

WASHINGTON, *September 4, 1925—6 p. m.*

35. Your telegram No. 48, August 31, 2 p. m. In the furtherance of Department's treaty program it is very desirous of concluding a *modus vivendi* to be followed as soon as possible by general treaty with Haiti. This wish is in accord with Department's policy toward all countries.

You are therefore instructed to show President Borno text of proposed *modus vivendi* which was transmitted to you in Department's instruction No. 649 of August 10, and to ascertain his views. Should you find him seriously opposed to conclusion of such an agreement at present time you need not press matter further. It should be made clear to President Borno, however, that Department hopes he will feel that he can consider matter favorably at an early date.

GREW

611.3831/25 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *May 7, 1926—10 a. m.*

[Received May 8—9:40 a. m.]

48. Department's 649, August 10, 1925, addressed to Merrell.[6] The Haitian Government agrees to *modus vivendi* but desires to except

[6] *Ante*, p. 401.

Dominican Republic. Haitian Government has notified the custom house authorities that the Franco-Haitian commercial convention of 1917 [*1907?*] will not be in effect after July 26.

Request authority to except the Dominican Republic and to fix the date when the *modus vivendi* becomes operative as July 27, 1926.

RUSSELL

611.3831/25

The Acting Secretary of State to the Chargé in Haiti (Merrell)

No. 692 WASHINGTON, *June 29, 1926.*

SIR: Reference is made to General Russell's telegram, No. 48, of May 7, 10 A. M., in regard to the proposed commercial *modus vivendi.*

The Department is glad to make the requested exception of the Dominican Republic. This may be done by adding to the text as contained on page 2 of the Department's instruction, No. 649 of August 10, 1925, following paragraph No. (2), a new paragraph as follows:

"(3) The treatment which Haiti accords or may hereafter accord to the commerce of the Dominican Republic."

The Department desires that the exchange of notes take place as soon as possible, but that it become effective on October 1, 1926, instead of six months after date. Accordingly, you should substitute for the first part of the antepenultimate paragraph of the text the following language:

"The present arrangement shall become operative on October 1, 1926, and, etc."

Please telegraph the date of the exchange of notes, and mail promptly to the Department the texts in order that they may be published in the Treaty Series.

I am [etc.] JOSEPH C. GREW

611.3831/27

The American Chargé (Merrell) to the Haitian Secretary of State for Foreign Affairs (Montas) [7]

No. 172 PORT AU PRINCE, *July 8, 1926.*

EXCELLENCY: I have the honor to make the following statement of my understanding of the agreement reached through recent conversations held at Port-au-Prince on behalf of the Government of the United States and the Government of Haiti with reference to the

[7] Transmitted to the Department by the Chargé in Haiti as an enclosure to his despatch No. 863, July 14, 1926.

treatment which the United States shall accord to the commerce of Haiti and which Haiti shall accord to the commerce of the United States.

These conversations have disclosed a mutual understanding between the two Governments which is that in respect of import and export duties and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Haiti, and Haiti will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports and exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Haiti than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in Haiti of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Haiti, on the exportation of any articles to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country;

Every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Haiti by law, proclamation, decree or commercial treaty or agreement, to any third country will become immediately applicable without request and without compensation to the commerce of Haiti and of the United States and its territories and possessions, respectively;

Provided that this understanding does not relate to

(1) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

(2) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to

the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(3) The treatment which Haiti accords or may hereafter accord to the commerce of the Dominican Republic.

The present arrangement shall become operative on October 1, 1926 and, unless sooner terminated by mutual agreement, shall continue in force for six months and thereafter until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligation thereof shall thereupon lapse.

I shall be glad to have your confirmation of the accord thus reached.

Accept [etc.] GEORGE R. MERRELL, Jr.

611.3831/27

The Haitian Secretary of State for Foreign Affairs (Montas) to the American Chargé (Merrell)[8]

[Translation]

PORT AU PRINCE, *July 8, 1926.*

MR. CHARGÉ D'AFFAIRES: I have the honor to inform you that the Haitian Government accepts the conditions of a Commercial *Modus Vivendi* between the Republic of Haiti and the United States of America as those conditions are indicated in your note No. 172 of this day.

The conversations that have taken place on the subject between the Legation of the United States and the Department of Foreign Relations have disclosed a mutual understanding between the two governments which is that in respect of import and export duties and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Haiti, and Haiti will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports and exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

[8] Transmitted to the Department by the Chargé in Haiti as an enclosure to his despatch No. 863, July 14, 1926.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Haiti than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in Haiti of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Haiti, on the exportation of any articles to the other or to any territory or possession of the other, than are or shall be payable on like articles to any foreign country;

Every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Haiti by law, proclamation, decree or commercial treaty or agreement, to any third country will become immediately applicable without request and without compensation to the commerce of Haiti and of the United States and its territories and possessions, respectively;

It is agreed that this understanding does not relate to

(1) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

(2) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(3) The treatment which Haiti accords or may hereafter accord to the commerce of the Dominican Republic.

The present arrangement shall become operative on October 1, 1926 and, unless sooner terminated by mutual agreement, shall continue in force for six months and thereafter until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

I take [etc.] EDMOND MONTAS

COMMERCIAL CONVENTION BETWEEN FRANCE AND HAITI, SIGNED JULY 29, 1926

638.5131/8

The High Commissioner in Haiti (Russell) to the Secretary of State

No. 802 PORT AU PRINCE, *May 3, 1926.*

[Received May 11.]

SIR: I have the honor to report that the Haitian Government has addressed a note to the chargé d'affaires of the French Government at Port-au-Prince, by the terms of which the Haitian Government abrogates, on the 27th of July next, the Franco-Haitian Commercial Convention of 1907.[9]

A copy and translation of the note, together with two other notes bearing thereon, are transmitted herewith for the Department's information.[10]

I have [etc.] JOHN H. RUSSELL

638.5131/9

The French Ambassador (Bérenger) to the Secretary of State

[Translation]

WASHINGTON, *May 6, 1926.*

MR. SECRETARY OF STATE: My predecessors repeatedly had occasion to discuss with Your Excellency the commercial relations between France and Haiti.

Thus, on November 5, 1924, Mr. Jusserand drew your predecessor's attention to the awkward features that would appear for French interest in a revision of the Haitian customs tariff.[11] Again, in a note dated May 27, 1925, Mr. Daeschner sent Your Excellency a communication on the same subject.[11] My Government now informs me that the Secretary of State for Foreign Relations of Haiti has informed the Minister of France at Port-au-Prince of his Government's intention not to extend beyond the 27th of July next the operation of the convention of commerce between France and Haiti of 1907, and added that he was ready to negotiate another agreement.

This unexpected notice of termination caused my Government all the more surprise, as it is inconsistent with the assurances now given to the French representative at Port-au-Prince by the Haitian Government. That Government had even gone so far as to express a hope that the present agreement would be strengthened. Furthermore, it seems to be conflicting with the assurances that the Secretary

[9] Signed Jan. 30, 1907; *British and Foreign State Papers*, vol. c, p. 911.
[10] None printed.
[11] Not printed.

of State of the United States had given to Mr. Jusserand on August 11, 1916,[12] which were again brought to Your Excellency's mind by my predecessor on September 30, 1925,[13] and were stated in the following sentence:

"The Financial Advisor of the Republic of Haiti has been directed, in the performance of his duties, to afford due consideration, in his advisory capacity, of such requests for the modification of present customs duties as may by him be regarded legitimate."

A sudden change in the present condition of commercial relations between Haiti and France, therefore, seems to my Government to be in conflict with the assurances then given by the Government of the United States and confirmed by the letter sent on October 26, 1925, to the Embassy by Your Excellency.[13] The French Government is ready to consider with the Haitian Government such modifications as it would be expedient to adopt in the agreement of 1907 to bring it up to date. But it would seem desirable, in the interest of both countries, that the basis be maintained. As a matter of fact, as my predecessor noted in his above-mentioned note, France not only buys 66 percent of the exports from Haiti, but also 75 percent of the exported coffee and the export tax on that staple alone supplies more than one-third of the revenues of the Haitian Republic.

Desirous as it is and may be to meet the desire of the Haitian Government that the present condition of commercial relations between France and Haiti be changed, my Government believes that such a modification should not take place without going through previous negotiations. That is the reason why, in view of all the foregoing considerations, I should be very thankful to Your Excellency if you would kindly draw to that question the most earnest attention of the American Financial Adviser at Port-au-Prince and send him such instructions as you may deem necessary to let the present *status quo* stand during the negotiations if any are had.

Be pleased [etc.] HENRY BÉRENGER

638.5131/9

The Acting Secretary of State to the French Chargé (Sartiges)

WASHINGTON, *June 28, 1926.*

SIR: I beg to acknowledge the receipt of M. Bérenger's note of May 6, 1926, in regard to commercial relations between France and Haiti. M. Bérenger stated that he had been informed that the Haitian Government had indicated to the French Government its inten-

[12] *Foreign Relations*, 1916, p. 387.
[13] Not printed.

tion not to extend the existing Franco-Haitian agreement beyond July 27 next. In this connection, M. Bérenger referred to previous correspondence on the subject and in particular to a communication made by Mr. Lansing to M. Jusserand on August 11, 1916, in which it was stated that the Financial Adviser would give due consideration in his advisory capacity to requests for the modification of customs duties, and indicated the view that the action described is in conflict with these assurances given in 1916 and confirmed in 1925 to the French Government. M. Bérenger further expressed the desire that modification of the commercial relations between France and Haiti should not take place without previous negotiations, and requested that instructions be sent to the Financial Adviser at Port au Prince to the end that the *status quo* should be maintained pending negotiations in the matter.

It is the understanding of the Government of the United States that on March 10, 1919, the French representative at Port au Prince informed the Haitian Government of the denunciation of the Commercial Convention of 1907, to take effect September 10, 1919, with the provision that the Convention might be prolonged by tacit agreement every three months. The original action looking toward the termination of this agreement thus appears to have been taken by the Government of France and not by the Government of Haiti.

The communication of August 11, 1916, made by Mr. Lansing to M. Jusserand read in part as follows:

"The Financial Adviser to the Republic of Haiti, appointed pursuant to the terms of the relevant article of the Convention of September 16, 1915, has been directed, in the performance of his duties, to afford due consideration in his advisory capacity of such requests for the modification of present customs duties as may by him be regarded legitimate."

The Department of State has received no information to the effect that due consideration of requests pertaining to the modification of present customs duties has not been afforded by the Financial Adviser. I do not, therefore, perceive that there has been any departure from the assurances given in 1916, and consequently see no basis for the intervention of this Government. Nevertheless, in view of the interest of your Government, I shall if you so desire be glad to forward to the American High Commissioner in Port au Prince, for the information of the Financial Adviser, a copy of your communication.

While I am not in a position to take any steps to the end that the *status quo* be maintained, since this is a matter for the decision of the Haitian Government regarding which I find no basis for action on the part of the Government of the United States, I wish to invite your attention to the statement in Mr. Lansing's note of August 11,

1916, to the effect that it is "the desire of this Government to neglect nothing that will ensure for French citizens treatment in Haiti equal to that accorded to Americans".

Accept [etc.] JOSEPH C. GREW

638.5131/10 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *July 14, 1926—7 p. m.*

193. (1) The Chargé in Haiti telegraphed the Department on July 10 [14] that the French Government has informed the Government of Haiti that the former will apply the maximum duties on Haitian coffee imported into France unless Haiti continues the privileged position of certain French imports. The Government of Haiti desires to place its relations with France on reciprocal most-favored-nation basis and requests the good offices of this Government in connection with its desire to conclude an arrangement of that nature with France.

(2) French Government denounced the Franco-Haitian commercial convention of 1907 on September 10, 1919, with the provision that by tacit agreement it might be prolonged every three months. It appears, therefore, that original action looking towards termination of the convention was taken by France instead of Haiti. It also appears that French Government wishes to conclude new arrangement with Haiti on basis of special concessions to French commerce. As the Government of Haiti is adopting the general policy of unconditional most-favored-nation treatment, the Department understands that Haiti would be prepared to make no discrimination against French commerce.

(3) The Department is reluctant to believe that the French Government would enter upon a policy of discrimination against imports from Haiti merely because the latter is unwilling to discriminate in favor of imports from France. Department has been informed that France admits at minimum tariff rates coffee from Brazil, Colombia, Costa Rica, and Venezuela, no one of which countries accords special favors to France. Other countries are given minimum rates in France without special favors being given in return and Haiti desires that its commercial relations with France likewise be placed on reciprocal most-favored-nation basis.

(4) The Department proposed a *modus vivendi*, based on most-favored-nation treatment, to Haiti in August 1925,[15] but at request of

[14] Telegram not printed.

[15] See pp. 401 ff.

Haitian Government negotiations were not pressed. Recently the Government of Haiti expressed its willingness to proceed; and on July 8, 1926, a *modus vivendi*, to come into effect on October 1, was concluded [16] similar to other agreements with about a dozen other countries which provide for reciprocal unconditional most-favored-nation treatment. In view of section 317, Tariff Act of 1922,[17] this Government has been following policy of negotiating agreements with countries discriminating against the United States with view to effecting the elimination of this discrimination wherever possible without having to enforce penalty duties. It will be seen that in view of this provision this Government could not have requested Government of Haiti to continue a regime of exclusive privileges to French commerce as had been requested in the note from the French Embassy, copy of which was sent you in Department's instruction No. 1634, June 29, last,[18] as such a course of action would have rendered Haitian imports into the United States liable to penalty duties here.

5. As soon as possible please take this matter up, orally and informally, with the Foreign Office, using as much of the foregoing as in your discretion you deem most effective, and endeavor to prevent the proposed discrimination against Haitian imports into France. Also at your discretion, you may point out that a very unfavorable impression would be created were France to discriminate against a small country like Haiti notwithstanding latter's willingness to accord most-favored treatment to French trade and merely for reason that Haiti would not agree to discriminate in favor of France against other countries.

KELLOGG

611.3831/28 : Telegram

The Chargé in Haiti (Merrell) to the Secretary of State

[Paraphrase]

PORT AU PRINCE, *July 26, 1926—9 a. m.*

[Received 4:45 p. m.]

76. After having received notification from France that maximum duties would be levied on Haitian products imported into France, Haitian Government and General Receiver of Customs made efforts to discover way to have minimum duties on Haitian products retained. Plan which seems to be acceptable to both parties is to conclude a convention terminating after three years unless it shall be renewed by mutual consent. Such a convention would provide that

[16] *Ante*, p. 405.
[17] 42 Stat. 858.
[18] Instruction not printed.

all the principal Haitian products should enter France with minimum duties applied, and that Haiti should allow a reduction of 33⅓ percent of prospective duties on wines, cognac, pharmaceutical specialties, perfumes, bicycles, and religious objects of French origin. Government of Haiti wishes the foregoing regime to begin on provisional basis with no delay following termination of the present convention on July 27, as expectancy is that by that date the new tariff will have been voted, and even a short period within which maximum duties would be levied on Haitian coffee entering France is undesirable. Tariff preferences indicated above would apply equally to similar products from the United States as soon as *modus vivendi* comes into effect.

The arrangements with France as outlined above are recommended for Department's approval by both this Legation and the General Receiver of Customs as they constitute a great improvement over existing regime and as they will expire in three years except with prior approval of Department. If Department perceives any objection to any feature of the plan, please advise me before July 27.

MERRELL

611.3831/28 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

[Paraphrase]

WASHINGTON, *July 27, 1926—2 p. m.*

51. Your telegram No. 76, July 26, 9 a. m. Department is not disposed to offer any objection to proposed convention between France and Haiti.

Department hopes, however, that terms of the convention will not preclude its generalization to other nations besides the United States with which Government of Haiti may conclude most-favored-nation agreements, as such preclusion would be contrary to the policy of the universal most-favored-nation treatment which the Government of the United States strongly favors.

KELLOGG

638.5131/13 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *July 29, 1926—noon.*

[Received July 29—11: 58 a. m.]

300. Your 193, July 14, 7 p. m. Foreign Office has informed me that negotiations are still continuing for a new commercial treaty between France and Haiti, and that French Government is hopeful that

a satisfactory agreement will be reached.[19] In the meantime, the French do not propose to apply the maximum duty on Haitian coffee, provided that Government of Haiti continues the present favorable treatment of products of France. The French feel that Haiti's new tariff is very high and they want a definite treaty arrangement whereby substantial reductions will be made in rates on certain articles of interest to France.

The French take the position that they are not asking for discrimination against other countries in their favor and they perceive nothing in their demands which is inconsistent with Haitian principle of most-favored-nation treatment. They understand that reductions in rates extended in regard to certain articles would be extended to other countries which have most-favored-nation treaties with Haiti.

HERRICK

PROMISE BY THE UNITED STATES NOT TO RAISE CERTAIN OBJECTIONS TO THE CLAIMS AGREEMENT BETWEEN FRANCE AND HAITI, SIGNED JUNE 12, 1925

438.00/352

The High Commissioner in Haiti (Russell) to the Secretary of State

No. 628 PORT AU PRINCE, *October 5, 1925.*

[Received October 17.]

SIR: I have the honor to forward herewith, for the Department's information, a copy and translation of Agreements entered into between the Republic of Haiti and the Republic of France, under dates of August 11, 1923,[20] and June 12, 1925,[21] as well as a translation of a note of transmittal from the Secretary of State for Foreign Relations[22] and Mr. George R. Merrell's reply thereto.[23]

After careful consideration, I have addressed a note to the Secretary of State for Foreign Relations on this subject, copy attached. It is my understanding that the Department of State has arranged with the Governments of Great Britain, France, Italy and Germany, that during the consideration of their respective claims the Financial Adviser will appoint, as the third member of the Claims Commission, a person selected by the Government concerned.

It is further my understanding that the French Government, through its Embassy in Washington, has agreed to submit all French claims originating prior to May 3, 1916, to the Claims Commission

[19] A convention between France and Haiti was perfected and signed July 29, 1926; *British and Foreign State Papers*, vol. CXXIV, p. 420.

[20] Agreement of Aug. 11, 1923, not printed; for correspondence concerning this agreement, see *Foreign Relations*, 1923, vol. II, pp. 400–411 *passim*.

[21] Agreement of June 12, 1925, printed as enclosure 1, *infra*.

[22] Note of July 27, 1925; no copy attached to file.

[23] Not printed.

with the proviso that either the French or Haitian Government has the right to appeal from the decision of the Claims Commission to the Arbitral Tribunal in the case of French claims originating prior to September 10, 1913, and furthermore that claims originating after May 3, 1916, may be submitted to the Arbitral Tribunal in accordance with the Franco-Haitian Agreement of September 10, 1913.[24]

The question arises as to whether all verifications by the Claims Commission of obligations, in any manner other than by the Treaty,[25] is not a direct violation of Article VII of the Treaty—a violation that might harmfully affect the security of the Loan. Where claims have been disallowed in whole or in part by the Claims Commission and then allowed on appeal, Haiti's outstanding obligations are effectively increased by extra-Treaty machinery and the bondholders might have substantial grounds for protest that Haiti's credit is being jeopardized thereby, and that that was not reasonably within the contemplation of those who advanced the money to place Haiti on a sound financial basis.

Apart from the question of conflict with the terms of the Treaty of 1915 and the Protocol of 1919,[26] the enclosed Agreements have not been placed before the Council of State, or published in the *Moniteur*, and it is therefore, my opinion that they are entirely ineffective.

I have [etc.] JOHN H. RUSSELL

[Enclosure 1—Translation]

Franco-Haitian Claims Agreement, Signed June 12, 1925

The Undersigned:

His Excellency Mr. Leon Dejean, Secretary of State for Foreign Relations of the Republic of Haiti,

His Excellency, Mr. Gaston Velten, Envoy Extraordinary and Minister Plenipotentiary of the French Republic,

Duly authorized by their respective Governments,

Have agreed to modify as follows the Accord signed August 11, 1923, for the settlement of French claims by the Claims Commission, it being understood that until the present Accord has been ratified by the French Government, the Accord of August 11, 1923, will remain in force.

I

All claims of French nationals or protegees based on facts prior to May 3, 1916, will be submitted, whether officially by the Legation of France or such person as may be designated for that purpose, or by the interested parties themselves or their duly authorized repre-

[24] *British and Foreign State Papers*, vol. CVII, p. 792.
[25] Treaty of Sept. 16, 1915; *Foreign Relations*, 1915, p. 449.
[26] *Ibid.*, 1919, vol. II, p. 347.

sentatives, to the Claims Commission constituted by Article 2 of the Protocol signed October 3, 1919, between the Haitian Government and the Government of the United States.

The claims presented up to the date of May 3, 1916, by the Legation of France to the Haitian Government, in the name of Turkish subjects or those enjoying Turkish nationality prior to the War of 1914–1918, shall likewise be turned over to the aforesaid Commission constituted as hereinbefore indicated. The individuals appearing in list A hereto annexed [27] are recognized as enjoying such protection. Those whose names may have been omitted by mistake will have the right to receive from the Legation of France, at any stage of the proceedings, a certificate of protection.

During the period while these claims are being examined, the third member of the commission will be designated, on the nomination of the French Government, and appointed like the others by the President of Haiti.

II

The Haitian Government and the French Government reserve the absolute right to submit, if there is need, to an arbitral tribunal constituted in conformity with the Franco-Haitian Convention of September 10, 1913, the claims prior to September 10, 1913, enumerated in the list (list B), the settlement of which by the Claims Commission does not appear to them to be satisfactory.

In that which concerns claims after 1913, the French Government reserves the absolute right to have recourse through diplomatic channels, in order to secure the revision of sentences which may not have been unanimous, or which may have been made subject to reservations on the part of one of the members of the Commission.

The Haitian Government shall have the same right in case of the reserve of the Haitian member in the manner and under the conditions hereinbefore expressed.

III

Whenever there is need for revision of sentences rendered on claims prior to 1913, the notification of the declaration of appeal must be sent, either by the Haitian Government to the Legation of France in Port au Prince, or by the Legation of France in Port au Prince to the Department of Foreign Relations within a period of six months beginning from the notifications of the sentence.

The Government which should not have appealed within this period should be considered as accepting the decision of the Claims Commission.

[27] There are no lists attached to file copy.

The acceptance by the claimants of the certificate of payment and the payment by the State of the indemnity allowed by the Claims Commission will be effective for the two Governments as a renunciation of the right of appeal.

IV

The two Governments undertake to designate their respective representatives to the arbitral tribunal of appeal within three months following the closing of the examination of the French claims. This tribunal will be convened after agreement between the Secretary of State of Foreign Relations of Haiti and the Minister of France at Port au Prince, when these two deem the number of appeal cases sufficient, and at the latest six months after closing of the examination by the Commission, of the claims of French citizens and protegees.

V

The procedure to be followed by the Claims Commission for the examination of claims of French nationals or protegees remains that fixed by Article 4 of the Protocol of October 3, 1919, completed by the regulations of the commission of February 6, April 14, and August 21, 1923, insofar as these regulations are not in conflict with the present Accord.

VI

The procedure to be followed by the arbitral tribunal of appeal is fixed by Articles 3, 4, 5, 6, and 7 of the Franco-Haitian Convention of September 10, 1913.

VII

The fees incurred by the constitution and operation of the arbitral tribunal of appeal will be borne in equal shares by the two governments.

VIII

The (Haitian) Government engages itself to carry out the sentences rendered by the arbitral tribunal of appeal in the conditions prescribed by Article 5 of the Protocol of October 3, 1919, in payment of the amount of the claims accepted by the Claims Commission, after the same delays.

IX

As to the French claims already settled in principal, after regular procedure, they will not be subjected to any revision.

These are the following settled by the arbitral tribunal:

(*a*) Lasalle (Gaston), awarded in the sum of 3,000 dollars;
(*b*) Barthe (Justin), awarded in the sum of 1,100 dollars;
(*c*) Clovis (Auguste), rejected.

The claim of Semexant Rouzier, provided for in the Accord of August 11, 1923, has already been settled.

X

It is necessary to increase the amount of the claims mentioned in the preceding article by interest at six per cent per year from the date of the sentence, in conformity with paragraph 2 of Article 8 of the Franco-Haitian Convention of September 10, 1913, and on account of the diplomatic character of these debts, no prescription can be presented against the claimants.

XI

From the time when the French member shall take his place on the Claims Commission, the latter will keep in the files of the respective awards in the office of its secretary, whether at the diligence of the French legation or of the claimants, or at that of the Haitian government, the certificates of payment respecting the claims provided for in Article 9. These certificates of payment will be immediately satisfied by the Haitian Government, under the conditions and according to the method agreed upon in the Protocol of October 3, 1919, and through the decision of the Claims Commission, which must bind itself to fix the amount of interest due since the date of the Original sentence until its award, and to indicate the proportion of bonds and of money due each claimant.

XII

In order to avoid all loss of time and useless expense to the Haitian Government, it is agreed that the claims of French citizens or protegees, which may give rise to hearings outside of Port au Prince, may be called for hearing by the present composition of the Claims Commission, and without waiting for the French session, along with all other cases which necessitate the transfer of the commission. In addition, it remains well understood that the Commission as now constituted must bind itself to proceed with hearings deemed necessary, and that the final sentences will not be rendered until the French member sits, in such manner as not to bring any prejudice to the rights of French citizens and protegees as are determined by the present Accord, subject to the claimants' acceptance, formally and in writing, of the present composition of the Claims Commission.

XIII

The Haitian Government engages itself immediately to notify the Claims Commission of the integral text of the present Accord in order to allow it sufficient time for all decisions on this matter.

XIV

Awards made by the Claims Commission on claims submitted by French nationals or protegees outside of the time fixed for the examination of French claims and after they have formally accepted the present composition, are definitive.

XV

The Haitian Government, in conformity with the French Government's request, agrees that the awards referred to in Article 5 of the Protocol of October 3, 1919, may be issued in the name of the Legation of France, for the account of the claimant.

In consequence, the certificate recording the decision of the Claims Commission will be sent to the French Legation and the payment of the award which shall have been made to it, will serve as a complete and final discharge of the Haitian Government, as well as of the members of the Claims Commission.

The French Government agrees at all times to take into consideration attachments which may have regularly been made against amounts allowed to claimants.

XVI

The French delegate to the Claims Commission will receive from the Haitian Government the pay and allowances prescribed by Article 9 of the Protocol of October 3, 1919, for the period of the examination of the claims of French citizens and protegees and proportionally to the duration of such period.

XVII

The following two French claims, based on facts subsequent to May 3, 1916, will be submitted to the examination of the arbitral tribunal provided for in paragraph 2 hereinabove, a tribunal which will judge in each case in first and final resort, that is to say:

(*a*) Claims by Mr. Charles Jean, Assyrian dependent of France, of an indemnity in reparation of damages caused on his property at Maissade during the political troubles in February 1919;

(*b*) Claim by Mr. Lavaury (Francois), French, for an indemnity in reparation of damages caused to his dwelling at Port au Prince during political troubles in January 1920.

In the case where, through failure of requests for revision or for any other reason, the arbitral tribunal provided for in Article 2 hereinabove does not meet, the two governments agree to submit these two claims to the arbitration of a special tribunal constituted under the same conditions and which will meet within the period prescribed in Article IV hereinabove.

The claim of the commercial firm called the Comptoir Francaise, provided for in the Accord of August 11, 1923, has already been paid.

Done at Port au Prince, June 12, 1925.

For France: G. VELTEN

For the Republic of Haiti: LÉON DEJEAN

[Enclosure 2]

The American High Commissioner (Russell) to the Haitian Secretary of State for Foreign Affairs (Dejean)[29]

PORT AU PRINCE, *October 5, 1925.*

EXCELLENCY: With reference to Your Excellency's letter of July 27, 1925, addressed to the American Chargé d'Affaires a. i. and transmitting a copy of the Agreement of June 12, 1925, between Your Excellency's Government and that of the Republic of France, and with reference to Mr. Merrell's reply of August 11, 1925, in which he had the honor to inform you that the matter would be brought to the attention of my Government and myself, I have the honor to advise Your Excellency that after having carefully read the Agreement, I should like to make the following observations thereon:

I understand that the objects of this Agreement, as well as of the Agreement of August 11, 1923, are, first, that all French claims should be submitted to the Claims Commission and, second, that French claims originating prior to September 10, 1913, might, at the request of either the Haitian or the French Government, be appealed from the decision of the Claims Commission to the Arbitral Tribunal authorized by the Agreement between Haiti and France of September 10, 1913.

Insofar as the Agreements under discussion relate to claims arising after May 3, 1916, they do not appear to be in conflict with the Protocol of October 3, 1919. The following points of conflict with the Protocol, however, should be remarked:

(*a*) Article II of the Protocol provides that the third member of the Claims Commission shall be nominated by the Financial Adviser and appointed by the President of Haiti, whereas, the Agreement between Haiti and France purports to give the French Government the

[29] This enclosure was actually transmitted to the Department by the High Commissioner in Haiti with his despatch No. 645, Nov. 3, 1925 (file No. 438.00/356).

right to nominate a third member. It would appear obvious that such an Agreement could not affect the provisions of the Protocol between the United States and Haiti.

(*b*) Article V of the recent Agreement recognizes Article IV of the Protocol, but this recognition is qualified by the clause stating that the rules of procedure of the Claims Commission may not conflict with the provisions of the Agreement. Inasmuch as one of the fundamental rules of procedure adopted by the Claims Commission is its authority to fix the time after which claims may not be filed, the French Government might easily question the foreclosure of claims in default, especially if any such claims are presented by those whose names are included in List A.[32]

(*c*) At the end of the second paragraph of Article I of the Agreement of June 12, 1925, it is provided that all the individuals whose names appear on a list attached are admittedly French nationals or protegees, and that the list may be added to at will by France. The question of citizenship or wardship would seem to be one with respect to which it would be peculiarly within the jurisdiction of the Claims Commission to decide, particularly as it is the evident aim of the two Agreements to secure favorable discrimination in favor of French citizens or protegees as distinguished from all others. This provision will be effective to estop the Claims Commission from considering evidence as to nationality.

The provisions of Article VIII of the Agreement would appear to be in conflict with those of Articles V, VI, and VII of the Protocol. The question arises whether Your Excellency's Government may, by agreement with a government other than that of the United States, obligate funds of the Haitian State derived from the Treaty of September 17 [*16*], 1915.

With reference to Article X, it would appear that the entire question of interest is a matter for the Claims Commission to determine in rendering its decisions.

The provisions of Articles XI, XV, and XVI seem to be quite inapropos. The Claims Commission was provided for by the Treaty of 1915 and the Protocol of 1919, entered into between the United States and Haiti, and it does not appear that the functions or powers of this Commission can be altered by an Agreement entered into between Haiti and another nation.

The claims contemplated in Article XVII, not coming under the jurisdiction of the Claims Commission might properly be submitted to an Arbitral Tribunal, but it would seem expedient and appropriate that an endeavor first be made to settle them through the ordinary diplomatic channels.

Finally, it may be stated that the text of the bonds themselves, as well as that of the loan contract, both contain an express provision

[32] A list of French protégés, of actual or former Ottoman nationality, for whom provision was made in art. I of the agreement of June 12, 1925.

that the loan is "in pursuance of the Treaty, concluded September 16, 1915, between the Republic of Haiti and the United States of America, as extended by the additional act of March 28, 1917,[33] and in conformity with a Protocol executed in pursuance thereto, on October 3, 1919, as modified and confirmed by an exchange of notes between the two governments, dated June 1, 1922, and June 8 [*3*], 1922, respectively".[34] Article VII of the Protocol provides that the loan will be used to pay or otherwise provide for obligations specifically mentioned and the awards rendered by the Claims Commission provided for in the Protocol. The surplus is then returned to the Government for use in construction of necessary public works and in the service of the loan. It thus appears that there is no authority for the payment from the proceeds of the loan, awards made by virtue of the Haitian-Franco Agreement of June 12, 1925.

Accept [etc.] [File copy not signed]

438.00/360 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *December 9, 1925—9 a. m.*

[Received December 10—9 : 55 a. m.]

76. Referring to my telegram No. 74 of December 5, 4 p. m.[35] Minister of Foreign Affairs states that French-Haitian Agreement of 1923 was discussed between the two Governments at Washington under the supervision of Department of State and that his understanding is that Department approved. He adds that the 1925 agreement has but slightly changed the 1923 agreement. Judge Strong[36] informs me that in his opinion the agreement is in conflict with the protocol of 1919 and that modifications in the protocol can only be made by the United States becoming a party to the agreement and its being approved by the Council of State. The protocol of 1919 was approved by the Council of State in the loan law of 1922.[37]

In view of the above I request the Department's instructions.

RUSSELL

[33] *Foreign Relations*, 1917, p. 807.

[34] See the Department's instruction No. 2, Apr. 1, 1922, to the High Commissioner in Haiti and the latter's telegram No. 61, June 3, 1922, to the Department, *ibid.*, 1922, vol. II, pp. 488 and 496.

[35] Not printed.

[36] Richard U. Strong, legal adviser to the High Commissioner in Haiti.

[37] *Foreign Relations*, 1922, vol. II, p. 500.

438.00/363 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

WASHINGTON, *January 18, 1926—9 p. m.*

3. For General Russell. Department's telegram No. 1, January 13, 6 p. m.[38] The Department contemplates making following observations to the Haitian Minister regarding Franco-Haitian claims Agreement of 1925:

1. Article I. No objection is taken to that portion of this Article which reads "the third member of the Commission will be designated, on the nomination of the French Government, and appointed like the others by the President of Haiti", provided it be understood that said member of the Commission shall be designated by the Financial Adviser of Haiti in conformity with the terms of the Protocol of October 3, 1919.

2. Article V. This Article to remain as it is subject to the understanding that the concluding phrase implies no departure from the procedure established by Article IV of the Protocol of October 3 1919. It is however the view of the Department of State that the phrase referred to, i. e. "insofar as these regulations are not in conflict with the present accord" should be deleted, inasmuch as its retention would give the appearance at least of according French claims a preferential status.

3. Article I, paragraph 2. It being understood that the settlement of all existing claims against Haiti of whatever nationality and by whomsoever presented was one of the primary objects of the Treaty of 1915 and the Protocol of October 3, 1919, between Haiti and the United States, no objection will be interposed to this Article, which, however, may be referred to in exchange of notes below mentioned.

4. Article VIII. No objection is had to this Article. It is understood however that, as this provision involves the question whether the Haitian Government may by an agreement with a Government other than that of the United States, obligate funds of the Haitian State derived from the Treaty of September 16, 1915, and the Protocol of October 3, 1919, an exchange of notes on the subject between the Haitian and United States Governments is necessary.

5. Article X. No objection to this Article which reaffirms Article VIII of the Franco-Haitian Protocol of 1913 relating to the payment of interest on certain awards rendered under the terms of the agreement.

6. Article XI. Substitute Article suggested:

"The certificates of payment respecting the claims referred to in Article IX of this Agreement may be presented to the Haitian Government by the French Legation or by the claimants and these certificates shall be paid by the Haitian Government as soon as possible under the conditions and according to the method agreed upon in the Protocol of October 3, 1919".

7. Article XV. On the distinct understanding that all French claims have been or will be submitted to the Commission through the

[38] Not printed.

French Legation and not by the individual claimants, the Department will not interpose an objection to this Article which provides that the French Legation at Port au Prince may collect the amount of the awards issued in favor of French claimants or claimants enjoying French protection. However, this Article may be referred to in exchange of notes above mentioned.

8. Article XVI. No objection is interposed to this Article.

9. Article XVII. No objection is had to this Article which provides for the submission of certain claims not coming under the jurisdiction of the Claims Commission to an Arbitral Tribunal composed in accordance with the Franco-Haitian Protocol of 1913.

Please telegraph briefly any comment you may desire to make concerning the foregoing. The Department has not found it possible to sustain certain of your original objections. In this connection refer to the Department's instruction to you No. 5, April 13, 1922, and telegram No. 103, November 4, 1922.[39]

KELLOGG

438.00/365 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *January 21, 1926—1 p. m.*

[Received January 22—10:14 a. m.]

8. Department's number 3, January 18, 9 p. m. Referring to article 15, over two hundred French claims have already been submitted to the Claims Commission by claimants and not through the French Legation. A large number of these claims originating during revolutionary periods have been heard by the Claims Commission as at present constituted, and with the approval of the French Legation, decisions to be rendered upon the French member taking seat as such. I suggest French Legation officially present to Claims Commission the entire list of French claims before February 15th, sponsoring claims presented by individual claimants.

It is my opinion that the Department's contemplated observations clear up the situation.

RUSSELL

438.00/365 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

WASHINGTON, *January 26, 1926—7 p. m.*

6. For General Russell: Your telegram January 21, 1 p. m. Department has handed informally to Haitian Minister a memorandum [40] containing observations set forth in its telegram No. 3,

[39] *Foreign Relations*, 1922, vol. II, pp. 535 and 542.

[40] Memorandum not printed.

January 18, 9 p. m. and a draft of proposed exchange of notes. Department will furnish substantially similar memorandum to French Embassy here and suggest formal presentation of French claims as recommended by you.

You should immediately bring the Department's observations to the attention of the Haitian Foreign Office and endeavor to obtain acceptance of suggested alterations and explanations. You may also, if you perceive no objection, discuss matters informally with the French Minister.

KELLOGG

438.00/367 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *January 30, 1926—2 p. m.*

[Received February 1—9:40 a. m.]

11. Department's 6, January 26, 7 p. m. Minister for Foreign Affairs has verbally informed me that he accepts suggested observations and explanations. At my [suggestion he is] informing Haitian Minister at Washington accordingly.

RUSSELL

438.00/367 : Telegram

The Secretary of State to the Chargé in Haiti (Merrell)

WASHINGTON, *February 3, 1926—4 p. m.*

8. For General Russell. Your telegram No. 11, January 30, 2 p. m. As agreement is now practically assured it appears advisable that a date be set for hearing French Claims. Even if agreement is not reached there would apparently be no objection to proceeding under Franco-Haitian agreement of 1923 pending definite solution of the present difficulties. French Embassy has approached the Department in the matter expressing hope that delay in accepting 1925 Agreement will not involve postponement of consideration of French claims. Report by telegraph.

KELLOGG

438.00/377

The Haitian Minister (Price) to the Secretary of State

[Translation]

WASHINGTON, *February 5, 1926.*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Haiti, has the honor to inform His Excellency the Secretary of State of the United States that he has received in-

structions from His Excellency the Secretary of State for Foreign Relations of Haiti to declare in the name of the Haitian Government that on June 12, 1925, an Agreement was concluded between the French and Haitian Governments relative to the pending French claims against Haiti, in which Agreement are found in particular the following stipulations:

(1) That persons whose names appear on an annexed list are recognized as enjoying French protection, and that those whose names may have been omitted by mistake may be given by the French Legation, at any stage of the proceedings, a certificate by which the recognition is made of such protection for them; and that during the time while the claims are under examination the Third Member of the Commission shall be appointed on the nomination of the French Government and commissioned as the others are by the President of Haiti; (Article 1).

(2) That the procedure to be observed by the Claims Commission, organized in accordance with the stipulations of the Protocol of 1919 between the United States and Haiti for the examination of the claims of French national protégés stands as fixed by article 4 of that Protocol and the existing regulations of the Commission insofar as the said regulations are consistent with the Franco-Haitian Agreement of 1925; (Art. 5).

(3) That in the case of judgments handed down by the Arbitrations Tribunal provided in the Agreement to take cognizance of claims appeals from the decision of the Claims Commission, organized in accordance with the provisions of the Protocol of 1919 between the United States and Haiti, the Haitian Government undertakes to carry out those judgments in accordance with the stipulations of the Protocol; (Art. 8).

(4) That the certificates of payment for the two French claimants mentioned under letters A and B of article 9 of the Franco-Haitian Agreement shall be immediately paid by the Haitian Government under the conditions and in the manner agreed in the Protocol of October 3, 1919, and by the decision of the Claims Commission which must confine itself to settling the amount of the interests due since the day of the original award up to its own decision, and to name the proportions of the securities in cash to be paid to each interested party; (Art. 11).

(5) That the decisions handed down by the Claims Commission in favor of the French nationals and protégés shall be given in the name of the French Legation for the account of the claimants, and that the certificates stating the decisions shall be delivered to the Legation; (Art. 15).

The undersigned has been further instructed by the Secretary of State for Foreign Relations of Haiti to declare in the name of the Haitian Government that it has received notice that in the opinion of the Government of the United States the foregoing stipulations in Articles 1, 5, 8, 11, and 15 of the said Agreement made between the French and Haitian Governments are not fully in accord with the stipulations of the Protocol of 1919.

It asks that the Government of the United States will not raise any question as to the parity between the Protocol and Articles 1, 5, 8, 11, and 15 of the Franco-Haitian Agreement of 1925.

In this respect it wishes to note with special reference to these articles that the intent of the Agreement, although it appears to give preference to French claims, is simply to acknowledge the said claimants to hold certain rights and privileges sanctioned by the stipulations of the Franco-Haitian Agreement of 1913.

Done in Washington, February the Fifth, One Thousand Nine Hundred and Twenty-six.

H. PRICE

438.00/352

The Secretary of State to the Haitian Minister (Price)

WASHINGTON, *February 9, 1926.*

The undersigned Secretary of State of the United States of America has the honor to acknowledge the note of February 5, 1926, of the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Haiti, stating that he has been instructed by the Minister for Foreign Affairs of Haiti to say on behalf of the Haitian Government that it has entered into an agreement with the Government of France respecting the claims of French nationals and protegés against Haiti, which contains the following provisions:

(1) That the individuals whose names appear on an attached list shall be recognized as enjoying French protection and that certificates of the French Legation at Port-au-Prince shall be recognized as entitling individuals whose names were omitted from this list to such protection; and that during the period while the claims of French nationals and protegés are being examined the third member of the commission will be designated on the nomination of the French Government and appointed, like the others, by the President of Haiti (Article I); and

(2) That the procedure to be followed by the Claims Commission, constituted under the provisions of the protocol of 1919 between the United States and Haiti, in the examination of French claims shall be that fixed by Article 4 of the protocol and the existing regulations of the Commission, insofar as such regulations do not conflict with the provisions of the French-Haitian agreement referred to (Article V); and

(3) That with respect to the awards made by the arbitral tribunal contemplated in the agreement to pass upon claims on appeal from the decision of the Claims Commission, constituted under the provisions of the protocol of 1919 between the United States and Haiti, the Government of Haiti will satisfy such awards in accordance with the provisions of the protocol relative to awards by the Claims Commission in question (Article VIII); and

(4) That the certificates of payment of the two French claimants mentioned under (*a*) and (*b*) of Article IX of the French-Haitian agreement will be immediately satisfied by the Haitian Government, under the provisions of the protocol of 1919 and through the decision of the Claims Commission, which will fix the amount of interest due on each award computed to its date from the date of the award given in favor of the claimants by the French-Haitian tribunal under the arbitral agreement of 1913, and indicate the proportion of bonds and of money due each claimant (Article XI); and

(5) That awards made by the Claims Commission in favor of French nationals or protegés may be issued in the name of the Legation of France for the account of the claimants and the certificates representing such awards sent to the French Legation (Article XV).

The note further states that it has been called to the attention of the Government of Haiti that the provisions before referred to as contained in the French-Haitian agreement are considered by the Government of the United States as not entirely in accord with the provisions of the protocol mentioned and that the Government of Haiti desires to request the consent of the Government of the United States not to raise a question of any such lack of accordance as may exist, and in this connection states, with particular reference to the before mentioned provisions of Articles V, VIII and XI of the agreement, that the intent of the agreement, so far as it may appear preferential as to French claimants, is merely to give to such claimants certain rights and privileges to which they are entitled under the provisions of the French-Haitian arbitral agreement of 1913.

Recognizing that the primary purpose of the protocol in question is to bring about the settlement of all pecuniary claims of whatsoever nationality pending May 3, 1916 against Haiti; and recognizing, also, that to effect the above-mentioned primary purpose of the protocol it was apparently necessary for the Haitian Government to make special provision respecting the claims of French citizens since an existing agreement between France and Haiti made in 1913 but never fully carried out provides for an arbitral tribunal to pass upon claims, and relying upon the statement of the Haitian Government that the intent of the French-Haitian agreement of 1925, so far as it may appear preferential as to French claimants, is merely to give such claimants certain rights and privileges to which they are entitled under the provisions of the French-Haitian arbitral agreement of 1913, and understanding, further, that the third member of the Commission designated by the French Government will be so designated to the Financial Adviser of Haiti, whose province it shall be to nominate such member, in accordance with the provisions of the protocol of October 3, 1919, and that all claims of French nationals or protegés have been or will be presented to the Claims Commission not by the individual claimants, but by the French Legation, the United States agrees not to

raise a question as to any lack of accordance between the above-mentioned provisions of Articles I, V, VIII, XI and XV of the French-Haitian agreement referred to and the protocol of 1919 between the United States and Haiti.

The undersigned, the Secretary of State of the United States, avails himself [etc.]

FRANK B. KELLOGG

438.00/352

The Secretary of State to the French Ambassador (Bérenger)

WASHINGTON, *February 11, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of January 30, 1926,[41] in further relation to the agreement concluded June 12, 1925, by the Governments of France and Haiti regarding the procedure to be followed in submitting the claims of French citizens and protegés to the Claims Commission constituted in accordance with the Treaty of September 16, 1915, and the Protocol of October 3, 1919, between the United States and Haiti.

In this connection I take pleasure in enclosing for the information of your Government a copy of a note addressed to me by the Minister of Haiti on February 5, 1926, and a copy of my note in reply thereto, dated February 9, 1926,[41a] from which it will be noted that this Government has indicated that it will interpose no objection to the provisions of the agreement beforementioned. This would appear to preclude the possibility of any question arising that might involve a delay in the presentation to the Commission of claims of French citizens and protegés. I may say, however, that prior to the exchange of notes above referred to information was received from the American High Commissioner at Port au Prince indicating that the hearing of French claims by the Commission would not be delayed. It is understood that consideration of these claims will be undertaken after the 15th of this month, but that it is impossible yet to fix a definite date for the commencement of the hearings.

Accept [etc.] FRANK B. KELLOGG

438.00/382

The High Commissioner in Haiti (Russell) to the Secretary of State

No. 718 PORT AU PRINCE, *February 23, 1926.*

[Received March 3.]

SIR: I have the honor to report that the Secretary of State for Foreign Affairs of the Haitian Government, informs me that in view

[41] Not printed.

[41a] Notes printed *supra*.

of the recent exchange of notes between the Haitian Minister at Washington and the Department of State, the Claims Commission has been informed of the provisions of the Haitian-French Agreement of June 12, 1925, for the regulations of the claims of French citizens and those under French protection. He also informs me that the above named agreement was sanctioned by the National Assembly in the session of February 17, 1926.

I have [etc.] JOHN H. RUSSELL

SUPPORT BY THE UNITED STATES OF HAITIAN REFUSAL TO ARBITRATE WITH FRANCE THE QUESTION OF PAYING INTEREST IN GOLD ON GOLD LOAN OF 1910[42]

838.51/1865

The French Ambassador (Bérenger) to the Secretary of State

[Translation]

WASHINGTON, *February 16, 1926.*

MR. SECRETARY OF STATE: In two notes dated July 11 and November 30 last,[43] my predecessor had the honor to bring to Your Excellency's attention the question of the arbitration asked for by the Bank of the Union Parisienne in connection with the redemption of the five percent Haitian Gold Loan of 1910.

As no answer was returned to those two notes, my Government wishes me to urge again upon the Federal Government an early settlement of this matter. As remarked by Mr. Daeschner in his last communication, my Government thinks that when it asks for an arbitration that is provided for in terms by the contract of issue, the Union Parisienne is not asking a favor but demanding the exercise of a right.

Be pleased [etc.] HENRY BÉRENGER

838.51/1865

The Secretary of State to the French Ambassador (Bérenger)

WASHINGTON, *March 26, 1926.*

EXCELLENCY: I have the honor to refer to Your Excellency's note of February 16, 1926, and to the several previous communications of your predecessor regarding the desire of your Government that the United States make representations to the Government of Haiti with a view to inducing the latter to agree to submit to arbitration the question whether the Haitian five percent loan of 1910 is payable in gold francs or in francs of current circulation.

I regret that it has not been possible for me sooner to communicate to you the decision of the Department in this matter. The delay has

[42] Continued from *Foreign Relations*, 1925, vol. II, pp. 308–315.
[43] Neither printed.

not been caused by any neglect of the requests of your Government. On the contrary, it has been due to my wish to have the question carefully reviewed from the beginning in a conscientious effort to find, if possible, a way to meet the views of the French Government, the frequency and insistency of whose communications on this subject to the Department of State have clearly indicated the importance attached by your Government to the present issue between the Bank of the Parisian Union and the Republic of Haiti.

As indicated in the correspondence which has been exchanged in this case, two principal questions have been under consideration, first, the fundamental question whether the 1910 loan is payable in francs of current circulation or on a gold basis, and, second, whether the Bank of the Parisian Union has the right under the loan contract to demand the arbitration of the first question.

The Department's reexamination of these questions has now been concluded and I regret to state that the Department cannot modify the views expressed in its note of May 7, 1925,[44] to the effect that in its opinion the position taken by the Haitian Government that the loan was payable at the current rate of the franc and not in gold was, in all the circumstances, a sound one.

The question of the applicability as between the Bank of the Parisian Union and the Haitian Government of the arbitration clause of the 1910 loan contract is one that the Department has reexamined with peculiar sympathy, not only because of the importance attached thereto by your Government, but also because of the traditional position of the Government of the United States in favor of arbitration wherever arbitration can properly be invoked. I am bound, however, to point out that in this matter the United States is not dealing with its own interests, but is only asked to give advice to the Government of Haiti; and that in these circumstances, the Department manifestly is confined to a consideration of the actual terms of the contract entered into by the Government of Haiti. A careful examination of the 1910 loan contract as a whole, and of the arbitration clause in particular, does not satisfy the Department that the Bank of the Parisian Union is entitled to invoke the arbitration provisions of the contract in respect of the subject matter of the present dispute. I am, therefore, constrained to state that this Government can not properly advise the Government of Haiti that it should agree to submit to arbitration the pending difference of opinion between that Government and the Bank of the Parisian Union on the question whether the 1910 loan is payable in francs of current circulation or in francs valued on a gold basis.

Accept [etc.] FRANK B. KELLOGG

[44] *Foreign Relations*, 1925, vol. II, p. 310.

838.51/1865

The Secretary of State to the High Commissioner in Haiti (Russell)

No. 298 WASHINGTON, *April 1, 1926.*

SIR: The Department encloses, for your information, a copy of its note of March 26, 1926, to the French Embassy [45] relating to the desire of the French Government that the United States make representations to the Government of Haiti with a view to inducing the latter to agree to submit to arbitration the question whether the Haitian five per cent loan of 1910 is payable in gold francs or in francs of current circulation.

I am [etc.]

For the Secretary of State:
ROBERT E. OLDS

838.51/1908

The French Chargé (Sartiges) to the Secretary of State

[Translation]

WASHINGTON, *June 28, 1926.*

MR. SECRETARY OF STATE: I did not fail to forward to my Government the note which Your Excellency was pleased to send to Mr. Bérenger on March 26, last, with respect to the Haitian 5 percent gold loan of 1910.

In reply to the communication which I had sent in that connection, my Government wishes me to renew to Your Excellency the following arguments in respect to the objections made by you.

While it is true on the one hand that the issuing contract was made between the Haitian Government and a group of four banks, the fact remains that under Article 32 [46] the other three banks gave to the Union Parisienne full power to take alone every measure needful for the execution of the contract. This is an actual power of attorney which now makes it possible for the French bank to act alone.

On the other hand, Your Excellency maintains that in the opinion of the State Department the position taken by the Haitian Government in that the loan is payable at the current rate in franc and not in gold is, under the present circumstances, correct. My Government is inclined to think that that argument confounds the merits and the jurisdiction in the case. The question of the currency for the payment is a question of merits. Even if the bank's standpoint in this respect is groundless, that standpoint being in conflict with that of

[45] *Supra.*

[46] Of the loan contract; text printed in *Le Moniteur*, Oct. 26, 1910, p. 608.

the Haitian Government creates a difference concerning the execution of the contract which, under Article 30, must be referred to arbitrators. In any event, if the Haitian Government believes that this is not a case for arbitration, it will be at liberty so to maintain to the arbitrators who will decide on the strength of Article 30.

Under those conditions, my Government can only continue upholding the justice of the demand for arbitration presented by the Bank of the Union Parisienne.

Be pleased [etc.] SARTIGES

838.51/1908

The Secretary of State to the French Chargé (Sartiges)

WASHINGTON, *July 31, 1926.*

SIR: I have the honor to acknowledge the receipt of your note of June 28, 1926, with further reference to the desire of your Government that the United States make representations to the Government of Haiti with a view to inducing the latter to agree to submit to arbitration the question whether the Haitian five per cent loan of 1910 is payable in gold francs or in francs of current circulation.

The Department has given careful consideration to the further arguments submitted by you in support of your Government's contention that the Bank of the Parisian Union has the right under the loan contract to demand arbitration of the question at issue. I regret to say that the Government of the United States must adhere to the decision communicated to you in the Department's note of March 26, to the effect that it cannot properly advise the Government of Haiti that it should agree to submit to arbitration the pending difference of opinion between it and the Bank of the Parisian Union as to whether the 1910 loan is payable in francs of current circulation or in francs valued on a gold basis.

Accept [etc.] FRANK B. KELLOGG

838.51/1944

The French Chargé (Sartiges) to the Secretary of State

[Translation]

WASHINGTON, *December 23, 1926.*

MR. SECRETARY OF STATE: I did not fail to forward to my Government the substance of the letter which Your Excellency kindly sent me on July 31 last concerning the difference between the Haitian Government and the Parisian Bank concerning the service of the 5 percent gold loan of 1910.

In reply to that letter my Government can only adhere to its former statements, namely, that the Federal Government confuses the question of merit with that of jurisdiction. It does not appear, indeed, for the present, that the question be whether, as the Federal Government seems to admit, the Haitian Government is in the right when it refuses to effect the service of its loan in gold, but merely to point to the judicial authority that will be called upon to say what that right is. The contract of issue clearly states that an arbitration shall decide any dispute that may arise in connection with the execution of the contract. The dispute exists as a matter of fact and this is acknowledged in Your Excellency's above-mentioned letter, and the French Bank is, in the opinion of my Government, fully warranted in demanding that it be decided by arbitration.

However, taking into account the opinion to the contrary advanced by the Federal Government, my Government instructs me to propose to Your Excellency that the previous question as to whether under the loan contract there is really occasion for arbitration be referred to an arbitrator. Only if that arbitrator, who might be selected from among the jurists of the International Court of Justice, should answer that question in the affirmative, would there be occasion to refer the merits of the case to arbitration.

My Government trusts that the Federal Government will not refuse to agree to that proceeding.

Be pleased [etc.] SARTIGES

838.51/1944

The Secretary of State to the French Chargé (Sartiges)

WASHINGTON, *February 1, 1927.*

SIR: I have received your note of December 23, concerning the differences between the Haitian Government and the Bank of the Parisian Union with regard to the service of the five per cent gold loan of 1910. You say, with reference to the Department's note of July 31, last, that your Government can only adhere to its former statements, and you add that it does not appear for the present that the question to be determined is whether the Haitian Government is in the right when it refuses to effect the service of its loan in gold but rather to indicate what judicial authority should be appealed to for a decision on this question. You say further that your Government has instructed you to propose that the previous question as to whether under the loan contract there is occasion for arbitration be referred to an arbitrator and that only if that arbitrator should answer this question in the affirmative would there be occasion to refer the case to arbitration.

In reply I can only refer you again to the Department's note of March 26, 1926, in which the Department set forth at length the rea-

sons which impelled it to decide that it could not properly advise the Government of Haiti to agree to submit to arbitration the pending difference of opinion between it and the Bank of the Parisian Union. This decision was reached by the Department after a very careful examination of the questions involved and was based upon the Department's conclusion that the Bank of the Parisian Union is not entitled to invoke the arbitration provisions of the 1910 loan contract in respect of the subject matter of the present dispute. The matter has been re-examined by the Department in the light of your suggestion of December 23, 1926, and I regret to inform you that the Department cannot see its way under the circumstances to advise the Government of Haiti to submit to arbitration the question whether its dispute with the Bank of the Parisian Union should be submitted to arbitration.

Accept [etc.] FRANK B. KELLOGG

BOUNDARY DISPUTE WITH THE DOMINICAN REPUBLIC

(See volume I, pages 543 ff.)

HONDURAS

AMENDS BY THE GOVERNMENT OF HONDURAS FOR VIOLATION OF THE AMERICAN CONSULAR PREMISES AT CEIBA

815.00/3998 : Telegram

The Vice Consul at Ceiba (Evans) to the Secretary of State

CEIBA, *October 28, 1926—7 p. m.*

[Received October 29—12:17 p. m.]

I have the honor to report that in the early morning following the midnight revolt of the Ceiba garrison October 26th I was begged by the Governor of this Department, who was the only existing authority at Ceiba, to lend good offices and aid him to save the city from fire and bloodshed. Subsequently the Governor offered Duron, the leader of the revolted garrison, guarantees for his life if he prevailed upon his men to disperse and disarm and turn over Ceiba to the authorities. Duron accepted upon the condition that I would take him into my personal custody pending receipt of instructions from the President of Honduras concerning his disposition. Duron remained in my personal custody and yesterday both the Governor and the commandant requested and authorized me to retain Duron in my private apartment until the President of Honduras could reply to radiogram sent to him last evening by the Governor explaining the arrangement the Governor had made with Duron and requesting President to make good the guarantee of Duron's life. No reply was received but this afternoon about 4 o'clock the *mayor de plaza* lined approximately 100 soldiers in the street in front of the consulate while others surrounded on all sides and from outside veranda door of the consulate. He demanded that Duron be delivered to him but without showing any order from the President or other authority but stating that he acted upon his own account as *mayor de plaza.* In view of the presence of armed forces on the open veranda before the consulate I told Duron to leave his room and give himself up to the soldiers whereat excusing himself a minute he shot himself in the head and was carried out on veranda and subsequently died. *Mayor de plaza* was extremely insolent and exhibited no authorization to demand person placed in my custody by the Governor. Show of force in front of the consulate was excessive and evidently designed to be publicly insulting to our Government. Two shots were fired at the consulate. I have the

honor to request that a naval vessel be despatched with the utmost urgency to Ceiba to protect American citizens and to obtain satisfaction for this studied and flagrant affront to the United States Government. If this grave incident passes without strong measures being taken, American prestige and interests in Honduras must inevitably suffer and this consulate lose its ability to lend good offices with a view to protect American lives and property in the constantly recurring armed outbreaks in Ceiba.

Repeated to Legation at Tegucigalpa.

EVANS

815.00/4001 : Telegram

The Minister in Honduras (Summerlin) to the Secretary of State

TEGUCIGALPA, *October 29, 1926—5 p. m.*

[Received October 30—12:15 p. m.]

65. Referring to telegram of Ceiba, October 28, 7 p. m. President Paz this afternoon in my presence and that of the Minister of Foreign Affairs directed the Ministry of War immediately to telegraph Ceiba authorities to order the *mayor de plaza* to parade 100 soldiers in front of the American consulate and salute its flag, then in the presence of the Governor and the commandant to apologize to the vice consul and to his Government; after which the mayor is to be court-martialed.

President Paz and the Minister of Foreign Affairs expressed deep regret over the unfortunate incident.

Repeated to Ceiba.

SUMMERLIN

815.00/3998 : Telegram

The Secretary of State to the Vice Consul at Ceiba (Evans)

WASHINGTON, *October 29, 1926—7 p. m.*

Your October 28, 7 p. m. Navy has been requested to despatch vessel as soon as possible. You will be advised when vessel leaves for Ceiba. You are instructed to lodge a strong and formal protest with the Governor against action of *Mayor de Plaza* for violation of consular premises and request a statement from him as to the latter's action. You will also inform him that this matter is receiving the serious consideration of the Government of the United States. Department is advising the Legation of the foregoing message to you.

KELLOGG

815.00/3998 : Telegram

The Acting Secretary of State to the Vice Consul at Ceiba (Evans)

WASHINGTON, *October 30, 1926—6 p. m.*

Department's October 29, 7 p. m. Navy Department advises Destroyer *Gilmer* sailed from Bluefields at 7 a. m. to-day for La Ceiba. Due arrive November 1st. Repeat to Legation.

GREW

815.00/4002 : Telegram

The Minister in Honduras (Summerlin) to the Secretary of State

TEGUCIGALPA, *October 30, 1926—11 p. m.*

[Received October 31—12:48 a. m.]

66. My telegram No. 65, October 29, 5 p. m. President Paz has just sent the Minister of Foreign Affairs and the Minister of War to inform me that in view of the unusual conditions existing at Ceiba the carrying out of his orders [cannot be effected?], however I am informed that Minister of War will be sent at once to Ceiba. Repeated to Ceiba.

SUMMERLIN

815.00/4015 : Telegram

The Vice Consul at Ceiba (Evans) to the Secretary of State

CEIBA, *November 6, 1926—11 p. m.*

[Received November 7—1:38 p. m.]

Referring to Department's October 29, 7 p. m., Governor today furnished statement in which he declares:

"That the Honduran Government sincerely laments incident that occurred at consulate October 28; that the *mayor de plaza* acted upon his own initiative and contrary to the positive orders of the superior military authorities; that for having violated said orders the *mayor de plaza* will receive disciplinary punishment; that in this way the Honduran Government desires to signify to the United States Government that there has not been any intention to offend the consular representative of the United States in this city."

I respectfully recommend that the foregoing be accepted as an adequate statement from the Governor in termination of the incident, especially in view of the present precarious local conditions as outlined in my telegram dated November 6, 1 p. m.[1]

Repeated to Legation at Tegucigalpa.

EVANS

[1] Not printed.

815.00/4014 : Telegram

The Secretary of State to the Vice Consul at Ceiba (Evans)

[Paraphrase]

WASHINGTON, *November 10, 1926—6 p. m.*

Because of the situation which you say exists in Ceiba, and because of your recommendations, the Department is disposed to accept the statement which the Governor furnished you as received in consulate's telegram dated November 6, 11 p. m., as a termination of this incident, provided this statement is published in the local press or is brought to the knowledge of the people of Ceiba in some other effective way. It is the feeling of the Department that it is of the utmost importance that it should be generally known that the Government of Honduras has apologized for this incident and has said that disciplinary punishment will be inflicted on the *mayor de plaza.* The Department expects that the punishment will actually be inflicted at an early date.

Repeat to Tegucigalpa and inform Department by cable.

KELLOGG

815.00/4028 : Telegram

The Vice Consul at Ceiba (Evans) to the Secretary of State

CEIBA, *November 14, 1926—9 a. m.*

[Received 6:40 p. m.]

Referring to Department's telegram of November 10, 6 p. m., received November 13, 9 a. m. The Governor published his statement in the only newspaper appearing last evening and informs me that publication will be made in all the local press. He states that the military authorities proceeded yesterday to take steps to inflict disciplinary punishment upon the *mayor de plaza* who will cease to exercise his functions on November 15th. Will report further by cable. Repeated to Legation at Tegucigalpa.

EVANS

ITALY

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

811.512365Shipping/18

The Italian Ambassador (Martino) to the Secretary of State

The Italian Ambassador presents his compliments to His Excellency the Secretary of State and, referring to his note of June 24th, 1925,[1] has the honor to bring to his knowledge the following.

From a communication received from the Italian Steamship Companies operating in ports of the United States it appears that the provisions contained in Royal Decree 891 issued on June 12, 1925, the text of which was submitted to the Department by the above mentioned note, did not seem to the competent Departments of the American Government to correspond exactly to the provisions contained in Section 213 (*b*) (8) of the Revenue Act of 1921 and was therefore considered insufficient to obtain to the Italian Companies exemption from the payment of the Income Tax, retroactively to 1921, on the basis of reciprocity.

In order to establish the required adequate basis of reciprocity, the Italian Government issued on March 4th, 1926 a Royal Decree N.340, the text of which is literally translated as follows:

"Companies organized in the United States and citizens of the United States not domiciled in Italy exercising maritime traffic in Italian ports, by means of ships flying the United States flag are exempt, with effect starting from January 1st, 1921, from the Imposta di Ricchezza Mobile, Income Tax, on income derived exclusively from such traffic, provided the United States likewise exempt from Income Tax, Imposta di Ricchezza Mobile, the income originating in the United States to Italian citizens not domiciled in the United States and to Italian Companies, and derived exclusively from the exercise of one or more ships flying the Italian flag."

The provisions set forth in this Decree being exactly equivalent to those contained in Section 213, the Italian Government is confident that the competent American Authorities will extend to the Italian Steamship Companies operating in United States ports the treatment contemplated by Section 213 of the Revenue Act of 1921, and this with effect starting from January 1st, 1921.

[1] Not printed.

The Italian Ambassador would much appreciate receiving some assurance in the matter.

WASHINGTON, *March 10, 1926.*

811.512365Shipping/21

The Secretary of State to the Italian Ambassador (Martino)

The Secretary of State presents his compliments to His Excellency, the Royal Italian Ambassador, and has the honor to acknowledge the receipt of his note of April 24, 1926,[3] in further relation to a decree issued by the Italian Government on March 4, 1926, exempting American shipping interests from the income tax of Italy, in which the Ambassador requests to be informed what decision has been taken by the Treasury Department concerning the exemption of Italian shipping interests from the payment of income tax.

In reply, the Secretary of State has the honor to inform the Italian Ambassador that he is in receipt of a communication from the Treasury Department concerning this matter, a copy of which is enclosed,[3] from which it will be observed that the Treasury Department holds that in view of the Royal Italian Decree No. 340 of March 4, 1926, Italy satisfies the equivalent exemption provision of Section 213 (*b*) (8) of the Revenue Acts of 1921, 1924 and 1926, and that consequently so much of the income from sources within the United States received by a non-resident alien or a foreign corporation as consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of Italy is exempt from the Federal income tax.

WASHINGTON, *May 5, 1926.*

RIGHT OF AMERICAN CITIZENS WHEN ARRESTED TO COMMUNICATE WITH AMERICAN CONSULAR OFFICERS

365.112Eagan,Edward P. et al.

The Ambassador in Italy (Fletcher) to the Secretary of State

No. 965 ROME, *August 20, 1926.*

[Received September 3.]

SIR: I have the honor to transmit herewith a translation of a personal letter from the Italian Undersecretary of State to me,[4] enclosing an *Aide Memoire*, intended as a reply to my representations to the Italian Government, based on an *Aide Memoire* of which a copy is enclosed, in the case of the arrest of the American boys . . . at Naples on October 16, 1925.

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[3] Not printed.

[4] Letter not printed.

The reply of the Foreign Office was handed to the Counselor of this Embassy on the 18th, instant, by Undersecretary of State, Grandi, who explained to Mr. Robbins that he was delivering the Note to him personally in order that his action might be more friendly and informal. The Undersecretary declared that the police authorities at Naples had been reprimanded for not notifying the Consul General of the arrest of the three Americans, but that this fact had not been mentioned in the enclosure with his personal letter. He added that the omission of this statement was owing to the fact that, according to the Consular Convention between the United States and Italy,[5] the Italian authorities were in no way obligated to make such reports, although in the past it had been customary to do so.

The Counselor emphasized again the hardships suffered by the young men through the stupidity of the police authorities, and said that one could readily understand that three young men in good standing, who were on their way around the world, could scarcely be anything but humiliated and disappointed at being taken off a passenger ship on which they were about to embark for Egypt and India. He pointed out also that had the police authorities taken the trouble to communicate immediately with the American Consul General the mistake and arrest would in all probability not have occurred.

I have [etc.]

For the Ambassador:
WARREN D. ROBBINS
Counselor of Embassy

[Enclosure 1]

The American Ambassador (Fletcher) to the Italian Under Secretary of State for Foreign Affairs (Grandi)

AIDE-MÉMOIRE

Reference is made to the detention last September of the three American citizens . . . by the local authorities at Naples upon suspicion that they had been implicated in a theft of jewelry in Rome.

In its Notes No. 277 of October 1 [*21*], 1925, and No. 444 of April 10, 1926,[6] the Embassy pointed out that no opportunity had been given the prisoners to communicate with the American Consul General at Naples, one of them having been actually restrained by force from telephoning to the Consulate General, and that the Italian

[5] Consular convention concluded May 8, 1878, and supplemental convention concluded Feb. 24, 1881; see Malloy, *Treaties*, 1776–1909, vol. I, pp. 977 and 983.
[6] Neither printed.

authorities at Naples failed to inform the Consul General of the detention of his compatriots until after they had been released and had reported in person at his office.

Having duly communicated to the American Government the text of the Notes of the Foreign Office, dated December 21, 1925, and May 25, 1926,[6a] the Embassy has now been informed that its Government cannot accept the declarations of the Italian Government, contained in these Notes, on this point as satisfactorily disposing of the matter.

The Embassy is instructed, therefore, again to emphasize the fact that the authorities at Naples not only refused to permit the prisoners to communicate with the Consul General but failed to inform him of their detention until after they had been released and had reported in person at his office. Hence, the American Government feels that the assurances asked in the Embassy's Note No. 444 of April 10, 1926,[7] are not excessive, and hopes that, as a result of the present representations, the Italian Government will agree that apologies from the local authorities at Naples to the three Americans and to the American Consul General there are in order, and that the Italian Government will see fit to issue specific instructions designed to prevent the recurrence of similar incidents.

ROME, *July 8, 1926.*

[Enclosure 2—Translation]

The Italian Minister for Foreign Affairs (Grandi) to the American Ambassador (Fletcher)

AIDE-MÉMOIRE

The Royal Ministry of Foreign Affairs has duly considered the contents of the *Aide Memoire* transmitted by the Embassy of the United States of America under date of July 8th last, relative to the detention in Naples of the American citizens . . . with the greatest attention, with a most friendly spirit, and with the intention of adhering as much as possible to the desire of the Government at Washington. The Royal Ministry, however, is compelled to confirm its conclusions contained in its *Note Verbale* No. 221055 of May 25th last.[7]

But, inasmuch as the United States Government believes that it cannot accept such conclusions and insists that the Italian authorities in Naples not only prevented the persons detained from communicating with their Consul, but that said authorities abstained from informing him directly regarding the facts during the period of

[6a] Neither printed.
[7] Not printed.

detention, the Ministry of Foreign Affairs must draw the courteous attention of the United States Embassy to the following considerations, with the request that the Embassy appeal to the spirit of well-known equity of its Government at Washington:

1. The authorities in Naples were under no obligation, during the time the investigations were being conducted by the judicial authorities, to inform the Consul of the United States of the detention in question, neither because of existing treaties between Italy and the United States, nor by virtue of international usages.

2. For the same reasons, they were under no obligation to allow the detained persons to telephone, and it is obvious that prisoners must be prevented [*restrained?*] by force.

3. The authorities in Naples did not intend, through their attitude, to offend the Consul General of the United States, to whom they did not fail, as a mark of courtesy, to communicate the occurrence as soon as . . . were liberated; and it is evident that, by their mode of procedure, the Italian authorities did not intend in the least to offend the aforementioned persons, but simply to assure to the police authorities the authors of a theft committed to the detriment of an American citizen.

ROME, *August 18, 1926.*

365.112Eagan, Edward P. et al.

The Secretary of State to the Chargé in Italy (Robbins)

No. 651 WASHINGTON, *November 9, 1926.*

SIR: The Department has received your despatch No. 965, of August 20, 1926, transmitting a translation of a personal letter from the Italian Under Secretary of State to you, enclosing an *Aide Memoire* in reply to your representations to the Italian Government in the case of the arrest of the three Americans . . . at Naples on October 16, 1925.

The Department has carefully considered the position of the Italian Government as set forth in the *Aide Memoire* of August 14 [*18*], and has noted the statements made to you by Signor Grandi to the effect that notification in such cases has been customary in the past and that the police authorities at Naples have been reprimanded for their failure to make such notification to the American Consul General at Naples in this particular instance.

The Department recognizes the friendly spirit in which the Italian Government has examined the question raised by this case and feels that this attitude materially contributes to its solution. However, it feels that before it can regard this case as completely closed the principle involved, namely, the right of American citizens to com-

municate with American Consular officers upon arrest by the Italian police authorities, and the corresponding right of Italian subjects to communicate with Italian Consular officers upon arrest in this country, is sufficiently important to merit further discussion with a view to establishing a more satisfactory and more uniform practice in both countries in cases of this sort.

The Department notes that the Italian Government believes that the right under reference is not specifically provided for by treaty and that it is not established as a right by any generally accepted international usage. However, it would observe that the denial of such a right would appear seriously to curtail the practical effect of Article 9 of the Treaty of 1878,[9] which provides for the recourse of Consular officers to the authorities of the respective countries in order to defend the rights and interests of their countrymen. Furthermore, it would remark that the act of holding persons under arrest incommunicado is one sufficiently unusual in this day and age as to afford proper grounds for this Government's request for explanations and assurances as to the future.

While the Department is of the opinion that no useful purpose will be served by further pressing this particular case, nevertheless, it desires that you acquaint Signor Grandi with the attitude of this Government, as outlined above, and that you take occasion to emphasize to him the desirability of reaching a definite understanding with regard to the procedure to be followed in such similar cases as may arise in the future.

You may point out to him the advantages accruing, both to the individuals concerned and to the authorities arresting them, of having a Consular officer interpose his good offices at the earliest possible moment, which, seemingly, can only be accomplished by permitting the person or persons arrested to communicate at once, either directly or through the police authorities, with the nearest Consular officer of their Nation. In the majority of cases it is safe to assert that American nationals in Italy (and likewise Italian nationals in this country) are unfamiliar with the language of the country in which they are temporarily residing. The arresting authorities may be in a similar difficulty in their endeavor to obtain a statement of the arrested person's side of the case. Lack of knowledge of the laws, of customs, et cetera, may often be the cause of incidents leading to an arrest. It is not believed that the Italian Government would seriously deny the advantage of having American Consular officers interpose their good offices in cases of this nature, and this Government would be glad to assure the Italian authorities of its readiness to cooperate with a view to according similar treatment to Italian nationals in the United States.

[9] Malloy, *Treaties*, 1776–1909, vol. I, p. 977.

You may say that this Government believes that in this manner many unnecessary misunderstandings and causes for diplomatic representations, together with the unfortunate publicity which so often attends cases of this sort, particularly when the individuals involved, as in this case, are of some prominence, could be avoided to the advantage of both Governments and to that of the individuals involved. It therefore hopes that the Italian Government will be disposed to take a similar view of the matter in order that there may be no recurrence of such an incident as has been caused by the circumstances of the arrest of these three Americans at Naples.[10]

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

PERMISSION FOR FLIGHT OVER TERRITORY OF THE UNITED STATES BY AN ITALIAN NAVAL HYDROPLANE

865.3311/28

The Italian Ambassador (Mœrtino) to the Secretary of State

The Italian Ambassador presents his compliments to His Excellency the Secretary of State and has the honor to inform him that plans are being made in Italy for an intercontinental raid by a Dornier hydroplane of the Royal Navy. This flight will have the character of a scientific experiment. The crew is to be composed of Col. Francesco De Pinedo, Pilot, Capt. Carlo del Prete, pilot, Signor Vitale Zacchetti, motorist, and eventually Signor Alessandro Orlando, mechanical engineer.

It is considered that the raid will include within the territory of the United States, the cities New York, Chicago, Seattle, Malta, San Diego, San Francisco, New Orleans, Hot Springs, Elephant Butte Reservoir, New Mexico, Salt Lake City, Omaha, St. Louis, (August); Pago Pago, Samoa Islands, (November) and Manila, Philippine Islands, (December 1926).

The Royal Italian Government would be much obliged to the Government of the United States for kindly granting permission for the seaplane to fly over and land in the above indicated localities, and the Ambassador would be grateful to His Excellency the Secretary of State for communicating to him, as soon as possible, the decision reached.

WASHINGTON, *June 10, 1926.*

[10] No record of further negotiations with the Italian Government on this subject has been found in the Department files.

865.3311/43

The Secretary of State to the Italian Ambassador (Martino)

The Secretary of State presents his compliments to His Excellency, the Royal Italian Ambassador and has the honor to refer to his note of June 10, 1926, requesting that permission be granted for a flight over United States territory by a Dornier hydroplane of the Italian Navy, the localities concerned being New York, New York; Chicago, Illinois; Seattle, Washington; Malta, Montana; San Diego, California; San Francisco, California; New Orleans, Louisiana; Hot Springs and Elephant Butte Reservoir, New Mexico; Salt Lake City, Utah; Omaha, Nebraska; St. Louis, Missouri; Pago Pago, Tutuila, American Samoa, and Manila, Luzon Island, Philippine Islands.

The Secretary of State has now received from all the interested Federal Departments and Governors of the states concerned, replies indicating that there is no objection on their part to the proposed flight over United States territory and that they will be glad to extend the courtesies and facilities usual on such occasions.

It is presumed that the members of the crew will be in possession of passports or that they will be included in a crew list visaed by a consular officer of the United States. The Secretary of State will be glad to be informed of the date and place of the expected arrival in order that the appropriate federal officers may be detailed to conduct the examination required by the immigration laws.

The Secretary of War states that the Army Air Service will be pleased to render any assistance practicable to the Italian officers making this flight, and with this end in view states that it is desirable that the War Department be informed of the approximate dates on which the officers expect to arrive at the various places listed in the itinerary.

The Secretary of the Navy in stating that the appropriate Naval authorities have been duly advised and that every facility possible will be accorded, adds that the customary restrictions as to flying over forts, naval stations and naval vessels, should be noted.

The Secretary of the Treasury states that his Department will be glad to accord the same courtesies to the Italian hydroplane and its officers as are accorded to visiting warships of foreign nations.

The Governor of Missouri states that the 35th Division Air Service of the National Guard of that state, located just at the edge of St. Louis, will be glad to place their landing field at the disposal of the Italian officers and render them any assistance possible.

In case the contemplated flight should be taken from St. Louis to Kansas City, or vice versa, the Governor of Missouri will be glad to

have the officers visit the Capitol, and will be pleased to receive them in the Executive Chamber. A landing field is within a very short distance of the Capitol. In conclusion the Governor states that in case the officers should pass over the State of Missouri, and he is informed in time, he will, if they so desire, see that air machines of Missouri escort them across the state and pilot them to a landing field.[11]

WASHINGTON, *October 28, 1926.*

[11] On Feb. 1, 1927, the Italian Ambassador advised the Secretary of State that the itinerary of the flight had been modified so that the only localities in the United States concerned were the following: New Orleans, Hot Springs, San Diego, San Francisco, Seattle, Malta, Chicago, St. Louis, New York and Galveston. The appropriate Federal and State authorities were notified of the changed itinerary, and on Feb. 28, 1927, the Italian Ambassador was informed that the Governor of Texas had given his consent to the proposed flight over Galveston. (File No. 865.3311/44.)

JAPAN

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

811.512394Shipping/–

The Japanese Ambassador (Hanihara) to the Secretary of State

The Japanese Ambassador presents his compliments to the Honorable the Secretary of State, and has the honour to state that the attention of this Embassy has been called to Section 213, Paragraph (*b*), item (8) of the Revenue Act of 1921,[1] which provides that "the term 'gross income' does not include 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."

The Japanese Ambassador has the honour to request that the Secretary of State be so good as to furnish this Embassy with information as to whether the United States Government is granting exemption from income tax to citizens or corporations of any foreign country in compliance with the above mentioned provision of the Revenue Act of 1921.

WASHINGTON, *March 21, 1923.*

811.512394Shipping/1

The Secretary of State to the Japanese Ambassador (Hanihara)

The Secretary of State presents his compliments to His Excellency the Ambassador of Japan and, referring to the note in which he inquired whether the United States Government is granting exemption from income tax to citizens or corporations of any foreign country in compliance with the provisions of Section 213, Paragraph (*b*), Item 8 of the Revenue Act of 1921, has the honor to say that there has been received from the Secretary of the Treasury a letter dated April 9,[2] in which he states that his Department has ascertained that some foreign countries satisfy the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1921, and consequently is exempting from tax the incomes from sources in the United States of nonresident

[1] 42 Stat. 227, 237.
[2] Not printed.

aliens or foreign corporations which consist exclusively of earnings derived from the operation of a ship or ships documented under the laws of such countries.

The Secretary of the Treasury adds that the question whether Japan satisfies the equivalent exemption provision of Section 213(*b*)(8) is now under consideration, and that as soon as the decision is made, the Secretary of State will be advised. When this information shall have been received by the Secretary of State, it will be promptly communicated to the Ambassador.

WASHINGTON, *April 18, 1923.*

811.512394Shipping/2

The Secretary of State to the Japanese Ambassador (Hanihara)

The Secretary of State presents his compliments to His Excellency, the Japanese Ambassador, and, referring to his note of March 21, 1923, and to the reply of the Secretary of State of April 18, 1923, in regard to the exemption from income tax granted by this Government to citizens or corporations of foreign countries under the provisions of Section 213, Paragraph (*b*), Item 8 of the Revenue Act of 1921, has the honor to say that he is advised by the Secretary of the Treasury that the following are the pertinent provisions of the Japanese income tax law:

Art. 1. Persons who are domiciled or reside for more than one year in the place where the present law is in operation shall pay an income tax.

Art. 2. Persons who, though not coming under the foregoing article, come under any one of the following clauses, shall pay an income tax for each specified income only.

Clause 1. When a person owns a property or business in the place where the present law is in operation.

The Japanese Minister of Foreign Affairs has given the following construction of the Japanese income tax law as applied to citizens of the United States nonresident in Japan and corporations organized in the United States:

A citizen of the United States or corporation organized in the United States whose income consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of the United States, but who owns a branch office or other place of business in Japan, is regarded, in the light of the law, as coming within the provisions of Clause 1 of Article 2 of the Income Tax Law which speaks of conducting business in the place where the law in question is in operation. Such citizen or corporation when he owns no branch office or other place of business in Japan is regarded in the

eye of the law as not conducting business where the law is in operation and no income tax is assessed.

Section 213(*b*)(8) of the Revenue Act of 1921 reads as follows:

That for the purpose of this title (except as otherwise provided in Section 233) the term "gross income"—. . .

(*b*) Does not include the following items, which shall be exempt from taxation under this title: . . .

(8) The income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

Since the Japanese law imposes a tax upon income consisting exclusively of earnings derived from the operation of ships documented under the laws of the United States, if the owner of the vessels, though not a resident of Japan, does business in Japan or has an office or place of business therein, it follows that Japan does not satisfy the equivalent exemption provision of Section 213(*b*)(8) and that the income of nonresident alien individuals or of foreign corporations from the operation of ships documented under the laws of Japan is not exempt from tax.

WASHINGTON, *June 9, 1923.*

811.512394Shipping/6

The Chargé in Japan (Caffery) to the Secretary of State

No. 229–E TOKYO, *January 23, 1924.*

[Received February 13.]

SIR: I have the honor to report that, in view of the unsatisfactory condition of Japanese shipping and the urgent necessity of economizing on operating expenses as much as possible, the Japanese Ship Owners' Association has decided to petition the Finance and Communication Departments, with a view to bringing about a modification in the present income tax regulations, in order that advantage may be taken of the clause in the American income tax laws providing that the shipping of a foreign nation which does not impose a tax of a like nature on American shipping is not required to pay the corresponding American taxes.

Those, who are conducting the agitation, point out that such action on the part of the Government would mean a great saving to Japanese shipping, as over one million dollars is paid annually to the American Government by Japanese ship owners; whereas American shipping does not pay over eighty thousand dollars per year to the Japanese Government.

I have [etc.] JEFFERSON CAFFERY

811.512394Shipping/4

The Secretary of State to the Japanese Ambassador (Hanihara)

The Secretary of State presents his compliments to the Japanese Ambassador, and has the honor to refer to the Ambassador's note No. 48 of May 27, 1924,[3] in which three questions were set forth regarding the establishment of reciprocity between the United States and Japan, concerning the payment of income tax on earnings derived from the operation of merchant vessels documented under the laws of the respective countries. The questions were stated as follows:

"1. Should Japan, by way of legislation, exempt from taxation the income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to subjects of Japan and to corporations organized in Japan, would America allow *ipso jure* an equivalent exemption to Japan in accordance with the provision of Section 213 (*b*) (8) of the Revenue Act of 1921?

"Or what kind of measure would be necessary for America to allow Japan an equivalent exemption?

"2. Assuming that the said legislation of Japan intends 'to exempt from taxation the income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of his or its country,' does the said provision of the American statute have the same meaning?

"Or if the American provision have a broader meaning than that of Japan, would America still allow Japan an equivalent exemption?

"3. Supposing that Japan and Great Britain allow an equivalent exemption to America in the same manner, does the said provision of the American statute exempt from taxation the income of a Japanese subject or Japanese corporation which consists of earnings derived from the operation of a ship or ships documented under the laws of Great Britain?"

The Secretary of State begs to inform the Ambassador of the receipt of a letter from the Treasury Department,[4] containing the following answers to the three inquiries just quoted:

"If Japan, by way of legislation, should provide for the exemption from tax of 'the income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to subjects of Japan and to corporations organized in Japan', Japan would *ipso jure* satisfy the equivalent exemption provision of Section 213 (*b*) (8) of the Revenue Act of 1924.

"The provision in Section 213(*b*)(8) has a broader meaning than that set forth in the first part of the second inquiry of the Japanese Embassy. For example: A nonresident alien individual who is a citi-

[3] Not printed.

[4] Dated June 18, 1924; not printed.

zen of a country which does not satisfy the equivalent exemption provision of Section 213(*b*)(8) or a corporation organized under the laws of such foreign country, would be exempt from tax on the earnings derived exclusively 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 not residing in such country and to corporations organized in the United States. If Japan so words her exemption provision that no tax is imposed on the income derived from the operation of ships documented under the laws of the United States by citizens of the United States nonresident in Japan or by corporations organized in the United States the equivalent exemption provision of Section 213(*b*)(8) will be satisfied and the income of a nonresident alien individual or a foreign corporation from sources in the United States which consists exclusively of the earnings of a ship or ships documented under the laws of Japan will be exempt from Federal income tax. It is deemed advisable to point out that the exemption granted by the Japanese law to United States corporations must be absolute, that is, the exemption must apply to all United States corporations even though such corporations have a branch office, a place of business or an agent in Japan.

"In answer to the third inquiry it may be stated that if a Japanese subject nonresident as to the United States or a Japanese corporation owns a ship documented under the laws of a country which satisfies the equivalent exemption provision of Section 213(*b*)(8), the income from sources in the United States which consists exclusively of earnings derived from the operation of such ship would be exempt from income tax."

The Treasury Department observes that inasmuch as the Revenue Act of 1924 has been enacted since the date of the inquiry of the Japanese Ambassador and contains the same provision [5] regarding the exemption from tax of earnings derived from the operation of ships, the replies to the questions submitted are made under the Revenue Act of 1924.

WASHINGTON, *June 26, 1924.*

811.512394Shipping/8

The Japanese Chargé (Yoshida) to the Secretary of State

No. 73 WASHINGTON, *August 4, 1924.*

SIR: Referring to the note of the Secretary of State dated June 26th last with regard to the reciprocal exemption of income tax on earnings derived from foreign vessels, I have the honor to inform you under instructions from my Government that a new law No. 6 was promulgated on July 18th last in the Japanese *Official Gazette.*

[5] 43 Stat. 253, 267.

Its translation is as follows:

"A foreign or foreign juridical person, having no domicile in Japan may be exempt from an income tax in respect to earnings derived from a vessel of foreign nationality, provided that a similar exemption is granted by the country in which such foreign vessel is registered, in respect to earnings derived from Japanese vessels.

Additional Rule:
This Law shall be in force from the date of its promulgation."

I am further instructed to advise you that my Government, assuming that the said law satisfies the exemption provision of Section 213(*b*)(8) of the United States Revenue Act of 1924, are prepared to instruct their competent Authorities to apply the provisions of this law with regard to American vessels, as soon as my Government are informed of the readiness of your Government to put Japanese shipping on the exemption list.

Accordingly I beg leave to state that I shall be happy to be informed of the approximate date of the revision of the Regulations of the United States Treasury Department.

Accept [etc.] ISABURO YOSHIDA

811.512394Shipping/11

The Acting Secretary of State to the Japanese Chargé (Yoshida)

WASHINGTON, *October 14, 1924.*

SIR: I have the honor to refer to your notes No. 73 of August 4, and No. 81 of September 13, 1924,[6] regarding the establishment of reciprocity between the United States and Japan concerning the exemption from income tax of earnings derived from the operation of merchant vessels documented under the laws of the respective countries. You enclosed with your note of September 13 a translation of a law No. 6 promulgated by your Government on July 17, 1924, regarding the exemption from income tax of earnings derived from the operation of vessels of foreign registry and requested that it be substituted for the translation quoted in your note of August 4. In the last mentioned note you inquired whether the law satisfies the provisions of Section 213 (*b*) (8) of the United States Revenue Act of 1924.

The law of July 17, 1924, as transmitted with your note of September 13, reads as follows:

"A" Foreigners or foreign juridical persons who have no domicile in Japan shall be exempted from income tax in respect of the income derived from vessels of foreign nationality, except in cases where a country whose nationality is possessed by the said vessels does not grant similar exemption in regard to the income of Japanese vessels.

[6] Latter not printed.

"Annex.

"The present law shall come into operation on the day of its promulgation, (July 17, 1924.)"

The Treasury Department, to which copies of your notes were referred for consideration, calls attention to a statement in its letter of June 18, 1924,[7] which was quoted in my note of June 26, 1924, to the Japanese Ambassador [8] in reply to the inquiries contained in his note of May 27, 1924,[7] regarding the establishment of reciprocity between the United States and Japan concerning income derived from the operation of merchant vessels. This statement, which appears at the end of the first paragraph of page 4 of the note of June 26, reads as follows:

"It is deemed advisable to point out that the exemption granted by the Japanese law to the United States corporations must be absolute, that is, the exemption must apply to all United States corporations even though such corporations have a branch office, a place of business or an agent in Japan."

The Treasury Department observes that under the term "Foreigners or foreign juridical persons who have no domicile in Japan", as used in the law promulgated by the Japanese Government, the exemption of a citizen of the United States non-resident in Japan or of a United States corporation upon income derived from the operation of ships documented under the laws of the United States might be destroyed by the citizen or corporation having an office or place of business or an agent in Japan; that if such should be the case, it would follow that the Japanese law of July 17, 1924, does not satisfy the equivalent exemption provision of Section 213 (*b*) (8) of the Revenue Act of 1924.

In view of the doubt as to the construction which may properly be placed on the provisions of the law, the Treasury Department desires a statement from the Japanese Government concerning the interpretation which that Government places upon the provisions in question. It also desires to be furnished with a statement from the Japanese Government

"whether a citizen of the United States, a non-resident in Japan, or a corporation organized in the United States, under the Japanese law promulgated on July 17, 1924, would be subject to Japanese taxes upon so much of their income as consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of the United States if such citizen or corporation were engaged in business in Japan or had an office, place of business or an agent in Japan."

If you will be good enough to furnish me with a statement from your Government on these points, I shall be glad to transmit it to the

[7] Not printed.

[8] *Ante*, p. 451.

Treasury Department for the purpose of determining whether the reciprocal exemption provided for in Section 213 (*b*) (8) of the Revenue Act has been established.

Accept [etc.] JOSEPH C. GREW

811.512394Shipping/16

The Japanese Chargé (Yoshida) to the Secretary of State

No. 17 WASHINGTON, *February 12, 1925.*

SIR: Referring to your note dated October 14, 1924, concerning Law No. 6, promulgated on July 17, 1924, I have the honor to make, under authorization of my Government, the following statement with regard to its interpretation.

It is the interpretation by the Japanese Government that the said Law would exempt an American citizen non-resident in Japan or a corporation organized in the United States from income-tax in respect to income consisting exclusively of earnings derived from the operation of a ship or ships documented under the laws of the United States, or of a third country which grants a reciprocal exemption to Japan, even if such citizen or corporation were engaged in business in Japan or had an office, a place of business or an agency in Japan.

The above interpretation places the law, it is considered, practically on the same basis of reciprocity as provided for in the Revenue Act of the United States.

I shall, therefore, be much obliged if you be good enough to refer the above to the proper authorities for their early consideration.

Accept [etc.] ISABURO YOSHIDA

811.512394Shipping/17

The Secretary of State to the Japanese Ambassador (Matsudaira)

WASHINGTON, *March 27, 1925.*

EXCELLENCY: I have the honor to refer to your Embassy's note, No. 17 dated February 12, 1925, regarding the establishment of reciprocity between the United States and Japan with respect to the exemption from taxation of income derived from the operation of merchant vessels, in which is set forth your Government's interpretation of law No. 6 promulgated by the Government of Japan, July 17, 1924.

The Treasury Department, to which a copy of the Embassy's note was referred, in a communication of March 17, 1925,[9] refers to a

[9] Not printed.

conference held at that Department in December last, between a representative of the Embassy and officials of that Department, in which the points mentioned in the memorandum accompanying the Embassy's note of November 6, 1924,[10] were informally discussed. The Treasury Department assumes that, in view of the unqualified use of the word "office" in the Embassy's note of February 12 referred to above, and of the conclusions reached at the conference mentioned, it is now mutually understood that the exemption to be accorded by Japan is to be absolute and that such exemption shall not be affected by the nature of the office maintained in Japan by a citizen or corporation of the United States.

The Treasury Department adds that upon the explicit understanding that a citizen of the United States non-resident in Japan, and a corporation organized under the laws of the United States, is thus exempted, irrespective of the question whether such citizen or corporation has an office, main or branch, place of business or an agent in Japan, it is of the opinion that Japan satisfies the requirements of Section 213(*b*)(8) of the Revenue Act of 1924.

The Treasury Department observes that the Japanese law No. 6 became effective July 17, 1924, the date on which it was promulgated and states that if the Japanese Government will furnish a statement that the provisions of the law mentioned will be applied as at present interpreted retroactively from and including July 17, 1924, the income of a non-resident alien individual or a foreign corporation from sources within the United States which consists exclusively of the earnings of a ship or ships documented under the laws of Japan shall be deemed exempt from July 17, 1924, from Federal taxation under the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1924.

Accept [etc.]

For the Secretary of State:
J. V. A. MacMurray

811.512394Shipping/18

The Secretary of State to the Japanese Ambassador (Matsudaira)

Washington, *May 6, 1925.*

Excellency: Referring to the Department's note of March 27, 1925, in regard to the establishment of reciprocity between the United States and Japan with respect to the exemption from taxation of income derived from the operation of merchant vessels, I have the honor to inform you that I have received from the Secretary of the Treasury a letter dated April 21, 1925,[10] from which the following is quoted:

[10] Not printed.

"This Department is now informed that the Japanese law No. 6 was promulgated under date of July 18, 1924, and not July 17 of the same year as stated inadvertently by the Japanese Embassy in its note of September 13, 1924. Accordingly, I have to advise that my letter of March 17th [10a] has been amended to conform to this change, and the effective date of the Japanese law shall be considered as July 18, 1924."

Accept [etc.]

For the Secretary of State:
LELAND HARRISON

811.512394Shipping/19

The Japanese Ambassador (Matsudaira) to the Secretary of State

No. 72 WASHINGTON, *June 18, 1925.*

SIR: In your note dated March 27, 1925, you were good enough to inform me of the opinion of the Treasury Department that upon the explicit understanding that a citizen of the United States non-resident in Japan and a corporation organized under the laws of the United States are exempted by Japan from taxation of income derived from the operation of merchant vessels documented under the laws of the United States, irrespective of the question whether such citizen or corporation has an office—main or branch,—place of business, or an agent in Japan, Japan satisfies the requirements of Section 213 (*b*) (8) of the Revenue Act of 1924.

Pursuant to instructions from my Government, I have the honor to state that with regard to your observation as to the date on which the reciprocal exemption is to be carried out, the provisions of the Japanese Law No. 6 will be applied as at present interpreted retroactively from and including July 18, 1924, the date on which the law was promulgated.

I am further instructed to state that in putting into effect the present arrangement of reciprocal exemption, the Japanese Government propose the following methods to be adopted by both countries in order to prevent any differences of opinion which may arise in making complicated calculations involved in this matter:

(1) Income of an individual acquired during the calendar year of 1924 shall be exempt from taxation.

(2) Income of a juridical person acquired during its fiscal year ending on or after the 18th of July, 1924, shall be exempt from taxation.

(3) Determination of tax, if already made on the income mentioned in (1) and (2), shall be cancelled.

(4) Income preceding that mentioned in (1) and (2) is subject to taxation.

[10a] Not printed.

(5) With regard to an income preceding that mentioned in (1) and (2), no additional amount of tax shall be imposed nor any reduction of tax shall be made even in case of error in assessment. The same principle shall be applied to income on which the amount of tax to be imposed is now in dispute.

I beg to add that as the Japanese law in question is intended to be put into force not only in Japan proper, but in its possessions and territories as well, my Government are desirous that your Government will see its way to adopt the same principle in the practical application of its law bearing upon this subject.

Accept [etc.] T. MATSUDAIRA

811.512394Shipping/20

The Acting Secretary of State to the Japanese Ambassador (Matsudaira)

WASHINGTON, *September 1, 1925.*

EXCELLENCY: I have the honor to refer to Your Excellency's note No. 72 dated June 18, 1925, regarding the establishment by the United States and Japan of reciprocal exemption from taxation of income derived from the operation of merchant vessels, in which you set forth the methods proposed by your Government for adoption by both countries in putting into effect the arrangement for reciprocal exemption. You state that the Japanese law is intended to be put into force not only in Japan proper but in Japanese possessions and territories as well and express the hope that this Government will see its way to adopt the same principle.

I beg to state that the Treasury Department, to which a copy of the Embassy's note was referred, has advised this Department that there is no authority in law whereby it can adopt the methods proposed by the Japanese Government in putting into effect the reciprocal exemption from taxation which exists by reason of the Japanese Law No. 6, promulgated on July 18, 1924, and Section 213(*b*)(8) of the Revenue Act of 1924.

The Treasury Department refers to the translation in the Embassy's note of August 4, 1924, of a portion of the Japanese law which reads:

"Additional Rule:

"This law shall be in force from the date of its promulgation."

and states that the equivalent exemption provisions of Section 213(*b*)(8) of the Revenue Act of 1924, were satisfied on the date of the promulgation of the Japanese law. The income, therefore, from sources within the United States received by a non-resident alien individual or a foreign corporation which consists of earnings

derived on and after July 18, 1924, from the operation of a ship or ships documented under the laws of Japan is exempt from Federal income tax. Such earnings derived prior to July 18, 1924, are subject to Federal income tax.

With respect to the Embassy's statement that the Japanese law is intended to be put into force not only in Japan proper but in its possessions and territories as well and that the Japanese Government is desirous that this Government see its way to adopt the same principle in the practical application of its law bearing upon this subject, the Treasury Department invites attention to the fact that the Revenue Act of 1924 is not in force in all the possessions of the United States. It adds that Section 2 (*a*) (5) of the Act provides that:

"When used in this Act—
"(5) The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia."

Section 260 provides:

"Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.
"Nothing in this section shall be construed to alter or amend the provisions of the Act entitled 'An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes,' approved July 12, 1921, relating to the imposition of income taxes in the Virgin Islands of the United States."

The Act referred to in Section 260 provides that income tax laws then or thereafter in force in the United States shall apply to the Virgin Islands, but that the taxes shall be paid into the treasury of the Virgin Islands. Accordingly, income from sources in the Virgin Islands received by a non-resident alien individual or a foreign corporation is taxed there under the provisions of the Revenue Act of 1924, but it is not taxed in the United States.

Section 261 provides:

"In Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid as provided by law prior to the enactment of this Act.
"The Porto Rican or the Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively."

The Treasury Department further states that, inasmuch as the Revenue Act of 1924 is not in effect in Porto Rico and the Philippine Islands, and the legislatures of those Islands have been given power to make their own income tax laws, the Federal government has no jurisdiction over the administration of such laws in those possessions, and no authority to extend the exemption provisions of the Revenue Act of 1924 to the taxes imposed by the laws of Porto Rico and the Philippine Islands. The liability to or exemption from any tax imposed by Porto Rico or the Philippine Islands is a matter wholly within the jurisdiction of the local governments of those possessions. A ruling by the Treasury Department that the law of a foreign country satisfies the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1924 has no force and effect in Porto Rico and the Philippine Islands as it does not relate to the tax imposed by the laws of those possessions.

In view of the foregoing provisions any income received by a non-resident alien individual or a foreign corporation from sources within those possessions of the United States (other than the Virgin Islands) which are not included in the term "United States" as defined in Section 2, is not subject to the tax imposed by the Revenue Act of 1924. The exemption from taxation accorded by Section 213(*b*)(8) to the income of non-resident alien individuals and foreign corporations derived from the operation of ships documented under the laws of a foreign country, applies only to such income as is derived from sources within the "United States" as that term is defined in Section 2, and from sources within the Virgin Islands. The practical effect of these provisions as applied in the case of Japan is that the income of a non-resident alien individual or a foreign corporation from sources within the possessions of the United States (other than the Virgin Islands) is not subject to the tax imposed by the Revenue Act of 1924, and such income from sources within the United States and the Virgin Islands, derived on and after July 18, 1924, exclusively from the operation of ships documented under the laws of Japan is exempt from the tax imposed by the Revenue Act of 1924.

While the Treasury Department is of the opinion that the effect of the provisions of the Revenue Act of 1924, appears to be substantially what is desired by the Japanese Government, I shall be glad to receive a statement from Your Excellency to that effect so that the Treasury Department may be advised accordingly.

Accept [etc.] JOSEPH C. GREW

811.512394Shipping/22

The Japanese Ambassador (Matsudaira) to the Secretary of State

No. 41 WASHINGTON, *March 31, 1926.*

SIR: With reference to your note dated September 1, 1925, concerning the reciprocal exemption from taxation of income derived from the operation of merchant vessels, I have the honor to state, under instructions from Tokio, that my Government is happy to signify its willingness to agree with the views of the Treasury Department as stated in your note under acknowledgment; namely, that the reciprocal exemption shall be carried out from and including July 18, 1924, the date on which the Japanese Law No. 6 was promulgated, without adopting the methods suggested in my note dated June 18, 1925; and, further, that the exemption from taxation accorded by Section 213(*b*)(8) of the Revenue Act of 1924 applies only to such income as is derived from sources within the "United States" as that term is defined in Section 2 of the said Act, and from sources within the Virgin Islands.

In bringing the above to your knowledge, I am happy to note that a unanimity of views has been reached between our two Governments on this subject, and shall be glad if you will be good enough to take steps with the Treasury Department to the end that an arrangement looking to the reciprocal exemption in question be put into force.

Accept [etc.] T. MATSUDAIRA

811.512394Shipping/23

The Acting Secretary of State to the Japanese Ambassador (Matsudaira)

WASHINGTON, *June 8, 1926.*

EXCELLENCY: Referring further to your note of March 31, 1926, and to previous correspondence in regard to the establishment by the United States and Japan of reciprocal exemption from taxation of income derived from the operation of merchant vessels, I have the honor to inform you of the receipt of a letter on the subject from the Secretary of the Treasury dated May 26, 1926.[11]

The Secretary of the Treasury states that he approved, on February 1, 1926, Treasury Decision 3812 embodying the ruling that from July 18, 1924, Japan satisfies the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1924, and that this action is all that is necessary to give effect to the reciprocal arrangement on the part of the United States.

Accept [etc.] JOSEPH C. GREW

[11] Not printed.

PROPOSAL BY JAPAN THAT A CONFERENCE BE CALLED TO REVISE THE FUR SEALS CONVENTION SIGNED JULY 7, 1911[12]

711.417/679

Memorandum by the Under Secretary of State (Grew) of a Conversation With the Japanese Ambassador (Matsudaira)

[WASHINGTON,] *January 5, 1926.*

The Japanese Ambassador left with me the appended note[13] stating that the Japanese Government had decided to approach the Governments of all the Signatory Powers of the Convention for the Protection of Fur Seals, signed at Washington on July 7, 1911, with a request for holding a conference contemplated in Article 16 of the Convention to consider and, if possible, to agree upon further extension of the Convention with such additions and modifications as may be desirable. The Ambassador said he had been instructed by his Government to add orally that while some difficulty might be found in participating in such a conference with representatives of the Soviet Russian regime, nevertheless the Japanese Government considered it extremely important that this should be done because it would be useless to consider the fur seals situation without taking into account the Komandorski Island which is Russian territory. The Ambassador added that in the recent treaties signed by Great Britain with the Soviet Russian regime a stipulation had been included that the Soviet regime would respect the provisions of the Convention for the protection of fur seals under reference. The Ambassador said that this was an identic note which was being delivered to each of the Signatories of the Convention. He added that it was not clear from the final paragraph of the note, which had been written exactly as it had been received from his Government, whether the Japanese Government intended to make its suggestions regarding the date and place of the proposed conference before or after receiving the replies of the various Powers. He said he intended to clear this point up by telegraph and would inform us with regard thereto.

J[OSEPH] C. G[REW]

711.417/679

The Japanese Ambassador (Matsudaira) to the Secretary of State

No. 1 WASHINGTON, *January 5, 1926.*

SIR: I have the honor to inform you that the Japanese Government, being convinced that the Convention for the Protection of Fur

[12] For text of the convention, see *Foreign Relations*, 1911, p. 260.
[13] Note dated January 5, *infra*.

Seals, signed at Washington on July 7, 1911, has, in many respects, ceased to be responsive to the actual conditions,[13a] have decided to approach the Governments of all the Signatory Powers with the request for holding a conference contemplated in Article 16 of the Convention, to consider and, if possible, agree upon further extension of the Convention with such additions and modifications as may be desirable.

In now communicating to you this request of my Government, pursuant to the provisions of the Convention, I am desired to add that the Japanese Government will be happy to make suggestions in due course, regarding the date and place of the proposed conference.

Accept [etc.] T. MATSUDAIRA

711.417/681

Memorandum by the Under Secretary of State (Grew) of a Conversation With the Japanese Ambassador (Matsudaira)

[WASHINGTON,] *January 20, 1926.*

The Japanese Ambassador called and referred to his former conversation regarding the desire of the Japanese Government to call a conference of the signatories of the Fur Seals Convention with a view to amending the convention. He said that at that time he had been uncertain from the wording of his instructions as to whether his Government intended to announce its proposal for the place and date for the meeting prior to receiving the replies of the other Governments, or whether they wished to receive the replies first. He had asked instructions on this point and was now able to tell me informally and unofficially that the intention of his Government was to have the conference held in London as, owing to Russian participation, they thought it might be difficult to hold it in Washington. He said he understood that the reasons for the proposed amending of the convention were that the fur seals were now rapidly increasing in numbers and were invading the seas of Japan in such numbers as to destroy and displace great quantities of fish which was working much hardship and damage to Japanese fishermen. In view of this situation, the Japanese Government felt that the regulations protecting the fur seals should be made less stringent, in order to decrease the number of seals coming into Japanese seas.

I told the Ambassador that we were now studying the matter, but were not yet prepared to make an official reply to the Japanese

[13a] A note of Oct. 31, 1940, from the Japanese Foreign Minister, transmitted in despatch No. 5117, Nov. 1, 1940, from the Ambassador in Japan, stated that according to the record in the Imperial Ministry of Foreign Affairs, the phrase "actual conditions" reads "actual condition of things." (File No. 026 Foreign Relations/1511.)

proposals. Nevertheless, I thought it best to tell him informally and unofficially in advance of our formal reply that I thought it was going to be very difficult to find a way by which we could participate in such a conference and sign a convention with representatives of the Soviet Regime which we had not recognized. The Ambassador said that his Government fully appreciated this point, but they considered the matter so important that they hoped we could find some method by which at least some informal arrangement could be made to alter the provisions of the present convention. He thought that we had already done this in other cases with representatives of the Soviet Regime, but was unable to specify what cases he had in mind. I said that we should approach the matter with good will and should let him know in due course as to our attitude.

J[OSEPH] C. G[REW]

711.417/696

Memorandum by the Under Secretary of State (Grew) of a Conversation With the Counselor of the Japanese Embassy (Sawada)

[WASHINGTON,] *March 1, 1926.*

About ten days ago I telephoned to the Japanese Embassy to say that when the Ambassador should find it convenient to come to the Department I should be glad to give him a reply to the proposal of his Government that a conference be called to amend or modify the Fur Seal Convention. The Ambassador, who is ill with grippe, had hoped to be able to come to the Department today, but as his doctors had advised him to remain indoors for a few days he sent Dr. Sawada, Counselor of the Embassy, to see me. I told Dr. Sawada that we had examined with care and good will the proposal of the Japanese Government and fully realized that under Article 16 of the Convention there was full justification for requesting that such a conference be held. However, as the Ambassador himself had been good enough to appreciate, there were difficulties involved so far as the United States was concerned owing to the absence of a recognized Government in Russia and I stated that this Government could not see its way clear to sign any treaty or agreement with representatives of the Soviet Russian regime. Under these circumstances I expressed the hope that the Japanese Government, recognizing this difficulty, might find it possible to postpone for the present its proposal for the holding of such a conference. If, however, it should not be found possible to reconsider the Japanese proposal, I said that we should be glad to learn the concrete modifications of the existing treaty which the Japanese Government desired to see effected and the reasons therefor, and that we would then examine the matter with the utmost good will with a view to finding whether

means could not be devised to meet the desires of the Japanese Government without actually modifying or amending the Convention.

I said that, speaking now informally and unofficially, the Japanese Ambassador had informed me that the basic reason for desiring a change was that the fur seals were making serious inroads on the Japanese fisheries and thereby causing damage to the industry. I said I understood that the American herd from the Pribilof Islands migrates along the Western coast of North America and does not touch Japan and that the Russian herd of Komandorski Island had in recent years materially decreased in numbers. The Japanese, or Robben herd, I understood, lives in the inland sea of Japan, and I presumed that if this herd was responsible for the inroads on the fish, steps could be taken to adjust its numbers under the terms of the Convention by land killings. However, I said that I was not fully familiar with the technical aspects of the question and merely advanced these thoughts in order, if possible, to ascertain more definitely the cause of the situation which the Japanese Government had in mind and the steps to be taken for its adjustment. Dr. Sawada said that he also was not familiar with the technical aspects of the subject.

Dr. Sawada then repeated to me the first part of our conversation and said he would bring it to the attention of the Ambassador who would cable to Tokyo and that they would then inform us of the Japanese Government's further views. I suggested that for the present the matter be dealt with by conversations and we should therefore not answer the Japanese note for the moment. Dr. Sawada agreed.

Dr. Sawada then said that the United States seemed to be in a somewhat awkward position owing to the fact that under the terms of the treaty the treaty would terminate on December 15, 1926 if notice were given by any one of the signatories. He asked me whether I thought we could sit in at a conference and have the modified or amended treaty signed only by Japan, Russia and Great Britain. I said that I believed that no instrument should be drawn up to cover this important subject which was not to be signed by all the interested parties and under these circumstances it seemed to me that it would be preferable not to hold such a conference at present.

J[OSEPH] C. G[REW]

711.417/698

The British Ambassador (Howard) to the Secretary of State

No. 192 WASHINGTON, *March 18, 1926.*

SIR: I have the honour, on instructions from His Majesty's Government, to inform you that the Japanese Government have recently

notified them of their desire that a conference should be summoned to consider, and if possible to agree upon, a further extension of the Convention for the Protection of Fur Seals signed at Washington on July 7th, 1911, with such additions and modifications as may be desirable.

In bringing this fact to your notice, I have the honour to enquire whether the United States Government have also been approached in the matter by the Japanese Government, and if so, what attitude they intend to adopt towards the proposed conference.

I have [etc.]

(For the Ambassador)
H. G. CHILTON

711.417/725

The Japanese Embassy to the Department of State[14]

First, there is an instance in which the United States Government signed the International Postal Convention with Soviet Russia in 1924,[15] notwithstanding the fact that it had not recognized the Soviet Government. Might it not, therefore, be possible that the United States, following upon this instance, would participate in the proposed conference and sign a modified or a new treaty with Soviet Russia without touching upon the question of its recognition?

Second, should there be any circumstance in which the United States finds it difficult to follow such a procedure, it may be proposed that, without touching the question of recognition and previous to the formal conference of official delegates of the countries concerned, a preliminary conference be held by the experts of these countries on the understanding that so far as the United States is concerned, it may treat the Soviet expert as an observer, while so far as Soviet Russia is concerned, it may treat the American expert as an observer.

In the event of a unanimity of views being reached at such a conference, their findings might be submitted simultaneously to a conference of the official delegates of Japan, England, and the United States, on the one hand, and also to another conference of the official delegates of Japan, England, and Soviet Russia, on the other, so that similar treaties may be concluded separately among the former three countries as well as among the latter three countries.

It is not known whether under such an arrangement Soviet Russia will agree to participate in a conference, but from the nature of the

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[14] This undated *aide-mémoire* was left with the Under Secretary of State by the Japanese Ambassador on Mar. 20, 1926.

[15] See United States Post Office Department, *Universal Postal Union, Convention of Stockholm (August 28, 1924) together with the detailed regulations for its execution* (Washington, Government Printing Office, 1926).

case, a readjustment of this matter can hardly be achieved unless by means of a joint conference of England, the United States, Soviet Russia, and Japan, signatories to the existing convention. Furthermore, serious damage is now being inflicted upon our fishing industry on account of the tremendous increase in the number of fur seals in our territorial waters, and a speedy remedy of this situation is a matter of urgent importance to Japan. In these circumstances, the Japanese Government is reluctant to postpone the proposed conference, and it is earnestly desired that the United States Government see its way to participate under either of the arrangements above suggested.

The Japanese Government finds it difficult at present to set forth the terms of modification, but it desires to see necessary provisions made in the treaty for the removal of the danger to our fishing industry and such other modifications introduced into it as to make it conformable to the requirements of the actual situation.

711.417/722

Memorandum by the Under Secretary of State (Grew) of a Conversation With the Second Secretary of the British Embassy (Balfour)

[WASHINGTON,] *May 4, 1926.*

I telephoned today to Mr. Chilton of the British Embassy to say that I was prepared at his convenience to answer the note of April 8 from the British Embassy,[16] but preferred to do it orally and therefore suggested that somebody from the Embassy come to the Department. Mr. Balfour came. I told him that the proposal of the Japanese Government for a revision of the Fur Seals Convention had been tentative up to the present and that our negotiations with the Japanese Ambassador had been entirely informal and oral and it therefore seemed preferable to inform the British Embassy of the present status of the matter orally instead of in a formal note. Mr. Balfour replied that this would be entirely satisfactory.

I then said that the situation is as follows: The Japanese Government had suggested a conference between Great Britain, the United States, Soviet Russia and Japan for the purpose of drawing up a new convention for the protection of fur seals on the ground that these seals were invading the seas of Japan in such numbers as to destroy and displace great quantities of fish, a circumstance which was inflicting great damage and harm to Japanese fishermen. In view of this situation, the Japanese Government felt that the regulations protecting fur seals should be made less stringent in order to decrease the number of seals entering into Japanese seas.

[16] Not printed; it referred to the British Ambassador's note No. 192, Mar. 18, p. 465, and inquired how the matter then stood.

In my first conversation with the Japanese Ambassador, I had made it clear that as the United States had not recognized the Soviet Russian régime, it would be impossible for us to sign a convention with representatives of that régime. The Japanese Ambassador after consulting with his Government then inquired whether we had not signed the Universal Postal Convention in 1924 with the Soviet Russian régime and whether this would not constitute a precedent for similar action in the present case. To this I replied that the negotiation and signature of the Universal Postal Convention could not serve as a precedent which could be followed by this Government in the matter of the revision of the Fur Seals Convention as the Postal convention was an arrangement of an administrative character having no political significance and was signed by administrative officials. The non-political character of the Universal Postal Convention is further evidenced by the fact that it is signed by numerous entities which are not recognized as sovereign states, such as the Philippine Islands, Belgian Congo, Spanish Colonies, French Colonies, Korea, etc. The Fur Seals Convention, on the other hand, is a formal treaty involving in the United States the full treaty-making power.

The Ambassador had then suggested that two separate conventions might be drawn up at a conference of experts at which the United States and Soviet Russia would be represented only by observers, for which the conference of Lausanne furnished a precedent, and that the two separate conventions could be concluded, one between the United States, Great Britain and Japan, and the other between Great Britain, Soviet Russia and Japan. To this suggestion I pointed out to the Ambassador that this would leave a serious loophole in the effectiveness of control, because no power would be conferred upon the American authorities to arrest Russians conducting pelagic sealing within the waters under their control, and, similarly, no power would be conferred upon the Russian authorities to arrest American citizens conducting pelagic sealing in Russian waters.

I had then informed the Ambassador that while we could not enter into a new convention we desired to approach the matter with the utmost good will and I asked if he could not tell us exactly what modifications in the existing convention his Government desired, so that we might ascertain whether a means of meeting the wishes of the Japanese Government, without holding a conference at this time, might not be found. I had pointed out to the Japanese Ambassador that under Article XIII of the present convention, the Japanese Government could adjust the size of the Robben Island herd by killings on land which would seem to be an effective method of cutting down the depredations upon the fisheries. The Ambassador had then said that while he had had no precise information on this point

from his Government he believed that the Japanese fishermen in the inland seas desired to kill the seals in the water. The Ambassador had then intimated that in view of the attitude of the American Government which he would bring to the attention of his own Government it was possible that the matter might be dropped, although he had no information from his Government to confirm this. For this reason he had suggested that the matter be kept in its present informal status.

Mr. Balfour said that his own Government had been approached similarly by the Japanese Government and that the British Government had replied asking exactly as we had done, for the precise modifications which the Japanese Government desired to have made in the convention. Up to the present no reply from the Japanese Government had been received. The situation, so far as the Government of the United States and the British Government are concerned, would therefore appear to be similar.

J[OSEPH] C. G[REW]

711.417/723

The Japanese Ambassador (Matsudaira) to the Secretary of State[17]

Under the date of January 5, 1926, the Japanese Ambassador addressed the Honorable the Secretary of State a note setting forth the desire of the Japanese Government to hold a conference as contemplated in Article 16 of the Convention for the Protection of Fur Seals for the purpose of considering and, if possible, agreeing upon further extension of the Convention with such modifications and additions as may be desirable.

In view of the fact that the United States Government has not accorded its recognition to Soviet Russia, the United States Government, while prepared to consider the Japanese proposal with good will, failed to see its way to participating in a conference at which Soviet Russia will be represented. In appreciation of the difficulty thus felt by the United States Government, the Japanese Government proposed, in the course of March last, that, without touching the question of recognition and previous to the formal conference of official delegates of the signatory countries, a preliminary conference be held by experts of these countries on the understanding that so far as the United States is concerned it may treat the Soviet expert as an observer, while so far as Soviet Russia is concerned it may treat the American expert as an observer. This proposal was made

[17] This undated *aide-mémoire* was left with the Under Secretary of State by the Japanese Ambassador on July 20, 1926.

with a view to similar treaties being concluded in the end among the United States, England, and Japan, on the one hand, and among England, Soviet Russia, and Japan, on the other. To this proposal also the United States Government failed to agree, but it wished to know the terms of modification desired by the Japanese Government so that it might be enabled to find some other means of adjusting the requirement.

Views thus exchanged on this subject have duly been reported to the Japanese Government, and the Japanese Ambassador is now instructed to approach the United States Government again with the request that the latter may see its way to acquiescing in the above proposal to conclude a similar treaty on this subject separately among the United States, England, and Japan, on the one hand, and among England, Soviet Russia, and Japan, on the other.

In again presenting this proposal to the United States Government, the Japanese Ambassador is charged to point out that the seals, the number of which was estimated at about 140,000 on the occasion of the conclusion of the existing Convention, have increased to about 840,000, and that the object for which this Convention was signed has been fully realized. With such a large increase in number, the seals frequenting waters adjacent to the coast of Japan are now said to have increased to 400,000 in recent years, with the consequence of serious damage being inflicted on the Japanese fishing industry. In order to save this situation, it is deemed not at all improper to permit pelagic sealing under certain restrictions.

In the second place, in the event of a remedy being sought for this situation in augmenting the number of land killings, instead of permitting pelagic sealing, it may be impossible to attain the purpose already mentioned, even though the land killing on Robben Island be increased, unless the United States Government will augment considerably the number of land killings on the Pribilof Islands, as it is estimated that 370,000 seals out of 400,000 resorting to the Japanese coast belong to the herds on the Pribilof Islands.

In the new convention to be reached, therefore, it may be necessary to strike out altogether Article 11 of the present Convention and to modify at the same time the terms of Article 10 conformably to the changed circumstances, with a view to securing the agreement of the United States Government to increase land killing on the Pribilof Islands.

In the third place, provisions in regard to the joint inquiry into the increase of seal herds, the rate of distribution of seal skins, the maintenance of a guard or patrol on the part of Great Britain, and the killing of seals by natives, either do not exist in the present

Convention or are found short of meeting the actual requirement if they do exist. These shortcomings should be remedied by a new Convention.

In the fourth place, the United States Government appears to be under the apprehension that, even though a new convention were concluded in a manner as suggested by the Japanese Government, the United States Government in view of the existing relations with Soviet Russia, would be debarred from exercising its right in regard to seizure of persons or vessels of the latter, offending against the prohibition as provided for in the present Convention. Such a contingency nevertheless exists under the present Convention, and it is hoped that a suitable measure of remedy may be found on the occasion of discussing the new convention.

In consideration of the foregoing observations, the Japanese Government earnestly request the United States Government to be so good as to reconsider this question so as to agree to the Japanese proposal.

711.417/728

Memorandum by the Chief of the Division of Far Eastern Affairs (Johnson) of a Conversation With the Counselor of the Japanese Embassy (Sawada)

[WASHINGTON,] *August 13, 1926.*

Mr. Sawada, Counselor of the Japanese Embassy, came to see me this morning and referred to my conversation with him on August 2 when I told him that the American authorities were very much interested in the Japanese statement that some 370,000 out of 400,000 seals now visiting Japanese waters were from the American Herds of the Pribilof Islands, and that we desired to know the data upon which the Japanese authorities based this statement. Mr. Sawada stated that he had lost no time in communicating this inquiry to Tokyo and had received a reply by telegraph which he orally paraphrased as follows:

"The Japanese authorities appreciate the sympathetic interest evidenced by this inquiry of the American authorities, but feel that they would prefer to await the time of a conference before revealing the data upon which they based their conclusions as to the seals now visiting Japanese waters."

N[ELSON] T. J[OHNSON]

711.417/752

Memorandum by the Under Secretary of State (Grew) of a Conversation With the Japanese Ambassador (Matsudaira)

[WASHINGTON,] *November 29, 1926.*

The Japanese Ambassador asked for an appointment and said that he had been requested by his Government to endeavor to obtain a reply to the Ambassador's memorandum of July 20, 1926 concerning the Fur Seals Convention, as the Japanese Diet was about to meet and it was believed that national pressure in the interest of the Japanese fishermen might force the matter into discussion. The Ambassador said that there had been a good deal of criticism of the Japanese Government when the Convention of 1911 was concluded, and intimated that this criticism was the basis of the Government's present desire to hold a conference for the purpose of negotiating a new Convention.

I told the Ambassador that I had just been on the point of asking him to see me because our reply to his representations of July 20 was only just completed. A thorough study of the situation had been made by our experts in an endeavor to meet the points raised by the Japanese Government and the results of these studies were contained in the memorandum which I now handed him. I alluded to the Japanese suggestion that two separate treaties might be substituted for the present Convention, one between Japan, Great Britain and the Soviet Régime, and the other between Great Britain, Japan and the United States. In this connection, I drew his attention to the fact that the Convention of 1911 is now recognized as binding by Soviet Russia, the latter having by a decree of February 2, 1926 made the Convention applicable to the Soviet Government and its citizens, and I intimated that this situation would, of course, be bound to be disturbed by a new conference. I furthermore said to the Ambassador that it was our desire so far as possible to try to find means to meet the Japanese viewpoint concerning the fur seals situation if this could be done short of altering the Convention and that as I had told the Ambassador before we would gladly consider and study any points the Japanese Government might raise with a view to ascertaining whether the situation could be improved by administrative regulations rather than by new treaty provisions.

J[OSEPH] C. G[REW]

711.417/752

Memorandum by the Chief of the Division of Far Eastern Affairs (Johnson) [18]

The Japanese Ambassador saw Mr. Grew, the Under Secretary of State, on July 20, 1926 and in a conversation referred to the Japanese Embassy's note of January 5, 1926, which set forth the desire of the Japanese Government that a conference should be held, as contemplated in Article 16 of the Convention for the Protection of Fur Seals, for the purpose of considering and, if possible, agreeing upon a further extension of that Convention with such modifications and additions as might be desirable. The Ambassador referred to the fact that in March the Japanese Government had proposed to the Government of the United States that, in view of the fact that recognition had as yet not been accorded to the Government of Soviet Russia by the Government of the United States, this obstacle to a conference of the nations party to the Fur Seal Convention of 1911 might be overcome by a preliminary conference of experts of the signatory powers on the understanding that, so far as the United States was concerned, it might treat the Soviet expert as an observer, while, so far as Soviet Russia was concerned, it might treat the expert of the United States as an observer. The Ambassador referred to the fact that the United States Government found itself unable to agree to this proposal but, desiring to do all things possible to meet the necessities of the situation as they revealed themselves to the Japanese Government, expressed a desire to know the terms of modification sought by the Japanese Government, in order that consideration might be given to them if happily some means short of a conference might be found to meet the wishes of the Japanese Government.

The Japanese Ambassador stated that he had communicated these views of the Government of the United States to his Government and stated that he had been instructed again to approach the Government of the United States with a request that the latter reconsider its position in this matter to the end that it might see its way clear to acquiesce in the proposal of the Japanese Government to conclude similar treaties separately among the United States, England and Japan on the one hand and among England, Soviet Russia and Japan on the other.

The Government of the United States has not failed again to give most careful consideration to the proposal of the Government of Japan to substitute two treaties for the present single convention

[18] This undated memorandum was handed to the Japanese Ambassador by the Under Secretary of State on Nov. 29, 1926.

for the preservation of fur seals but it still finds it difficult to persuade itself that the unity of interest and of obligation, served and established by the Convention of 1911, can be served by two treaties which will divide the parties whose interests are the same.

The Government of the United States, however, being most anxious to find some means short of a conference that must be fruitless, whereby the desires of the Japanese Government may be met, has, with the assistance of the appropriate authorities, most carefully and with good will studied the suggested changes in the present Convention which the Japanese Government has intimated should be made. Note is made of the statement that the object of the Convention providing for the preservation and protection of fur seals has been fully realized as the number of seals, which was estimated at about 140,000 on the occasion of the conclusion of the existing Convention, has increased to about 840,000. There is no question that the Convention of 1911 has been most effective in fulfilling its purpose at least insofar as concerns the seal herd which resorts to the Pribilof Islands for breeding purposes, the purpose of the Convention being, as set forth in its preamble, to provide "for the preservation and protection of the fur seals which frequent the waters of the North Pacific Ocean". The obvious effectiveness of the Convention appears to justify the conviction of the Government of the United States that the continued preservation and protection of fur seals, as a commercial proposition, which frequent the waters of the North Pacific, depends entirely upon the continuance of the prohibition of pelagic sealing. The Japanese Government will recall that at the conference which was held in Washington in the summer of 1911 and which resulted in the convention now under discussion, the United States Government stated that its position had always been that pelagic sealing was an unscientific and wasteful method of hunting which would inevitably result in the ultimate extermination of the seal herds. The soundness of this position has been more than demonstrated by the results achieved under the present convention and the Government of the United States is convinced that these results will be lost if pelagic sealing is allowed to be resumed, as suggested by the Government of Japan, even under restrictions.

When the question of the fur seal convention was discussed by the Under Secretary of State with the Counselor of the Japanese Embassy on March 1, 1926, the former referred to the statement made orally some time before by the Japanese Ambassador to the effect that the large number of seals frequenting Japanese waters was having dire effect upon the Japanese fishing industry. At that time the Under Secretary of State suggested that the situation complained of might be remedied by an adjustment of land killings on

Robben Island. The Japanese Ambassador on July 20, referred to this suggestion and stated that it might be impossible to attain the ends desired by the Japanese Government with increased killing on Robben Island unless the United States Government would be willing to augment considerably the number of land killings on the Pribilof Islands as the Japanese authorities estimated that some 370,000 fur seals out of 400,000 resorting to the Japanese coast belong to the herds of the Pribilof Islands. The statement that seals belonging to the Pribilof Islands herds resort to Japanese waters presents an aspect of the question of the migratory habits of the fur seals of the North Pacific new to the authorities of the United States and has naturally been the subject of special and most careful consideration on the part of those authorities to whom the matters mentioned by the Japanese Ambassador were referred. The Department of State is now informed by those authorities that they find this statement regarding migratory habits of the Pribilof Islands herds as wholly at variance with accepted scientific views on the subject. The attention of the Department of State has been called to the fact that the fur seals resorting for breeding purposes to the Pribilof Islands, the Commander Islands and Robben Island, respectively, have been classified scientifically as different species. The seals resorting to the Pribilof Islands belong to the species *Callorhinus alascanus;* those resorting to the Commander Islands to the species *Callorhinus ursinus;* and those to Robben Island to the species *Callorhinus kurilensis.* The existence of these three different species is recognized by Article 3 of the Convention of 1911. It is understood that seals belonging to any one of these species do not resort to any of the islands to which the seals of either of the other two species resort, that the different species do not intermingle at sea, and that the seals of the Pribilof Islands have their migration routes along the west coast of North America and do not frequent Japanese waters at all. The evidence shows that the fur seals of the Pribilof Islands leave the island late in the fall to spend the winter in open ocean, and that as the mating season approaches, the herds come nearer to the coasts which they follow in their northward movement toward the breeding grounds on the island. The Pribilof seals, having a longer way to travel, arrive off the coast of California as early as December and January. From then on their movements along the west coast of North America to Alaska can be followed from month to month till the breeding seals land in the Pribilofs in May and June. The northward movement thus consumes about five months from the time of the first appearance off California. It is understood that the Commander Island seals apparently do not arrive off the Japanese coast quite so early, but from February and March

their movements toward Bering and Copper Islands parallel those of the American seals. In this connection emphasis is to be laid upon the fact that a large portion of the immature seals do not go to the islands at all, but remain in the open ocean throughout the summer. Such pelagic seals have been observed north of latitude 42° north during June and July, as far east as longitude 175° west, and as far west as longitude 150° west, but there is no reason to believe that these scattered summer bands do not eventually join their parent stocks to the west or the east, as the case may be. The Department of State is informed that it is well known that two years old seals do not reach the Pribilof Islands until some time in July and the yearlings not till August. The bulk of the seals do not leave the islands until November, and many bachelors and bulls remain later. The older males, in fact, at no time wander very far south. The females and younger males, on the other hand, travel as far south as latitude 35° north to reappear off California in December and January. It will thus be seen that the south migration requires only one or two months, the northward movement four to five. It would thus appear to be very improbable that any part of the Pribilof Islands herd could make the journey to Japan, stay there long enough for any purpose and be back in waters adjacent to the California coast in the short space of time that elapses between the time when they leave the islands and the time when they arrive off the coast of California to begin their annual northward journey. The Department of State is furthermore informed that there is nothing on record to indicate that the Pribilof Islands herd divides, one part going to Japan, the other directly to California. There is nothing to show that there is more than one main approach to the coast; besides the bulk of each class of seals arrives at the islands practically at the same time without any indication of two instalments. Attention has been given the question of the feeding habits of the seals and the Department of State is informed of two facts in this connection; first, that the seals are surface feeders; second, that their migrations are not correlated with the migrations of the commercially valuable salmonid fishes of the American coast. Authoritative investigations indicate that the seals feed almost exclusively on squids, pollock and the so-called seal fish, all surface fishes. That the valuable salmonids are not habitually pursued by the seals is amply proved by the fact that on Bering Island, the main rookery is located within seven miles of the main salmon river without any damage being done to the latter.

The above facts indicate why the authorities of the United States consider that it is very unlikely that the fur seals of the Pribilof Islands either visit Japanese waters or are destructive to commer-

cially valuable fish. In view of the very evident and marked difference between the views entertained by the authorities of the two countries with regard to these important question[s], the Government of the United States is prepared to co-operate with the Japanese Government in an investigation into the migration, feeding habits and other pertinent facts relating to fur seals of the North Pacific, more especially those of the Pribilof Island herds. Such an investigation made jointly by the scientists of the two countries would enable the two countries to determine what steps, if any, were necessary to correct conditions complained of by the Japanese Government.

Consideration has been given to the suggestion of the Japanese Government that it may be necessary to strike out altogether Article 11 of the present Convention and to modify at the same time the terms of Article 10 conformably to the changed circumstances, with a view to obtaining an agreement of the United States Government to increase land killing on the Pribilof Islands. Article 11 of the Convention consists of three paragraphs; the first paragraph having been executed has no direct bearing upon matters of the present or the future. The second paragraph guarantees that the British and Japanese shares, respectively, of the seal skins taken from the American herd under the terms of the Convention "shall be not less than 1,000 each in any year, even if such number is more than 15 per cent of the number to which the authorized killing is restricted in such year, unless the killing of seals in such year or years shall have been absolutely prohibited by the United States for all purposes except to supply food, clothing and boat skins for the natives on the islands, in which case the United States agrees to pay to Great Britain and to Japan each the sum of $10,000 annually in lieu of any share of skins during the years when no killing is allowed". The provisions of this paragraph would seem to be favorable rather than otherwise to Japan and it is therefore not understood why it should be taken out of the Convention. In regard to paragraph 3, which stipulates that if the total number of seals frequenting the Pribilof Islands in any year falls below 100,000, all killings except the supply necessary for the support of the natives may be suspended without allowance of skins or payment of money equivalent until the number of such seals again exceeds 100,000, the provisions of this paragraph have application only in the event that the Pribilof Islands herd falls below 100,000 animals, a very remote contingency under present conditions. It is the view of the Government of the United States that if such a contingency should unhappily come about, there should be no reason why the United States Government should pay revenue from the Pribilof Islands herd either to Japan or to Great Britain when the Government of the United States is receiving no revenue itself.

With reference to the question of modifying Article 10 of the Convention with a view to securing the agreement of the United States to the increased land killing on the Pribilof Islands, the Department of State is informed that there are now being killed each year at those islands all the male seals that are not required for breeding purposes. It is stated that to extend the killings to males which should be spared for breeding purposes would retard or stop altogether the natural increase in the herd or actually result in a reduction of the herd from its present size, according to the extent that increased killings were made. To kill more than surplus males would bring about a wastage of female life, unless females were to be included in the killings in order to maintain an equilibrium between the sexes. It is pointed out that in each of the years 1924, 1925 and 1926 the number of seal skins taken has been substantially in excess of the number taken in the preceding year.

N[ELSON] T. J[OHNSON]

SUITS IN JAPANESE COURTS AGAINST UNITED STATES SHIPPING BOARD[19]

394.1154 T 13/4

The Chairman of the United States Shipping Board (O'Connor) to the Secretary of State

WASHINGTON, *August 11, 1926.*

SIR: The United States Shipping Board has just received from its agent for Japan at Kobe the following cablegram:

"Shipboard
3196 Takata Case. Hirata advises Professor Takayagi, court expert on immunity, has rendered decision attorney not competent to plead immunity unless specially so instructed by United States. Hirata requests 'Please ask State Dept. to send through American Embassy Tokio to Hirata telegraphic instructions to the effect that United States Government consider Bank of Chosen and Hong Kong and Shanghai Bank Corporation case to be proper case to claim immunity from Japanese jurisdiction, and that the attorney is hereby instructed to plead immunity.'

Shipboard"

The Hirata mentioned is the attorney who has been retained by the United States Shipping Board to defend the Government's interest in the two suits mentioned.

The two suits mentioned are as follows: The first was brought by the Hong Kong and Shanghai Banking Corporation against the United States Shipping Board in the Yokohama Local Board of Justice on

[19] For previous correspondence concerning status of United States Shipping Board vessels in foreign countries, see *Foreign Relations*, 1923, vol. I, pp. 263 ff.

December 3, 1925, for 520,500 yen. The plaintiff attached the SS. *President Grant* as the property of the Government. It is also believed that the Admiral Oriental Line is a defendant in this suit although not particularly named in the copy of the complaint on file in this office.

The second suit was brought by the Bank of Chosen in the same court on December 3, 1925 against the United States Shipping Board and the Admiral Oriental Line. This suit is for 272,955.03 yen. An attachment was also made in this case of the SS. *President McKinley.*

The two suits grew out of the operation by the Admiral Oriental Line of passenger and freight steamers belonging to the Government and sailing between Seattle, Washington, Japan and other ports of the Orient.

Takata & Company, a very large and apparently responsible firm, dealer in electrical supplies, purchased in the United States in 1924 and shipped to itself in Japan large consignments of electrical supplies and machinery much of which was destined to and was actually used in Japanese government contracts.

Takata & Company borrowed from New York banks including the New York Offices of the two plaintiff banks, money on the strength of the consignments of goods and pledged with the banks as security the bills of lading, which were all with one exception "order" bills. The drafts were for the most part for ninety days. When the goods arrived at Yokohama, Takata, instead of following the usual custom and securing from the banks holding the bills of lading, those bills of lading or guarantees in place of them, went to other banks and secured from those banks signed contracts agreeing to deliver to the Admiral Oriental Line the bills of lading when received and also to protect that Line against any claims that might arise against it by reason of the delivery of the goods without insisting upon the surrender of the bills of lading.

Finally, in January or February, 1925, Takata & Company was compelled to go into the hands of a creditor's committee for liquidation because of its inability to meet its obligations.

As soon as this happened it was found that there were many banks holding bills of lading, many carriers and many banks who had given contracts of guarantee involved in the situation and that many of the consignments had arrived and been delivered to Takata & Company nearly a year previously. The banks holding the bills of lading demanded the goods of the carriers including the Admiral Oriental Line and the carriers referred the demands to the banks who had given the guarantees. All of the guaranteeing banks which had been accepted by the Admiral Oriental Line recognized and paid their obligations except the Daini Bank which repudiated its obligations and refused to recognize them.

This Daini Bank is a local Yokohama Bank which acts as the fiscal agent for the Japanese Government.

Examination into the situation disclosed the above described facts and also showed that the lending banks had been relying almost exclusively on Takata's credit and not on the bills of lading. The lending banks had extended and re-extended the drafts and had given the carriers no notice of the fact that they were the holders of the bills of lading. All this in face of the fact that these banks must have known of the widespread practice in Japan and the Orient of consignees lifting goods from carriers immediately upon arrival and delivering the carriers bank guarantees to protect them. Also in face of the clear provisions of the bills of lading requiring that notice be given the carrier of any claim on the bill of lading within a short specified period of the arrival of the goods.

Under the circumstances, the United States Shipping Board believes that it has several valid fundamental defenses to the Actions and that these defenses must be asserted in order to protect the Government's rights against the Daini Bank on the contracts of guarantee and against any claim which the Government might have against the Admiral Oriental Line, its operator. The Daini Bank has insisted that the Shipping Board take advantage of all defenses and the Bank will undoubtedly attempt to secure release from its obligations if the United States Shipping Board fails to do so.

The Japanese Government appears indirectly as interested in every angle of the suit brought by the Bank of Chosen. As pointed out above, much of the goods secured by Takata were used in completing Japanese Government contracts. The Bank of Chosen holding the bills of lading and the plaintiff in the suit is largely owned and controlled by the Japanese Government. The Daini Bank which has repudiated its contract is the fiscal agent of the Japanese Government.

The suits are clearly suits against the United States in that the United States Shipping Board is the main defendant in both of them. The attachment of the ships appears to be merely incidental to the suit and follows the Japanese Court practice.

It is believed that the claim for immunity requested in the above quoted cablegram should be asserted not only because the case appears to be on all fours with the Compania Mercantil Argentina case brought against the United States Shipping Board in the Courts of England, decided March 25, 1924, in which such a claim was made but also because it is felt that the letter of February 20th, 1923 from the United States Shipping Board to the Secretary of State which was transmitted to the foreign offices of foreign governments including Japan [20] was a bi-lateral suggestion and that the foreign government taking

[20] Not printed; see instruction No. 178, Mar. 5, 1923, to diplomatic officers, *Foreign Relations*, 1923, vol. I, p. 270.

advantage of the waiver of immunity should recognize the credit of the United States Government and take steps to provide for the release of any Government owned vessel from libel or attachment in accordance with the provisions of Section 7 of the Suits in Admiral[ty] Act [21] in return for such waiver. Japan has failed to accord the United States this privilege although earnestly solicited to do so by His Excellency, The United States Ambassador, Mr. Warren.

It is respectfully requested that such instructions as the Secretary deem proper be issued to the United States Ambassador in Tokio asserting the rights of the United States Government and placing before the Courts of Japan the claim of sovereign immunity in the United States Shipping Board.

Respectfully,

T. V. O'CONNOR

394.1154 T 13/4 : Telegram

The Acting Secretary of State to the Ambassador in Japan (MacVeagh)

WASHINGTON, *August 18, 1926—6 p. m.*

75. In compliance with request of Shipping Board please telegraph following to Joye Hirata, counsel for Shipping Board in suits filed in Yokohama courts: United States Shipping Board is an agency of the Government of the United States and not subject to suit in foreign courts. You are accordingly instructed to plead Board's immunity in suits brought against it by Bank of Chosen and Hongkong and Shanghai Banking Corporation.

HARRISON

394.1154 T 13/8

The Secretary of State to the Ambassador in Japan (MacVeagh)

No. 203 WASHINGTON, *April 11, 1927.*

SIR: Reference is made to your despatches No. 340 of November 19, 1926, No. 354 of December 1, 1926, and No. 367 of December 14, 1926,[22] transmitting copies of editorials which appeared in the *Japan Chronicle* declaring that the plea of immunity filed in behalf of the United States Shipping Board in suits brought against the Board by the Hongkong and Shanghai Banking Corporation and the Bank of Chosen is inconsistent with the declaration communicated in this Department's circular No. 178 of March 5, 1923.[23]

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[21] 41 Stat. 525.
[22] None printed.
[23] *Foreign Relations*, 1923, vol. I, p. 270.

Copies of your despatches and their enclosures were referred to the United States Shipping Board for any comment the Board desired to make regarding the editorials mentioned and there are transmitted herewith for your information copies of a letter dated February 7, 1927, from the Chairman of the Shipping Board and the enclosures mentioned therein in reply to this Department's communication.

It will be observed that the suits in Japan in which counsel was instructed to plead immunity were against the United States Shipping Board and were in effect suits against the United States. The Department did not undertake in Circular No. 178 of March 5, 1923, to waive the immunity of the Government of the United States from suit to which it is entitled by the well recognized principles of international law. The Department merely announced in that circular that it would not claim, for ships operated by or on behalf of the United States Shipping Board in commercial pursuits immunity from arrest and other special advantages generally accorded public vessels.

Furthermore, in addition to an express reservation of the right to claim immunity "of such vessel or cargo from foreign jurisdiction in a proper case" the declaration is by reasonable implication conditioned on the acceptance by foreign governments of the provisions of Section 7 of the Suits in Admiralty Act of March 9, 1920, which is quoted in the Circular, and the refusal of the Japanese Government to accept as applicable to Japan the provisions of the section of law mentioned, might properly be held to render the declaration of the Circular inapplicable to Japan.

It would appear to be clear, therefore, that the declaration was not intended to have, and cannot reasonably be construed as having application to the suits instituted in Japan against the Shipping Board in which the immunity of the Board was pleaded. These suits are, in effect, personal actions against the Government of the United States and not suits *in rem* growing out of a case against ships operated by the Shipping Board in commercial pursuits. The attachment of two Shipping Board vessels by the plaintiffs was merely an incident to the actions brought against the Government of the United States, and in the circumstances mentioned the Government had no alternative than to plead its immunity.

An additional reason for claiming immunity in the cases under discussion is found in the fact that the plaintiffs in both suits have instituted legal proceedings in the United States against the Government of the United States based on the claims for which the suit in Japan was filed. Irrespective of the question of the Government's right to claim immunity as a sovereign, it is obvious that the

United States Government should not be required to defend in the courts of a foreign country actions based on claims which are also made the subject of legal proceedings instituted against the Government of the United States in the courts of this country.[24]

The Department does not consider it advisable at this time to issue through the Embassy any statement regarding the editorials for publication, but you are requested to improve every opportunity informally to correct the erroneous impressions that may have been made by the editorials mentioned and upon request therefor to communicate the substance of this instruction to the Foreign Office.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[Enclosure]

The Chairman of the United States Shipping Board (O'Connor) to the Secretary of State

WASHINGTON, *February 7, 1927.*

SIR: Acknowledgment is made of your letter of January 26, 1927 transmitting copies of despatches dated November 19, December 1, and December 14, 1926, from the American Embassy at Tokyo with the enclosures mentioned therein,[24a] in regard to editorials which have appeared in the Japanese press concerning the claim of immunity made on behalf of the United States Shipping Board by its attorney in certain legal proceedings brought against the Shipping Board in the Courts of Yokohama.

The memorandum from the American Ambassador to you of December 1, 1926 correctly states the reasons for claiming immunity in this particular case, but something may be added so as to explain the background of this particular case.

You will see that the American Ambassador suggests in his memorandum of December 1 that the editorials in the Japanese paper were written by J. E. deBecker, the attorney of the Hong Kong & Shanghai Banking Corporation, and were instigated by that corporation. No doubt this is correct, and the habit of trying points in litigation in the newspapers is not confined to Japan alone, but, as you know, is frequently resorted to in this country. The result is that the newspaper

[24] In a letter dated June 26, 1928, regarding these suits, Mr. Chauncey G. Parker, general counsel for the United States Shipping Board Emergency Fleet Corporation, wrote to Mr. Frank X. Ward, assistant solicitor of the Department of State, that: "The question of immunity raised by our pleas has not yet been determined." (File No. 394.1154T13/20.) In a letter dated Jan. 22, 1929, Mr. T. V. O'Connor, chairman of the United States Shipping Board, wrote to the Secretary of State that: "The United States Shipping Board recently reached a settlement with certain Japanese banks in regard to the 'Takata Cases.'" (File No. 394.1154T13/28.)

[24a] None printed.

which lends itself to a private interest for the purpose of influencing the determination of a litigated matter in court is not helping either the nation of which it happens to be a national or the administration of justice in the court itself. It should be expected, therefore, that the statements made in the newspaper are highly exaggerated and do not represent the truth of the controversy.

You must understand that the Japanese suit is an effort to get a judgment against the United States Shipping Board in an action *in personam*. The Fleet Corporation is not sued as is usual and the suit is not of a maritime nature. You are also quite aware of the fact that the United States Shipping Board is an agency of the Government precisely like the State Department or the War Department or the Navy Department, and the claim is made that by virtue of Circular Instruction No. 178, March 5, 1923, the State Department has announced to the world that the Government of the United States would not claim immunity in any suit that might be brought against the Shipping Board. Of course, this is perfectly absurd and neither the Shipping Board nor Mr. Lasker [25] in the circular in question, nor in any other way, invited nationals of foreign countries to bring their suits against the United States Shipping Board in a foreign court in case they were aggrieved on account of some matter arising from the commercial business of the United States handled through the Shipping Board. Consequently, the point taken by Mr. Hirata that the diplomatic note of March 5, 1923 was not a complete waiver and that the waiver was based on Section 7 of the Suits in Admiralty Act approved March 9, 1920, is correct.

You will notice that Section 7 presents an alternative. The first is where the vessel is arrested, attached or otherwise seized, or if any suit is brought against the Master of any such vessel for a cause of action arising in connection with the operation or ownership of such vessel, then the United States Consul may claim the vessel to be immune from arrest and may execute an agreement on behalf of the United States or the Shipping Board for the release of the vessel and for the prosecution of any appeal. This is the first alternative.

Then follows the second alternative:

"Or may, in the event of such suits against the Master of any such vessel, direct said United States Consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit."

The Act further authorizes the Attorney General to arrange with bank or other surety for the execution of a bond or stipulation to secure the payment of any such lien.

[25] Albert Davis Lasker, former chairman of the United States Shipping Board.

The State Department has attempted without success to persuade the Foreign Office of the Japanese Government to accept the procedure for the release of the United States vessels under the provisions of Section 7. As a result of the refusal of the Japanese Government to accede to this request the United States in the present case was required to put up security in an amount considerably larger than the amount of the claim of the plaintiff so as to secure the payment of any judgment against the United States. Apparently there is now criticism that the United States should not exercise its full right to claim immunity which was incorporated in the Circular Instruction at the end of Section 7 aforesaid, as follows:

"Provided, however, that nothing in this Section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case."

Now, in the judgment of the Shipping Board, the present suit is a proper case for claiming immunity. The Shipping Board takes the view that the mere fact that a vessel goes into a foreign port should not subject the United States to claims arising out of commercial transactions carried on by the United States except so far as those claims and commercial transactions arise with respect to the vessel itself which goes into that particular port. In other words, if the vessel itself has carried the goods which have either been nondelivered or injured, the person so injured might hold the vessel in a foreign port in a suit in which the Master of the vessel might be sued. Our thought is that maritime actions against the vessel itself should be consented to, but that ordinary common law actions or equity actions are without the field covered by Section 7 of the Suits in Admiralty Act.

It must be noted that Section 7 is the only act which authorizes the Shipping Board to waive a claim of immunity on the part of the United States and the only act by which the Attorney General or any other agent of the Government may waive such immunity.

This view may seem to be rather finespun and certainly is difficult to explain to the general public since they do not realize the extent to which a general waiver of all claims of immunity would go. For instance, what is to prevent a national of Great Britain having an action against the Government of the United States arising out of transactions in London commencing a suit in Japan by seizing a Government-owned ship in the manner in which the Hong Kong & Shanghai Bank have seized this ship. The Government had transactions with Japanese shipbuilders. Fortunately, these claims have been settled, but on the theory of the writer of the editorials in the Japanese newspapers, what would have prevented the Japa-

nese shipbuilders from seizing Government-owned ships in Japanese ports by attachment and suits brought to recover on such claims.

The United States Shipping Board has recently settled claims for large amounts in favor of seamen who were entitled to war bonuses for working on vessels under charter for the United States Government. What would have prevented these claims from being prosecuted in Japanese Courts by the seizure of United States vessels?

These illustrations show the far-reaching character of the contention made by the Japanese newspapers, and it is quite apparent that if there are general waivers to litigation of the character in question this will be treated as a precedent so that the Government will be unable in future cases to properly insist upon the immunity to which a sovereign power is entitled by the law of nations and the law of the United States.

The writer of the editorials quotes the opinion of a Judge in an inferior Court of the United States in the *Pesaro* case, and ridicules the opinion of Justice Van Devanter in the Supreme Court of the United States, 271, U. S. 562. This is not an unusual course for newspaper writers to pursue, especially when they are ignorant of the field of which they are writing, and certainly an attorney on the other side would wish to keep from the public the decisions and laws which would be unfavorable to his view. As a matter of fact, not only is immunity allowed when claimed in the Courts of the United States, but Courts of Great Britain, Courts of Germany, and I believe the Courts upon the continent of Europe allow the same claim. You are referred to the following decision in the Courts of Great Britain, *Compania Mercantil Argentina* vs. *United States Shipping Board*, also, the case of *Gustave Salling* vs. *United States Shipping Board* shows the German rule, copies of which decisions are herewith transmitted.[26]

I am enclosing for your information and for the benefit of the American Embassy at Tokyo, two copies of a brief of the authorities on Immunity which have been collected.[26]

This question has not been raised in the Courts of Europe because as a rule litigations there are brought for maritime causes in Courts having maritime jurisdiction and service is made upon the Master and Agent of the ship so that these actions are entirely within the declaration of policy maintained in Chairman Lasker's letter.

It may not be very pertinent to this discussion to go into the facts of the particular case which the writer of the editorials had in mind. The action of the Government was precipitated by the refusal of the Daini Bank to meet bank guarantees to indemnify the Admiral

[26] Not printed.

Oriental Line and the Government from losses on account of delivering cargo consigned to Takata & Company to the said Company without the surrender of the bills of lading. The Hong Kong & Shanghai Bank held many of these bills of lading and had held them in some instances for over a year after the goods were delivered to Takata & Company and with full knowledge of that fact. The failure of Takata brought to the attention of the Government the fact that the Hong Kong & Shanghai Bank was a creditor of Takata for the amount for which this suit is brought. When the Government was forced to put up security to obtain the release of the vessel, bonds of the Kingdom of Japan had to be furnished and these bonds had to be deposited with the very same banking institution, the Daini Bank, who owed the Government on these bank guarantees.

It must be remembered also that the bills of lading upon which these shipments were made were through bills of lading, the primary carriers being railroads of the United States, and by the terms of the bills of lading the ocean carrier was entitled to the same protection as the railroad which originally issued them. These bills of lading have been construed in the Courts of the United States, and under the decisions of the United States Courts the carrier has defenses to the claims of the holding banks which not only limit the amount of the recovery under the bills of lading but also relieve the carrier from responsibility because of the failure of the holder of the bill of lading to give notice within the time limit prescribed by the bill of lading. The action, therefore, is based upon a contract which was made in the United States, and the rights of the parties should be regulated by the laws of the United States. The Courts of the United States are open for the trial and determination of these causes of action, and as a matter of fact both the Hong Kong & Shanghai Bank and also the Bank of Chosen, which is in similar situation to that of the Hong Kong & Shanghai Bank, have brought suits in the United States for recovery of the very same claims which are being litigated in the Courts of Japan. This forms an additional reason why the United States Shipping Board should endeavor to prevent the Japanese cases from proceeding to trial.

Should the Japanese Foreign Office make this case the subject of inquiry we would respectfully suggest that the Japanese Foreign Office inquire into the question why the Daini Bank does not meet its guarantee.

Hoping that this memorandum may be helpful, I am [etc.]

T. V. O'Connor

LATVIA

PROVISIONAL COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND LATVIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 1, 1926

611.60 p 31/4a : Telegram

The Acting Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *July 29, 1924—4 p. m.*

35. Your 84, May 23, 1 p. m.[1] Department's 21, May 27, 3 p. m.[2] Department not disposed to proceed with treaty pending consent of Senate to treaty with Germany,[3] but desires immediately to enter into *modus vivendi* with Latvia for reciprocal assurance of unconditional most-favored-nation treatment in commercial matters.

You are requested at the earliest practicable date to propose such a course, at the same time handing to the Foreign Minister the following draft of a note which you are authorized to sign upon assurance of a reply in like terms:

"I have the honor to make the following statement of my understanding of the agreement reached through recent conversations held at Riga on behalf of the Government of the United States and the Government of Latvia with reference to the treatment which the United States shall accord to the commerce of Latvia and which Latvia shall accord to the commerce of the United States.

These conversations have disclosed a mutual understanding between the two Governments which is that in respect to import and export duties, light, harbor, port and tonnage dues and all other charges affecting commerce, as well as in respect to transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Latvia, and Latvia will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports or exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the

[1] Not printed; it inquired as to the status of the treaty of amity, commerce and consular rights, which had been proposed to Latvia pursuant to instruction No. 62, Aug. 21, 1923 (not printed).

[2] Not printed; it stated that the Department would probably not proceed further with the negotiations for a treaty of amity, commerce and consular rights until action on the treaty signed with Germany on Dec. 8, 1923, had been taken by the Senate.

[3] Signed Dec. 8, 1923; *Foreign Relations*, 1923, vol. II, p. 29.

other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Latvia than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in Latvia of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Latvia, on the exportation of any article to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country;

Every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Latvia, by law, proclamation, decree or commercial treaty or agreement, to any third country will become immediately applicable without request and without compensation to the commerce of Latvia and of the United States and its territories and possessions, respectively:

Provided that this understanding does not relate to

(1) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(2) The treatment which Latvia may accord to the commerce of Esthonia and/or Lithuania.

(3) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

The present arrangement shall become operative on the day of signature and, unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

I shall be glad to have your confirmation of the accord thus reached.

Accept, Sir, the renewed assurance of my high consideration."

In view of the fact that this is the time of year when the greatest commercial interchange takes place between the United States and

Latvia, the Department would be much gratified if the proposed exchange of notes could take place immediately. Should Latvia insist upon changes you should report them textually by telegraph.

[Paraphrase.] Should you find that there exists any discrimination against American trade, and if you should think such a statement advisable, you may state orally that by Section 317 of the Tariff Act of 1922 [4] the President is authorized to declare new and additional duties upon the products of those countries which discriminate against the United States. [End paraphrase.]

GREW

611.60 p 31/5 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

[Paraphrase]

RIGA, *August 2, 1924—1 p. m.*

[Received August 2—9:36 a. m.]

122. Department's telegram No. 35, dated July 29, 4 p. m. Foreign Minister agrees to Department's draft with the exception mentioned below. He states that since Latvia has refused to concede most-favored-nation treatment to other countries by means of an exchange of notes, he prefers, as a matter of form, that the proposed arrangement be communicated by a provisional agreement bearing our two signatures. Accordingly, I request that the Department instruct me regarding this desired change of formula and draft of preamble. Foreign Minister wishes to be informed of the reason why Russia was omitted from special regional treatment reserved for Lithuania and Esthonia. See Legation's despatch No. 1803, dated February 18, enclosure No. 2, page 3, additional article to column 4.[5]

I have learned that Great Britain has accepted principle of special status for Russia in its trade agreements with Latvia but that Czechoslovakia, France, and Poland refuse to negotiate treaties on this basis. It is reported that the Latvian Finance Minister insists upon such treatment but the Foreign Minister feels that if the United States joins objections, Latvia will be compelled to conform to their view.

COLEMAN

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[4] 42 Stat. 858, 944.

[5] Not printed. The reference is to alterations proposed by Latvia on Feb. 15, 1924, in the text of the draft treaty of friendship, commerce and consular rights which had been submitted to Latvia pursuant to instruction No. 62, Aug. 21, 1923 (not printed).

611.60 p 31/5 : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *August 23, 1924—2 p. m.*

42. Your 122, August 2, 1 p. m. In view of Latvia's disinclination to exchange notes, you are authorized to sign a *procès verbal*, as follows:

"The Undersigned, the Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Latvia and the Minister for Foreign Affairs of Latvia, desiring to confirm and make of record the understanding which they have reached through recent conversations on behalf of their respective Governments with reference to the treatment which the United States shall accord to the commerce of Latvia, and which Latvia shall accord to the commerce of the United States, have signed this *procès verbal.*

It is understood:

1. That in respect to import and export duties, light, harbor, port and tonnage dues and all other charges affecting commerce, as well as in respect to transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Latvia, and Latvia will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports or exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

2. That no higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Latvia than are or shall be payable on like articles the produce or manufacture of any foreign country.

3. That no higher or other duties shall be imposed on the importation into or disposition in Latvia of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country.

4. That, similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Latvia, on the exportation of any article to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country.

5. That every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Latvia, by law, proclamation, decree or commercial treaty or agreement, to any third country will become immediately applicable without request and without compensation to the commerce of Latvia and of the United States and its territories and possessions, respectively.

6. This understanding does not relate to:

a. The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

b. The treatment which Latvia has accorded or may accord to the commerce of Esthonia, Lithuania or Russia, so long as any advantages arising from such treatment are not accorded by Latvia to the commerce of states other than Esthonia, Lithuania or Russia.

c. Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

7. It is further understood that the present arrangement shall become operative on the day of signature and, unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either Government; but should either Government be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

Signed at Riga this ..... day of ....., 1924."

The *procès verbal* should be signed in duplicate. The extradition convention signed by the United States and Latvia on October 16, 1923,[6] was signed only in English, and it may be that it would be satisfactory to Latvia to sign this commercial arrangement only in English.

The *alternat* should be observed in referring to the United States and Latvia throughout the instrument, namely, the United States should be mentioned first each time in the copy retained by you and Latvia should be mentioned first in the copy retained by the Latvian Minister for Foreign Affairs.

Telegraph developments.

HUGHES

611.60 p 31/6 : Telegram

The Chargé in Latvia (White) to the Secretary of State

RIGA, *September 20, 1924—noon.*

[Received 12:10 p. m.]

151. Department's 46, September 19, 4 p. m.[7] Inasmuch as Foreign Minister Seya requested modifications in formula contained in Department's 35, July 29, 4 p. m., and Acting Foreign Minister Albats desires changes in that telegraphed in Department's 42, August 23, 2 p. m., I thought it more economical to obtain a written statement

[6] *Foreign Relations*, 1923, vol. II, p. 513.

[7] Not printed.

of alterations desired by Foreign Office prior to telegraphing further. Before giving me proposals in writing, Acting Foreign Minister desires to submit Department project to a meeting of the local commercial representatives. This meeting, already twice postponed, is due Monday 22nd.

Albats tells of [*me?*] that he wishes "procès-verbal" changed to "provisional agreement" and that Finland should be included with Esthonia, et cetera, as exception to extension of most-favored-nation treatment. The term "provisional agreement" is considered more likely to be acceptable to Diet which must [ratify?] arrangement. Although I have verbally stated that it will not be submitted to our Senate, I will telegraph again when I have written proposals.

WHITE

611.60 p 31/8 : Telegram

The Chargé in Latvia (White) to the Secretary of State

RIGA, *September 23, 1924—2 p. m.*

[Received 7:37 p. m.]

152. My telegram number 151, September 20, noon. Informed by Acting Foreign Minister that at a meeting of commercial representatives sentiment appeared opposed to conclusion of any arrangement other than a permanent treaty, inasmuch as highly improbable that new Latvian tariff schedules will become effective as soon as January 1st, and, in the meantime, no discrimination exists in favor of commerce covered by treaties. Views of meeting will be submitted to Council of Ministers probably Thursday.

WHITE

611.60 p 31/11 : Telegram

The Chargé in Latvia (White) to the Secretary of State

[Paraphrase]

RIGA, *October 25, 1924—noon.*

[Received 12:12 p. m.]

166. Discussed with Foreign Minister Seya the desirability of proceeding with temporary most-favored-nation agreement. As he considers that there is no prospect of new maximum and minimum tariff taking effect before next spring, he is in favor of waiting for regular commercial treaty. He has assured me, however, that the maximum tariff will not be applied against the United States, and in order to prevent such a contingency the Government of Latvia would unquestionably sign a temporary agreement when actual necessity arose.

WHITE

611.60 p 31/18a : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *August 4, 1925—3 p. m.*

39. Your despatch No. 2782, April 16.[8] Department hopes in the near future to be able to reopen negotiations with Latvia for long-term general treaty of commerce and consular rights.

Since, however, it is likely that considerable time would elapse before treaty could be consummated and ratified, the Department is very desirous of effecting temporary arrangement through medium of *modus vivendi.*

Referring to Department's 53, November 15, 1924, 5 p. m.,[9] please make the following changes in text transmitted in Department's No. 42, August 23, 1924, 2 p. m. In the paragraph following the preamble marked 1 omit first 17 words and insert "That in respect of import and export duties and all other duties and."

Should any question arise in regard to omission of reference to navigation dues you may explain that under the laws of the United States the President is authorized to suspend discriminatory tonnage and light dues on foreign vessels, thus placing them on the same basis as national vessels when he is satisfied that the foreign country in question imposes no discriminatory dues on American vessels or their cargoes. As national treatment is thus authorized by statutory law it is deemed inadvisable to insert in an executive agreement with another country provision for most-favored-nation treatment. You may style the *modus vivendi* "provisional agreement" in accordance with your No. 151, September 20, 1924, instead of "*procès verbale.*"

Unless you perceive objection, endeavor to arrange for signature *modus vivendi* modified as above stated as soon as possible. Keep Department fully informed.

KELLOGG

611.60 p 31/19 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *August 6, 1925—4 p. m.*

[Received August 6—1:25 p. m.]

68. Your 39, August 4, 3 p. m. In view of the difficulties mentioned in the Legation's despatch number 2399, of September 25th[9] and telegram 152, of September 23, 2 p. m., 1924, would respectfully suggest that, as an inducement in case Foreign Minister agrees to

[8] Not printed; it reported that the Foreign Minister desired to enter into a treaty of commerce and friendship with the United States.

[9] Not printed.

sign provisional agreement, negotiations may be immediately renewed on formal commercial treaty or else that I be informed what are obstacles on the part of the Department to concluding a treaty if Lettish Foreign Office considers that treaty can be negotiated and signed the same time, necessary to submit exchange of notes and ratification by Cabinet and Parliament (see telegram 151 September 20th). Refusal to renew treaty negotiations would be embarrassing in view of previous unsuccessful efforts for such exchange, especially since ratification by United States Senate of treaty with Germany.[10] Awaiting further instructions.

COLEMAN

611.60 p 31/19 : Telegram

The Secretary of State to the Chargé in Latvia (White)

WASHINGTON, *August 11, 1925—3 p. m.*

41. Your 68, August 6, 4 p. m. Department desires you to press for prompt conclusion of provisional agreement in accordance with its 39, August 4, 3 p. m. Conversations with Latvian Minister here indicate that he is advising his Government favorably to such end.

Department considers it impracticable to sign long-term treaty at same time. There has never been any intention, however, to fail to renew negotiations, which Department expects to propose as soon after provisional agreement becomes operative as it completes its study of the counter-proposals submitted by Latvia in February 1924,[11] which was suspended while the Senate had the Treaty with Germany under consideration.

KELLOGG

611.60 p 31/20 : Telegram

The Chargé in Latvia (White) to the Secretary of State

RIGA, *August 12, 1925—4 p. m.*

[Received August 12—1:18 p. m.]

73. Your telegram 39, August 4, 3 p. m. Legation's 68, August 6, 4 p. m. Having orally informed Minister of Foreign Affairs of Department's wishes for revised draft of most-favored-nation *modus vivendi* he stated: (1) No agreement of the kind could take effect without ratification of Diet; (2) very doubtful whether Diet would

[10] Ratification advised by the Senate, with reservations and understandings, Feb. 10, 1925; see *Foreign Relations*, 1923, vol. II, pp. 45–46.

[11] Not printed.

ratify. Between now and November when Diet will meet he considers that there is time to negotiate treaty which he is confident could be ratified early in the session.

By virtue of law taking effect August 8th, petroleum and products imported from countries enjoying most-favored-nation treatment now obtain tariff reductions which importers American oil products consider will injure their business seriously.

WHITE

611.60 p 31/21 : Telegram

The Chargé in Latvia (White) to the Secretary of State

RIGA, *August 18, 1925—1 p. m.*
[Received August 18—10:50 a. m.]

74. In view of my telegram number 73, August 12, 4 p. m., does Department's telegraphic instruction number 41, August 11, 3 p. m., still stand?

WHITE

611.60 p 31/20 : Telegram

The Secretary of State to the Chargé in Latvia (White)

WASHINGTON, *August 19, 1925—3 p. m.*

43. Your 73, August 12, 4 p. m., and 74, August 18, 1 p. m. Department's 41 of August 11, 3 p. m. still stands. Considerations set forth in last paragraph of your 73 would appear to emphasize the necessity of the prompt conclusion of a *modus vivendi* pending the final conclusion and bringing into operation of a comprehensive treaty. This method of procedure which the Department desires to follow in the case of Latvia is the course followed in connection with commercial treaty negotiations with other countries including Spain,[13] Poland,[14] Esthonia[15] and Finland.[16]

On August 1st Department received notification from Minister of Esthonia[17] putting into force the *modus vivendi* signed on March 2, 1925,[18] and on August 13 transmitted to the Minister copies of a draft treaty of friendship, commerce and consular rights.[19] Copy will be mailed to you for your information.

KELLOGG

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[13] See *Foreign Relations*, 1925, vol. II, pp. 707 ff.
[14] See *ibid.*, pp. 692 ff.
[15] See *ibid.*, pp. 66 ff.
[16] See *ibid.*, pp. 86 ff.
[17] *Ibid.*, p. 69.
[18] See *ibid.*, pp. 66–69.
[19] For text of signed treaty, see *ibid.*, p. 70.

611.60 p 31/23 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *September 15, 1925—3 p. m.*
[Received September 15—10:47 a. m.]

81. Your 41, August 11, 3 p. m. Until general elections take place October 4th and new Government comes in, it is impossible to make any progress in negotiations. Full particulars go forward in pouch this week.

COLEMAN

611.60 p 31/25 : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *October 22, 1925—6 p. m.*

53. Your telegram 81, September 15, and despatch 3202, September 16.[20]

(1) Department has informally discussed matter with Latvian Minister, who stated he had written his Government and would communicate again by telegraph recommending conclusion of *modus vivendi* in view of the fact that the United States would shortly re-open negotiations for permanent treaty. Department pointed out to the Minister that *modus vivendi* is only a temporary arrangement pending renewal of negotiations which Department desires to initiate at Washington at the earliest practicable moment and certainly within a few months. You may, if desired, give such assurance in writing. Department also pointed out that the situation between Latvia and the United States differs from that between Latvia and other countries in that the United States has already initiated treaty negotiations with Latvia.

(2) Please further sound out the situation as it exists following elections, referring to the Minister's recommendations, and tactfully endeavor to arrange *modus vivendi*. While the Department will not insist upon *modus vivendi* and does not desire an impasse, Department greatly prefers *modus vivendi* as the quickest means to do away with discriminations and because of present pressure of work on officials charged with preparation of treaty draft.

KELLOGG

[20] Latter not printed.

611.60 p 31/30 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *November 23, 1925—2 p. m.*
[Received November 23—10:49 a. m.]

96. My telegram number 95, November 17, 4 p. m., also despatch number 3262, October 10th.[21] Has Department any objection to including Finland among list of countries excluded from operation provisional trade agreement? If no objection, I assume I still have authority to sign text submitted by Department in telegram 42, August 23, 2 p. m., 1924, and number 39, August 4, 3 p. m., this year. I am advised agreement is likely now and to be signed here.

COLEMAN

611.60 p 31/30 : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *November 24, 1925—3 p. m.*

59. Your 96, November 23, 2 p. m. You may proceed to signature of text as contained in Department's No. 42, August 23, 1924, 2 p. m., amended by Department's No. 39, August 4, 1925, 3 p. m., further amended by adding Finland to list of countries referred to.

Department is gratified at prospect of prompt signature.

KELLOGG

611.60 p 31/31 : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *December 18, 1925—9 p. m.*

61. Department's 42, August 23, 1924, 2 p. m. If exchange of notes with Latvia is not yet concluded please undertake to have inserted in the text as included in the paragraph of the telegram numbered 5, after the 38th word "to" the words "the products of", so that the passage reads "to the products of any third country" et cetera.

These added words do not appear in the *modus vivendi* with Esthonia or in some other similar arrangements but were used in certain of the exchanges of notes previously entered into. The Department considers their inclusion in future notes to be necessary as clarifying the exact meaning intended.

Please telegraph present status of negotiations.

KELLOGG

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[21] Neither printed.

611.60 p 31/32 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *December 23, 1925—10 a. m.*

[Received 10:43 a. m.]

107. Your telegram number 61, December 18, 9 p. m.. Have brought all proper pressure and am hopeful of eventual success. Daily unsuccessful attempts to form [government?] have slowed progress.[22]

COLEMAN

611.60 p 31/36 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *January 28, 1926—1 p. m.*

[Received January 28—8:59 a. m.]

10. Has the Department any objection to substitution of "Union of Soviet Socialist Republics" for "Russia" in provisional trade agreement list excluded countries and to insertion that it will come into force upon ratification by Latvian Parliament and notice to that effect? Please expedite reply.

COLEMAN

611.60 p 31/36 : Telegram

The Secretary of State to the Minister in Latvia (Coleman)

WASHINGTON, *January 28, 1926—8 p. m.*

7. Your 10, January 28, 1 p. m. Department cannot approve suggested substitution for "Russia" which appears in *modi vivendi* with Esthonia[23] and Lithuania.[24] Department approves insertion of statement that the agreement will be effective upon ratification by Latvian Parliament and notice to that effect.

KELLOGG

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[22] In his despatch No. 3496, Jan. 4, 1926 (not printed), the Minister in Latvia informed the Department that the new Cabinet was accepted by the Saeima on Dec. 22, 1925 (file No. 611.60p31/34).

[23] See notes exchanged Mar. 2, 1925, *Foreign Relations*, 1925, vol. II, pp. 66–69.

[24] See notes exchanged Dec. 23, 1925, *ibid.*, pp. 500–503.

611.60 p 31/37 : Telegram

The Minister in Latvia (Coleman) to the Secretary of State

RIGA, *February 2, 1926—noon.*
[Received February 2—7 : 50 a. m.]

11. Commercial *modus vivendi* with Latvia dated February 1st signed today. It will be approved by Cabinet today and submitted to Parliament February 5th. Ratification probable inside two weeks. Prime Minister is ready to negotiate permanent treaty in Riga following closely Esthonia text. In case of necessity your further instructions.

COLEMAN

Treaty Series No. 740

Provisional Commercial Agreement Between the United States of America and Latvia, Signed at Riga, February 1, 1926 [25]

The Undersigned,

Mr. F. W. B. Coleman, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Latvia, and

Mr. K. Ulmanis, Prime Minister of Latvia, desiring to confirm and make a record of the understanding which they have reached through recent conversations on behalf of their respective Governments with reference to the treatment which the United States shall accord to the commerce of Latvia and which Latvia shall accord to the commerce of the United States, have signed this Provisional Agreement:

§ 1

It is understood that in respect of import and export duties and all other duties and all other charges affecting commerce, as well as in respect to transit, warehousing and other facilities and the treatment of commercial travellers' samples, the United States will accord to Latvia, and Latvia will accord to the United States, its territories and possessions, unconditional most favored nation treatment, and that in the matter of licensing or prohibitions of imports or exports each country so far as it at any time maintains such a system will accord to the commerce of the other treatment as favorable with respect to commodities, valuations and quantities as may be accorded to the commerce of any other country.

[25] Ratification by Latvian Saeima notified to the Government of the United States, Apr. 30, 1926.

§ 2

It is understood that no higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Latvia than are or shall be payable on like articles the produce or manufacture of any foreign country.

§ 3

It is understood that no higher or other duties shall be imposed on the importation into or disposition in Latvia of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country.

§ 4

It is understood that similarly no higher or other duties shall be imposed in the United States, its territories or possessions, or in Latvia, on the exportation of any article to the other or to any territory or possession of the other than are payable on the exportation of like articles to any foreign country.

§ 5

It is understood that every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Latvia by law, proclamation, decree, or commercial treaty or agreement, to the products of any third country will become immediately applicable without request and without compensation to the commerce of Latvia and of the United States and its territories and possessions, respectively.

§ 6

This understanding does not relate to:

A. The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States, or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions, or to the commerce of its territories or possessions with one another.

B. The treatment which Latvia has accorded or may accord to the commerce of Estonia, Finland, Lithuania or Russia so long as

any advantages arising from such treatment are not accorded by Latvia to the commerce of states other than Estonia, Finland, Lithuania and Russia.

C. Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life, or regulations for the enforcement of police or revenue laws.

§ 7

It is further understood that the present arrangement shall become operative on the day when the ratification of the present agreement by the Latvian Saeima will be notified to the Government of the United States, and unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either Government; but should either Government be prevented by future action of its legislature from carrying out the terms of this arrangement the obligations thereof shall thereupon lapse.

Signed at Riga, this first day of February nineteen hundred and twenty-six.

[SEAL] F. W. B. COLEMAN
[SEAL] K. ULMANIS

LIBERIA

NEGOTIATIONS CONCERNING THE FIRESTONE RUBBER CONCESSIONS AND THE FINANCE CORPORATION OF AMERICA LOAN[1]

882.6176 F 51/156

The Chief of the Division of Western European Affairs (Castle) to the Secretary of State

[WASHINGTON,] *January 12, 1926.*

THE SECRETARY: You will recall that during the visit of the Liberian Secretary of State to this country last summer conversations took place between him, the Firestone interests and the National City Bank of New York. The upshot of these conversations was the granting to Mr. Firestone of three concessions providing for:

(1) A 99 year lease on the existing experimental rubber plantation near Monrovia;
(2) A 99 year lease for a million acres to be devoted to rubber production;
(3) The right to improve the harbor facilities of Monrovia.

In addition, a Loan Agreement was negotiated with the National City Bank providing for a five million dollar credit for the Liberian Government to be expended under certain conditions. Copies of these agreements are subjoined.[2]

With regard to the rubber agreements the Department felt that 99 years might be too long and that it might be advisable to limit the concession to 50 years with the option of renewal upon such terms as might then be appropriate to existing conditions. However, the Liberian Government stated flatly that it preferred the hard and fast agreement for 99 years and in consequence the matter was dropped and the 99 year feature was retained.

The Loan Agreement and the rubber agreements were informally submitted to the Department as under them this Government is to assume certain functions more or less analogous to those assumed by it under the 1912 Loan Agreement.[3] These functions may be summarized as follows:

(*a*) The rubber agreement provides that the Liberian Government shall arrange with the Department of State for the arbitration of any

[1] Continued from *Foreign Relations*, 1925, vol. II, pp. 367–495.
[2] There are no agreements attached to the file copy of this memorandum. For texts of the agreements signed Sept. 16 and 17, 1925, see *ibid.*, pp. 450 ff.
[3] See *ibid.*, 1912, pp. 667 ff.

questions arising under the agreement. This is a new feature not found in the 1912 Loan Agreement.

(*b*) The loan contract provides that the President shall designate the individual to be appointed by the Liberian Government as Financial Adviser, the President having at all times the right to insist upon his removal. This is similar to the designation of the General Receiver of Customs by the President under the 1912 Agreement.

(*c*) The names of the staff of the Financial Adviser are to be reported to the Department of State. This feature does not appear in the 1912 Agreement.

(*d*) The President of the United States is to recommend four duly qualified officers to take charge of the Frontier Force. This was also provided for in the 1912 Agreement.

(*e*) The Secretary of State may be requested to appoint an arbitrator in case of dispute concerning the loan contract. A new feature.

(*f*) Liberia out of the loan proceeds will discharge its debt to the United States of $26,000 plus accrued interest. This requires no comment but its support has been informally communicated to the Treasury.

These agreements have received the careful scrutiny of the Department, particularly in connection with the note from the British Embassy of October 7, 1925,[4] and they have been carefully examined with a view to determining whether they are in any particular open to criticism on the score of impairing the principle of the Open Door.

Two points of possible objection were raised by the Department, namely, article 12, paragraph 5 and article 15 of the Loan Agreement.

After consultation with Colonel Crews,[5] representing the National City Bank, and Mr. Harvey Firestone, Jr., it was decided to modify article 12, paragraph 5, in the manner shown in the subjoined copy,[6] as it was felt incongruous that the Liberian tariff be controlled by a New York bank providing that the total yield of the revenues was unaffected, and that the phrase "expenses of the administration of the Government" might prevent the application of the assigned revenues to the service of other loans which the Liberian Government might contract in the future.

It was felt by the Department that it might be preferable to revise article 15 so as to make the contracting of new loans dependent upon whether in the future revenues should have increased to a point at which the service of such loans would be possible. However, Colonel Crews and Mr. Firestone objected strongly to such change as they considered the clause an essential safeguard to their investment and, in consequence, the Department took the attitude that it would not insist, provided it could clear itself of any claim that might be raised

[4] *Foreign Relations*, 1925, vol. II, p. 484.

[5] Member of the law firm of Shearman & Sterling, attorneys for the Finance Corporation of America and the National City Bank of New York.

[6] There is no copy of the article attached to the file copy of this memorandum.

by a foreign government to the effect that this clause constituted an infringement of the principle of the Open Door. This it believes it can do as the clause does not prohibit the making of new loans but merely requires that they be approved by the Financial Adviser, and as there is no reason for assuming that he will not pass on such loans in a proper manner.

Subject to your approval it is therefore proposed that the Department notify the bankers, informally, that the Department perceives no objection to the terms of the Loan as they now stand (with the modification agreed upon in article 12, paragraph 5) and that this Government is prepared to assume the functions assigned to it by the agreements upon the request of the Liberian Government.

A memorandum is attached [7] suggesting certain further steps which may be taken by the Department to put our position in the matter beyond the possibility of any misunderstanding.

W. R. C[ASTLE], Jr.

882.51/1870

The Chargé in Liberia (Wharton) to the Secretary of State

No. 324 MONROVIA, *January 23, 1926.*
Diplomatic [Received March 4.]

SIR: This Legation has the honor to transmit this despatch confirming this Legation's cable number 3 of January 23, 1926,[8] relative to the present Liberian Legislative Session and the submission for ratification of the Firestone Rubber Concessions and the Loan Agreement of the Finance Corporation of America.

The Department is referred to this Legation's despatch number 318 of December 29th, 1925.[9] The Rubber Agreements are absolutely sure to be ratified during the present session. There have been few modifications, merely textual, which have been agreed to by Mr. Ross, Manager of Firestone Plantations Company.

The proposed amendments of the loan referred to in the former cable as "few minor details causing the delay" have been transmitted in despatch number 318 and it is believed should give little concern. However, in the same despatch in the general statement on page 3, paragraph 2, speaking of the many points raised, there was reference to "the pledging of all revenues of the country". At that time this Legation was not sure that this point would be stressed by the Liberian Government because this was not included in the proposed amendments which were informally obtained at that time.

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[7] There is no memorandum attached to the file copy of this memorandum.
[8] Not printed.
[9] *Foreign Relations*, 1925, vol. II, p. 489.

President King has been ill with grippe and slight high blood pressure. It was impossible for him to carry on his duties as executive. Further, it has been unfortunate that at the same time cabinet members and other officials have been ill. The Attorney General, The Secretary of War, the Postmaster General and the Vice-President have been confined to their homes. However, all are recovering and it was possible to visit the President Thursday last.

Among other subjects the loan was informally discussed by President King, who confidentially though emphatically stated that he will never approve of this loan under its present terms. The main objection and most forceful point is with reference to giving over both the customs and internal revenues for the two and one-half million loaned. He considers the loan for two and one-half million regardless of the credit stated for five million.

So that the Department may better understand his position it is thought best to go to some extent into details. When the addenda and former correspondence was referred to in which nothing was stated concerning not applying the internal revenue, the President readily agreed and without hesitance outlined the terms originally considered and basis agreed to and submitted by the Liberian Government, but called attention to the amount of the loan, ten million dollars, not two and one-half or even five million. It is contended that to be consistent and not only from a governmental view but from a sound business principle to accept such an agreement would be detrimental. This Legation's position has been purely an official one and has not and can not make agreements for its nationals nor even surmise the effect of such a stand.

The probable procedure in ratifying all agreements has been informally brought to the attention of this Legation. The Firestone Rubber Concessions will be ratified by the legislature. The Loan Agreement will no doubt be passed by the legislature and that body will give authority to the President to ratify the agreement subject to certain modifications submitted.

Reverting to other modifications it is assumed that there will be no radical changes from those submitted in despatch 318. Information has been received that the section relative to opening and closing of customs houses with "consultation and the agreement of the Financial Adviser" has been stricken out entirely.

It may be of interest to know that the Liberian Government has expressed the desire to have the Financial Adviser detached from the loan and function in all matters of finance, both customs and internal revenue. It further appears that the Liberian Government sees no necessity for but one auditor and wishes to appoint a Liberian as assistant auditor.

I have [etc.] CLIFTON R. WHARTON

882.6176 F 51/195 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *January 28, 1926—noon.*

[Received 5 : 56 p. m.]

4. Rubber agreements ratified by Legislature. Loan ratified with modifications will be cabled.

WHARTON

882.51/1869

Joint Resolution Passed by the Liberian Legislature January 28, 1926, Approving the Loan Agreement Concluded Between the Government of Liberia and the Finance Corporation of America, January 1, 1926 [10]

It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

SEC. 1. That the Agreement concluded between the Government of the Republic of Liberia and the Finance Corporation of America, as of January 1, 1926, be and the same is hereby approved subject to the following modifications to wit:

(*a*) In this Agreement wherever the term "Buyer" occurs it shall be substituted by the term "Corporation".

(*b*) Article II shall read: The Government covenants that both principle [*sic*] and interest of the Bonds will be paid promptly as they respectively become due and that any and all sums and expenses in connection with the service of the issue will be paid in conformity with Article V hereof, and that payments shall be made in the Borough of Manhattan, City and State of New York, United States of America, at the Head office of the Fiscal Agents in Gold coin of the United States of America of or equal to the present standard of weight and fineness and shall be paid without deduction for or on account of any taxes, assessments or other governmental charges or duties now or hereafter levied or to be levied by or within the Government or by any taxing authority thereof.

(*c*) Article VII shall read: The Government agrees that it will forthwith undertake negotiations with the present holders of the external and internal debt of the Republic for the adjustment or [*of*] such debt and for the settlement of such claims as may be approved by the Financial Adviser hereinafter referred to, and that the Bonds herein provided to be issued by the Government and hereinafter termed "The Loan" shall be charged:

[10] Copy transmitted to the Department by the Chargé in Liberia under covering letter of Feb. 1; received Mar. 4.

(*a*) On all Customs duties of the Republic receivable on and after the 30th day of January 1926 whether in respect of imports or exports, and upon all revenues receivable on and after said date, from headmoneys; but

(*b*) In the event the above revenues should prove insufficient for the service of the loan, the Government undertakes to allocate from its other revenues such a sum as shall be sufficient to make up the deficiency.

Import and Export duties of every kind and character whatsoever, headmoneys, and all other taxes, imposts and revenues of the Republic shall be collected through the Customs, Postal and Internal revenue administration, to be maintained by the Government under the supervision of the Financial Adviser and certain Assistants appointed as hereinafter stipulated who shall cooperate with the Treasury, Postal and Interior Department Officials in the manner hereinafter prescribed. The Government obligates itself to appoint from time to time during the entire life of the loan the Fiscal Officers required by the terms of this Agreement, who, during the life of this Agreement, shall supervise the collection of the revenues of the Republic from whatever source they may arise, and the application thereof to the service of the loan in accordance with the provisions of article VII (*a*) and (*b*) as modified by this Act, or as may be provided from time to time by rules or regulations to be made effective for the purpose of carrying out the provisions and terms hereof.

(*d*) Article IX shall read: The organization of the Customs and internal revenue administration of the Republic shall be supervised by the following officers, who shall be nominated by the Financial Adviser to the President of the Republic of Liberia, (the Financial Adviser having first reported the names of the officers nominated to the Secretary of State of the United States), and shall be by the President of the Republic of Liberia appointed and commissioned to the respective offices with duties as defined in this instrument. These officers shall hold their appointment during good behavior but shall be subject to removal by the President of Liberia for cause, or upon the withdrawal by the Financial Adviser for sufficient cause stated of his recommendation of such officer or officers. The Auditor shall hold his appointment during good behavior but may be removed by the President of Liberia for cause, or upon the withdrawal by the Fiscal Agent for sufficient cause of their recommendation of such officer.

The officers to be nominated by the Financial Adviser and by the Fiscal Agents shall be qualified as to education and as to previous experience in similar or analogous positions in foreign service; and the President of the Republic of Liberia before commissioning them for service hereunder, shall have the right to require satisfactory proof of such qualifications.

1. A Financial Adviser who shall be designated and appointed as hereinbefore stated, at a salary of $10,000 per annum;
2. An official, who shall be designated Supervisor of Customs;
3. An official who shall be designated Supervisor of Internal Revenue;
4. A bonded Auditor.

The officers above mentioned shall perform such duties and employ such persons as may be defined by law or prescribed by the Government, and the salary of said officers with the exception of the Financial Adviser, shall be fixed from time to time by agreement between the Financial Adviser and the Government, but the total aggregate salaries of said officers, excepting only the Financial Adviser, shall not exceed the total aggregate sum of Eighteen Thousand Dollars ($18,000); provided however, that in the event of substantial changes of money values, the salary of the Financial Adviser and the above aggregate total amount for salaries of other officers may be from time to time increased or diminished by agreement between the Government and the Fiscal Agent.

Such salaries paid to the Financial Adviser and the Fiscal Officers to be appointed as above stated shall include all allowances of any kind or character whatsoever, provided however, that said officials shall in addition to such salaries be furnished medical care and attendance; shall be reimbursed for their traveling expenses incurred by them on official duty; and shall receive traveling expenses from the point of departure in the United States at time of appointment or employment, to their posts in Liberia and return to the United States on termination thereof; and not more often than once in two years, shall receive their actual traveling expenses by ordinary route to the United States and return. Such expenditure shall conform to the regulation now enforce [*in force*] or which may hereafter be promulgated by the Audit Bureau of the Treasury Department of Liberia.

The Financial Adviser and the Fiscal Officers employed hereunder shall be entitled to receive reasonable leaves of absence, cumulative over not more than two years, at full pay.

(*e*) Article X shall read: 1. The Corporation agrees to purchase from the Government and the Government agrees to sell, at the rate of $900.00 per Bond of $1000.00 together with interest accrued thereon from time to time, pursuant to the terms and provisions hereof, and in the manner hereinafter stated such an amount of said bonds as will provide funds to be used by the Government for the purpose stated in the preamble hereof not to exceed, however, the total aggregate amount of two millions five hundred thousand dollars.

2. Said bonds shall be certified by the Fiscal Agents for the purpose of identification, and from time to time delivered to the Corporation or its nominee as against payment therefor at the rate above stated, to be credited by the Fiscal Agent to the account of the Liberian Government said Bonds shall be so certified and delivered from time to time by the Fiscal Agent at the request of the Secretary of the Treasury of the Government with the within covenant and approval of the Financial Adviser but not otherwise, and payment for said bonds shall not be called for in excess of the following schedule, to wit:—

3. During the calendar year 1926 not to exceed the total aggregate amount of ($2,000,000) two million dollars face value of said bonds;

4. During the calendar year 1927 not to exceed the aggregate face amount of $500,000. If the Government should fail to call for the full amount of said bonds provided for any one year the uncalled balance thereof shall not be cumulative except with the Corporation's consent.

It is understood by the parties hereto that the Government may at any time it deems desirable offer for sale in such amounts as it may decide the bonds covering the remaining two and one-half million dollars authorised under this Agreement.

(*f*) Article XII paragraph 1 shall read: The Government agrees that the Secretary of the Treasury, Secretary of the Interior, Secretary of War, Postmaster General and other officials shall cooperate with the Financial Adviser to bring order and system into the finances of the Government and to that end the Financial Adviser shall devise for the Republic of Liberia and for any local Governmental Authority therein such methods of accounting, rules and regulations for the collection and administration of the public revenues and receipts as may be necessary to assure the collection of such revenues and the enforcement of the laws, rules and regulations pertaining thereto; and such administrative orders or regulations having been approved by the President of Liberia shall be issued at the request of the Financial Adviser by the Department's Head for whose Department or under whose jurisdiction any such regulation, rule or order applies. The Government shall fix penalties not inconsistent with the Constitution and laws of Liberia for the violation of such administrative order, rules and regulations as may be issued as above.

Paragraph 3 shall read: For the further securities of the revenues and receipts, the Government shall maintain the Liberian Frontier Force, and shall further maintain patrol service by sea as may be necessary from time to time. The patrol service by sea shall be administered by the Treasury Department Customs Service. The

Frontier Force shall be administered by the War Department and the strength of the Force shall be fixed by agreement between the President of Liberia and the Financial Adviser, and it shall not be increased or reduced in number without the agreement of the Financial Adviser except temporarily in case of emergency declared to be such by the Government. Two duly qualified and experienced officers shall be recommended by the President of the United States to the President of Liberia and if approved by the President of Liberia shall be appointed by him to the said Frontier Force. These officers shall be one Major and one Captain. The total aggregate salaries of said officers shall not exceed the sum of Eight Thousand Dollars ($8,000) per annum; provided however that such may be at any time increased or diminished by agreement between the Government and the Fiscal Agent. Such salaries shall include all allowances, except medical care and attendance, and travel on duty, which shall be furnished by the Government. Such officer[s] shall serve in the Frontier Force during the term of said bonds, and their duty shall be to prepare a plan of reorganization of the Force which shall be based on the idea of creating an efficient constabulary organization for the purposes aforesaid and which shall include the qualification and disciplining of all commissioned and noncommissioned officers and the training of the men in accordance with the best practice now obtaining in similar organizations.

Paragraph 4 shall read: The funds for the maintenance of the Frontier Force shall be administered by the Treasury Department under the same plan and system as other sections of the Government.

Paragraph 5 shall read: The revenues and receipts allocated to the services of the loan shall, during the term of said bonds, be payable only in gold, of the present standard of weight and fineness of gold coin of the United States of America, or its equivalent, and the rates and the amounts of such allocated revenues shall not be decreased without approval of the Fiscal Agent, but may be increased so as to meet the expenses of the service of the loan, and the expenses of the administration of the Government. The Comptroller of the Treasury, together with the Auditor, shall prepare for the Secretary of the Treasury, and the Financial Adviser, quarterly and annually, reports of the financial administration and of the collection and application of all revenues and receipts. Such reports shall contain the detail of all financial transactions of the Government.

Paragraph 6 shall read: The Government covenants to install and maintain the pre-audit system, whereby all accounts of the Government before payment shall be duly presented to the Auditor and shall be audited. The Auditor, upon the submission of any account for his check and after examination of the appropriation to which it is chargeable to ascertain that the same has not been over expended

and that the account is correct, properly verified and payable, shall indicate his approval by appropriate signature and shall approve the transfer from the general deposit account in the designated depositary to the disbursement account in the designated depositary of a sum sufficient to meet the Secretary of the Treasury's check for the particular account and payee specified. No payments shall be made except under warrant of the President in accordance with the budget or appropriation law, and all payments shall be made by check on the disbursement account to be opened and maintained in the designated depositary by the General Government. Payments to troops or other payments which must be made in cash shall be by check to a bonded paymaster, who shall make the detail of disbursements in accordance with the audit rules and regulations which are to be prepared and enforced in accordance with the provisions hereinbefore stated.

Paragraph 7 shall read: The proceedings of the Legislature of Liberia relating to financial matters shall be reported stenographically daily by the Government and typewritten copies of such proceedings shall be furnished to the President of the Republic, the Heads of Department[s] and the Financial Adviser.

Paragraph 8 shall read: The Government shall annually enact a budget which shall set up in detail the estimates of revenues and receipts for the fiscal year and shall duly appropriate and provide in the said budget for the costs and expenses of collection of the revenues and receipts, and the expenses of the various departments of the Government, including the salaries and expenses of the Financial Adviser and his Staff, as herein provided, the service of the loan, general administrative expenses, public works and improvements and all other amounts which under this Agreement or otherwise the Government is by existing laws or understandings, contracts or engagements, required or obligated to pay; and this shall be done in the following way: At least thirty days before the opening of each regular session of the Legislature of Liberia, the Secretary of the Treasury shall prepare an itemized budget for the ensuing year, which shall contain statements in detail of the probable revenues and receipts of the Government for the ensuing fiscal year from all sources, and of all proposed expenditures chargeable in any manner against such revenues and receipts. This proposed budget shall be prepared in consultation with the Financial Adviser, whose duty it shall be to assure that the amounts provided to be appropriated for expenditure shall not exceed the resources of the Government, as shown by careful examination and comparison of the revenue estimates, and who shall further examine the proposed budget to ascertain that all expenditures which are provided to be made by virtue of any of the provisions of this Agreement shall have been properly

included in the proposed statement of expenditures. In the event of the failure of the Financial Adviser to approve the Budget as prepared by the Secretary of the Treasury of Liberia for the reason that it exceeds the estimates, then the budget of the previous year shall be operative in so far as it applies to the ordinary operating expenses of the Government and the expenditures provided to be made by virtue of any of the provisions of this Agreement for the ensuing fiscal year only. Within ten days after the enactment of the Budget, the Secretary of the Treasury of Liberia shall deliver to the Financial Adviser a copy thereof as enacted and a statement of all appropriations, regular and special which shall have been made. All accounts of the Government shall be subject to examination and verification by the Financial Adviser at all reasonable times.

(*g*) Article XIII paragraph [*sic*] shall read: The revenues and receipts shall be applied by the Government as follows:

1. To the payment as they arise of a [*all?*] cost and expenses of collection, application, and administration of the revenues and receipts including the salaries of the Financial Adviser and the officers appointed hereunder, and the salaries of the employees of the revenue service, both customs and internal, the cost and expenses of maintaining the Frontier Force, and any other legitimate expenses or obligations incurred under this Agreement, and all amounts incident to the service of the loan except as to payments on account of principal and interest for which provision is hereinafter made.

Paragraph 6 shall read: The sums that may remain after the payments provided in the first five clauses of this Article have been made shall be applied as follows:

Such sums shall be credited by the depositary to an account hereinafter referred to as the reserve account. Moneys in the reserve account shall be applied, in so far as possible only for the improvement of public education in Liberia and for public works except that in emergency declared to be such by the Government the same may be applied to some purpose not covered by the ordinary Budget. Monies shall be transferred for expenditures from the reserve account by agreement of the Secretary of the Treasury and the Financial Adviser. In case of a disagreement between the Secretary of the Treasury and the Financial Adviser, the question as such shall be referred to the President of Liberia and his decision thereon shall be final. Whenever and for so long a period as the revenues and receipts shall be insufficient to meet the payments required to be made by Clauses 1, 2, 3, 4, and 5 of this Article, the depositary shall cease paying out the monies from the reserve account and such funds may be applied by the Government to meet the payments provided in Clauses 1, 2, 3, 4, and 5 of this Article.

(*h*) Article XV shall read: Until the Government has repaid the whole amount of the loan and all expenses incident to the service thereof, no floating debt shall be created and no loan chargeable upon the revenues allocated to the service of the loan hereby authorised for any purpose shall be made except with the written approval of the Financial Adviser, but the Government may without such approval at such time as it deems fit negotiate a refunding loan for the retirement of the present loan.

(*i*) Article XVI of the Proposed Agreement shall be eliminated.

(*j*) Article XIX shall read: The Government covenants to designate as the depositary hereunder, such bank in the City of Monrovia, in Liberia, as shall be agreeable to the Fiscal Agent, and such designation shall be terminated by the Government upon the request of the Fiscal Agent. Any arrangement which the Government may make with the depositary shall embody the provisions of this Agreement and such depositary undertake to comply herewith. In case the depositary shall cease to act as such by reason of such termination of its designation or otherwise, a new depositary shall be designated in the same manner as above provided. Moneys paid to the depositary for the account of the Government, as provided in this Agreement, shall be held by the depositary and paid out as follows:

Moneys paid to the depositary under the provisions of Article XIII shall be deposited in one or more special deposit accounts, as may be from time to time determined necessary or desirable, and no expenditures shall be made therefrom. Transfer from these accounts of moneys to be disbursed shall be on order of transfer requested by the Secretary of the Treasury and approved by the President, and such transfer shall be made only to a disbursement account to be opened and maintained by the designated depositary, on which disbursement account checks may be drawn from expenditure as hereinafter provided.

Moneys paid to the depositary hereunder, whether remitted by the Fiscal Agent or deposited by the Treasury Department or any other officer or agency of the Government, shall be deposited in one or more deposit accounts to be opened and maintained by the depositary, and shall be transferred for disbursement to one or more disbursement accounts to be likewise opened and maintained by the depositary and shall not otherwise be expended or transferred. Such transfers from deposit account to disbursement account shall be made only as provided in the foregoing paragraph.

Moneys in the disbursement account or accounts which are to be disbursed in accordance with the provisions of Article XI shall be disbursed in the following manner, viz:

(*a*) No sum shall be disbursed in amounts greater than those provided by the budget, but

(*b*) Unexpended credit to any account provided for in the budget may be transferred to any other account of the budget by agreement of the Secretary of the Treasury and the Financial Adviser who shall certify such decision to the Comptroller for appropriate notation in the appropriation ledger. In case of a disagreement between the Secretary of the Treasury and the Financial Adviser, the question shall be referred to the President and his decision thereon shall be final.

Article XX clause (*a*) shall read: (*a*) If the Fiscal Agent shall at any time be in doubt as to its rights or obligations hereunder or with respect to the rights of any holder of any bond, the Fiscal Agent may advise with legal counsel and anything done or suffered by it in good faith in accordance with the opinion of such counsel and approval of the Government shall be conclusive in its favour as against any claim or demand by the Government or any holder of any Bond.

Clause (*b*) shall read: The Fiscal Agent shall not be responsible to the Government or to any holder of any Bond for any mistake or error of fact or of law or for the exercise of a sound discretion or for anything which it may do or cause to be done in good faith in connection therewith; except only for its own wilful default.

Article XII [*XXII*] shall read: The Government shall pay to the Fiscal Agent reasonable compensation for all services rendered hereunder and a sum equivalent to one-quarter of one per cent of the face amount of all interest coupons as paid and to one-eighth of one per cent of the principal amount of all Bonds, as retired, whether paid at maturity or purchased or redeemed prior to maturity, as hereinbefore provided. Payment of such compensation shall be made to the Fiscal Agent in gold coin of the United States of America, in the City of New York, upon statements rendered semi-annually by the Fiscal Agent to the Government as hereinafter provided. The Fiscal Agent shall allow and pay to the Government on monies other than deposits for the payment of coupons or the redemption of bonds, remaining on deposit with the Fiscal Agent for thirty days, or more, interest at the rate of two per cent per annum. The Fiscal Agent may treat all such moneys as time deposits. The Fiscal Agent shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney shall have been selected with reasonable care.

Article XXVI shall read: In case of dispute between the Government and either of the other parties to this contract, the matter shall be referred for determination to arbitrators, one of whom shall be appointed by each of the parties to dispute; and, if such arbitrators shall be unable to agree among themselves, the Secretary of State of the United States of America and the Government of Liberia shall collaborate in finding a basis for a final decision.

SEC. 2. The President is hereby fully authorized and empowered to take all measures necessary to give effect to the provisions of the Agreement subject to the provisions of this Act.

Any law to the contrary notwithstanding.

882.044/1

Joint Resolution Passed by the Liberian Legislature January 30, 1926, Approving the Agreements Concluded Between the Government of Liberia and the Firestone Plantations Company, September 16 and 17, 1925 [11]

It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

SECTION 1. That the Agreements concluded by and between the Government of the Republic of Liberia and the Firestone Plantations Company dated September 16 and 17, 1925 be and the same are hereby approved subject to the following modifications to wit:

(*a*) That the exemption from taxation provided for in the Agreements numbers one and two shall not affect the liability of the Company for the payment of the Emergency Relief Fund and to taxation on vehicles;

(*b*) That the number of white employees to be brought into Liberia by the Company shall in no case exceed fifteen hundred men;

(*c*) That the Company is liable to the payment of rent upon all areas of land selected by them as and when such areas are selected;

(*d*) That the words "Articles for the welfare of the employees" (used in Agreement number two, Article two, Clause *b*) connote only hospital supplies and games;

(*e*) That the words "before so doing" occurring in Article IV Clause (*d*) of Agreement number two be stricken out;

(*f*) That Clause N, Article IV of Agreement number two be deleted and the following Clause substituted therefor:

> All or any questions in dispute arising out of these Agreements which cannot be harmonized or adjusted by the Lessee and the Government, shall be referred to the Liberian Courts for Arbitration. Should, however, the Lessee feel aggrieved at the final decision of the Liberian Courts then the Government agrees to arrange with the United States Department of State for a further arbitration of the question or questions submitted by both parties.

SECTION 2. The President is hereby authorized and empowered to take all measures necessary to put into effect these Agreements subject to the provisions of this Joint Resolution.

Any law to the contrary notwithstanding.

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[11] Printed from *Acts Passed by the Legislature of the Republic of Liberia During the Session 1925–1926* (Monrovia, Government Printing Office, 1926), ch. VII, p. 7.

882.51/1854 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *January 31, 1926—10 p. m.*
[Received February 1—7:38 p. m.]

5. Principal loan modification[s]:[12]

(1) Article VII. Omit words *as a first lien.* Add to (*a*), line 11, "and upon all revenues receivable on and after said date from head moneys, but"; (*b*) change to "In the event the above revenues should prove insufficient for the service of the loan, the Government undertakes to allocate from its other revenues such a sum as shall be sufficient to make up the deficiency." Omit first paragraph of (*c*).

(2) Page 8, line 13,[13] omit words *and direction.* Line 21, omit words *direct and control.* Line 24, omit from word *which* to word *hereof*, line 28; and add "in accordance with the provisions of article VII (*a*) and (*b*) as modified by this act, or as may be provided from time to time by rules or regulations to be made effective for the purpose of carrying out the provisions and terms hereof."

(3) No assistant adviser and assistant auditor.

(4) Reduction of Financial Adviser [to] $10,000; total of assistants, $18,000.

(5) Article X changed to two million dollars fiscal [*first*] year, one half million dollars second year.

(6) Frontier officers reduced to two total salaries $8,000.

(7) Article XIII, 6, changed to agreement between the United States Financial Adviser and Secretary of the Treasury, disagreement decision of President of the Republic final. Article XVI eliminated.

(8) Article XIX. Page 25, line 17, [words] *auditor and adviser* changed to [read] *President of the Republic.* (*b*) Commission eliminated substituting agreement of Secretary of the Treasury and Financial Adviser, disagreement decision of President of the Republic final.

(9) Article XXVI changed [to] Secretary of State of the United States and Liberian Government shall collaborate in finding basis for final decision, no appointment of additional arbitrator.

(10) "The President is hereby fully authorized and empowered to take all measures necessary to give effect to the provisions of the agreement subject to the provisions of this act."

Constitutionality [*Principal?*] rubber modifications:[14] (1) No tax exemption from emergency relief fund and for vehicles; (2) white employees limited 1,500; (3) rent liability when land selected; (4) welfare articles, interpretation of hospital supply and games; (5) agreement 2 years [*sic*], article IV, clause (*d*), omit words *before so doing;* (6) article IV, clause (*n*), Agreement 2, changed referring to courts for arbitration first, then Liberian Government agrees to

[12] For text of draft loan agreement to which these modifications apply, see *Foreign Relations*, 1925, vol. II, p. 463.

[13] This reference and the others in this paragraph are to art. VII.

[14] For texts of the three agreements to which these modifications apply, see *Foreign Relations*, 1925, vol. II, pp. 450 ff.

arrange with Secretary of State of the United States for further arbitration. Liberian court arbitration specific procedure; (7) the President has power to put into effect agreements. Complete modifications mailed.

WHARTON

882.51/1854 : Telegram

The Secretary of State to the Chargé in Liberia (Wharton)

[Paraphrase]

WASHINGTON, *February 3, 1926—6 p. m.*

5. Your 5, January 31, 10 p. m. Neither this Department nor the National City Bank is able to understand the reasons for the radical changes made by the Liberian Legislature in the loan agreement. Colonel Crews in a telephone call to the Department stated that he had talked with Firestone, who said that he would probably be compelled to give up the project of growing rubber in Liberia if the changes proposed are final. Colonel Crews further stated that under these conditions the bankers would not consider going ahead with the loan.

Please report to the Department whether the Legislature still remains in session and whether you believe that the modifications made in the agreement represent the final position of the Government of Liberia.

KELLOGG

882.6176 F 51/195a : Telegram

The Secretary of State to the Chargé in Liberia (Wharton)

WASHINGTON, *February 5, 1926—6 p. m.*

6. Mr. Firestone has called at the Department to discuss the changes in the Planting Agreements proposed by the Liberian Legislature. He states that the Planting Agreements were signed by him and by the Secretary of State of Liberia, Mr. Barclay, who was understood to have full power to commit the Liberian Government under the Liberian Act of ratification of January, 1925;[15] that he considers the Planting Agreements as signed to constitute a definite and binding contract, and that he is, therefore, unable to consent to the changes now proposed therein. He feels certain that no misunderstandings can arise thereunder which will not be readily susceptible of friendly adjustment, but he states definitely that acceptance of the Planting Agreements as signed is the essential basis for any further dealings with the Liberian Government.

[15] *Foreign Relations*, 1925, vol. II, p. 405.

The Department agrees with Mr. Firestone that the Liberian Government should fulfill the Planting Agreements in strict accord with its pledged word. The Liberian Government should remember that no loan negotiations would have been possible unless the bankers had understood that the Planting Agreements were definite and final and that they could depend upon the good faith of both Mr. Firestone and the Liberian Government.

You should communicate the foregoing to the Liberian Government both orally and in writing.

KELLOGG

882.51/1859 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *February 7, 1926—5 p. m.*

[Received February 8—11:05 a. m.]

8. Department's 5. Legislature to adjourn February 10th. Feel no insincerity on the part of Liberian Government but a slight apprehension and especially keen desire to watch and guard its best interests as it is seen. Government planned sending De la Rue[16] with complete text and advisable Liberian representative. Changes affecting money matters such as salaries, quarters, and the like may be adjusted likewise both supervision "and direction" in article 7 but no "contributing" [*control?*]. Those considered by Government as matters of principle such as contributing [*control?*], assigning of revenues, etc., position believed to be final and extreme difficulty will be met. Though my January 31, 10 p. m., worded carefully feel a better conclusion and judgment can be reached by financial interests after seeing complete text. Request what particular changes received are considered radical for it is possible some stressed by Liberian Government may be insignificant to corporation and vice versa.

WHARTON

882.51/1874

The Chargé in Liberia (Wharton) to the Secretary of State

No. 334 MONROVIA, *February 12, 1926.*

Diplomatic [Received March 11.]

SIR: I have the honor, in confirmation of Legation's cables numbers 8 and 10 dated February 6th [*7th*] and 9th respectively,[17] to report the following:

Since receiving Department's cable number 5 of February 3rd, I have had three conferences with the President and one with the

[16] Sidney de la Rue, General Receiver of Customs and Financial Adviser of the Republic of Liberia.

[17] Latter not printed.

President and Secretary of State, Edwin Barclay, upon the loan agreement and modifications.

The greatest forces to combat throughout all the negotiations have been the propaganda of the British, who have taken advantage of British West African publications and strengthened articles and abstracts from American newspapers and Mr. Firestone's own words. In face of the apprehension on the part of the Liberian Government and the people here, Mr. Firestone has continually made reference to what the members of the Legislature have termed an effort to establish a super-government in Liberia. Though the Liberian Government received a cable from Mr. Firestone denying that 30,000 white men were coming to Liberia in connection with the rubber project, the Firestone papers have continuously stated, even up to the present time, that 30,000 white men would be needed here.

It has been necessary to assure and reassure the Liberian Government of the truly helpful attitude and friendly policy of the United States . . . for the thing utmost [*uppermost?*] in the Liberian mind is the so-called "Haiti Affair".

The object of my first conference on Friday, February 5th was to obtain direct from the President personally whether the changes in the loan agreement represented the final position of the Liberian Government and to inform him of the reaction in America to the modifications. At first some difficulty was met for . . . the President was not sure of his own position, especially how he could confront the apprehensive Cabinet and Legislature.

Later, however, since no information was transmitted by the Liberian Government to the Finance Corporation of America, President King appeared not satisfied that the Corporation could reach any reasonable conclusion until receiving the complete text of modifications. He felt and still feels that without an authorized representative of the Corporation with full power to discuss the modifications, final settlement can not be expedited or facilitated.

I showed him how utterly impossible it was for American interests to continue indefinitely negotiations without any assurance of later acceptance by the Liberian Government, during which negotiations the Liberians were receiving everything and willing to concede little or nothing. Further that the part played by the Department of State was no small one which Mr. Barclay well knew.

I further informed him that it should be appreciated the Finance Corporation should be able to rely upon the work done by the Liberian Government's representative, and though ratification of the loan was necessary (the President having recalled Firestone's proposal as outlined in Legation's cable No. 20 of June 10[*11*], 1925, and Department's cables numbers 12 and 13 of June 11 [*12, 3 p. m.,*]

and 12 [, *4 p. m.*,] respectively)[18] nevertheless, Secretary Barclay was empowered by the Executive and whatever he did was the Executive's act and should be supported. It will be of interest to the Department to know that whereupon President King recalled that surely if President Wilson could not compel the United States Senate to ratify the Peace Treaty, how could it be expected that he was able to force the entire Liberian Legislature to pass this loan. President King suggested a conference for the following morning. The result of the conference of Saturday morning, February 6th is shown more or less by Legation's cable number 8 of February 6th [*7th*].

President King still insisted and advised that final conclusions or opinions be withheld but realizing my view-point of the American interest stated he was willing to adjust money matters as explained in my cable but was determined not to assign all revenues and contract for a top-heavy loan.

Saturday afternoon, evidently in order to show accord and agreement, the President requested that I have a conference with Secretary Barclay and himself. The President, though I was not inclined to go into details, proceeded to take the modifications one by one in order to explain the Liberian Government's position. My position was that to discuss details would detract from the force of Department's cable number 5 and further I preferred to permit the Liberian Government to assume the responsibility of saying what was radical. . . . I succeeded in obtaining from the President the word "direction" as in article 7 and an intimation that the salaries of the fiscal officers could be raised. The President, however, refused to substitute a schedule of priorities in the loan in lieu of the modifications in article 7 as in Legation's cable number 5. His position has been consistent on the revenue question from the first of January up to the present time (see Legation's cable No. 3 of January 23, 9 A. M.).[19]

Neither President King nor Secretary Barclay could see the absolute necessity of an assistant Auditor in order to have continuity under the loan agreement. Since this conference, however, I am informed Mr. de la Rue, through his efforts, has been informed by the President that there is no objection to an assistant Auditor (I wish the Department to know of the friendly relationship and cooperation between this Legation and the present General Receivership throughout the entire negotiations).

It is regretted that article XII referring to military officers will not be modified further because the Liberian Government resents the

[18] *Foreign Relations*, 1925, vol. II, pp. 442 and 443.
[19] Not printed.

sending of United States non-commissioned officers, regardless of their efficiency, to reorganize the combat forces of this country.

Article X (3), (4) and (5) has been modified in order that all outstanding debts may be paid off at once. When the 1912 loan was floated the claims of the Liberians against the Government were not met and not only was priority given to foreign claims, but the Liberians, whether they were holders of bonds or other just debts, were forced to compromise at considerable losses in order to receive any satisfaction.

The foregoing are the most important points discussed by the President at this last conference.

From all interviews I have concluded that the reason for any changes, not only is due in order to safeguard the interest and allay the fear and apprehension on the part of the Liberian Government, but also because Liberians express themselves in an entirely different way from Americans. This is true though they mean to attain the same end.

Further, it should be remembered that the task here of the Liberian officials is no easy one. They must appease the people on so many points, which though trivial to American interests, are vital to the masses, more so, to the administration. For example, section 1 (*a*) of the Agreement, the term "Corporation" has been substituted for the word "Buyer" in order that there be no fear on the part of the people that the Government was being sold to American interests. While such points are amusing to Americans they are of vital importance to the Liberian Government.

Another example, though not connected with the loan, is the name "Firestone Plantations Company". Much apprehension has been caused by the word "Plantations" among the Liberians. There are only farms here, no plantations. This will likewise seem trivial but when you consider that most places other than Monrovia, are small towns, peopled by descendants of freed American slaves just from plantations, few or no newspapers, little information from the outside world, inadequate schools, etc., we can appreciate that a plantation is something to be abhorred, particularly one brought by white Americans into a country proud of its conception, founded to do away with plantations, and lauding its history of freedom and independence.

It is difficult to explain such facts to the financial interests of America or business men, but these characteristics play a major part in the present negotiations and make the task here an onerous one. To force an issue under ordinary circumstances is difficult and to unduly force an issue now means failure.

This is the crisis and that is the reason for my cable of February 9, 5 P. M. (Legation's 10).[20] The President has had great difficulties in view of all the foregoing facts and has ordered Secretary Barclay and the General Receiver to draft certain modifications supplementing those of January 28, 1926. The difficulty is in obtaining the approval of the Legislature, satisfying the Liberian people, and meeting the wishes of the Finance Corporation of America whose views, other than a general one expressed in the original loan and Department's cable number 5, are unknown.

The Legislature will not adjourn until next week and the Executive shall try to have the loan ratified substantially in its original form except:

1. See modification No. 1 in Legation's cable No. 5 of January 31. (The President would support other wording so long as the same principle is embodied in this article).
2. Modification No. 6 in cable No. 5 of January 31 to remain the same.
3. No assistant Financial Adviser and salaries of officers excluding the Financial Adviser to be $32,000. Additional assistant Auditor to be a Liberian, who shall not interfere in any way with the present organization of the loan.
4. Modification No. 5 of cable No. 5 to remain the same.
5. In order that the power of the Financial Adviser may not be entirely arbitrary under the loan, certain justifiable reasons for his failure to agree with the Secretary of Treasury will be specifically enumerated.

The resubmission of the loan will, without doubt, take place within the next 48 hours.

I have [etc.] CLIFTON R. WHARTON

882.51/1862 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *February 13, 1926—midnight.*

[Received February 14—1:23 a. m.]

11. Loan to be reconsidered by Legislature at once. Can get substantially original agreement except: Legation's cable 5. See (1), assignment revenues, principle same as reported but other wording accepted if desired. No assistant financial adviser. Rubber agreement. The Liberian Government considers subjects incorporated in approval act only interpretations agreed to by letters exchanged with manager here excepting arbitration clause.

See (6) same cable. This clause considered to have been suggested to commission by the authorities.

[20] Not printed.

Firestone cabling his office negotiations French Ivory Coast, Philippines and Sumatra suggesting transfer enterprise. Fearful Liberians may consider the matter finally refused and take no further action unless it is thought possible to adjust matters. Can you secure provisional assent subject to final examination of text? May be able to secure further concessions but cannot now promise more than above. Can you give suggestions? Telegraph answer at once.

WHARTON

882.51/1864 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *February 16, 1926—noon.*

[Received 7:47 p. m.]

12. Cannot hold Legislature longer. Loan reconsidered and passed in accordance with Legation's cable number 11. Arbitration convention ratified.[21]

WHARTON

882.0044/1

Joint Resolution Passed by the Liberian Legislature February 16, 1926, Supplementary to the Joint Resolution of January 28, 1926, Approving the Loan Agreement Between the Government of Liberia and the Finance Corporation of America[22]

It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

SECTION 1. That the Agreement concluded between the Government of the Republic of Liberia and the Finance Corporation of America, as of January 1, 1926, approved subject to certain modifications by Joint Resolution of the Legislature of the Republic of Liberia on January 28, 1926,[23] be fully entered into and consummated by the President of the Republic of Liberia in accordance with the following supplemental authority, instructions and interpretations, it being considered necessary and desirable to bring about the operation of the Agreement at the earliest possible date.

(*a*) Article 9, shall be modified as follows, referring to the original draft: In the first paragraph, strike out the last sentence which reads: "The officers shall at all times be subject to removal by the President of Liberia at the request of the Financial Adviser"; and substitute therefor the following: "These officers shall hold their appointment during good behaviour but shall be subject to removal

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[21] See pp. 597 ff.

[22] Printed from *Acts Passed by the Legislature of the Republic of Liberia During the Session 1925–1926*, ch. x, p. 20.

[23] *Ante*, p. 507.

by the President of Liberia for cause, or upon the withdrawal by the Financial Adviser, for sufficient cause stated, of his recommendation of such officer or officers."

(*b*) The second paragraph of Article 9, which reads: "The Auditor and Assistant Auditor shall be appointed by Agreement between the Government and the Fiscal Agent," shall have added thereto the following: "and the Liberian Assistant Auditor shall be appointed by the President of the Republic of Liberia to serve during his pleasure."

(*c*) Article 9, paragraph 3, shall have the last phrase at the bottom of page 9, of the original draft stricken out that is the words "with the exception only of the Financial Adviser." Continue as in original draft to and [*end*] of par. 1, page 10.

(*d*) Article 9, paragraph 2, on page 10 of the original draft, shall be stricken out.

(*e*) Article 9, paragraph 3, on page 10 of the original draft, shall be changed to read: "An official who shall be designated Supervisor of Customs."

(*f*) Article 9, paragraph 4, on page 10 of the original draft, shall be changed to read: "An official who shall be designated Supervisor of Internal Revenue."

(*g*) Article 9, paragraph 5, on page 10 of the original draft shall be changed to read: "A bonded Auditor appointed by Agreement between the President of the Republic of Liberia and the Fiscal Agent."

(*h*) Article 9, paragraph 6, on page 10 of the original draft shall be changed to read: "A bonded Assistant Auditor to be appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent."

(*i*) There shall be inserted after the foregoing paragraph an additional paragraph which shall read: "A bonded Assistant Auditor who shall be appointed by the President of Liberia."

(*j*) Article 9, referring to the last paragraph on page 10, of the original draft, on line 10, shall be changed to read in place of $40,000 $32,000."

(*k*) Article 9, referring to the last paragraph on page 10 of the original, shall have added to said paragraph: "In the absence or during disability of the bonded Auditor, the Assistant bonded Auditor appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent shall act in his place and stead, and he shall be assisted by the Assistant bonded Auditor appointed solely by the President of Liberia. The salary of the Assistant bonded Auditor appointed solely by the President of Liberia is not incorporated in the above amendments but is to be determined by the Budget appropriation as made from time to time.

(*l*) Article 9, first paragraph on top of page 11 of the original draft shall have added to said first paragraph, on line 6, to follow the word: "Government", the following: "should the quarters furnished not be desired, commutation in lieu thereof will be given for the actual expense of the quarters not to exceed the sum of $800.00 annually." Beginning with the words: "shall be furnished suitable medical care" continue as in the original draft to the end of the paragraph.

(*m*) Article 9, the last paragraph of said Article, on page 11, shall be changed to read: "The financial Adviser and the officers appointed by virtue of the provisions of this agreement shall be entitled to receive reasonable leaves of absence cumulative over not more than two years at full pay."

(*n*) Article 10, paragraph 1, on page 11, of the original draft, modified in the Joint Resolution of January 28, 1926, omitted the last five words of said paragraph by error; the original wording of Article 10, paragraph 1, page 11 of the original draft is to be understood therefor.

(*o*) Article 10, paragraph[s] 3, 4, 5, as modified, are intended to be understood to indicate the desire of the Republic to pay off the external and Internal funded and floating indebtedness of the Republic during the present calendar year should it be found possible to arrange this payment within that period.

(*p*) Article 10, referring to the last paragraph of this Article, on page 12 of the original draft, it is intended that this last paragraph is approved and is to be inserted at the end of Article 10 as modified.

(*q*) Article 12, paragraph 1, of the original draft, has been changed in the modification to provide that administrative orders or regulations to be issued at the request of the Financial Adviser shall be approved by the President of the Republic of Liberia, it being intended that such approval of the President should be first given to insure that the provisions contained in said administrative rules or regulations, would not be contrary to law or against public policy.

(*r*) Article 12, paragraph 6, on page 17 of the original draft, was modified to include the constitutional provision that the President of the Republic must sign all warrants of payments. This paragraph is now further modified by the following addition on line 15, as written in the original draft after the words "payee specified", viz: "The Auditor shall only refuse his approval of an order of transfer in case of:—

(*a*) Non-appropriation,
(*b*) Over expenditure of appropriation,
(*c*) Incorrectness of account to be paid,
(*d*) Lack of approval by proper official or officials.

after the foregoing addition and beginning with the words "No payments shall be" continue as modified to the end of the paragraph.

(*s*) Article 12, paragraph 8, on page 18 of the original draft shall have inserted the following provisions after the word "expenditures", second line from the bottom of the page viz: "The Financial Adviser may only refuse to approve the Budget when and if the disbursements which should be included therein as provided in this Agreement or by obligation of laws have not been properly included, or when and if the budget submitted by the Secretary of the Treasury exceeds the estimates of the revenues." Continue to bottom of page as in the original draft; and on page 19, second line, after the word: "Liberia" insert: "for any of the reasons above stated and defined," continue as in the original draft to the end of said Article.

(*t*) Article 19, paragraph 2, as modified, is hereby cancelled, and the Agreement shall read in accordance with the provisions of the original draft on page 25, with the following addition to be inserted on line 8, of said paragraph, after the words: "approved by the Auditor", viz:—"in accordance with the provisions of Article 12, paragraph 6," as modified. Beginning with the words "and Countersigned" continue to the end of said paragraph as in the original draft.

(*u*) Article 20, Clause (*a*) on page 28 of the original draft, was modified for the purpose of having this clause re-written in order that the Government's interest may be equally protected with the Fiscal Agent's interest. The President is authorized to conclude an Agreement with the Finance Corporation of America on this point which will satisfactorily provide for the protection of the Government's interests as well as those of the Fiscal Agent, and incorporate said arrangement in the Agreement in lieu of the modified clause.

(*v*) Article 22, as modified, shall be stricken out, and in place thereof, Article 22 shall be re-written in accordance with page 29 of the original draft, provided however that after the words: "reasonable care" third line from the bottom of the page, there shall be inserted the following words: "in which case", and continue to the end of said paragraph in accordance with the original draft.

(*w*) Referring to the form of the Bond on page 34 of the original draft, line 3, from the bottom of said page, strike out the following words: "in time of war as well as of peace, whether holder of the Bond is a citizen of a friendly or hostile State", and

On page 36, the 5th line strike out the words: "the Republic" and insert in place thereof: "the Government of the Republic of Liberia".

SECTION 2. The President is hereby fully authorized and empowered to consummate and place in effect the final Agreement in accordance with the authority and instructions contained in the Joint Resolution approving the Loan Agreement between the Government

of the Republic of Liberia and The Finance Corporation of America as modified, approved January 28, 1926 and in accordance with the further directions, authority, and instructions contained in this Resolution.

Any law to the contrary notwithstanding.

Approved February 16, 1926.

882.51/1865

The Chief of the Division of Western European Affairs (Castle) to Mr. Harvey S. Firestone

[WASHINGTON,] *February 17, 1926.*

MY DEAR MR. FIRESTONE: I have received your telegram of February 15.[24]

It appears that some days ago De la Rue informed the American Legation that he had been instructed by President King to draft modifications of the Loan Agreement for presentation to the Liberian Legislature but he has not communicated direct with the Department since the present situation developed. As the questions involved appear to be primarily of a business character, in the negotiation of which the Department naturally cannot intervene, and which appear to call for direct agreement between the interested parties, the Department has not felt that it could properly make any suggestions to De la Rue in the matter.

Recent advices from the American Legation in Monrovia indicate that the Liberian Legislature has reconsidered the Loan Agreement and after passing it with certain modifications, has adjourned. The Department's advices are not clear as to the nature and extent of these reported modifications but the Department assumes that you and the bankers have received more exact information direct from your representatives in Monrovia and De la Rue.

Needless to say, the Department is greatly disappointed by the turn which affairs have taken and hopes that some satisfactory arrangement can eventually be evolved.

Sincerely yours,

WM. R. CASTLE, JR.

882.6176 F 51/196 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *February 17, 1926—2 p. m.*

[Received 7:31 p. m.]

13. Refer to Department's 6.[25] Situation misunderstood by the Government [*Department?*] as ratification 1925 referred to was of

[24] Not printed.

[25] Dated Feb. 5, 1926; *ante*, p. 518.

Hines' original agreements which were not accepted by Firestone. New agreements submitted to [*by?*] Firestone subsequently modified with Barclay in America could not be submitted Legislature for the ratification until the present session. Barclay authority that of executor only; so understood by the Legation. Firestone earnestly desired by all; absolutely no bad faith nor intention to quibble.

Modification on number white employees to allay fear general public caused by newspaper reports 30,000. Other modifications to satisfy Legislature are considered as adversely affecting Firestone and operation of these can be set aside by Executive power if of sufficient importance to Firestone. Suggest correct his misunderstanding and give immediate instructions, as extending operation[s], harbor work stopped.

WHARTON

882.51/1864 : Telegram

The Secretary of State to the Chargé in Liberia (Wharton)

WASHINGTON, *February 17, 1926—7 p. m.*

9. From Castle: Firestone and the bankers have been informed of your 11, February 13, midnight and 12 February 16, noon.

As was stated in the Department's 6, February 5, Firestone considers that the signing of the Planting Agreements by Barclay constituted the final step in their execution and that they must therefore stand as signed, although he has indicated his willingness to adjust such difficulties as may arise thereunder in the future in a friendly manner. Although he has made no comment to the Department upon your last advices he has recently indicated that he is prepared to withdraw from Liberia except for Mount Barclay plantation on the ground that he has lost confidence in the Liberian Government. Furthermore, he has expressed to the Department his unwillingness and that of the bankers to enter upon further negotiations with the Liberian Government.

Regarding the loan agreement, the bankers take the position that the security for their loan rests upon (1) the integrity of the planting agreements, (2) the assigning of all the revenues for the service of the loan and (3) the granting of broad powers to the Financial Adviser. While they might possibly consent to minor changes not affecting these main principles, they are prepared to stand on the loan agreement substantially as printed and to decline to make the loan on other terms. Personally I am inclined to doubt whether the Liberian Government will be able to secure more favorable terms than those now offered.

While surprised and disappointed by the turn that affairs have taken I regret that I am not in a position to make suggestions in the matter as the questions which you have raised are primarily of a business character, in the negotiation of which you will realize that the Department cannot intervene and which appear to call for direct agreement between the interested parties.

KELLOGG

882.6176 F 51/147 : Telegram

Mr. Harvey S. Firestone to the Chief of the Division of Western European Affairs (Castle)

MIAMI BEACH, FLA., *February 18, 1926—6: 45 p. m.*

Letter enclosing copy from De la Rue received.[26] Appreciate your sending it to me very much. De la Rue is at least partially right but hope he has not taken this same attitude with Liberian officials, advising them what he could get Firestone to do and what they would not do, endeavoring to take the place of what he thinks lack of proper representation by Firestone in Liberia. This may be partially responsible for attitude of Liberian Government. Wrote you fully yesterday.[27] Have instructed Mr. Martin [28] meet Clark,[29] New York, tomorrow, then telephone you. Have given instructions to hold two doctors and three office staff who are now in England, letting only one assistant auditor go forward. Also instructed to have $37,000 worth harbor equipment and $11,000 worth Firestone equipment due to arrival [*arrive*] Monrovia 26th remain intact and return[ed]. I note tenor of your cables. I am not in humor to negotiate as we did before. They must accept agreements without single change if we go into Liberia, and that they probably will not do; therefore, our only alternative is to withdraw with exception of agreement number 1, Mount Barclay, with as little embarrassment and expense as possible.

H. S. FIRESTONE

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[26] Not found in Department files.
[27] Not printed.
[28] A Firestone representative.
[29] Reed Paige Clark, General Receiver of Customs and Financial Adviser to Liberia, 1911–1916, appointed Second Secretary of Legation at Monrovia, Feb. 4, 1926.

882.51/1877

The Chargé in Liberia (Wharton) to the Secretary of State

No. 336 MONROVIA, *February 24, 1926.*
Diplomatic [Received March 25.]

SIR: This Legation has the honor to refer to its despatch No. 334 dated February 12, 1926, and report further on the planting and loan agreements.

Loan Agreement:

. . . . . .

While the Legation knows that some politics was involved in handling the ratification and further appreciates that some of the modifications were radical, nevertheless it is known that the repeated reflection on the good faith of the Liberian Government was not justified and greatly hampered further negotiations. (See Department's cable No. 5, February 3, 6 P. M., and Legation's cable No. 8, February 6, 9 P. M. [*February 7, 5 p. m.*]) This incident and others have been exceedingly unfortunate and untimely owing to their tendency to disrupt all negotiations, not only cause misunderstandings between the parties to the agreements, but also between the governments, and result in an unwarranted situation.

For the Department's information it should be known that the President had made no secret of his position with reference to the loan agreement which was that he could not be in favor of a loan for $2,500,000 or even $5,000,000 which pledged all the revenues of the country. He at all times has considered the customs revenues alone sufficient security but would be willing to make provision should the customs be insufficient. (It may interest the Department that as early as January 1st, this was his position but further information was desired by me before my cable of January 23, 9 A. M. Legation's No. 3 [30] "President insists that customs receipts sufficient security for present loan".) This was the major objection of President King to the loan agreement and he has been consistent throughout all the negotiations. He has been, and without reserve, is in favor of American interests in Liberia, particularly the Firestone project and (inasmuch as the Department advised it) likewise the loan but with reasonable terms.

The modifications provide that the loan charges will be met from customs and headmonies but if these are insufficient then by the other revenues as necessary. The accounting control of the loan officers over the entire revenues is, however, not disturbed and is desired as a means of increasing their efficiency and bettering their system. This has not been changed.

[30] Not printed.

In further substantiation of the President's position and in confirmation of this Legation's cables Nos. 11 and 12, there is enclosed herewith the "Joint Resolution Supplementary to the Joint Resolution passed by the Legislature of the Republic of Liberia on the 28th of January 1926, directing, instructing and authorizing the Executive to consummate the Loan Agreement between the Government of the Republic of Liberia and the Finance Corporation of America." [31]

In light of this Legation's cable No. 15 of February 19, 1926,[32] and despatch No. 334, referred to before, the difficult task confronted by President King and the reasons not only for the prior but later modifications of the loan, can be better realized. I attribute the difficulty mainly to the situation created by premature publication of the projects, especially the loan, in American and foreign papers prior to the securing by the President of sufficient legislative support here, and the fear and apprehension on the part of the Liberians even legislators (see despatch No. 344 [*334*]). The Department understands that in order to avoid foreign interference with the negotiations, they had been conducted confidentially and the public and even the Legislature knew nothing of the loan proposal prior to January and at all times the Executive was acting without legislative authority.

So that the Department could better understand the facts, my cable No. 15 cited the voting in both houses during the enactment of the last modifications which give substantially the original loan terms. The House of Representatives was deadlocked and the Speaker cast the deciding vote in favor of the modifications. In order to secure passage, President called a joint meeting of both Houses at the Executive Mansion the night before passage at which meeting he and other members of the Executive branch urged the absolute necessity of these further modifications bringing the loan back to its original form in substantial effect. At this meeting he asked the Financial Adviser to be present and address the two Houses so as to assure and explain to them the necessity of not breaking down the financial scheme incorporated in the original agreement and to explain to them the advantages of modern methods of control, collection and expenditure of government finance. The President in conference with the Senate in order to assure passage without destroying any substantial provisions as far as possible, had the resolution presented as a party measure and stated that the Firestone and Loan Agreements were absolutely necessary to preserve Liberia.

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[31] *Ante*, p. 524.
[32] Not printed.

It is now felt that the provisions of the loan agreement have been ratified substantially in the original form and save for minor details, further negotiations are unnecessary.

Rubber Agreements:

The Department's No. 6 [33] was orally communicated to the Secretary of State, Honorable Edwin Barclay, on February 8th, who became indignant at the position taken by Mr. Firestone and the Department's agreement "that the Liberian Government should fulfill the planting agreements in strict accord with its pledged word". Further, he stated that the Liberian Government has always kept its word and no matter how strong other nations were or wealth any corporations had, still Liberia could not be intimidated into breaking her Constitution, into playing fast and loose for any concession, nor have her honor flouted by others. Mr. Barclay resented this attitude on the part of Mr. Firestone and the Department and threatened to use this to defeat the proposal of further modifying the loan agreement to substantially the original form.

Taking into consideration the nature of the planting modifications, the exchange of letters on these modifications, the question raised by Mr. Firestone with regard to Mr. Barclay's power to bind the Liberian Government under the Liberian Act of Ratification of 1925, the desire of the Liberians for the Firestone project and therefore possibility of adjusting these matters later, the resentful attitude of the Liberian Secretary of State, and the manifest inclination at that time to further modify the loan agreement in a far more acceptable form, substantially the original agreement; this Legation deemed it advisable, while neither lessening the effect of the Department's No. 6, nor agreeing with the Secretary of State of Liberia, to leave the planting modifications in abeyance until the reconsideration of the loan by the legislature.

This Legation in reviewing the history of the planting negotiations and the present status of the agreements, realized that the situation here is badly misunderstood in America.

The ratification of 1925 upon which Mr. Firestone bases his claim to the agreements as signed by Mr. Barclay in New York, was a ratification, not of the present planting agreements but the original agreements negotiated by Mr. Hines, refused by Mr. Firestone, and withdrawn. Since entirely new agreements were submitted by Mr. Firestone shortly after my arrival in Monrovia May 1925, negotiations carried on by cable, and finally a substantial basis reached, the signing of the later agreements by Mr. Barclay, was merely the act of the Executive without the authority of the legislative branch of

[33] Dated Feb. 5, 1926; *ante*, p. 518.

the government. The Liberian Government contends that under the constitution all concessions must be ratified by the Legislature and inasmuch as Mr. Barclay negotiated a entirely new concession it was absolutely necessary and likewise impossible to have ratification before the last session. Further, it was understood prior to Mr. Barclay's departure that his authority was that of the Executive only.

It is suggested to the Department that regardless of the question of ratification as explained above, the Liberian Government considers the subjects incorporated in the act of ratification merely interpretations agreed to by Mr. Ross, the manager of the Firestone Plantations Company here. A copy of this letter, which the Liberian Government is relying on, is enclosed herewith.[34] Please note that the copy furnished the Legation does not indicate the manner in which the letter was signed by Mr. Ross.

In previous despatches to the Department this Legation has indicated the harmful effect of propaganda circulated against the Firestone negotiations, particularly by the British who used Mr. Firestone's statements to defeat the scheme of American rubber production. These interpretations were incorporated in the act of ratification in order to allay the fear of the members of the legislature and the Liberian public.

With reference to the authority of Mr. Ross to bind Mr. Firestone, the Department should know that all present operations are conducted under lease with Mr. Ross and the business is conducted in his name. Further information has been received that under orders from Mr. Firestone, Mr. Ross withdrew this letter from the Department of State here. Secretary Barclay returned the letter and expressed regret that Mr. Firestone repudiated this act and thanking Mr. Ross for his assistance in aiding ratification of the planting agreements.

Unfortunately no copy of this letter was received by this Legation though it had been requested.

There is enclosed also a report from the General Receiver of Customs [34] which clearly shows the disposition of the Liberian Government relative to these modifications, particularly the Emergency Relief Fund.

This Legation feels that all the modifications are of comparatively minor importance and should not interfere with the greater principle of American development of rubber sources, especially in Liberia which offers without doubt an exceptional opportunity wholly free from foreign control except that of the Liberian Government.

This Legation cannot understand at this time why Mr. Firestone should consider withdrawing from Liberia on the ground that he

[34] Not printed.

has lost confidence in the Government. This Legation feels that Mr. Firestone had some confidence in Liberia and while he may possibly feel that there was some weakness in handling the final settlement of the agreements, nevertheless this Legation cannot see any reason why this attitude should be changed to such an extent to justify him in abandoning all operations except Mount Barclay. First, the modifications to his agreements are minor; secondly, the loan now has been ratified in substantially its original form and its integrity intact. Further, regardless of the confidence of the Banking Company and Mr. Firestone, it was considered necessary to tie the loan and planting agreements in order to stabilize the government and make operations safe, and this object has been attained. It would be exceedingly difficult in face of the present Liberian attitude for Mr. Firestone to only retain Mount Barclay.

It is hoped under the circumstances that Mr. Firestone will continue, for the Liberian Government is anxious for the country to be the seat of his major operations. This Legation feels that in view of the larger principle of aiding the United States to have sources for not only rubber, but other products which are now controlled by foreign monopolies, no better opportunity is available than Liberia. Likewise, American influence should be felt in Africa.

The Liberian Government considers Mount Barclay as part of one entire scheme and that if Firestone does not accept the entire proposition, he cannot retain Mount Barclay.

It has been hinted by certain Liberians that the failure of either Firestone or the Finance Corporation of America to communicate with the Liberian Government has been caused by better offers being tendered to Firestone and he now wishes to take advantage of these offers and take undue advantage of the Liberian Government by only holding Mount Barclay. When the profits which can be derived from Mount Barclay Plantation are taken into consideration, the Department can see the reason why the Liberian Government would not consider Firestone retaining only this plantation. The annual profits from Mount Barclay have been roughly estimated to be slightly over $300,000. This plantation of about 1400 acres produces at the present time 30 long tons of rubber per month at a cost of about thirteen and one-quarter to thirteen and one-half cents per pound. The present rental is $6,000 per year.

It is known that should Firestone withdraw the Liberian Government intends to undertake the operation of Mount Barclay. It is also appreciated that antagonistic interests should be and are anxious to produce rubber here. There has been a rumor that . . . will accept this plantation and other areas should Firestone withdraw.

Under all the foregoing circumstances this Legation feels that there is not sufficient disagreement to warrant accusations of bad faith by any party to the agreements. Likewise, to abandon all negotiations now that there is a substantial agreement is not only unwise but aiding the rubber monopolists and thwarting attempts to build up American commercial independence.

This Legation wishes to report to the Department with reference to the interference in business negotiations, (Department's cable No. 9 [36]), that the only communications to the Liberian Government during the crisis of the negotiations were made through and by the Legation as neither Firestone nor the Finance Corporation of America communicated. Mr. Firestone cabled Mr. Ross not to interfere in the negotiations and the Finance Corporation had no representative here. The tension was great and misunderstandings widening the gap between the Liberian Government and the American concerns. Had the Legation not acted the Legislature would have adjourned leaving an impossible situation. However, the strict limitations upon interference in business negotiations have been observed as consistently as possible and this Legation has continually had as its objective safeguarding the interests of the American concerns and obtaining a place for America to grow rubber.

I have [etc.] CLIFTON R. WHARTON

882.51/1866 : Telegram

The Secretary of State to the Chargé in Liberia (Wharton)

[Paraphrase]

WASHINGTON, *February 26, 1926—5 p. m.*

10. 1. You are instructed to make no communication to the Liberian Government which could be understood as participation in strictly business negotiations unless specifically authorized by the Department.

2. Firestone is in the South and Colonel Crews is in Cuba. Neither is expected to return until April. At present communication with them is difficult, and the project cannot be properly considered until the texts of the Liberian Legislature's ratifying acts have been received. The Department understands that in the interval operations will not be discontinued. The Department hopes that a better understanding and an equitable adjustment of remaining differences may be effected upon the return of Firestone and Crews and upon receipt of the texts of the acts of ratification.

KELLOGG

[36] Dated Feb. 17, 1926; *ante*, p. 529.

882.51/1878

The Chargé in Liberia (Wharton) to the Secretary of State

No. 339 MONROVIA, *March 2, 1926.*
Diplomatic [Received April 3.]

SIR: I have the honor, in view of Department's cable No. 10 of February 26, 5 P. M., to inform the Department that though fully appreciating the importance of developing independent sources of rubber under American control, I have at all times during the negotiations between the Liberian Government and Mr. Firestone and the Finance Corporation of America, refrained from making any communication to the Liberian Government which might be interpreted as participation in negotiations of a business character.

Further, since assuming charge of the affairs of this Legation, not one written statement pertaining either to the planting agreements or the loan has been sent by me to the Liberian Government or any Liberian official. (Department's cable No. 6 was not transmitted to the Liberian Government in writing—see Legation's despatch No. 336 of February 24, 1926.)

The Liberian Government has continuously been informed and is fully aware that it is not the policy of the Department of State of the United States or accredited United States Foreign Service Officers to obtain or negotiate concessions for American citizens, although the Department and its agents are always desirous to maintain free and equal opportunity for American enterprises throughout the world.

I wish the Department to understand that I have in no sense diverged from the Department's fixed policy nor tried to influence in any way the action of the Liberian Government as an official. I simply kept in constant touch with the Liberian Government and suggested my personal feeling, which feeling would, I feel very sure, be shared by the Department and all far-seeing American friends of Liberia.

In order that the Department may further know the Liberian Government's attitude towards my position, I wish to state that President King in informal conversation told me immediately after the Department's cable No. 5 [37] that it would be utterly impossible to expedite matters unless Mr. Firestone and the Banking Company had agents for I was a governmental official and forbidden to interfere in negotiations and Mr. de la Rue was a Liberian official and therefore could not act for the Banking Company. I readily acquiesced and this understanding has been clear throughout the entire negotiations.

I have [etc.] CLIFTON R. WHARTON

[37] Dated Feb. 3, 1926; *ante*, p. 518.

882.6176 F 51/197 : Telegram

The Chargé in Liberia (Wharton) to the Secretary of State

MONROVIA, *March 6, 1926—1 p. m.*
[Received 2:38 p. m.]

19. Department's 12.[38] Liberian Government desiring to clear up misunderstandings and consummate negotiations despatched De la Rue today with complete certified texts, documents, and official explanations. Available copies will be mailed.

WHARTON

882.6176 F 51/205

The Chargé in Liberia (Wharton) to the Secretary of State

No. 346 MONROVIA, *March 9, 1926.*
Diplomatic [Received April 3.]

SIR: This Legation has the honor, in confirmation of its cable No. 19 of March 6th, 1926, to enclose herewith a copy of the Liberian Government's despatch No. 208/D of March 4th, 1926, relative to the mission to the United States of Mr. Sidney de la Rue, Financial Adviser to Liberia, for the purpose of consummating the loan agreement between the Government of Liberia and the Finance Corporation of America.

There is also enclosed a copy of the directions given to the Financial Adviser limiting and explaining his power with reference to the planting and loan agreements.

At the earliest opportunity, this Legation will forward a complete despatch covering this matter.

I have [etc.] CLIFTON R. WHARTON

[Enclosure 1]

The Liberian Secretary of State (Barclay) to the American Chargé (Wharton)

208/D MONROVIA, *March 4, 1926.*

MR. CHARGÉ D'AFFAIRES: I have the honour to advise you that the Liberian Government is despatching to the United States Mr. de la Rue, Financial Adviser, for the purpose of concluding the Loan Agreement between the Liberian Government and the Finance Corporation of New York and to settle other matters which might need adjustment in connection with the Firestone Plantation Agreement. Mr. de la Rue is furnished with certified text of the Loan Agreement as amended.

I should be pleased if you would advise your Government of the contents of this despatch.

I have [etc.] EDWIN BARCLAY

[38] Not printed.

[Enclosure 2]

The Liberian Secretary of State (Barclay) to the Financial Adviser of Liberia (De la Rue)

205/L MONROVIA, *March 4, 1926.*

SIR: I am directed by the President to authorize your immediate departure for the United States for the purpose of consummating the Loan Agreement between the Government of the Republic of Liberia and the Finance Corporation of America which has been approved by the Legislature of the Republic, as well as to settle any misapprehensions which may have arisen over the Firestone Planting Agreement which has been similarly approved.

In discharging this duty you are to be governed by the following instructions:

(*a*) You will take up with the Finance Corporation of America or their Representative the amendments which have been made in the text of the Agreement as originally drawn and will explain these amendments in accordance to your knowledge of the reasons which have inspired them.

(*b*) You will take up with the Firestone Company the provisions of the Amendatory Act covering the Planting Agreement—explain to them the purpose of the amendments which are largely explanatory, and only in one instance make any material modifications of the text of the Agreement signed in New York in September last. You will endeavour to secure from them their acceptance in writing of the Legislative interpretations and modification which being handed to you will be considered as completing the Agreements. In case the Finance Corporation accepts the modified text of the Loan Agreement, you are authorized to execute it in behalf of the Republic and thereafter to hand the enclosed letter and copy of the Agreement to the Secretary of State of the United States which requests him to undertake in behalf of the Department of State of the United States the discharge of the obligations therein imposed upon them.

(*c*) Should any difference of opinion arise over these matters you will cable the Department for further instructions.

I have [etc.] EDWIN BARCLAY

882.6176 F 51/194

Memorandum by the Assistant Chief of the Division of Western European Affairs (Richardson)

[WASHINGTON,] *March 11, 1926.*

Messrs. Hines, Robinson and Martin, of the Firestone Company, called at the Department this morning and discussed, among other

matters, the plans of Firestone in Liberia in view of the modifications in the Planting and Loan Agreements made by the Liberian Legislature.

While very little new information was brought out at the conference, there was discussion tending to clarify the reasons which may plausibly be supposed to have prompted the Liberian Government to take its recent action. A copy of the Liberian Act of Ratification of January, 1925,[39] which authorized the President of Liberia to conclude final agreements along substantially the same lines as the original agreements signed between Mr. Hines and the Liberian Government in 1921 [*1924*], was examined. Mr. Robinson considered that this confirmed Firestone's contention that Barclay had full authority to act for the Liberian Government when he was in New York and that, by his signature to the agreements, binding contracts were made. It was pointed out to Mr. Robinson that, although this interpretation might be legally valid as between two private parties, the practical effect was that President King could, under the terms of the Ratifying Act of January 1925, use his discretion and was quite within his discretion in saying that the agreements, as signed by Barclay, were not substantially the same as the previous agreements and that, therefore, he, as President of Liberia, felt that he must submit them to the Legislature.

It was also pointed out that no matter what authority Barclay might or might not have, the agreements had, in fact, been submitted to the Legislature and had been ratified with amendments; the amended agreements were now law as far as Liberia was concerned and it was doubtful whether the Executive of Liberia would feel justified in recognizing any prior agreements.

Firestone's representatives said that Mr. Firestone considered this a matter of principle, that if he agreed to permit the Liberian Government to modify Barclay's agreements now, he might anticipate periodic modifications at the whim of the Legislature. In regard to this it was pointed out that Liberia is a sovereign State and that at any time in the future it could modify or abrogate the contracts as it saw fit, upon the payment of pecuniary compensation to the company.

It came out in the conversation that Firestone apparently had no great objection to any of the modifications which had been made in the Planting Agreements, with the possible exception of the arbitration clause. In regard to this, Mr. Robinson said that if there were a set arbitration procedure in the statutes of Liberia which corresponded roughly to the arbitration statutes of certain American states, there would be no great danger in accepting this plan. The

[39] *Foreign Relations*, 1925, vol. II, p. 405.

fear of the Firestone Company was that, by the grant of jurisdiction to the Liberian Courts, the latter would contrive to delay judgments in all cases to such an extent that it would be impossible for the company to operate efficiently.

It was intimated that Mr. Hines was going to Liberia with much fuller powers from Firestone than the latter's previous representatives and that he hopes to adjust matters on a workable basis.

882.6176 F 51/207

The Chargé in Liberia (Wharton) to the Secretary of State

No. 348 MONROVIA, *March 13, 1926.*
Diplomatic [Received April 15.]

SIR: I have the honor, in compliance with Department's cable No. 12 of March 4, 1926,[40] to transmit herewith a single copy of "Correspondence and Draft Agreements of the Firestone Proposals."[41] Agreements numbers one, two and three on pages 54 [*51*] to 65 inclusive were ratified by the Legislature of Liberia January 13, 1925.

The Act of Ratification is enclosed herewith.[42] The Department's attention is called to section two of this Act authorizing the President to enter into final agreements with the said "Harvey S. Firestone substantially on the terms, conditions and stipulations set forth in the said draft agreements and correspondence incidentally thereto."

This ratification was of the Hines original Agreements which were not accepted by Firestone. In fact these Agreements were withdrawn and when submitted contained radical changes including the proposed loan.

This Legation has never been furnished copies of the Planting Agreements signed by Secretary of State Barclay in New York. Through courtesy, however, an opportunity to see these agreements and compare them with the original Hines Agreements has been afforded.

The Liberian Government maintains that these later Agreements, their terms, conditions and stipulations are substantially different from the draft agreements ratified by the Legislature in 1925, particularly Agreement No. 2 and it was therefore absolutely necessary for the Liberian Legislature to ratify them in as much as the Act of Ratification of the Hines Agreements merely gave the Executive Government limited power and authority.

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[40] Not printed.

[41] For correspondence and draft agreements reprinted from this pamphlet, see *Foreign Relations*, 1925, vol. II, pp. 367, 379.

[42] For the text of the act of ratification, see *ibid.*, p. 405.

If the new Agreements have substantial changes, it is absolutely essential, not only in compliance with the constitution and laws of the Republic of Liberia but also for the protection of the Firestone Plantations Company to have approval by the Legislature. Without such approval all rights thereunder are subject to attack. This Legation is aware that the Department has at its hand all facts subsequent to the resubmission of the second set of Agreements and subsequent to the Act of Ratification of January 13, 1925.

Although the final Planting Agreements as they now stand do not include the loan, it is contended there are such substantial differences that ratification is absolutely necessary.

From this brief explanation and upon comparing the original Hines Agreements, [with] the final ones now in the possession of the Department, taking into consideration the wording of the Act of Ratification (inclosure No. 2,) this Legation hopes that the Department can see the situation clearly as it is regarded here; also see that while Mr. Barclay has the authority of the Executive Government, he could not have complete and final authority including Legislative, unless in direct contradiction of the Act of Ratification of January 13, 1925.

The Joint Resolution approving the final planting Agreements as signed in New York by Mr. Barclay and modified by the Liberian Legislature was transmitted in this Legation's despatch No. 336 dated February 24, 1926, and the reason and cause for the modifications explained in other despatches transmitted by me to the Department.

In further explanation of these modifications there is enclosed a copy of a cable from Mr. Firestone to President King dated December 19, 1925,[43] relative to the number of white employees to be used in Liberia.

All of these modifications were merely interpretations based, as viewed by the Liberian Government, upon mutual understanding except the one on Arbitration, and were needed to assure passage of the Agreements by the Legislature in view of newspaper articles and apprehension on the part of the Liberian people.

Further, I feel that they are of such minor importance that Mr. Firestone should not withdraw, especially since he may be stopped from denying his agreement on these points. This is so, not that their importance should be regarded but in view of his absolute protection through the requisite joint resolution of the Legislature.

The Liberian Government, see Legation's cable No. 19,[44] has sent Mr. de la Rue to explain the situation and consummate the agreements and the loan.

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[43] *Foreign Relations*, 1925, vol. II, p. 489.

[44] Dated Mar. 6, 1926; *ante*, p. 538.

. . . . . .

I sincerely hope that in view of such a friendly definite policy by Liberia, the need on the part of Mr. Firestone and America to secure a source of rubber and desire to assist Liberia in economic development, any misunderstanding may be adjusted and these agreements completed.

I have [etc.] CLIFTON R. WHARTON

882.6176 F 51/167

The Liberian Secretary of State (Barclay) to the Chief of the Division of Western European Affairs (Castle)

377/M. F. MONROVIA, *April 23, 1926.*

DEAR MR. CASTLE: I am in receipt of your letter of March 5, 1926 [45] for which I thank you. I think your memorandum calls for some statement of the Liberian Government's position, although by the day this reaches you Mr. De la Rue will have very likely made a complete exposé of the facts.

I was fully empowered by the Government to conclude agreements with Mr. Firestone subject, as has always been understood between us, to the final approval of such agreements by the Liberian Legislature. Not only is this [in] consonance with the Liberian law on the subject of such contracts, but it was the continually reiterated demand of Mr. Firestone himself even when I was in America. If the Agreements originally drawn up in Monrovia and transmitted to Mr. Firestone had been accepted by him as drawn, there would have been no difficulty. If Mr. Firestone had notified the Government, in the first instance, of the necessity for additional stipulations, the Government would not have submitted the Agreements to the Legislature before discussing such proposed modifications. Immediately after Mr. Hines reached America with the documents, Mr. Firestone cabled President King accepting them. No reservation, limitation nor proviso was either expressed or implied in this Cablegram. The President very reasonably thought that a complete meeting of minds had been arrived at, and with a view to facilitating the initiation of the operations under the contracts, submitted them for Legislative approval. The Government experienced no difficulty in securing this approval, and, immediately upon the passage of the Legislative resolution, informed Mr. Firestone by cable. Now, it must be remembered, that at that date the Agreements had not been fully executed. After a long period of negotiation, during which we were led to believe Mr. Firestone's representative on the spot was fully empowered to consummate the agree-

[45] Not found in Department files.

ments upon the bases mutually settled, we were suddenly told that Mr. Hines had no power of attorney and was authorised to do nothing beyond reporting to Akron the results of his negotiations. He would not accept the responsibility of even initialing the documents. When eventually the Government were advised by cable of Mr. Firestone's acceptance, the draft agreements were laid before the Legislature whose resolution authorised the President to enter into "final agreements substantially on the terms, conditions and stipulations set forth in said draft Agreements." The Executive's powers in the premises were thus strictly limited to the stipulations contained in the draft Agreements. These powers did not extend to nor include provisions which were not contained in the drafts or which had not been suggested or discussed during the negotiations.

It was not until he had been apprised of the Legislative approval of the Agreements that Mr. Firestone informed the Government that he had amendments to make. He did not furnish us with advice as to the nature of the "necessary amendments" he had in mind. He made the rather curious suggestion that the Legislative Session should be extended until his personal representative could arrive with the amended Agreements, (which, by the way, was an admission that he thought the changes suggested by him were such as would require Legislative approval).

Mr. Hines eventually arrived at Monrovia with the new drafts, based it is true upon the first draft, but containing in addition new stipulations and such modifications, as made them not only substantially but actually new documents.

After a careful consideration of these new documents the Liberian Government informed Mr. Hines in substance that they were unable to accept these new Agreements in their entirety because in aspects which the Liberian Government considered fundamental they differed from the Agreements arrived at in the proceeding [*preceding*] year. Mr. Hines had then declared the drafts were founded upon terms and conditions mutually acceptable. This declaration of Mr. Hines was emphasized by Mr. Firestone's cablegram of December 24, 1924 by which in express terms he informed President King that the Agreements were approved.

In order not to burden this memorandum with details I attach a copy of said letter and a letter to Minister Hood which set forth the Liberian view point.[46] With all this you are possibly familiar. After more discussions the Amended agreements with modification desired by the Liberian Government, but which still differed fundamentally from the first draft were signed by the Liberian Government and transmitted through your Department to Mr. Firestone for his signature.

[46] There are no enclosures attached to this letter in the Department files.

I was sent over to the United States to conclude this and other matters and it was understood that the modified new drafts contained the maximum of concession by both parties to the views of each of them. Mr. Firestone insisted upon further amendments some of which I accepted subject to my Government's approval, which of course meant Legislative approval. The most important of these amendments suggested by Mr. Firestone in New York was with reference to question of arbitration.

The Liberian Government would be recreant in discharging its obligation to the country if it relied solely upon the benevolence of a foreign Government or official for assuring the rights of the Republic. With us it is not a question of trust or lack of trust in the Secretary of State of the United States. It is a question of whether as a matter of policy the Liberian Government should bind itself to submit all disputes arising between them and the nationals of a foreign state to the final arbitrament of officials of that state. The Legislature disapproved, and suggested the formula which is the only real amendment to the planting agreement. And what does it amount to after all? Merely, to this that instead of the American Secretary of State being the final arbiter in such disputes as might rise out of these contracts, he will cooperate with the Liberian Government in arranging for such arbitration. This difference saves the national *amour propre* of Liberia and yet does not in any way affect the principle of arbitration. Instead of saying "Mr. Secretary you will arbitrate"; we say "Mr. Secretary you will appoint an arbitrator".

Mr. Firestone should understand that the security of his investments lies in the Legislative approval of these contracts, not in the Executive's entering into them. That they became a final and irrevocable obligation on the Republic of Liberia by virtue of Legislative approval. That no amendment of the contracts after approval by the Legislature can be initiated by the Liberian Government in any of its branches. This is not only constitutional doctrine in Liberia but also consistent constitutional practice here. By insisting in these matters upon a compliance with the constitutional practice, the Liberian Government have given ample proof, if proof were really needed, that they had acted throughout *de bonne foi.* The constant suggestion from your end that the Liberian Government has not acted in good faith we feel is unjustifiable and gratuitous aspersion.

Mr. Wharton explained the matter of the telegram and I do not think Mr. Clark has any complaint to make in respect of his reception.

With best wishes [etc.] EDWIN BARCLAY

882.6176 F 51/219 : Telegram

The Acting Secretary of State to the Chargé in Liberia (Clark)

WASHINGTON, *August 19, 1926—6 p. m.*

25. For Bussell [47] from Castle. Since sending my No. 24, August 11, 1 p. m.[48] the Department has talked with Firestone who says

"They will not accept Planting Agreement as passed by Legislature, but that Harvey Firestone, Junior, is sailing immediately for Liberia in the hope that satisfactory adjustments can be made and that if this is accomplished they can lay out a program for Liberia which will be helpful and progressive."

HARRISON

882.51/1888,1889

Mr. Guy Cary of Shearman & Sterling to the Assistant Chief of the Division of Western European Affairs (Richardson)

NEW YORK, N. Y., *September 25, 1926.*

DEAR MR. RICHARDSON: In accordance with our telephone conversation of this morning, I am enclosing to you, herewith, a printed copy of the proposed Loan Agreement between the Republic of Liberia, of the one part, Finance Corporation of America, of the other part, and The National City Bank of New York, as Fiscal Agent.

Also a copy of a letter to Mr. de La Rue,[48] transmitting to him three counterparts of this Agreement, duly executed by the Finance Corporation of America and by The National City Bank of New York, as Fiscal Agent.

I also quote as follows from a personal letter to Mr. de La Rue:

"After myself reviewing the whole subject thoroughly with the clients, I am of the opinion that no mistake has been made in executing the Agreement before sending it forward to you for submission to the Liberian Government. It would be erroneous to infer from this the intention or desire on the part of our clients to force the hand of the Liberian Government by adopting a 'take it or leave it' attitude. The simple facts are, however, that the Agreement as it stands affords only the essential safeguards, and that the previous discussions, resulting, through the former texts and through the adoption in great part of the changes desired by the Liberian Legislature, have cleared the ground of all the unessentials, so that the stage of discussion and mutual concession has passed, and we have

[47] C. T. Bussell, assistant to the General Receiver of Customs of Liberia.
[48] Not printed.

come by natural steps to a form of agreement which both sides can consider as a whole. This being so, and in view of the distance separating us, it is obviously timesaving and proper to execute it here and send it on to you, so that the Liberian Government will have it before them in concrete and definite shape."

These two letters and the counterparts of the Agreement, signed as above stated, are in the hands of one of Mr. Firestone's men who is now on the way to Monrovia where he will deliver them to Mr. Harvey S. Firestone, Jr. It lies with the latter to deliver them to Mr. de La Rue at the proper time, which depends to some extent, of course, upon the outcome of the negotiations which he is now carrying on with the Liberian Government concerning the planting agreement.

I need not rehearse the reasons for thus signing and sending forward the Loan Agreement in the present form, as they are stated in the two before-mentioned letters to Mr. de La Rue; and I hope that you will also conclude that this is the best way to bring matters to a head, with reasonable ground to hope for a successful outcome. However, as I said to you over the telephone, it might complicate the situation very seriously, and a totally wrong construction might be placed upon our clients' attitude, if it should become known in Monrovia, before Mr. Firestone, Jr., hands the documents and letters to Mr. de La Rue with the proper explanations, that we have sent forward signed contracts in final form. With this thought in mind, we have not even cabled Mr. Firestone, Jr., that signed contracts are on the way. He will receive his information to this effect when the letters and papers reach him by the hand of the messenger who is carrying them. In view of this, and for the benefit of the whole situation, we and our clients will esteem it a great favor if the Department will refrain from cabling advance information to the Legation at Monrovia, and permit Mr. Firestone, Jr., to be the Legation's first informant. We intend to cable him to this effect as soon as we receive word by cable that the papers have reached him.

I also enclose a copy of a cable received by the National City Bank from Mr. Bussell [49] inquiring whether an officer of the Finance Corporation was coming to Monrovia. With this, I enclose a copy of a cable from the Bank to Mr. Bussell [49] which seemed to be as much as could be said under the circumstances.

Yours very truly,

GUY CARY

[49] Not printed.

[Enclosure—Extracts]

Draft Loan Agreement Between the Government of Liberia, the Finance Corporation of America, and the National City Bank of New York [51]

ARTICLE VII. The Government agrees that it will forthwith undertake negotiations with the present holders of the external and internal debt of the Republic for the adjustment of such debt and for the settlement of such claims as may be approved by the Financial Adviser hereinafter referred to, and that the Bonds herein provided to be issued by the Government and hereinafter termed "The Loan" shall be charged as a first lien.

On all customs duties of the Republic receivable on and after the date of the execution and delivery of this Agreement by the Government, whether in respect of imports or exports, and

On all other revenues or moneys received for the account of the Government from any source whatever.

Import and export duties of every kind and character whatsoever, head moneys and all other taxes, imposts and revenues of the Republic shall be collected through the customs, postal and internal revenue administration, to be maintained by the Government under the supervision and direction of the Financial Adviser and certain assistants appointed as hereinafter stipulated who shall cooperate with the Treasury, Postal and Interior Department officials in the manner hereinafter prescribed. The Government obligates itself to appoint from time to time during the entire life of the loan the fiscal officers required by the terms of this agreement, who during the life of this agreement, shall supervise, direct and control the collection of the revenues of the Republic from whatsoever source they may arise, and the application thereof to the service of the loan, which shall be administered in accordance with the terms of this agreement under rules and regulations to be made and to become effective for the purpose of carrying out the terms and provisions hereof.

. . . . . .

ARTICLE IX. The organization of the customs and internal revenue administration of the Republic shall be supervised by the following officers, who shall be nominated by the Financial Adviser, to the President of the Republic of Liberia, (the Financial Adviser having first reported the names of the officers nominated to the Secretary of State of the United States), and shall be by the President of the Republic of Liberia appointed and commissioned to the respective offices with duties as defined in this Instrument. These officers shall

[51] The text of this draft is the same as the text of the agreement ratified by Liberia, p. 574, with the exception of the extracts here printed. Topical notes appearing in the margin of the draft text have been omitted.

hold their appointment during good behavior but shall be subject to removal by the President of Liberia, for cause, or upon the withdrawal by the Financial Adviser, for sufficient cause stated, of his recommendation of such officer or officers.

The auditor and assistant auditor shall be appointed by agreement between the Government and the Fiscal Agent, and the Liberian Assistant Auditor shall be appointed by the President of the Republic of Liberia, to serve during his pleasure.

The officers to be so designated shall be qualified as to education and as to previous experience in similar or analogous positions in foreign service; and the President of the Republic of Liberia, before commissioning them for service hereunder, shall have the right to require satisfactory proof of such qualifications, with the exception only of the Financial Adviser:

1. A Financial Adviser who shall be designated and appointed as hereinbefore stated, at a salary of $12,500. per annum;
2. An official, who shall be designated Supervisor of Customs;
3. An official, who shall be designated Supervisor of Internal Revenue;
4. A bonded Auditor appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent;
5. A bonded Assistant Auditor, appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent;
6. A bonded Assistant Auditor who shall be appointed by the President of the Republic of Liberia.

The officers above mentioned shall perform such duties and employ such persons as may be defined by law or prescribed by the Government, with or upon the advice of the Financial Adviser, and the salaries of said officers, with the exception of the Financial Adviser, shall be fixed from time to time by agreement between the Financial Adviser and the Government, but the total aggregate salaries of said officers, excepting only the Financial Adviser, shall not exceed the total aggregate sum of Thirty-two Thousand Dollars ($32,000); *provided, however*, that in the event of substantial changes in money values, the salary of the Financial Adviser and the above aggregate total amount for salaries of other officers may be from time to time increased or diminished by agreement between the Government and the Fiscal Agent.

In the absence or during disability of the bonded Auditor, the bonded Assistant Auditor appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent shall act in his place and stead, and he shall be assisted by the bonded Assistant Auditor appointed solely by the President of Liberia. The salary of the bonded Assistant Auditor appointed solely by the President of Liberia is not incorporated herein but is to be determined by the Budget appropriation as made from time to time.

Such salaries paid to the Financial Adviser and the fiscal officers to be appointed as above stated shall include all allowances of any kind or character whatsoever, *provided, however*, that said officials shall in addition to such salaries be furnished suitable quarters by the Government; should the quarters furnished not be desired, commutation in lieu thereof will be given for the actual expense of quarters not to exceed the sum of eight hundred dollars ($800) annually; shall be furnished suitable medical care and attendance; shall be reimbursed for their actual traveling expenses incurred by them on official duty; and shall receive traveling expenses from the point of departure in the United States at time of appointment or employment, to their post in Liberia and return to the United States on termination thereof; and not more often than once in two years, shall receive their actual traveling expenses by ordinary route to the United States and return.

The Financial Adviser and the officers appointed by virtue of the provisions of this agreement shall be entitled to receive reasonable leaves of absence, cumulative over not more than two years, at full pay.

ARTICLE X. 1. The Corporation agrees to purchase from the Government and the Government agrees to sell, at the rate of $900 per bond of $1,000., together with interest accrued thereon from time to time, pursuant to the terms and provisions hereof, and in the manner hereinafter stated, such an amount of said Bonds as will provide funds to be used by the Government for the purpose stated in the preambles hereof, not to exceed, however, the total aggregate amount of $2,500,000, face value of said bonds.

2. Said Bonds shall be certified to by the Fiscal Agent for the purposes of identification, and from time to time delivered to the Corporation, or its nominee, as against payment therefor at the rate above stated, to be credited by the Fiscal Agent, out of moneys provided for that purpose by the Corporation, to the account of the Liberian Government in the City of New York. Said Bonds shall be so certified and delivered from time to time by the Fiscal Agent, at the request of the Secretary of the Treasury of the Government, with the written consent and approval of the Financial Adviser but not otherwise, and payment for said Bonds shall not be called for in excess of the following schedule, to wit:

3. During the calendar year 1927, not to exceed the total aggregate amount of $1,500,000, face value of said Bonds;

4. During the calendar year 1928, not to exceed the aggregate face amount of $500,000. of said Bonds;

5. During the calendar year 1929, not to exceed the aggregate face amount of $500,000. of said Bonds.

If the Government shall fail to call for the full amount of said bonds provided for any one year the uncalled balance thereof shall not be cumulative except with the Corporation's consent.

If the Government shall desire to issue the additional $2,500,000 face amount of Bonds or any part thereof, it shall first advise with and secure the consent of the Financial Adviser to such proposed issue, but in no case shall any such additional bonds be issued or offered for sale until after December 31, 1930. Such additional bonds shall only be sold in the American financial market, and to or through the Corporation or other responsible American financial concern, bank or bankers, doing business in the United States of America, and the Corporation shall have the preferential right to purchase such bonds on the same terms as may be offered by any such other proposed purchaser.

. . . . . .

ARTICLE XIII. The revenues and receipts shall be applied by the Government as follows:

1. To the payment, as they arise, of all costs and expenses of collection, application, and administration of the revenues and receipts, including the salaries of the Financial Adviser and the officers appointed hereunder, and the salaries of the employees of the revenue service, both customs and internal, the cost and expenses of maintaining the frontier force, and any other legitimate expenses or obligations incurred under this agreement, and all amounts incident to the service of the loan except as to payments on account of principal and interest, for which provision is hereinafter made.

2. Thereafter to the payment to the depositary on the first day of each month for account of the Government, of such sums as may be necessary to enable the Government to pay as they become due the current administrative expenses of the Government, but not in any year more than the sum set forth as the estimate of current administrative expenses of the Government in the budget and appropriation acts prepared and adopted as hereinbefore provided.

3. Thereafter to the payment to the Fiscal Agent on the dates hereinbefore stated, of an amount equal to the interest to be due and payable on the next semi-annual interest date hereinbefore stated.

4. Thereafter to sinking fund payments provided for in Article V hereof.

5. The remainder thereof shall be applied so far as may be necessary to the payment of any other amounts which the Government may, with the approval of the Financial Adviser be required to pay.

6. The sums that may remain after the payments provided in the first five clauses of this article have been made shall be applied as follows:

Such sums shall be credited by the depositary to an account hereinafter referred to as the reserve account. Moneys in the reserve account shall be applied, in so far as possible, only for the improvement of public education in Liberia and for public works, except that in emergency, declared to be such by the Government, the same may be applied to some purpose not covered by the ordinary budget. Moneys shall be transferred for expenditure from the reserve account by agreement of the Secretary of the Treasury and the Financial Adviser. In case of a disagreement between the Secretary of the Treasury and the Financial Adviser, the question of such transfer shall be referred to the President of Liberia and his decision thereon shall be final. Whenever and for so long a period as the assigned revenues and receipts shall be insufficient to meet the payments required to be made by clauses 1, 2, 3, 4 and 5 of this article, the depositary shall cease paying out the moneys from the reserve account and such funds may be applied by the Government to meet the payments provided in clauses 1, 2, 3, 4, and 5 of this article.

7. At the end of each fiscal year, all unexpended balances of the budget or appropriations shall be reported, together with notation of any commitments or reservations or amounts outstanding in suspense against the same, and the budget for the following year shall take into consideration any outstanding commitments or unadjusted balances, but no sums shall be expended after the close of the fiscal year against the preceding years budget, the purpose being that all expenses for each year shall be budgeted annually.

8. The Government shall make no expenditures, except as hereinbefore provided and for the purposes and in the manner hereinbefore provided, and shall not incur any liability or obligation to make expenditures otherwise. All salaries and expenses incident to the collection, application and administration of the assigned revenues and receipts and maintenance of the frontier force shall be disbursed in accordance with the provisions of this agreement.

9. The Government and the Financial Adviser, or such person as he may designate, and the Auditor shall have the right at any time and from time to time to examine and audit the books and accounts of the depositary in connection with its acts as depositary. Monthly or quarterly statements of such accounts shall be rendered by the depositary to the Financial Adviser and to the Fiscal Agent. A copy of said monthly or quarterly statements shall be furnished by the depositary to the Secretary of the Treasury of Liberia.

10. Agencies or branches of the depositary shall be opened or established at such places in the interior or on the coast of Liberia as the Government, upon the advice of the Financial Adviser, may decide are necessary for the protection of the revenues and receipts, and for their convenient application and administration.

. . . . . .

ARTICLE XV. Until the Government has repaid the whole amount of the loan and all expenses incident to the service thereof, no floating debt shall be created and no loan for any purpose shall be made, except with the written approval of the Financial Adviser.

. . . . . .

ARTICLE XXV. In case of dispute between the Government and either of the other parties to this Contract, the matter shall be referred for determination to arbitrators, one of whom shall be appointed by each of the parties to dispute; and, if such arbitrators shall be unable to agree among themselves, the Secretary of State of the United States of America shall be requested to appoint an additional arbitrator. The decision of a majority of the arbitrators so appointed shall be binding and conclusive upon the parties to the dispute.

. . . . . .

[Subenclosure—Exhibit A]

[FORM OF BOND]

No.—— $——

REPUBLIC OF LIBERIA

EXTERNAL FORTY YEAR SECURED SINKING FUND
SEVEN PER CENT GOLD BOND

For value received, the Republic of Liberia (hereinafter referred to as the "Republic") promises to pay to Bearer, or if the ownership of this Bond be registered, to the registered owner hereof on the first day of January, 1966, the principal sum of . . . . . Dollars, and to pay interest thereon from the date hereof at the rate of seven per cent. per annum semi-annually on July 1 and January 1 in each year, until such principal sum is paid; but any such interest falling due at or before the maturity of this Bond shall be paid only upon the presentation and surrender of the attached interest coupons as they severally mature.

Both principal and interest of this Bond are payable at the Head Office of the Fiscal Agent, The National City Bank of New York, in the Borough of Manhattan, City and State of New York, United States of America, in gold coin of the United States of America, of or equal to the present standard of weight and fineness, without deduction for or on account of any taxes, assessments or other governmental charges or duties now or hereafter levied or to be levied by or under the authority of the Republic or any taxing authority thereof.

This Bond is one of a duly authorized issue of $5,000,000, aggregate principal amount, of Bonds of the Republic of Liberia, desig-

nated as its "External Forty Year Secured Sinking Fund Seven Per Cent. Gold Bonds" all of like date and maturity and similar tenor, except as to denomination. The terms of issue of the said Bonds are set forth in a certain Loan Agreement, dated as of September 1, 1926, of which a copy is on file with the Fiscal Agent hereinafter mentioned, to which contract reference is made for the terms thereof.

The due and punctual payment of the principal and interest of this Bond and of all sums required by the said contract to be paid on account of the Sinking Fund are secured and guaranteed by a first charge upon all the customs duties and other revenues of the Republic, subject only to a prior charge thereon for expenses of administration.

This Bond may be redeemed at 102 per cent. of the principal hereof through the operation of the Sinking Fund provided for in the said Loan Agreement, on any semi-annual interest date prior to maturity, upon at least sixty days prior notice, published in two daily newspapers of general circulation, in the Borough of Manhattan, City and State of New York.

The Government of the Republic of Liberia hereby certifies and declares that all acts, conditions and things required to be done and performed and to have happened precedent to and in the issuance of this Bond have been done and performed and have happened in strict compliance with the constitution and laws of the Republic.

This Bond shall be transferable by delivery unless registered in the owner's name at the said Head Office of the Fiscal Agent, such registration being noted hereon. After such registration, no further transfer hereof shall be valid unless made at said office by the registered owner in person or by duly authorized attorney and similarly noted hereon; but this Bond may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored. This Bond shall continue to be subject to successive registrations and transfers to bearer, at the option of the holder or registered owner, but no registration shall affect the negotiability of the attached interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

Bonds of this issue, of the denomination of $500, are exchangeable, at the option of the respective holders thereof, for a like aggregate principal amount of Bonds of this issue, of the denomination of $1,000, in the manner and upon payment of the charges provided in the said contract.

This Bond shall not be valid or obligatory for any purpose until authenticated by the execution by the Fiscal Agent of the certificate indorsed hereon.

IN WITNESS WHEREOF, the Republic of Liberia has caused this Bond to be executed on its behalf by its . . . . . , and impressed

with a facsimile of its seal of State, attested by . . . . . , and the attached interest coupons to be executed with the fascimile signature of its Secretary of the Treasury, as of the first day of January, 1926.

[FORM OF INTEREST COUPON]

No.—— $——

On the first day of . . . . . , 19 . . , unless the Bond herein mentioned shall have been called for previous redemption, the Republic of Liberia will pay to Bearer, at the Head Office of The National City Bank of New York, in the Borough of Manhattan, City and State of New York, ... Dollars, in United States Gold coin, being six months' interest then due on its External Forty Year Secured Sinking Fund Seven Per Cent. Gold Bond, No. . . . . .

[FORM OF FISCAL AGENT'S CERTIFICATE]

This is one of the Bonds described in the within mentioned Loan Agreement.

THE NATIONAL CITY BANK OF NEW YORK,
as Fiscal Agent,
By . . . . . .

882.6176 F 51/220 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

[Paraphrase]

MONROVIA, *September 30, 1926—4 p. m.*
[Received 5 : 52 p. m.]

35. Firestone, Junior, has informed the Legation that he is in accord with President King on the planting agreement and that this agreement as it has now been amended will be submitted to the Legislature for its approval by President King, who has promised to give it his support. The full text of the arbitration clause is now available at Akron.

After local arbitration there is provision for recourse to Washington in the following language:[52]

"Should however either party feel aggrieved at the decision of the arbitrators, then the Government agrees to arrange with the United States Department of State for a further arbitration of the question or questions submitted by either or both parties."

[52] Quotation not paraphrased.

The agreement further provides that the result of this second arbitration shall be final and binding upon both parties. Is it your desire that the provisions be framed in language acceptable to the Department? Early instruction is requested.

CLARK

882.6176 F 51/220 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

[Paraphrase]

WASHINGTON, *October 20, 1926—6 p. m.*

27. Your 35, September 30, 4 p. m. While the Department has no objection to the phrasing of the revised arbitration clause as furnished by Akron, the Department does not care to offer any suggestions inasmuch as it is not a party to the agreement.

KELLOGG

751.8215/242 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

MONROVIA, *October 24, 1926—5 p. m.*

[Received October 25—9:10 p. m.]

38. For Castle: . . . New draft of the loan agreement, dated September 1st and received by the Liberian Government October 20, contains material provisions unacceptable to Liberia and critical situation has been precipitated. Has Department seen this draft? Liberian Government has heard that maximum rubber prices were fixed at London, August last, and believes that Finance Corporation consequently is not inclined to make loan except upon onerous terms. If this is true, impasse has been reached; if not true, can assurance to that effect be had? De la Rue knows nothing of intention of London agreement. No one here can negotiate in behalf of Finance Corporation.

It is believed planting agreements will be accepted by the Legislature irrespective of loan agreement outcome.

CLARK

882.51/1890 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

[Paraphrase]

MONROVIA, *October 25, 1926—1 p. m.*

[Received 8:45 p. m.]

39. For Castle: The entire question of the loan hinges on the alleged London agreement. The Liberian Government has received information concerning it from the Liberian Minister in London. He states that Firestone, Junior, at this conference agreed that, in consideration of the rubber prices conceded by Dutch and British producers, Firestone would limit operations in Liberia to his present holdings and to make the terms of the loan impossible. This belief is confirmed by other evidence at hand.

The Liberian Government has instructed De la Rue to cable Shearman & Sterling that the Government will not agree to assign all of its revenues, but will consent not to issue the second half of the loan before the acceptance of such issue. A favorable reply from the bankers would do much to relieve the apprehensions of the Government, while failure on the part of the bankers to accept the suggestion would be considered very significant.

CLARK

882.51/1893 : Telegram

The Financial Adviser of Liberia (De la Rue) to the National City Bank of New York [53]

MONROVIA, *October 26, 1926.*

For Hoffman: [54] Advise Finance Corporation that departure from conditions laid down by Government as the basis upon which would negotiate loan has caused critical situation. Government will not assign all of the revenues nor change from final memorandum given Crews on this point, but if reason for this and other changes incorporated in article X, page[s] 12 and 13 new draft are for the purpose of protecting purchasers from premature issue second [$]2,500,000 bonds before revenue justifies same, Government may consider changing original form and embodying clause that second bond issue will not be made before revenues assigned reach $800,000. Advise.

FINANCIAL ADVISER

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[53] Received by the Department as an enclosure to a letter dated Oct. 29, 1926, from Guy Cary of Shearman & Sterling. The text, which was garbled in transmission, has been corrected to agree with a copy received through the Legation at Monrovia (file No. 882.6176 F 51/189).

[54] William Hoffman, vice president and trust officer of the National City Bank of New York.

882.51/1890 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

[Paraphrase]

WASHINGTON, *October 27, 1926—1 p. m.*

28. Your 38 of October 24 and 39 of October 25 conveyed the first intimation of the alleged London agreement received by the Department. Please report to the Department by cable such additional information as you may obtain on the subject.

The Department desires a fuller explanation by cable of the phrase in your telegram 39 of October 25 "to make the terms of the loan impossible." [55]

The Department possesses no information as to the probable attitude of the bankers concerning the suggestion of the Liberian Government outlined in the second paragraph of your telegram 39, October 25.

KELLOGG

882.6176 F 51/188

The Liberian Secretary of State (Barclay) to the General Receiver of Customs of Liberia (De la Rue) [56]

1013/L MONROVIA, *October 28, 1926.*

SIR: I am directed by the President to acknowledge receipt of your letter dated October 20, 1926, transmitting a reprint of the proposed Loan Agreement between the Government of the Republic of Liberia and the Finance Corporation of America [57] covered by a letter from Shearman & Sterling which, although stating that the Government should not consider this form of the Agreement as a "take it or leave it" proposition, nevertheless adds that "the stage of discussion and mutual concession has passed;" or, in other words, that the Finance Corporation having come to a conclusion as to what the Government of Liberia ought to accept require this Government to "sign on the dotted line" without further discussion.

2. You will understand how impossible it is for the Liberian Government to execute this Agreement, seeing that it not only ignores the fundamental conditions of acceptance prescribed by the Legislature of Liberia, but also repudiates without notice the under-

[55] The Chargé in Liberia, on Oct. 29, cabled as follows: "40. Department's October 27, 1 p. m. For 'impossible' substitute 'impossible of acceptance by Liberian Government, thus throwing onus of loan failure upon the Government.' Clark." (File No. 882.51/1892.)

[56] Transmitted to the Department by De la Rue under covering letter of Oct. 29; received Dec. 14.

[57] See p. 548.

standings reached by you, acting for the Government, and Colonel Crews, acting for the Finance Corporation, when you were last in America.

3. The Government is still open to the consideration of an agreement based upon terms substantially in accord with the conditions prescribed by the Legislative Act of Approval, already communicated to you; but find themselves unable to accept the Contract in the form just communicated to them.

4. You are authorized to ascertain from the Finance Corporation whether or not there is any possibility of reconciling their point of view and the Government's.

I return the document herewith.

I have [etc.] EDWIN BARCLAY

882.51/1893 : Telegram

The National City Bank of New York to the Financial Adviser of Liberia (De la Rue) [58]

[NEW YORK,] *October 28, 1926.*

Following from Finance Corporation of America:

"Replying to your cable 26th through National City Bank, we will accept wish of the Government of Liberia regarding assignment of revenues and accordingly you are authorized to strike out lines 13 and 14, article 7, page 7, of Loan Agreement signed by us,[59] and substitute the following:

'On all the revenues receivable on and after said date from headmoneys and 'The Government further agrees that in the event that the above revenues should prove insufficient for the service of the loan, the Government shall first allocate from its other revenues such sums as shall be sufficient to make up the deficiency.'

And to strike out the last 5 lines, page 12 and the first 9 lines, page 13,[60] and substitute the following:

'It is understood by the parties hereto that the Government may offer for sale in such amounts as it may decide the bonds covering the remaining $2,500,000 authorized under this agreement when the total annual amount of the assigned custom duties and headmoneys have exceeded the sum of $800,000 for 2 consecutive years. Such additional bonds shall only be sold in the American financial market, and to or through the Finance Corporation of America, or other American financial concerns, bank or banks doing business in the United States, and the Finance Corporation of America shall be given the first opportunity to purchase such bonds.'

Finance Corporation of America"

NATIONAL CITY BANK OF NEW YORK

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[58] Received by the Department as an enclosure to a letter dated Oct. 29, 1926, from Guy Cary of Shearman & Sterling.

[59] The words "On all other revenues or moneys received for the account of the Government from any source whatever."

[60] In art. X from the words "If the Government shall desire to issue the additional $2,500,000 face amount of Bonds . . ." through the end of that article.

882.51/1890 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

WASHINGTON, *November 1, 1926—2 p. m.*

29. Your 39, October 25, 1 p. m., paragraph 2, and Department's 28, October 27, 1 p. m., paragraph 3.

The Department is informed that bankers have cabled De la Rue accepting the Liberian proposals regarding the assignment of revenues and the issuance of the second half of the loan.

KELLOGG

882.51/1905 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

[Paraphrase]

WASHINGTON, *November 2, 1926—5 p. m.*

30. Your 38 of October 24 and 39 of October 25. The Department has been informed by the Finance Corporation that it possesses absolutely no information concerning the alleged London conference on rubber prices and that no consideration of such a character is influencing the corporation in the negotiations now pending.

KELLOGG

382.1121 Dr. Shattuck and Cheek : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

[Extract]

MONROVIA, *November 10, 1926—8 p. m.*

[Received November 11—10:15 a. m.]

42. . . . The planting agreements have now passed both Houses in the form agreed upon. As regards the loan agreement the President has formulated the remaining points of difference which De la Rue is now transmitting. Articles 15 and 25 of the last-named appear to be the only ones at all difficult of adjustment. I am convinced that the Finance Corporation can accept no material weakening of the first without impairing Firestone's security while the suggested amendment of the arbitration clause may not be acceptable to the Department.

The Department is not a party to the loan agreement but in view of present conditions considered as a whole, perhaps the Department could reexpress its friendly interest in a manner peculiarly effective.

CLARK

An Act Passed by the Liberian Legislature November 10, 1926, Approving the Agreement Between the Government of Liberia and the Firestone Plantations Company [61]

It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:—

SECTION 1. That from and after the passage of this Act the Agreement between the Government of Liberia and the Firestone Plantations Company hereinunder recited, be and the same is hereby approved.

MEMORANDUM OF AGREEMENT made and entered into at the City of Monrovia this 2nd day of October in the year of our Lord Nineteen Hundred and Twenty-six by and between THE GOVERNMENT OF THE REPUBLIC OF LIBERIA hereinafter styled the Government and FIRESTONE PLANTATIONS COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of Delaware, with principal office in the City of Akron, State of Ohio, United States of America, hereinafter styled the Lessee WITNESSETH:—

ARTICLE I

That the Government hath agreed and by these presents doth agree to grant, demise and to farmlet unto the Lessee for the period of Ninety-nine years from this date an area of land within the boundaries of the Republic of Liberia of one million acres or any lesser area that may be selected by the Lessee from time to time within said period of Ninety-nine years; such land to be suitable for the production of rubber or other agricultural products.

But should the Lessee fail

(*a*) To notify the Government of its acceptance of the conditions herein contained and stipulated within six months after the execution of this Agreement by the Government of Liberia;

(*b*) Or within one year thereafter to commence the selection of lands hereunder;

Then in such case the obligation of the Government under this Agreement shall be discharged and ended.

ARTICLE II

The Government further agrees the Lessee shall during the life of this Agreement have and enjoy the following additional rights and exemptions:

(*a*) All products of Lessee's plantations and all machinery, tools, supplies and buildings established, constructed or placed upon the leased land or elsewhere for the operation and development of the Lessee's land holdings and all leasehold interests, improvements and other property, franchises rights and income shall be free of and exempt from any internal revenue or other tax, charge, or impost except

[61] Printed from *Acts Passed by the Legislature of the Republic of Liberia During the Session 1926* (Monrovia, Government Printing Office, 1926), ch. IV, p. 3.

the revenue tax provided for in Article III, Paragraph (*d*), provided, however that the exemption herein granted shall not affect the liability of the Lessee for the payment of the Emergency Relief Fund nor for the payment of the tax leviable on vehicles.

It is understood and agreed that this exemption shall not apply to Lessee's employees, labourers or servants.

(*b*) All machinery, tools and supplies of all kinds purchased and imported by Lessee for the operation and development of the lands held by Lessee under this Agreement and for the welfare of the employees of Lessee's enterprise shall be exempt from all customs dues or other import duties. But such import duties, if any, as are now required by the "Agreement for Refunding Loan, 1912", or any modification thereof, shall be paid by the Lessee until such Agreement shall be so modified as to reduce or abrogate such duties required on such imports by Lessee; in which event, Lessee shall be required to pay only such import duties as are demanded by such Agreement as modified. It is understood and agreed that the word "welfare" used in this paragraph shall connote only hospital supplies and games and that any articles which may be used by the Lessee in trade or barter or in payment for labour shall not be deemed "supplies" within the meaning of this section.

(*c*) Lessee shall have the exclusive right and privilege upon the lands which shall be selected under this Agreement to construct highways, railways and waterways for the efficient operation and development of the properties. It is agreed that all trails across such lands used immemorially by the population shall be subject and open to free use by the public.

(*d*) Lessee shall have the right to construct and establish at its own expenses lines of communication such as highways, roadways, waterways and railways outside the lands selected under this Agreement. Such routes may be so located by the Lessee as to best serve the purpose of efficient operation of its plantations and enterprises but the Lessee agrees to consult the Government in the matter of such location. All highways and roadways in this paragraph mentioned shall upon completion become public property. But the Government in any event shall not be required to refund to the Lessee any sums of money expended by it in the construction and maintenance of such highways, roadways, waterways or railways.

(*e*) The Lessee shall have the right to construct and establish lines of communication for the purpose of more efficiently operating its plantations and enterprises such as telegraph lines, telephone lines and wireless stations outside of the confines of the lands selected under this Agreement, subject to the provisions of paragraph (*h*), Article IV of this Agreement; and to the extent necessary for such purpose may use, without the payment of rent for such land, any Government lands not already devoted to some other use. The Government in case of war or other emergency shall have the right to use such lines of communication.

(*f*) The Lessee shall have the right to cut and use all timber upon the lands covered by this Agreement but if it shall engage in the sale of lumber to be removed from such lands for export it shall pay the Government royalty of two (2) cents per cubic foot for the lumber so sold, in gold coin of the United States of the present standard of weight and fineness.

(*g*) The Lessee shall have the right to engage in any operations other than agricultural upon the lands held under this Agreement and to utilize any product or materials of or upon said lands; but any mining or other similar operations shall be subject to the laws of the Republic of Liberia unless the parties hereto shall agree upon special terms therefor.

(*h*) The Government warrants to the Lessee the title to all lands selected by it upon which the Government shall accept the rental or compensation as herein provided and will defend and protect such title for the benefit of the Lessee.

The Government further agrees that it will encourage, support and assist the efforts of the Lessee to secure and maintain an adequate labour supply.

Article III

The Lessee in consideration of the Agreements herein by the Government hath agreed and by these presents doth agree as follows:

(*a*) To notify the Government within a period of six (6) months after the execution of this Agreement by the Government of Liberia of its acceptance or rejection of the conditions and stipulations of this Agreement.

(*b*) Beginning one year after the acceptance by the Lessee of this Agreement it shall select from year to year land suitable for the production of rubber and other agricultural products in such areas or quantities within the maximum limit of one million acres of land as may be convenient to it and in accordance with the economical and progressive development of its holding and said Lessee shall upon the selection or location of any tract or tracts of land notify the Government of such selection and the boundaries thereof. But the Lessee shall within five years of the final execution of this Agreement select and begin the payment of rent upon a total of not less than twenty thousand acres.

Upon written notice by the Lessee to the Government of Liberia of Lessee's intention to make a selection of land hereunder within a named territory Lessee shall have six (6) months thereafter to select land within such territory and upon the filing by Lessee with the Government within such six (6) months or written notice of the selection of land within such designated territory the title of such selected land shall vest in Lessee for the purpose named in this Agreement.

It is not intended hereby to deny Lessee the right to make selection of lands hereunder without such previous notification of intention to select within six (6) months; but if such last named notification is filed the same shall have the effect of preventing others from acquiring title within such territory during such six (6) months.

(*c*) As and when the Lessee takes possession of lands selected by it under this Agreement Lessee shall pay to the Government rental at the rate of six (6) cents per acre yearly and every year in advance in gold coin of the United States of the present standard of weight and fineness. Such payments shall be made to the Secretary of the Treasury of Liberia or to such other officer as may be by law provided, it being understood and agreed that the rent herein provided to be paid by the Lessee shall be due to be paid by it to the Government upon all areas of land selected by it as and when such areas are selected.

(*d*) Six (6) years after the acceptance by the Lessee of this Agreement and annually thereafter, the Lessee shall pay to the Government a revenue tax equivalent to one per centum of the value of all rubber and other commercial products of its plantation shipped from Lessee's plantations calculated on the price of such products prevailing in New York market at the time of the arrival of the shipment in New York.

(*e*) Any taxes which may become payable by virtue of the laws of the Republic by any person or persons carried on the payroll of the Lessee, if the Lessee so desires, shall be collected as follows:— The Lessee may come to an arrangement with the Treasury Department of the Republic of Liberia which shall regulate the method of collection and payment of such taxes. But the Lessee shall in no event be held to collect in any year the tax for a greater number of employees than the average employed during the year.

(*f*) Should the rent reserved on any piece or parcel of ground selected by the Lessee be behind or unpaid on any day of payment whereon the same ought to be paid as herein provided, or if default should be made in any of the covenants hereinbefore contained on the part of Lessee to be paid, kept and performed, and if such default in the payment of rent or otherwise shall continue after six months written notice of the existence of such default served by the Government upon the Lessee, then it shall be lawful for the Government to cancel this lease as to that piece or parcel of ground, the rent for which is in default or in respect of which piece or parcel any other default exists as specified in such notice, and to re-enter into and upon the said demised premises and to again repossess and enjoy the same. But if the Lessee shall, within said period of six (6) months after written notice as aforesaid, make good the default complained of in said notice, no right of cancellation shall thereafter exist because of such default. The notice required by this paragraph to be served on the Lessee shall be delivered to the representative of the Lessee in the Republic of Liberia and a duplicate thereof shall be simultanously sent by registered mail to the President of the Lessee at its head office in the City of Akron, State of Ohio, United States of America. The Lessee shall promptly notify the Government of any change in the location of its head office and thereafter any such notice shall be addressed accordingly.

ARTICLE IV

It is further agreed between the parties hereto as follows:—

(*a*) The Lessee will not import unskilled foreign labour for the carrying out of any operations or development undertaken by virtue of this or any other grant except in the event the local labour supply should prove inadequate to the lessee's needs. In the event that the local labour supply should prove inadequate as aforesaid Lessee undertakes to import only such foreign unskilled labour as shall be acceptable to the Government of Liberia. It is understood and agreed that Lessee shall not have in its employ in Liberia more than 1500 white employees at any one time.

(*b*) Should the operations of the Lessee under this Agreement cease for a period of three consecutive years then all and singular

of the rights of the Lessee hereunder shall become extinguished and void and this Agreement shall become of no effect but such cancellation of this Agreement shall not affect any rights granted by the Government to the Lessee under any other Agreement.

(*c*) The rights by this Agreement granted to the Lessee shall not be sold, transferred or otherwise assigned by the Lessee to any person, firm, group or trust without the written consent thereto of the Liberian Government previously had and obtained.

(*d*) The Government reserves the right to construct roads, highways, railroads, telegraph and telephone lines and other lines of communication through any and all plantations owned and operated by Lessee; but the Government shall pay to Lessee all damage which will be caused to Lessee's property by the construction and operation of such roads or other lines of communication; such damage to be ascertained in accordance with the General law of the Republic of Liberia.

(*e*) The Lessee shall have the right to develop for its own use such natural water power and hydroelectric power as may be capable of development upon any of the tracts of land selected by the Lessee under this Agreement and Lessee shall have the right to construct and maintain power lines over any Government lands in order to convey power so developed from one tract of land selected by Lessee to any other tract.

(*f*) Tribal reserves of lands set aside for the communal use of any tribe within the Republic of Liberia are excluded from the operation of this Agreement. Should any question arise as to the limits and extent of such reserves such question shall be finally determined by the Secretary of Interior of Liberia on a reference by the Lessee.

(*g*) Lines of communication such as telegraph, telephone lines, railroads and canals constructed and established by Lessee outside the confines of the Lessee's tracts selected hereunder shall during the life of this Agreement be exempted from all taxation so long as they be used only for the purposes of the operations of Lessee upon lands held under this Agreement. In the event that such lines of communication shall be used by Lessee for general commercial purposes to serve others for hire then while so used they shall be subject to taxation under the general laws of Liberia.

(*h*) It is further agreed that at the expiration of the term of this lease hereinabove provided or of any extension thereof or upon the cancellation of this Agreement at any earlier time such buildings and improvements erected by the Lessee upon the land selected hereunder as shall not have been removed before the expiration or cancellation of the lease shall become the property of the Government of Liberia without charge or condition.

(*i*) It is further agreed that if hereafter the Government shall grant to any other person, firm or corporation any rights in connection with the production of rubber in Liberia upon more favourable terms and conditions in any respect than those granted in this Agreement such more favourable terms and conditions shall inure to the benefit of the Lessee herein the same as if such more favourable terms and conditions were incorporated herein.

(*j*) It is further agreed that the Lessee shall use its best efforts to secure either from the Government of the United States or with

the approval of the Secretary of State of the United States from some other person or persons a loan of not less than five million dollars to establish a credit for public developments in the Republic of Liberia to the end that the credit may be a revolving credit set up through reserves so as to meet the future requirement of funds for such developments. Such loan shall be upon terms and conditions to be negotiated by a Commission appointed by the President of Liberia who shall proceed promptly to the United States for this purpose. It is understood that such terms and conditions as may be agreed upon shall be subject to the approval of the Legislature of the Republic of Liberia.

(*k*) Wherever in this Agreement the Government grants to the Lessee the right to build and operate a railroad or to use the highways and waterways, it is understood that the Lessee is not seeking and is not granted public utility or common carrier privileges and that the same are not intended to be conveyed to it.

(*l*) Wherever in said Agreements the Lessee is granted the right to construct and maintain telephone or telegraph lines or wireless stations it is understood that the rights intended to be conveyed permit the establishment of such lines of means of communication for the private use of the Lessee in the operation of its business and that the Lessee does not seek and is not granted the right to establish and maintain any public services.

(*m*) During the life of this Agreement the Lessee shall at all times have access to the port and harbour facilities at Monrovia, or in any other district of the Republic where it may be carrying on operations, upon not less favourable terms than is accorded others under existing treaties and the laws of the Republic of Liberia. It shall be privileged to lease available lands in all ports of entry from the Government upon favourable terms.

(*n*) All or any questions in dispute arising out of this Agreement between the Government and the Lessee which cannot be harmonized or adjusted by the Lessee and the Government shall be referred to the Liberian Supreme Court or any one of the Justices thereof for arbitration on application of either party; and said Court shall make appointment of three arbitrators (one of whom shall be nominated for such purpose to said Court by the President of Liberia, and one of whom shall be nominated for such purpose to said Court by the representative of the Lessee in charge of Lessee's affairs in the Republic of Liberia, the third arbitrator being the Court's selection without nomination) to hear and determine such dispute within five days after application being filed, upon first being satisfied of the service of notice of such application at least five days previous to the filing of the application by (*a*), by delivery of a copy of the application to the Attorney General of Liberia, or in his absence, to the officer in charge of his office when said application is made by the Lessee, and (*b*), by delivery of a copy of the application to the representative of the Lessee in charge of Lessee's affairs in the Republic of Liberia and by mailing a duplicate thereof on the same date by registered mail to the President of the Lessee at its head office in the City of Akron, State of Ohio, United States of America, when said application is made by the Government.

That the arbitrators so appointed as aforesaid shall render their decision of the question or questions in dispute in writing and file same with the Clerk of the Supreme Court, together with copy of testimony taken and statement of proceedings had within fifteen days after their appointment as aforesaid. Unless an application for further arbitration, as hereinafter provided, be made by either party within a period of four months after said decision is given, said decision shall be a definitive settlement of the question or questions in dispute and shall be binding upon both parties, their agents or assigns, and the Government of Liberia agrees to make said decision operative. Should however, either party feel aggrieved at the decision of the arbitrators then the Government agrees to arrange with the United States Department of State for a further arbitration of the question or questions submitted by either or both parties; provided, however, that in the case of such further arbitration each party shall bear its own respective costs; and provided further that the procedure for such further arbitration shall be as follows:

Written notice of desire for further arbitration shall be given by either party to the other within four months after the written decision of the arbitrators in the first instance has been filed with the Clerk of the Supreme Court; thereupon both parties shall prepare and file with the Clerk of the Supreme Court within sixty days after service of the notice written statements of the questions in disputes, and these statements together with a copy of the testimony and proceedings of the arbitrators together with a copy of their decision, shall be certified by the Clerk of the Supreme Court and delivered within five days after receipt of said papers in his office to the Secretary of State of Liberia who will thereupon promptly arrange with the United States Department of State for further arbitration of the questions in dispute, the decision of which arbitration shall be final and binding upon both parties to this Agreement.

It is understood and agreed that the final decision shall become effective thirty days after such final decision has been rendered and shall not be retroactive. It is also understood and agreed that during the period of arbitration, the Lessee shall be permitted by the Government to carry on without interference, all operations under this Agreement, including the operations involved in the subject matter of dispute, which the Lessee had undertaken, and, being undertaken, had not been objected to by the Government prior to the dispute arising. It is understood, however, that the fact there was no objection on the part of the Government shall not prejudice its rights in the subject matter of dispute.

It is hereby expressly understood and agreed that the arbitration procedure provided for herein does not apply to civil or criminal proceedings to be brought by or against employees of Lessee in Liberia.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

For the Government of Liberia

Witness: .....

Secretary of State.

Firestone Plantations Company

Attest: By .....

Secretary. President.

SECTION 2. This Act shall take effect immediately and be published in hand bills.

Any law to the contrary notwithstanding.

Approved November 18, 1926.

882.51/1906

The Assistant Chief of the Division of Western European Affairs (Richardson) to the Secretary of State and the Assistant Secretary of State (Harrison)

[WASHINGTON,] *November 12, 1926.*

Mr. Guy Cary, of Shearman and Sterling, just telephoned to say that according to a telegram from Monrovia the Liberian Government insists that the Arbitration Clause in the Loan Agreement which is now before the Liberian Legislature should read as follows:

"In case of dispute between the government and either of the parties to this contract the matter shall be referred for determination to arbitrators one of whom shall be appointed by each of the parties to the dispute; and if such arbitrators shall be unable to agree among themselves the Secretary of State of the United States of America shall be requested to appoint an additional arbitrator WHO SHALL BE OF DIFFERENT NATIONALITY FROM THE OTHER ARBITRATORS. The decision of a majority of the arbitrators so appointed shall be binding and conclusive upon the parties to the dispute."

The text of the article is identical with the one to which the Department raised no objection some time ago except for the addition of the words "who shall be of different nationality from the other arbitrators" which are capitalized in the text above.

Mr. Cary states that President King of Liberia feels that the selection of an American as third arbitrator in any dispute might be the cause of resentment in Liberia and might lead to anti-foreign or anti-American sentiment.

Mr. Cary says that the Finance Corporation is inclined to accept this amendment provided the Department of State perceives no objection thereto. He states that the Liberian legislature is disbanding shortly and he hopes to be able to send a telegraphic response by tomorrow at the latest. He hopes that the Department will be able to telephone him this afternoon or if not send him a telegram to-night expressing its views.

DORSEY RICHARDSON

882.51/1906

Memorandum by the Assistant Chief of the Division of Western European Affairs (Richardson)

[WASHINGTON,] *November 12, 1926.*

After consultation with Mr. Hackworth [62] and Mr. Harrison, and upon the authorization of the latter, I telephoned to Mr. Cary stating that the Department considered the arbitration clause in the Loan Agreement a matter primarily affecting the Finance Corporation and the Liberian Government and that if the former was willing to accept the clause as amended the Department perceived no objection thereto. I added that, of course, this expression of the Department's views could not be regarded as binding succeeding Administrations.

DORSEY RICHARDSON

882.51/1907 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

MONROVIA, *November 20, 1926—10 p. m.*

[Received November 22—11:40 p. m.]

The President has requested me to transmit to the Secretary, in the Department's code, the following personal message:

"Taking advantage of the courteous invitation extended me when in America by Secretary Hughes, which invitation was renewed by Mr. Castle to Secretary of State Barclay last year, to communicate with you informally on matters of mutual interest to our respective countries I desire to apprise you that the present loan negotiations have reached a point where only two serious questions remain unsettled. These are article 15 and article 25.

Through having no representatives of the bankers here and because of the death of Colonel Crews it appears that our position is not clearly appreciated. In order to present the loan for passage at this legislature it is necessary to act with the least delay and present it in form that will insure least opposition.

Referring to article 15, Finance Corporation cablegram of November 16 says last December,[62a] referring to communications between Liberian and American State Departments on economic development of Liberia, that Liberian Government by not accepting articles 15 and 25 offered by corporation 'has now come to suggest terms which permit Liberia at her option to change this policy' and 'suggested departure . . . might seriously affect whole plan of American investment in Liberia.' It is clearly impossible present this communication to officials here as meaning of telegram read as a whole will be interpreted by Legislature as intending to compel Liberia to agree

[62] G. H. Hackworth, Solicitor for the Department of State.

[62a] The words "last December" were apparently inserted by error or are in improper order.

never to refund loan and conveying to their understanding a threat of imperialism. Our objection to power of Financial Adviser in clause as insisted on is: (1) arbitrary power to block legitimate loan; (2) Financial Adviser refusing his approval beneficial loan will be subject to charge that his refusal, and therefore other official acts, is based on instructions, thus embarrassing both Governments. Or Financial Adviser may advance [apparent omission] comes to approval of loan which is contrary to present policies and thus destroy the reason for this clause, as intimated by the corporation.

The executive government will accept definite commitment not to refund for 12 years and agree to incorporate in any refunding loan the objective as set forth on page 1 present draft. Further, to only negotiate refunding loan with established responsible financial concern or bankers and to give the Finance Corporation first option on taking refunding loan on same terms as such concern or bankers may offer.

Referring to article 25, Legislature has approved in Firestone planting agreements an arbitration clause which preserves the dignity of the Republic of Liberia and gives Liberian Secretary of State wide range of action. Similar clause in article 25 loan agreement can be passed without comment or difficulty. As now written article 25 increases the difficulty by reopening discussion and, further, as the general public has never understood or desired loan, it might be utilized by administration's political opponents as allegation that arbitration clause is equivalent to unnecessary surrender of control of foreign country. We suggest addition to article 25, line 6, after word 'themselves' the following: 'themselves the Government of Liberia agrees to arrange with the United States Department of State for the further arbitration of the question or questions in dispute and the decision arrived at in such further arbitration shall be final and binding'. Similar commitment in planting agreements I understand is not objectionable to American State Department. May I request you to use your good offices to bring about better understanding and appreciation of our position as present impasse if continued may indefinitely postpone the realization of a long desired objective. Message ends". Signed King.

CLARK

882.51/1907 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

WASHINGTON, *November 24, 1926—4 p. m.*

34. Your November 20, 10 p. m. Please inform President King that the Department, in accordance with his request for its informal good offices, has consulted with the Finance Corporation regarding the changes in Articles XV and XXV of the Loan Agreement proposed by the Liberian Government.

The Finance Corporation states that serious difficulties would be encountered in marketing bonds which could be refunded in 12 years and consequently it hopes that the Liberian Government will see its

way clear to accepting Article XV as it now appears in the printed agreement. However, in case the Liberian Government is unable to do so, the Finance Corporation states that it would be willing to accept the Liberian amendment changing "12 years from the date hereof" to "25 years from the date of each issue of bonds". The Finance Corporation points out that this would make the new loan agreement coterminous with the present 1912 Loan Agreement and it further states that 25 years is approximately the average life of foreign government bonds sold in the United States.

Regarding Article XXV the Finance corporation finds the change proposed in President King's telegram to the Department too indefinite in its phraseology. However, it has informed the Department that it would be willing to accept the suggestion previously made to the effect that the third arbitrator, to be appointed by the American Secretary of State, be of a different nationality from the other arbitrators.

Article XV would thus read "Until the Government has repaid the whole amount of the loan and all expenses incident to the service thereof, no floating debt shall be created and no loan for any purpose shall be made, except with the written approval of the Financial Adviser, provided that this is not to be understood as restricting the Secretary of the Treasury from arranging temporary banking credit for carrying out a budget approved as herein provided; and provided further that the Government may negotiate with responsible bankers for a refunding loan at any time after 25 years from the date of each issue of bonds but before such refunding loan shall be accepted the Finance Corporation of America shall have the option of taking the new loan on the same terms and conditions as such bankers may offer."

Article XXV would thus read "In case of dispute between the Government and either of the other parties to this Contract, the matter shall be referred for determination to arbitrators, one of whom shall be appointed by each of the parties to dispute; and, if such arbitrators shall be unable to agree among themselves, the Secretary of State of the United States of America shall be requested to appoint an additional arbitrator who shall be of different nationality from the other arbitrators. The decision of a majority of the arbitrators so appointed shall be binding and conclusive upon the parties to the dispute."

In conveying this information to President King you may orally express your hope that the changes thus proposed by the Finance Corporation meet the objections raised by the Liberian Government.

KELLOGG

882.51/1908 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

MONROVIA, *November 28, 1926—9 a. m.*

[Received 6:20 p. m.]

44. For Castle: Department's 34, November 24, 4 p. m., has been communicated to the President who declines to accept article XV as transmitted, stating that it would be impossible to secure approval of Legislature for the period of 25 years.

However President King assures me and De la Rue that if Finance Corporation will offer to change the words "may negotiate with responsible bankers for a refunding loan at any time after 25 years" either to "may negotiate with responsible purely American bankers for a refunding loan at any time after 12 years" or to "may negotiate with responsible bankers for a refunding loan at any time after 20 years," he will have the executive government accept offer and will recommend and stand back of the passage of the loan agreement with article XV as it is [*sic*] would then stand. King assures me that he is confident he can secure the passage of either alternative above suggested and I believe he can.

I earnestly recommend that the Department of State urge upon Finance Corporation the necessity of offering one or the other of the above alternatives and direct me to communicate the offer to King. To be effective the offer must come as an offer of Finance Corporation made in consequence of refusal communicated in the first paragraph of this cable, . . . Personally I prefer article XV amended to read "20 years", thus leaving the Department's cabled text of that article unchanged except for the substitution of "20 years" for "25 years". Firestone, Junior, concurs.

Article XV is the sole remaining issue. Legislature will adjourn in one week. I beg the Department to reply with the utmost despatch, having the cablegram repeated to avoid delay caused by mutilations.

I have counselled Firestone not to urge frontier force amendment as I am convinced that introduction of this or any other issue at the present time would make definitely impossible the passage of a satisfactory loan legislation.

CLARK

882.51/1908 : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

WASHINGTON, *November 29, 1926—6 p. m.*

35. Your 44, November 28, 9 a. m. The Department has informed the Finance Corporation of President King's declination to accept the 25 year proviso in Article XV as transmitted in the Department's

34, November 24, 4 p. m., and of his statement that it would be impossible to secure approval of legislature for the period of 25 years.

The Finance Corporation have now notified the Department that after careful consideration of President King's statement mentioned above, it is willing to modify the refunding period from 25 to 20 years. Article XV would therefore stand as transmitted in the Department's 34, except that the words "twenty-five" would be changed to "twenty".

The Finance Corporation has requested that this proposal be transmitted to President King through the American Legation at Monrovia, and in transmitting the foregoing to President King you may express the hope that this present proposal on the part of the Finance Corporation will make it possible to bring the negotiations to a prompt conclusion satisfactory alike to the Liberian Government and the Finance Corporation.

The Department understands that the Finance Corporation will not raise the question of Article XII at this time.

KELLOGG

882.51/1909 : Telegram

The Chargé in Liberia (Clark) to the Secretary of State

MONROVIA, *December 8, 1926—5 p. m.*
[Received December 9—12:10 p. m.]

45. Joint resolution ratifying loan contract in the agreed form having passed both Houses reaches the President this afternoon. Firestone sailed yesterday. De la Rue will proceed to the United States shortly.

. . . . . .

CLARK

882.51/1925

The Liberian Secretary of State (Barclay) to the Secretary of State

1199/M. F. MONROVIA, *December 9, 1926.*
[Received January 31, 1927.]

EXCELLENCY: I have the honour to advise you of the approval by the Legislature of Liberia of the Loan Agreement between the Government of said Republic and the Finance Corporation of America, which agreement provides for certain actions to be taken by the Secretary of State of the United States in circumstances therein specified.

I transmit herewith a certified copy of said Agreement and in behalf of my Government request that the Department of State of the United States will undertake the obligations imposed upon it by this Agreement.

I have [etc.] EDWIN BARCLAY

[Enclosure]

Joint Resolution Passed by the Liberian Legislature December 7, 1926, Ratifying the Loan Agreement Between the Government of Liberia, the Finance Corporation of America, and the National City Bank of New York[63]

A joint resolution ratifying the agreement concluded between the Government of the Republic of Liberia and the Finance Corporation of America, a corporation organized under and by virtue of the laws of the state [of] Delaware, United States of America, and the National City Bank of New York, a national banking association organized and existing under the laws of the United States of America, said agreement being dated for convenience as of the 1st day of September 1926.

It is resolved by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

SECTION 1. That the agreement set forth in the preamble hereof is hereby ratified and approved and the President is hereby fully authorized and empowered to consummate and place in full force and effect the provisions thereof as set forth in the copy of the said agreement as written at the end of this Joint Resolution, and made a part hereof.

SECTION 2. Any laws or parts of laws conflicting with the provisions of this Joint Resolution are hereby repealed.

[AGREEMENT]

AGREEMENT, dated, for convenience, as of the 1st day of September, 1926, by and between the Government of the Republic of Liberia, of the first part (hereinafter referred to as the Government); Finance Corporation of America, a corporation organized and existing under and by virtue of the laws of the State of Delaware, United States of America, of the second part, (hereinafter referred to as the Corporation) and The National City Bank of New York, a national banking association organized and existing under the laws of the United States of America, of the third part, (hereinafter referred to as the Fiscal Agent);

[63] Topical notes appearing in the margin of the text of the agreement have been omitted.

WHEREAS, the Government represents to the Corporation that it desires to provide for the adjustment of its outstanding indebtedness, and to arrange for

a. The construction of certain public works in the form of roads, bridges, and wharves, and the development of its harbors and communications;

b. Encouraging and development of agriculture;

c. The development of the sanitary organization, including the establishment and maintenance of hospitals;

d. Construction of schools and the encouraging of education among the peoples of the Republic;

e. The maintenance of the frontier force and its development;

f. The general economic development of the country; and

WHEREAS, the Government represents to the Corporation

A. That Schedule A hereto embraces a statement as of December 31st, 1924, of the entire funded debt of the Government, external and internal, and all indebtedness of the Government incident to the current administration of the Government and all claims against the Government, including claims disputed by the Government as to their validity or amount, or both,

B. That Schedule B hereto embraces all funded debt of the Government, external and internal, and all indebtedness of the Government and claims against the Government, payment of which is or has been directly or indirectly charged, or is claimed to be charged on any of the customs of the Government, on exports or imports, or on head moneys, or on any part of any thereof, or on other revenues of the Government from whatever source derived:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH;

ARTICLE I. The Government covenants with the Corporation that it will cause to be sanctioned, created and issued its "External Forty Year Sinking Fund Seven Per Cent. Gold Bonds" (hereinafter referred to as the "Bonds") in the aggregate principal amount of Five Million Dollars ($5,000,000), gold coin of the United States of America, to be dated as of January first, 1926, to mature on January first, 1966, to bear interest from the date thereof at the rate of seven per cent. (7%) per annum, payable semi-annually on July first and January first in each year, to be executed by the Secretary of the Treasury of the Government, or by such other officer of the Government as may be designated in writing to the Fiscal Agent by the President of the Government, to be imprinted with the seal of the Government or a facsimile thereof, and to have interest coupons attached, executed with the facsimile signature of its Secretary of the Treasury, and to be authenticated by the signature of the Fiscal Agent thereon indorsed, which Bonds, interest coupons and Fiscal

Agent's Certificate are to be substantially in the forms hereto attached, marked Exhibit "A". Only such Bonds as shall be so authenticated shall be valid or obligatory for any purpose, and such authentication upon any outstanding Bond shall be conclusive evidence and the only competent evidence that such Bond is one of the Bonds of this Loan. The Bonds shall be issued in the denomination of $500 or $1000 as the Corporation may designate, and shall be registerable as to principal but not as to interest.

The Government hereby appoints The National City Bank of New York as Fiscal Agent of the Government, with duties and powers hereinafter set forth. The Fiscal Agent shall maintain at its Head Office in the Borough of Manhattan, City and State of New York, United States of America, a book or books in which shall be kept a record of Bonds registered as to principal, and it may establish such regulations with reference to the registration of Bonds as it may deem necessary or advisable; the cost of such registration to be paid, as and when stated to it, by the Government.

ARTICLE II. The Government covenants that both principal and interest of the Bonds will be paid promptly as they respectively become due and that any and all sums and expenses in connection with the service of the issue will be paid in conformity with Article V hereof, and that payments shall be made in the Borough of Manhattan, City and State of New York, United States of America, at the head office of the Fiscal Agent, in gold coin of the United States of America of or equal to the present standard of weight and fineness and shall be paid, without deduction for or on account of any taxes, assessments or other governmental charges or duties now or hereafter levied or to be levied by or under the authority of the Government or any taxing authority thereof.

ARTICLE III. The Fiscal Agent shall be entitled to treat the person in whose name any Bond shall at the time be registered as to principal, as the owner thereof for the purpose of receiving payment of such principal, and payment of or on account of the principal of any Bond which shall at the time be registered as to principal shall be made only to or upon the order of such registered owner. The bearer of any Bond which shall not at the time be registered as to principal, and the bearer of any interest coupon pertaining to any Bond (whether such Bond shall be registered as to principal or not) shall be deemed to be the absolute owner thereof for any and all purposes, and neither the Government nor the Fiscal Agent shall be affected by any notice to the contrary.

ARTICLE IV. In case any Bond, with interest coupons, shall be mutilated, destroyed or lost, the Government, in its discretion, may issue, and thereupon the Fiscal Agent shall authenticate and deliver,

a new Bond of like series, denomination, tenor and date, in exchange and substitution for, and upon the cancellation of, the mutilated Bond and its interest coupons, or in lieu of and in substitution for the Bond and its interest coupons so destroyed or lost, upon receipt, in each case, of indemnity satisfactory to the Government and to the Fiscal Agent, and, in the case of the destruction or loss of any Bond or its interest coupons, upon the receipt, also, of evidence satisfactory to them of such destruction or loss.

ARTICLE V. For the payment of the interest on the outstanding Bonds and the amortization of the principal thereof at or prior to maturity, the Government will remit or cause to be remitted to the Fiscal Agent in the City of New York, United States of America, semi-annually on May first and November first in each year, (so long as any of the Bonds remain outstanding and unpaid and there shall not have been deposited with the Fiscal Agent a sum in cash sufficient to pay, and for the purpose of paying the same), an amount in cash sufficient to pay the interest to become due on all the Bonds then oustanding, on the next subsequent interest payment date; and in addition thereto, on or prior to November first, 1930, and on or prior to May first and November first in each year thereafter, such proportion of the sum of $70,000 as the aggregate principal amount of Bonds theretofore issued shall bear to the total authorized issue of $5,000,000.

From the sums so remitted from time to time, the Fiscal Agent shall first set aside a sum sufficient to pay the interest on the outstanding Bonds on the next subsequent semi-annual interest date, and after setting aside such sum the Fiscal Agent shall apply the remaining sums so received, from time to time, as a sinking fund for the retirement of the Bonds, after January 1st, 1931, in the following manner:

The Fiscal Agent shall apply the moneys in the sinking fund, as the same accrue and become available thereto, from time to time, to the purchase of Bonds in the open market (including, as well, any stock exchange) if obtainable with reasonable diligence at prices not exceeding 102 per cent. of the principal amount thereof, and accrued interest.

Any moneys in the Sinking Fund which shall not have been applied to the purchase of Bonds at least seventy days prior to the first day of October in each year shall be applied on such first day of October to the redemption of Bonds, by lot, at the redemption price of 102 per cent. of the principal amount thereof, as follows: The Fiscal Agent shall select by lot an aggregate principal amount of such Bonds equal as nearly as may be, to, but not exceeding, the moneys then in the Sinking Fund, and shall thereupon give notice of redemption of the Bonds so selected, by publishing the same at least once a week for four consecutive weeks, in each of two newspapers of general

circulation, published in the Borough of Manhattan, City and State of New York, United States of America, the first publication to be at least sixty days prior to the date designated for redemption, and by mailing a copy of such notice to each registered owner of such Bonds at his address appearing upon the bond registry books, on or before the date of the first publication of the notice. Such notice shall call upon the holders of the Bonds mentioned therein to surrender the same, with all unmatured interest coupons attached, at the Head Office of the Fiscal Agent in the City of New York for redemption at the said redemption price on the date designated for such redemption. Notice of such redemption having been given as herein provided, the said Bonds shall, on the date designated in such notice, become due and payable, at the said Head Office of the Fiscal Agent, at the said redemption price plus accrued interest, anything herein or in said Bonds contained to the contrary notwithstanding. After such redemption date, the Bonds designated for redemption shall cease to bear interest.

ARTICLE VI. Any and all Bonds purchased or redeemed pursuant to any of the provisions of this Contract shall forthwith be cancelled by the Fiscal Agent and permanently retired and disposed of at the direction of the Government, and no further Bonds shall be issued in lieu thereof.

ARTICLE VII. The Government agrees that it will forthwith undertake negotiations with the present holders of the external and internal debt of the Republic for the adjustment of such debt and for the settlement of such claims as may be approved by the Financial Adviser hereinafter referred to, and that the Bonds herein provided to be issued by the Government and hereinafter termed "The Loan" shall be charged as a first lien,

On all customs duties of the Republic receivable on and after the date of the execution and delivery of this Agreement by the Government, whether in respect of imports or exports, and

On all of the revenues receivable on or after said date from headmoneys and:—

The Government further agrees that in the event that the above revenues should prove insufficient for the service of the Loan the Government shall first allocate from its other revenues such sum as shall be sufficient to make up the deficiency.

Import and export duties of every kind and character whatsoever, headmoneys and all other taxes, imposts and revenues of the Republic shall be collected through the customs, postal and internal revenue administration, to be maintained by the Government under the supervision and direction of the Financial Adviser and certain assistants appointed as hereinafter stipulated who shall cooperate with

the Treasury, Postal and Interior Department officials in the manner hereinafter prescribed. The Government obligates itself to appoint from time to time during the entire life of the loan the fiscal officers required by the terms of this agreement, who during the life of this agreement, shall supervise and direct the collection of the revenues of the Republic from whatsoever source they may arise, and the application of the assigned revenues thereof to the service of the loan, which shall be administered in accordance with the terms of this agreement under rules and regulations to be made and to become effective for the purpose of carrying out the terms and provisions hereof.

ARTICLE VIII. As an additional guarantee of the prompt payment of the loan and to insure the efficient organization and functioning of the Liberian fiscal services, the Government covenants and agrees to appoint to its service said Financial Adviser, who shall be designated by the President of the United States of America to the President of the Republic of Liberia and, subject to his approval, appointed to the said office. The said Financial Adviser shall at all times be subject to removal by the President of the Republic of Liberia, upon the request of the President of the United States.

ARTICLE IX. The organization of the customs and internal revenue administration of the Republic shall be supervised by the following officers, who shall be nominated by the Financial Adviser, to the President of the Republic of Liberia, (the Financial Adviser having first reported the names of the officers nominated to the Secretary of State of the United States), and shall be by the President of the Republic of Liberia appointed and commissioned to the respective offices with duties as defined in this Instrument. These officers shall hold their appointment during good behavior but shall be subject to removal by the President of Liberia, for cause, or upon the withdrawal by the Financial Adviser, for sufficient cause stated, of his recommendation of such officer or officers.

The auditor and assistant auditor shall be appointed by agreement between the Government and the Fiscal Agent, and the Liberian Assistant Auditor shall be appointed by the President of the Republic of Liberia, to serve during his pleasure.

The officers to be so designated shall be qualified as to education and as to previous experience in similar or analogous positions in foreign service; and the President of the Republic of Liberia, before commissioning them for service hereunder, shall have the right to require satisfactory proof of such qualifications, with the exception only of the Financial Adviser:

1. A Financial Adviser who shall be designated and appointed as hereinbefore stated, at a salary of $12,500. per annum;

2. An official, who shall be designated Supervisor of Customs;
3. An official, who shall be designated Supervisor of Internal Revenue;
4. A bonded Auditor appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent;
5. A bonded Assistant Auditor, appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent;
6. A bonded Assistant Auditor who shall be appointed by the President of the Republic of Liberia.

The officers above mentioned shall perform such duties and employ such persons as may be defined by law or prescribed by the Government, with or upon the advice of the Financial Adviser as provided in Article XII. Said officers in the performance of their duties as above shall be responsible through the Financial Adviser. The salaries of said officers, with the exception of the Financial Adviser, shall be fixed from time to time by agreement between the Financial Adviser and the Government, but the total aggregate salaries of said officers, excepting only the Financial Adviser, shall not exceed the total aggregate sum of Thirty-two Thousand Dollars ($32,000); provided, however, that in the event of substantial changes in money values, the salary of the Financial Adviser and the above aggregate total amount for salaries of other officers may be from time to time increased or diminished by agreement between the Government and the Fiscal Agent.

In the absence or during disability of the bonded Auditor, the bonded Assistant Auditor appointed by agreement between the President of the Republic of Liberia and the Fiscal Agent shall act in his place and stead, and he shall be assisted by the bonded Assistant Auditor appointed solely by the President of Liberia. The salary of the bonded Assistant Auditor appointed solely by the President of Liberia is not incorporated herein but is to be determined by the Budget appropriation as made from time to time.

Such salaries paid to the Financial Adviser and the fiscal officers to be appointed as above stated shall include all allowances of any kind or character whatsoever, provided, however, that said officials shall in addition to such salaries be furnished suitable quarters by the Government; should the quarters furnished not be desired, commutation in lieu thereof will be given for the actual expense of quarters not to exceed the sum of eight hundred dollars ($800) annually; shall be furnished suitable medical care and attendance; shall be reimbursed for their actual traveling expenses incurred by them on official duty; and shall receive traveling expenses from the point of departure in the United States at time of appointment or employment, to their post in Liberia and return to the United States on termination thereof; and not more often than once in two years,

shall receive their actual traveling expenses by ordinary route to the United States and return.

The Financial Adviser and the officers appointed by virtue of the provisions of this agreement shall be entitled to receive reasonable leaves of absence, cumulative over not more than two years, at full pay.

ARTICLE X. 1. The Corporation agrees to purchase from the Government and the Government agrees to sell, at the rate of $900 per bond of $1,000., together with interest accrued thereon from time to time, pursuant to the terms and provisions hereof, and in the manner hereinafter stated, such an amount of said Bonds as will provide funds to be used by the Government for the purpose stated in the preambles hereof, not to exceed, however, the total aggregate amount of $2,500,000 face value of said bonds.

2. Said Bonds shall be certified to by the Fiscal Agent for the purposes of identification, and from time to time delivered to the Corporation, or its nominee, as against payment therefor at the rate above stated, to be credited by the Fiscal Agent, out of moneys provided for that purpose by the Corporation, to the account of the Liberian Government in the City of New York. Said Bonds shall be so certified and delivered from time to time by the Fiscal Agent, at the request of the Secretary of the Treasury of the Government, with the written consent and approval of the Financial Adviser but not otherwise, and payment for said Bonds shall not be called for in excess of the following schedule, to wit:

3. During the calendar year 1927, not to exceed the total aggregate amount of $1,500,000, face value of said Bonds;

4. During the calendar year 1928, not to exceed the aggregate face amount of $500,000 of said Bonds;

5. During the calendar year 1929, not to exceed the aggregate face amount of $500,000 of said Bonds.

If the Government shall fail to call for the full amount of said Bonds provided for any one year the uncalled balance thereof shall not be cumulative except with the Corporation's consent.

It is understood by the parties hereto that the Government may offer for sale in such amount as it may decide, the Bonds covering the remaining $2,500,000 authorized under this Agreement, when the total annual amount of the assigned customs duties and headmoneys has exceeded the sum of $800,000 for two consecutive years. Such additional Bonds shall only be sold in the American financial market and to or through the Finance Corporation of America or other American financial concern, bank or bankers doing business in the United States of America and the Finance Corporation of America shall be given the first opportunity to purchase such Bonds.

ARTICLE XI. 1. The Government hereby authorizes the redemption of all of its Bonds now issued and outstanding, commonly called the 5% Sinking Fund Gold Loan due July 1, 1952, under the agreement for Refunding Loan dated March 7, 1912, between the Republic of Liberia of the first part and Messrs. J. P. Morgan & Co., et al., of the second part. The redemption of said Bonds shall be promptly carried out by the Fiscal Agent for the account of the Government in such manner as it may deem to be to the best interests of the Government, pursuant to the terms and provisions of the indenture of March 7, 1912. For this purpose the Fiscal Agent shall use the first proceeds which it may receive from the sale of bonds as hereinbefore provided.

2. The Government further authorizes the payment of all costs and expenses incident to the preparation of this Agreement, and the preparation and execution of said Bonds, including fees of the Corporation's counsel, which the Fiscal Agent is hereby authorized and directed to pay from the first proceeds of said Bonds as aforesaid.

3. The remaining proceeds of said Bonds purchased by the Corporation shall be from time to time paid out by the Fiscal Agent for the account of the Government for the following purposes, in the following order of priority, to wit:

4. Thirty-Five Thousand Dollars, or such less amount as shall be sufficient to enable the Government to repay the advances heretofore made to it by the Secretary of the Treasury of the United States under the Act of September 24, 1917, known as "Second Liberty Loan Act" as amended and supplemented, and the interest thereon;

5. Such amount as shall be certified by the Financial Adviser as being sufficient to enable the Government to pay its internal funded debt, and the interest thereon;

6. Such amount as shall be certified by the Financial Adviser as being sufficient to enable the Government to pay its internal floating debt;

7. Improvements and developments as set out in the preamble on page 1, sub-paragraphs *a*, *b*, *c*, *d*, *e* and *f*.

Such payments shall be made from time to time by the Fiscal Agent from funds available in its hands therefor to the credit of the Government, upon the request of the Secretary of the Treasury of the Republic of Liberia, certified and approved in manner and form satisfactory to the Fiscal Agent by the Financial Adviser.

ARTICLE XII. 1. The Government agrees that the Secretary of the Treasury, Secretary of the Interior, Secretary of War, Postmaster General, and other officials shall co-operate with the Financial Adviser to bring order and system into the finances of the Government, and to that end, the Financial Adviser shall devise for the

Republic of Liberia and for any local governmental authority therein such methods of accounting, rules and regulations for the collection, and administration of the public revenues and receipts as may be necessary to assure the collection of such revenues and the enforcement of the laws, rules and regulations pertaining thereto; and such administrative orders or regulations having been approved by the President of Liberia, (such approval, however, shall not be withheld provided said rules and regulations as provided for in this Article are not contrary to law and apply to the collection and administration of the public revenues and receipts) shall be issued at the request of the Financial Adviser by the department head for whose department or under whose jurisdiction any such regulations, rule or order applies. The Government shall fix penalties not inconsistent with the constitution and laws of Liberia for the violation of such administrative order, rules and regulations as may be issued as above.

2. Only the Financial Adviser as such is authorized to communicate directly with any official or branch of the Government, but by agreement between the Government and the Financial Adviser, any official appointed under this Agreement may be authorized to correspond directly with any official of the Government with whom he may have business.

3. For the further security of the revenues and receipts, the Government shall maintain the Liberian frontier force, and shall further maintain patrol service by sea as may be necessary from time to time. The patrol service by sea shall be administered by the Treasury Department Customs Service. The frontier force shall be administered by the War Department and the strength of the force shall be fixed by agreement between the President of Liberia and the Financial Adviser, and it shall not be increased or reduced in number without the agreement of the Financial Adviser, except temporarily in case of emergency declared to be such by the Government. Two duly qualified and experienced officers shall be recommended by the President of the United States to the President of Liberia, and if approved by the President of Liberia, shall be appointed by him to the said Frontier Force. These officers shall be one Major and one Captain. The total aggregate salaries of said officers shall not exceed the sum of eight thousand dollars ($8,000) per annum; provided, however, that such sum may be at any time increased or diminished by agreement between the Government and the Fiscal Agent. Such salaries shall include all allowances, except medical care and attendance, travel on duty, and quarters, which shall be furnished by the Government. Such officers shall serve in the frontier service during the term of said Bonds, and among their duties

shall be to prepare a plan of reorganization of the force which shall be based on the idea of creating an efficient constabulary organization for the purposes aforesaid and which plan shall include the qualification and disciplining of all commissioned and non-commissioned officers and the training of the men in accordance with the best practice now obtaining in similar organizations.

4. The funds for the maintenance of the frontier force shall be administered by the Treasury Department under the same plan and system as for other sections of the Government.

5. The assigned revenues and receipts shall, during the term of said Bonds, be payable only in gold of the present standard of weight and fineness of gold coin of the United States of America, or its equivalent, and the rates and the amounts thereof shall not be decreased without the approval of the Fiscal Agent, but may be increased by the Government so as to meet the expenses of the service of the loan, and the expenses of the administration of the Government. The Comptroller of the Treasury, together with the Auditor, shall prepare for the Secretary of the Treasury, the Fiscal Agent and the Financial Adviser, quarterly and annually reports of the financial administration and of the collection and application of all revenues and receipts. Such reports shall contain the detail of all financial transactions of the Government.

6. The Government covenants to install and maintain the pre-audit system, whereby all accounts of the Government before payment shall be duly presented to the Auditor and shall be audited. The Auditor, upon the submission of any account for his check and after examination of the appropriation to which it is chargeable to ascertain that the same has not been over expended and that the account is correct, properly verified and payable, shall indicate his approval by appropriate signature and shall approve the transfer from the general deposit account in the designated depositary to the disbursement account in the designated depositary of a sum sufficient to meet the Secretary of the Treasury's check for the particular account and payee specified. The auditor shall only refuse his approval of an order of transfer in case of:

(*a*) Non-appropriation.
(*b*) Over expenditure of appropriation,
(*c*) Incorrectness of account to be paid,
(*d*) Lack of approval by proper official or officials.

No payments shall be made except under warrant of the President in accordance with the budget or appropriation law and all payments shall be made by check on the disbursement account to be opened and maintained in the designated depositary of the general government. Payments to troops or other payments which must be made in cash

shall be by check to a bonded paymaster, who shall make the detail of disbursements in accordance with the audit rules and regulations which are to be prepared and enforced in accordance with the provisions hereinbefore stated.

7. The proceedings of the Legislature of Liberia relating to financial matters shall be reported stenographically daily by the Government and typewritten copies of such proceedings shall be furnished to the President of the Republic, the Heads of Department, and the Financial Adviser.

8. The Government shall annually enact a budget which shall set up in detail the estimates of revenues and receipts for the fiscal year and shall duly appropriate and provide in the said budget for the costs and expenses of collection of the revenues and receipts, and the expenses of the various departments of the Government, including the salaries and expenses of the Financial adviser and his staff, as herein provided, the service of the loan, general administrative expenses, public works and improvements and all other amounts which under this Agreement or otherwise the Government is by existing laws or understandings, contracts or engagements, required or obligated to pay; and this shall be done in the following way:—At least thirty days before the opening of each regular session of the Legislature of Liberia, the Secretary of the Treasury shall prepare an itemized budget for the ensuing year, which shall contain statements in detail of the probable revenues and receipts of the Government for the ensuing fiscal year from all sources, and of all proposed expenditures chargeable in any manner against such revenues and receipts. This proposed budget shall be prepared in consultation with the Financial Adviser, whose duty it shall be to assure that the amounts proposed to be appropriated for expenditure shall not exceed the resources of the Government, as shown by careful examination and comparison of the revenue estimates, and who shall further examine the proposed budget to ascertain that all expenditures which are provided to be made by virtue of any of the provisions of this Agreement shall have been properly included in the proposed statement of expenditures. The Financial Adviser may only refuse to approve the budget when and if the disbursements which should be included therein as provided in this agreement or by obligation of law have not been properly included, or when and if the budget submitted by the Secretary of the Treasury exceeds the estimates of the revenues. In the event of the failure of the Financial Adviser to approve the budget as prepared by the Secretary of the Treasury of Liberia, for any of the reasons above stated and defined, the budget of the previous year shall be operative in so far as it applies to the ordinary operating expenses of the Government and the expenditures

provided to be made by virtue of any of the provisions of this Agreement, for the ensuing fiscal year only. Within 10 days after the enactment of the budget, the Secretary of the Treasury of Liberia shall deliver to the Financial Adviser a copy thereof as enacted and a statement of all appropriations, regular and special, which shall have been made. All accounts of the Government shall be subject to examination and verification by the Financial Adviser at all reasonable times.

9. All revenues and receipts of the Government shall be deposited in a bank designated jointly by the Fiscal Agent and the Government as the official depositary. All deposits made with said depositary and all payments made therefrom shall be in accordance with the provisions hereof.

ARTICLE XIII. The assigned revenues and receipts shall be applied by the Government as follows:

1. To the payment, as they arise, of all costs and expenses of collection, application, and administration of the revenues and receipts, including the salaries of the Financial Adviser and the officers appointed hereunder, and the salaries of the employees of the revenue service, both customs and internal, the cost and expenses of maintaining the frontier force, and any other legitimate expenses or obligations incurred under this agreement, and all amounts incident to the service of the loan except as to payments on account of principal and interest, for which provision is hereinafter made.

2. Thereafter to the payment of the Fiscal Agent on the dates hereinbefore stated, of an amount equal to the interest to be due and payable on the next semi-annual interest date hereinbefore stated.

3. Thereafter to sinking fund payments provided for in Article V hereof.

4. Thereafter to the payment of such sums from the residue as may be necessary to enable the Government to pay such other current administrative expenses of the Government, as may be approved for payment in accordance with the provisions of Articles XII and XVIII.

5. The remainder thereof shall be applied so far as may be necessary to the payment of any other amounts which the Government may, with the approval of the Financial Adviser be required to pay.

6. The sums that may remain after the payments provided in the first five clauses of this article have been made shall be applied as follows:

Such sums shall be credited by the depositary to an account hereinafter referred to as the reserve account. Moneys in the reserve account shall be applied, in so far as possible, only for the improvement of public education in Liberia and for public works, except

that in emergency, declared to be such by the Government, the same may be applied to some purpose not covered by the ordinary budget. Moneys shall be transferred for expenditure from the reserve account by agreement of the Secretary of the Treasury and the Financial Adviser. In case of a disagreement between the Secretary of the Treasury and the Financial Adviser, the question of such transfer shall be referred to the President of Liberia and his decision thereon shall be final. Whenever and for so long a period as the assigned revenues and receipts shall be insufficient to meet the payments required to be made by clauses 1, 2, 3, 4 and 5 of this article, the depositary shall cease paying out the moneys from the reserve account and such funds shall be applied by the Government to meet the payments provided in clauses 1, 2, 3, 4, and 5 of this article.

7. At the end of each fiscal year, all unexpended balances of the budget or appropriations shall be reported, together with notation of any commitments or reservations or amounts outstanding in suspense against the same, and the budget for the following year shall take into consideration any outstanding commitments or unadjusted balances, but no sums shall be expended after the close of the fiscal year against the preceding years budget, the purpose being that all expenses for each year shall be budgeted annually.

8. The Government shall make no expenditures, except as hereinbefore provided and for the purposes and in the manner hereinbefore provided, and shall not incur any liability or obligation to make expenditures otherwise. All salaries and expenses incident to the collection, application and administration of the assigned revenues and receipts and maintenance of the frontier force shall be disbursed in accordance with the provisions of this agreement.

9. The Government and the Financial Adviser, or such person as he may designate, and the Auditor shall have the right at any time and from time to time to examine and audit the books and accounts of the depositary in connection with its acts as depositary. Monthly or quarterly statements of such accounts shall be rendered by the depositary to the Financial Adviser and to the Fiscal Agent. A copy of said monthly or quarterly statements shall be furnished by the depositary to the Secretary of the Treasury of Liberia.

10. Agencies or branches of the depositary shall be opened or established at such places in the interior or on the coast of Liberia as the Government, upon the advice of the Financial Adviser, may decide are necessary for the protection of the revenues and receipts, and for their convenient application and administration.

ARTICLE XIV. None of the provisions of the present Agreement shall be deemed or construed to create any trust or obligation in

favor of any holder of any of the outstanding obligations of indebtedness of Liberia or in favor of any owner of any coupons or claim for interest on, or in respect of any thereof, or in favor of any holder of any claims against Liberia. Any and all claims against the Government which may not be discharged under the provisions of the present Agreement shall be submitted to a claims commission, composed of the Secretary of the Treasury of Liberia, the Auditor and the Financial Adviser. This claims commission shall have power to determine the validity of any and all such claims, and its decision shall be final.

ARTICLE XV. Until the Government has repaid the whole amount of the Loan and all expenses incident to the service thereof, no floating debt shall be created and no loan for any purpose shall be made except with the written approval of the Financial Adviser, provided that this is not to be understood as restricting the Secretary of the Treasury from arranging temporary banking credit for carrying out a budget approved as herein provided; and provided further that the Government may negotiate with responsible bankers for a refunding loan at any time after twenty years from the date of each issue of bonds, but before such refunding loan shall be accepted the Finance Corporation of America shall have the option of taking the new loan on the same terms and conditions as such bankers may offer.

ARTICLE XVI. 1. The Government of Liberia hereby agrees that the fiscal agency created by the agreement of March 7th, 1912, shall lapse with the payment of the Bonds secured thereby, and shall be in all respects superseded by the provisions of this agreement.

2. The three separate agreements heretofore entered into by the Government with the Firestone Plantations Company, a Delaware corporation, providing for,—

1. Lease of the Mount Barclay Rubber Plantation,

2. Lease of certain lands of the Government for the purposes of planting and growing rubber thereon,

3. Improvements to the harbors of the Government, and respectively containing immunity in respect of the payment of taxes and duties as therein stated, are hereby in all respects ratified, approved and confirmed, and it is understood and agreed between the parties hereto that this agreement is entered into in all respects subject to the provisions of said agreements between the Government and the Firestone Plantations Company, in so far as the same relate to the payment of taxes and duties on the part of it, the said Firestone Plantations Company.

ARTICLE XVII. The Government shall enact all such legislation as may be required for the complete authorization and legalization

of the present agreement and of all action called for by the present agreement on the part of the Government or necessary or convenient to carry out the terms and provisions thereof.

ARTICLE XVIII. The Government covenants to designate as the depositary hereunder, such bank in the city of Monrovia, in Liberia, as shall be agreeable to the Fiscal Agent, and such designation shall be terminated by the Government upon the request of the Fiscal Agent. Any arrangement which the Government may make with the depositary shall embody the provisions of this agreement and such depositary shall undertake to comply herewith. In case the depositary shall cease to act as such by reason of such termination of its designation or otherwise, a new depositary shall be designated in the same manner as above provided. Moneys paid to the depositary for the account of the Government, as provided in this agreement, shall be held by the depositary and paid out as follows:

Moneys paid to the depositary under the provisions of Article XIII shall be deposited in one or more special deposit accounts, as may be from time to time determined necessary or desirable, and no expenditures shall be made therefrom. Transfer from these accounts of moneys to be disbursed shall be on order of transfer requested by the Secretary of the Treasury and approved by the Auditor, in accordance with the provisions of Article XII, paragraph 6, and countersigned by the Financial Adviser, and such transfer shall be made only to a disbursement account to be opened and maintained by the designated depositary, on which disbursement account checks may be drawn for expenditure, as hereinafter provided.

Moneys paid to the depositary hereunder, whether remitted by the Fiscal Agent or deposited by the Treasury Department or any other officer or agency of the Government, shall be deposited in one or more deposit accounts to be opened and maintained by the depositary, and shall be transferred for disbursement to one or more disbursement accounts to be likewise opened and maintained by the depositary and shall not otherwise be expended or transferred. Such transfers from deposit account to disbursement account shall be made only as provided in the foregoing paragraph.

Moneys in the disbursement account or accounts which are to be disbursed in accordance with the provisions of this Agreement shall be disbursed in the following manner, viz:

a. No sum shall be disbursed in amounts greater than those provided by the budget, but

b. Unexpended credit to any account provided for in the budget may be transferred to any other account of the budget by agreement of the Secretary of the Treasury and the Financial Adviser, who shall certify such decision to the Comptroller for appropriate nota-

tion in the appropriation ledger. In case of a disagreement between the Secretary of the Treasury and the Financial Adviser, the question shall be referred to the President and his decision thereon shall be final.

c. Should it be deemed necessary and desirable moneys available by reason of accumulated credits as provided for in Article XIII, paragraph 6, may be used, and an extraordinary or supplemental budget may be prepared for their disbursement, by and with the joint approval of the Secretary of the Treasury and the Financial Adviser and authorized by the executive power. Such moneys shall be available for disbursement from the disbursement account or one of the disbursement accounts the same as other funds of the Government.

d. All moneys available for disbursement shall be expended only upon the submission to the auditor of a properly authorized and verified account showing the name or names of the person or persons to whom said moneys are to be paid, and the article of the budget or appropriation law whereby such expenditure is authorized shall appear on the face of the request for payment, together with any other necessary information to enable the Auditor properly to examine and check the warrant for payment. Upon the Auditor duly examining and verifying the balance of the appropriation credit against which said voucher is to be paid, the Auditor shall signify his approval by an order of release from the designated deposit account to the designated disbursement account, of a sum sufficient to meet the check or checks to be made and drawn in payment of said warrant. Thereupon the Secretary of the Treasury shall sign the check and the Auditor shall countersign to indicate his verification of the article of the appropriation law, the correctness of the charge, and the correctness of the check, whereupon said check may be paid by the designated depositary on presentation by the person to whom the same is drawn or by the specific person to whose order it has been transferred.

e. No checks shall be payable to bearer.

The Auditor shall prepare at the end of each month a statement to each departmental head and to the President and Financial Adviser, which shall show the condition of each article and detail of the current appropriations showing the amount appropriated, the amount expended to date, the amount reserved in suspense, if any, and the balance available for disbursement.

ARTICLE XIX. The Fiscal Agent accepts its appointment as such, and agrees to perform its obligations under this Contract upon the terms and conditions herein set forth, including the following:

(*a*) If the Fiscal Agent shall at any time be in doubt as to its rights or obligations hereunder or with respect to the rights of any holder of any Bond, the Fiscal Agent may advise with legal counsel, and

anything done or suffered by it in good faith in accordance with the opinion of such counsel shall be conclusive in its favor as against any claim or demand by the Government or any holder of any Bond. If any dispute shall arise between the Fiscal Agent and the Government hereunder the same shall be settled by arbitration as provided in Article XXV hereof.

(*b*) The Fiscal Agent shall not be responsible to the Government or to any holder of any Bond for any mistake or error of fact or law or for the exercise in good faith of its discretion or for anything which it may do or cause to be done in good faith in connection therewith, except only for its own wilful default.

(*c*) The appointment of the Fiscal Agent by the Government is irrevocable, except for good and sufficient cause; but the Fiscal Agent may resign at any time, by giving notice of resignation to the Government at least four weeks before such resignation takes effect, and by publishing such notice at least once a week for four consecutive weeks in each of two newspapers of general circulation, published in the City of New York, United States of America.

(*d*) In acting under this contract, the Fiscal Agent is solely the agent of the Government and does not enter into or assume any obligation or relationship of agency or trust for or with any of the holders of any Bond or its interest coupons.

ARTICLE XX. It is expressly understood, however, that all power and authority temporarily delegated under this agreement to the Financial Adviser or any officer appointed hereunder is granted solely for the purpose of facilitating the carrying out of this agreement, and upon the discharge by the Government of the obligations herein assumed all said power and authority so delegated shall automatically revert unimpaired to the Government.

ARTICLE XXI. The Government shall pay to the Fiscal Agent reasonable compensation for all services rendered hereunder and a sum equivalent to one-quarter of one per cent. of the face amount of all interest coupons, as paid, and to one-eighth of one per cent. of the principal amount of all Bonds, as retired, whether paid at maturity or purchased or redeemed prior to maturity, as hereinbefore provided. Payment of such compensation shall be made to the Fiscal Agent in gold coin of the United States of America, in the City of New York, upon statements rendered semi-annually by the Fiscal Agent to the Government, as hereinafter provided. The Fiscal Agent shall allow and pay to the Government on moneys other than deposits for the payment of coupons or the redemption of Bonds, remaining on deposit with the Fiscal Agent for thirty days, or more, interest at the rate of two per cent. per annum. The Fiscal Agent may treat all such moneys as time deposits. The Fiscal Agent shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent

or attorney shall have been selected with reasonable care, in which case, the Fiscal Agent shall be reimbursed and indemnified by the Government against any liability or damage which it may sustain or incur in the premises and the Fiscal Agent shall have a lien upon any moneys deposited in the Sinking Fund preferential to that of the Bonds, for any such liability or damage.

ARTICLE XXII. The Fiscal Agent shall render to the Secretary of the Treasury of Liberia in each year semi-annual statements of account covering the semi-annual periods ending December 1 and June 1 in each year of all receipts and payments and expenses made or incurred by it during the respective periods, provided that the first statement shall be rendered for the period commencing with the date of this Contract and ending June 1, 1927. Unless objection to any such statement of account shall be made by the Secretary of the Treasury to the Fiscal Agent within two months after the receipt of such statement of account by him particularly specifying the ground or grounds of such objection or objections, the statement of account shall be deemed to be correct and conclusive between the Government and the Fiscal Agent. The Government shall promptly pay or cause to be paid as part of the service of the Bonds, the expenses of the Fiscal Agent as shown in such statement. The expenses of such service may include among other things expenses of printing and advertising, cost of exchange and remittance of funds, brokerage charges, postage, cable, telegraph and telephone charges, charges of legal counsel and other usual expenditures.

ARTICLE XXIII. Nothing in this Contract expressed or implied is intended, or shall be construed, to give any person, other than the parties hereto, any right, remedy or claim or by reason of this Contract or any covenant, stipulation or condition herein contained.

ARTICLE XXIV. Notices to the Government in connection with this Contract or the performance of any of the terms hereof, may be given by written communication, or by cable, addressed to the Secretary of the Treasury of the Republic of Liberia at Monrovia. Notices from the Government to the Fiscal Agent in connection with this Contract may be given by written communication, or by cable, addressed to The National City Bank of New York, at No. 55 Wall Street, New York City, United States of America.

ARTICLE XXV. In case of dispute between the Government and either of the other parties to this Contract, the matter shall be referred for determination to arbitrators, one of whom shall be appointed by each of the parties to dispute; and, if such arbitrators shall be unable to agree among themselves, the Secretary of State of the United States of America shall be requested to appoint an additional arbitrator who shall be of different nationality from the other two arbitrators. The decision of a majority of the arbitrators so appointed shall be binding and conclusive upon the parties to the dispute.

ARTICLE XXVI. The Bonds may, at the option of the corporation, be engraved in such form as to be eligible for listing on the New York Stock Exchange, and the Government agrees in such case to furnish such information as may be required in connection with any application to list such Bonds on the said Stock Exchange. The Government will pay, as a part of the expenses in connection with the service of the Bonds, the cost of such listing.

ARTICLE XXVII. The obligations of the Corporation under this Contract are expressly *conditioned* upon the due ratification and sanction of this Contract by the Legislature of the Republic of Liberia, and upon approval by counsel for the Corporation of the legality of the loan and the form and legality of the Bonds, including all proceedings in connection with the authorization, sanction and issue of the loan and the said Bonds; and the Government agrees to furnish to the Corporation prior to the delivery of any Bonds, all such documents, instruments, assurances and proof of legality as counsel for the Corporation and the Corporation may require. If the Legislature shall fail to ratify and sanction this Contract, or if the Government shall fail to deliver to the Corporation a temporary Bond within sixty (60) days after such ratification, or if counsel for the Corporation shall be unable to give their approval as above provided in this Article XXVII, then the Corporation and the Fiscal Agent shall be, respectively, relieved and discharged from any and all obligations or duties under this Contract, and the Government shall pay to the Corporation and the Fiscal Agent, respectively, all expenses which they shall have paid or incurred respectively in connection herewith.

ARTICLE XXVIII. This Agreement shall come into force and effect when approved by the Legislature of the Republic of Liberia, and duly executed in behalf of the Government by the officer or officers thereunto duly authorized.

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA, [SEAL]

Attest, By, J. JEREMIAH HARRIS
S. DE LA RUE *Secretary of the Treasury of*
Financial Adviser, R. L. *the Republic of Liberia*

[SEAL] FINANCE CORPORATION OF AMERICA,

Attest, By, A. M. COLTON
EDGAR HACKNEY *President*
Secretary

[SEAL] THE NATIONAL CITY BANK OF NEW YORK,
Fiscal Agent

Attest, By, WILLIAM W. HOFFMAN
E. C. BOGERTY *Vice President & Trust Officer*
Assistant Cashier

[Subenclosure—Exhibit A]

(FORM OF BOND)

No. —— $——

REPUBLIC OF LIBERIA

EXTERNAL FORTY YEAR SECURED SINKING FUND
SEVEN PER CENT. GOLD BOND

For value received, the Republic of Liberia (hereinafter referred to as the "Republic") promises to pay to Bearer, or if the ownership of this Bond be registered, to the registered owner hereof on the first day of January, 1966, the principal sum of . . . . . Dollars, and to pay interest thereon from the date hereof at the rate of seven per cent. per annum semi-annually on July 1 and January 1 in each year, until such principal sum is paid; but any such interest falling due at or before the maturity of this Bond shall be paid only upon the presentation and surrender of the attached interest coupons as they severally mature.

Both principal and interest of this Bond are payable at the Head Office of the Fiscal Agent, The National City Bank of New York, in the Borough of Manhattan, City and State of New York, United States of America, in gold coin of the United States of America, of or equal to the present standard of weight and fineness, without deduction for or on account of any taxes, assessments or other governmental charges or duties now or hereafter levied or to be levied by or under the authority of the Republic or any taxing authority thereof. This Bond is one of a duly authorized issue of $5,000,000, aggregate principal amount, of Bonds of the Republic of Liberia, designated as its "External Forty Year Secured Sinking Fund Seven Per Cent. Gold Bonds" all of like date and maturity and similar tenor, except as to denomination. The terms of issue of said Bonds are set forth in a certain Loan Agreement, dated as of September 1, 1926, of which a copy is on file with the Fiscal Agent hereinafter mentioned, to which contract reference is made for the terms thereof.

The due and punctual payment of the principal and interest of this Bond and of all sums required by the said contract to be paid on account of the Sinking Fund are secured and guaranteed by the first charge upon all the customs duties and headmoneys receivable on and after the date of the execution and delivery of said Loan Agreement, subject only to a prior charge thereon for expenses of administration, and further; The Government agrees that in the event that the above revenues should prove insufficient for the service of the Loan the Government shall first allocate from its other revenues such sum as shall be sufficient to make up the deficiency.

This Bond may be redeemed at 102 per cent. of the principal hereof through the operation of the Sinking Fund provided for in said Loan Agreement, on any semi-annual interest date prior to maturity, upon at least sixty days prior notice, published in two daily newspapers of general circulation, in the Borough of Manhattan, City and State of New York.

The Government of the Republic of Liberia hereby certifies and declares that all acts, conditions and things required to be done and performed and to have happened precedent to and in the issuance of this Bond have been done and performed and have happened in strict compliance with the constitution and laws of the Republic.

This Bond shall be transferable by delivery unless registered in the owner's name at the Head Office of the Fiscal Agent, such registration being noted hereon. After such registration, no further transfer hereof shall be valid unless made at said office by the registered owner in person or by duly authorized attorney and similarly noted hereon; but this Bond may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored. This Bond shall continue to be subject to successive registrations and transfers to bearer, at the option of the holder or registered owner, but no registration shall affect the negotiability of the attached interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

Bonds of this issue, of the denomination of $500, are exchangeable, at the option of the respective holders thereof, for a like aggregate principal amount of Bonds of this issue, of the denomination of $1000, in the manner and upon payment of the charges provided in the said contract.

This Bond shall not be valid or obligatory for any purpose until authenticated by the execution by the Fiscal Agent of the certificate indorsed hereon.

In witness whereof, the Republic of Liberia has caused this Bond to be executed on its behalf by its . . . . . , and impressed with a facsimile of its seal of State, attested by . . . . . , and the attached interest coupons to be executed with the facsimile signature of its Secretary of the Treasury, as of the *first day of January, 1926.*

(Form of Interest Coupon)

No.—— $——

On the first day of . . . . . , 19 . . , unless the Bond herein mentioned shall have been called for previous redemption, the Republic of Liberia will pay to Bearer, at the Head Office of The National City Bank of New York, in the Borough of Manhattan,

City and State of New York, ... Dollars, in United States gold coin, being six months' interest then due on its External Forty Year Secured Sinking Fund Seven Per Cent. Gold Bond, No. . . . . .

(FORM OF FISCAL AGENT'S CERTIFICATE)

This is one of the Bonds described in the within mentioned Loan Agreement.

THE NATIONAL CITY BANK OF NEW YORK,
as Fiscal Agent,

By . . . . . .

882.6176 F 51/193a : Telegram

The Secretary of State to the Chargé in Liberia (Clark)

WASHINGTON, *December 14, 1926—3 p. m.*

36. Your 45, December 8, 5 p. m.

(1) You may take an early opportunity to express to President King the Department's hope that with the satisfactory completion of the Firestone negotiations and the ratification of the new Loan Agreement a new era of prosperity for Liberia has been inaugurated which will ever strengthen the ties of friendship between the two countries.

(2) In this connection the Department desires to commend the Legation for the manner in which it has kept the Department informed of the various phases of the negotiations between the Liberian Government, Firestone and the Finance Corporation, and the care with which it has carried out the Department's instructions.

KELLOGG

882.6176 F 51/230

The Chargé in Liberia (Clark) to the Secretary of State

No. 422 MONROVIA, *December 20, 1926.*
Diplomatic [Received January 27, 1927.]

SIR: I have the honor to acknowledge receipt of the Department's telegraphic instruction, No. 36, of December 14, 1926, the contents of the first paragraph of which were immediately communicated to President King.

The President has now replied to the Legation's Note, asking that his thanks be conveyed to the Department for the kindly expressions contained in the telegraphic instruction. I take much pleasure in enclosing a copy of the President's communication.

The Legation is deeply appreciative of the Department's commendation of its activities in connection with the negotiations recently concluded, and Mr. Wharton and myself desire to express our warm personal thanks.

I have [etc.] REED PAIGE CLARK

[Enclosure]

President King of Liberia to the Chargé in Liberia (Clark)

736/119 MONROVIA, *December 16, 1926.*

MY DEAR MR. CHARGÉ D' AFFAIRES: I have the honour to acknowledge receipt of your esteemed Note of yesterday informing me that you have been instructed by cable to express to me the hopes of the Department of State at Washington, that the Firestone negotiations having been satisfactorily concluded and the Loan Agreement ratified, a new era of prosperity has been inaugurated which will ever strengthen the ties of friendship between our respective countries.

You will please be good enough to convey to Mr. Secretary Kellogg, my sincere thanks for, as well as my appreciation of his assistance and cooperation in the negotiations of the agreements now satisfactorily concluded, as referred to in your Note; you will assure him also, that I most heartily reciprocate the hope so kindly expressed by his Department, that the conclusion and ratification of these agreements will mark the inauguration of a new era of prosperity for Liberia, which will ever strengthen the ties of friendship between it and the United States of America.

With the assurance [etc.] C. D. B. KING

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND LIBERIA, SIGNED FEBRUARY 10, 1926

Treaty Series No. 747

Convention Between the United States of America and Liberia, Signed at Monrovia, February 10, 1926 [64]

The Government of the United States of America and the Government of the Republic of Liberia, being desirous of establishing a means for referring to arbitration questions arising between them which they shall consider possible to submit to such treatment, have named as their Plenipotentiaries for that purpose, to wit:

The President of the United States of America:

[64] Ratification advised by the Senate, June 30, 1926; ratified by the President, July 16, 1926; ratified by Liberia, Sept. 22, 1926; ratifications exchanged at Monrovia, Sept. 27, 1926; proclaimed by the President, Sept. 30, 1926.

Clifton R. Wharton, Chargé d'Affaires ad interim of the United States at Monrovia; and

The President of the Republic of Liberia:

Edwin Barclay, Secretary of State of the Republic of Liberia;

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

ARTICLE I

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Conventions of July 29, 1899 and October 18, 1907,[65] provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special arrangements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and that on the part of Liberia they shall be subject to the procedure required by its laws.

ARTICLE III

The present Convention shall be ratified by the Contracting Parties in accordance with their respective constitutional methods. It shall come into force on the day of the exchange of the ratifications, which shall take place at Monrovia as soon as possible, and shall remain in force for a period of five years. In case neither Contracting Party should give notice, six months before the expiration of that period of its intention to terminate the Convention, it will continue binding until the expiration of six months from the day when either Contracting Party shall have denounced it.

Done in duplicate at Monrovia, this tenth day of February in the year one thousand nine hundred twenty-six.

[SEAL] CLIFTON R. WHARTON
[SEAL] EDWIN BARCLAY

[65] Malloy, *Treaties*, 1776–1909, vol. II, pp. 2016 and 2220.

711.8212/7

The American Chargé (Wharton) to the Liberian Secretary of State (Barclay)[66]

MONROVIA, *February 10, 1926.*

EXCELLENCY: In connection with the signing today of a Convention of Arbitration between the United States of America and the Republic of Liberia, providing for the submission of differences of certain classes which may arise between the two Governments to the Permanent Court of Arbitration established at The Hague under the Convention for the Pacific Settlement of International Disputes concluded in 1899 and 1907, I have the honor to state the following understanding which I shall be glad to have you confirm on behalf of your Government.

I understand that in the event of the adhesion by the United States to the Protocol of December 16, 1920,[67] under which the Permanent Court of International Justice was created at The Hague, the Government of Liberia will not be averse to considering a modification of the Convention of Arbitration which we are concluding, or the making of a separate agreement, under which the disputes mentioned in the Convention could be referred to the Permanent Court of International Justice.

Accept [etc.] CLIFTON R. WHARTON

711.8212/7

The Liberian Secretary of State (Barclay) to the American Chargé (Wharton)[68]

MONROVIA, *February 10, 1926.*

SIR: I have the honour to acknowledge the receipt of your note of today's date, in which you were so good as to inform me, in connection with the signing of a Convention of Arbitration between the Republic of Liberia and the United States of America, that you understand that in the event of the adhesion by the United States to the Protocol of December 16, 1920, under which the Permanent Court of International Justice was created at The Hague, the Government of Liberia will not be averse to considering a modification of the Convention of Arbitration which we are concluding, or the making of a separate agreement, under which the disputes mentioned in the Convention could be referred to the Permanent Court of International Justice.

[66] Transmitted to the Department by the Chargé in Liberia under covering letter No. 371, May 12, 1926; received June 17.

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

[68] Transmitted to the Department by the Chargé in Liberia under covering letter No. 371, May 12, 1926; received June 17.

I have the honour to confirm your understanding of the attitude of the Government of Liberia on this point and to state that if the United States adheres to the Protocol, Liberia will not be averse to considering a modification of the Convention of Arbitration which we are concluding, or the making of a separate agreement, under which the disputes mentioned in the Convention could be referred to the Permanent Court of International Justice.

Accept [etc.] EDWIN BARCLAY

STEPS TAKEN TOWARD COMPLETING THE DELIMITATION OF THE FRANCO-LIBERIAN BOUNDARY [69]

751.8215/227

The Chargé in Liberia (Wharton) to the Secretary of State

No. 330 MONROVIA, *February 8, 1926.*
Diplomatic [Received March 10.]

SIR: This Legation has the honor, in confirmation of its cablegram number 6 dated February 2, 1926,[70] to inform the Department that the Liberian Government has been notified of the appointment of the French Boundary Commission. The Liberian Boundary Commission has been appointed and the French Government duly notified. The Liberian Commission was scheduled to leave Monrovia for the frontier on Tuesday the 3rd or Wednesday the 4th of February. However, the time has been extended to enable the Boundary Commission to be thoroughly informed and prepared to guard the best interests of Liberia.

There is enclosed herewith a despatch from the Department of State of Liberia setting forth the composition of the Commission.[70] It should be noted that the third member of the Commission, R. A. Farmer, Assistant Geodetic Engineer, has been placed by the Liberian Government as Chief of the Bureau of Public Construction. William V. Moore will, without doubt, be placed on the Liberian Commission instead of Mr. Farmer.

This Legation has not been notified of any conference between the Secretary of State and the Commission with reference to what basis the Liberian Government proposes to accept for the settlement of the boundary. In other words, whether the settlement is to be an arbitrary one based on nothing except the agreement of the Commission, in which case, no engineer would be necessary or whether it is expected to use Engineer Daves' calculations as a basis of argument.

Presuming the last suggestion is correct and Mr. Daves' figures are to be used as a basis of argument, it would appear that these

[69] For previous correspondence concerning the boundary dispute, see *Foreign Relations*, 1925, vol. II, pp. 495 ff.

[70] Not printed.

figures are not sufficiently complete to furnish such a basis, because the triangulation work has never been carried to completion, and also because time signals have never been obtained to determine the longitude. According to information received, I presume that latitude can be determined by star observations, but I understand longitude is an arbitrary thing referring to the distance from some given fixed point (Greenwich) and the only way to determine this distance is by scientifically despatched radio time signals, or else by chronometers very accurately tested and checked.

In the course of a recent conversation I was informed that neither Mr. Daves nor Mr. Moore has been officially advised of appointment. Here are two Americans, one of whom was sent out by the American Government at the request of the Liberian Government; the other employed by an arrangement of which I have not been clearly informed. These two men are to form part of a commission to determine the Boundary of a Nation in which boundary settlement, the United States has taken some interested part.

I feel that the necessary copies of treaties, written instructions, etc., of the basis on which they are authorized to act and a thorough understanding and agreement as to how they are to act and conduct the negotiations should be gone into before they leave Monrovia. I shall, of course in a tactful manner, do my utmost to guard against any national responsibility.

It appears to me that if Mr. Daves and Mr. Moore are to be merely technical advisers, they could in each instance advise Mr. Morris, the Secretary of the Interior, in writing on such points as they could accurately answer, and where a question is asked which has not been accurately determined, they could state in their answer what they have done and possibly, if true, state that the question cannot be accurately answered. In this way no reflection could be made on the technical advisers.

I wish to be quite clear to the Department that I appreciate this is a matter in which the Liberian Government alone is responsible.

At my first opportunity I shall have a conference with the Secretary of State on the boundary settlement.

I have [etc.] CLIFTON R. WHARTON

751.8215/228

The Ambassador in France (Herrick) to the Secretary of State

PARIS, *March 1, 1926.*
[Received March 11.]

SIR: With reference to the Department's instruction No. 1862 of February 9, 1926,[71] regarding the Franco-Liberian boundary delimi-

[71] Not printed.

tation and the settlement of future disputes, I have the honor to transmit, herewith, for the information of the Department, copies of a memorandum of a conversation between Baron Lehmann, the Liberian Minister in Paris and a Secretary of this Embassy, reporting the latest developments regarding the aforesaid matters, together with copies and translations of the communications exchanged during the month of January 1926 by the Liberian Minister and the French Foreign Office on the subject.

I have [etc.] MYRON T. HERRICK

[Enclosure]

Memorandum of a Conversation Between the Second Secretary of Embassy at Paris (Miller) and the Liberian Minister in France (Lehmann)

PARIS, *February 26, 1926.*

With reference to the Department's instruction No. 1862 of February 9, 1926, I called this afternoon on Baron Lehmann, the Liberian Minister, and for an hour discussed with him the recent developments regarding the delimitation of the Franco-Liberian boundary. When the Embassy, on November 20, 1925, last reported upon this matter, the French Government had signified its willingness to proceed, by the first of the year, with the delimitation of the frontier. M. Briand, moreover, had expressed, in writing, the opinion that the early settlement of the frontier questions which were pending between Liberia and French West Africa could not have a better complement than the negotiation and signature of an arbitration agreement between the two countries providing for the amicable adjustment of future territorial, political or juridical disputes that might henceforth arise between them.

Baron Lehmann said that following Mr. Barclay's departure for Monrovia early in last December, the Liberian Government adopted a waiting policy, watching for an indication on the part of the French of their desire to proceed with the delimitation. The French Ministry for Foreign Affairs, on January 21, 1926, addressed a note to Baron Lehmann stating that the Lieutenant Governor of French Guinea had been invited immediately to proceed with the formation of the French section of the Mixed Boundary Commission, and that for this purpose a topographical officer had been made available. The Foreign Office requested Baron Lehmann telegraphically to inform Monrovia of the steps which the French Government had taken, and added that the French Commission had made preparations to be upon the scene by the 15th of January. The Liberian Minister pointed out, . . . that the French Foreign Office had conveyed this information to him on the 21st of January, or a week after the French Commission was supposed actually to have reported for the beginning of the work.

In the same note of January 21, 1926, the French Foreign Office took occasion to observe that, according to information supplied by the Lieutenant Governor of Guinea to the Governor General of French Equatorial Africa, the village of Baragara-Batata (or Gbetté Dalala) was situated nine kilometers from Zinta, while Mr. Morris placed it at only three kilometers from that district. The latter estimate, the note continued, had determined M. Carde to recognize the provisional control of Liberian authority over the Baragara-Batata district. The statement followed, however, that in any event, it was to be understood that this concession was only of a provisional nature and that no particular advantage in favor of Liberia at the time of the delimitation could be drawn from it. The note contained a further statement that on the occasion of his visit to the locality, Mr. Morris, the Liberian Secretary of the Interior, had an opportunity to convince himself that his statement regarding the site of Baragara-Batata ought to call for rectification. The Liberian Minister expressed considerable doubt as to the possibility of Mr. Morris ever having made this statement.

The Liberian Minister, under date of January 22, 1926, formally acknowledged the above-mentioned Foreign Office note, the contents of which he cabled to his Government on January 23rd. The Government of Liberia replied by cable on January 26, 1926. The substance of this reply was embodied in a note dated January 26, 1926, which the Liberian Minister addressed to M. Briand, in which Baron Lehmann stated that Liberia approved of the agreement reached at Dakar between the Governor General of French West Africa, M. Carde, and the Liberian Minister of the Interior, Mr. Morris. At the same time, the Liberian Minister wrote that his Government had constituted a commission for the delimitation of the frontier and that Mr. Morris had been designated as President of this Commission. Mr. Morris would be assisted in his work by competent engineers (Baron Lehmann added, for my information, that all these experts were American citizens). This commission, the Minister continued, was actually en route and was fully empowered to deal with all questions of frontier delimitation, subject to the reserve stated in the conversation which Mr. Barclay had on November 5th with Mr. Berthelot and Mr. Ponsot of the Foreign Office, to wit: that in case any difference of opinion between the two commissions should arise on technical or other grounds, the delimitation of the frontier should not terminate but should continue in other parts of the frontier. The question in dispute would then be referred to the Governments to be settled by diplomatic means. The Foreign Office, on January 28, 1926, acknowledged this communication from Baron Lehmann, stating that the Minister of Colonies had been requested to inform the Governor Gen-

eral of French West Africa of the steps taken by the Government of Monrovia; and repeated the assurance that the French Government was desirous of reaching an early solution of this matter. Copies of the aforesaid communications exchanged between the French Foreign Office and Baron Lehmann were handed to me, for my further information, by the Minister.

With respect to the progress of the Franco-Liberian negotiations relative to the conclusion of an arbitration treaty, the Liberian Minister on February 25th telegraphed to Liberia that the Foreign Office, in response to his several inquiries, had informed him that it hoped to be prepared to submit by March 4th next to the Liberian Government a rough draft of an arbitration treaty.

G. HARLAN MILLER

MEXICO

REPRESENTATIONS BY THE UNITED STATES AGAINST MEXICAN AGRARIAN AND PETROLEUM LEGISLATION[1]

812.6363/1721

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 1674 MEXICO, *January 21, 1926.*

[Received January 29.]

SIR: Confirming my telegram No. 33 of yesterday's date, four P. M.,[2] transmitting for the Department's information the translation of the text of the Mexican note received yesterday in reply to my note of January 8, 1926,[3] on the subject of the Mexican land and petroleum alien laws, I have the honor herewith to enclose a copy with translation of the note in question.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation[4]]

The Mexican Minister for Foreign Affairs (Sáenz) to the American Ambassador (Sheffield)[5]

No. 806 MEXICO [*undated*].

MR. AMBASSADOR: I duly received Your Excellency's note No. 989, dated January 8, 1926.

Your Excellency states therein that under instructions from your Government you refer to the recent passage by the Mexican Congress of the law regulating land ownership by foreigners, and recall to my attention the statements respecting the bill now enacted which you made to me on November 17 and 27 last,[6] in order to say to me that, generally speaking, the observations made in those statements regarding certain retroactive and confiscatory features of the bill are considered to be applicable to the law as passed.[7]

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[1] Continued from *Foreign Relations*, 1925, vol. II, pp. 521–554.

[2] Not printed.

[3] See telegram No. 294, Dec. 31, 1925, 9 p. m., to the Ambassador in Mexico, *Foreign Relations*, 1925, vol. II, p. 552.

[4] File translation revised.

[5] Handed to the Ambassador in Mexico on Jan. 20, 1926.

[6] See telegrams No. 254, Nov. 13, 1925, and No. 264, Nov. 25, 1925, to the Ambassador in Mexico, *Foreign Relations*, 1925, vol. II, pp. 527 and 529.

[7] Text of the alien land law as passed is printed in *Diario Oficial*, Jan. 21, 1926. For text of the proposed alien land bill to regulate section 1 of art. 27 of the Mexican Constitution, see *Foreign Relations*, 1925, vol. II, p. 522.

With the intention of referring to this matter later, and before proceeding further, I beg to recall to Your Excellency that in my memorandum of December 3 [*5?*], 1925,[8] which is still unanswered by the Embassy, I set forth at length the reasons why the aforesaid legislation cannot be regarded as possessing the character which Your Excellency gives to it.

Your Excellency then discusses principally the petroleum law which was published in the *Diario Oficial* of December 31 last, after reminding me that on December 16 you conveyed to me,[9] in confirmation of the statements made by the Secretary of State to Ambassador Téllez on December 12,[10] certain general observations relating to the retroactive and confiscatory character of the bill then pending approval.[11] Your Excellency adds that your Government regrets to observe that the last-mentioned law as approved is subject to the same objections which were advanced against the pending bill. Your Excellency then states that from your Government's point of view you must make the following observations which are not all which might be presented against the law:

First objection: The law does not recognize fully rights acquired prior to the going into effect of the present Constitution,[12] when Mexican law provided that the owner of the surface lands owned also the subsoil deposits of petroleum.

With regard to this observation I take the liberty to state to Your Excellency that while it is true that the Mexican law provided what is set forth and that under the new legislation petroleum deposits are the property of the Nation, this does not signify that prior rights lawfully acquired may be disregarded. In fact, a right is not acquired except by its exercise. The owner of the surface could exploit the subsoil as his own property, but so long as he did not do so he could not acquire ownership of anything which might be found therein. A subsequent law may modify a status in law created by a prior law without being retroactive; and not only can it do this, but it must necessarily be so, otherwise legislation would be immobile, which is absurd, because law is no more than one aspect of the life of peoples and has to be continually modified in order to be adapted to the new necessities of peoples. Otherwise slavery would not have been abolished, nor right of primogeniture, nor forced inheritance, nor irredeemable taxes, etc. It is always

[8] *Foreign Relations*, 1925, vol. II, p. 540.

[9] See telegram No. 280, Dec. 16, 1925, from the Ambassador in Mexico, *ibid.*, p. 550.

[10] See telegram No. 274, Dec. 12, 1925, to the Ambassador in Mexico, *ibid.*, p. 547.

[11] For text of petroleum bill approved by the Chamber of Deputies, Nov. 26, 1925, see *ibid.*, p. 531.

[12] For text of the 1917 Constitution, see *ibid.*, 1917, p. 951.

assumed that a new law is better than the former one, and the only limitation placed on the application of such new law is that it shall not be retroactive, and it is not so when it does not infringe upon any right that has been completed, and in the case under discussion no act was performed. Now, if there are in question cases in which acts have been performed, article 14 of the law provides that it will not apply retroactively.

As a second objection, Your Excellency states that the law not only fails to respect what is indicated above, but that it also fails to respect the decisions of the Supreme Court of Justice,[13] according to which the constitutional precepts are not retroactive nor applicable to corporations or individuals who performed any of those acts denominated "positive acts"; an objection which, having a general character, it is sought to base on the following objections having a special character.

(*a*) That under article 4, foreign corporations, without taking into consideration the time when they acquired their rights and without taking into account any "positive act," will not be able to obtain the recognition of their rights.

In reply to the foregoing objection, I beg leave to state to Your Excellency that, from a careful reading of the law, it clearly follows that the hypothetical case in question does not come under article 4, but under article 14, according to which foreign corporations which have acquired rights and performed "positive acts," before the going into effect of the Constitution, will have such rights confirmed.

Article 14, furthermore, should, in this case, be considered along with articles 5 and 6 of the organic law of section 1 of article 27, which provides that rights to real property situated in the prohibited zones, not devoted to agricultural purposes, and lawfully acquired by foreigners prior to the going into effect of the law, may be retained by the present owners until their death.

On my part I beg to call to Your Excellency's attention that it is not juridical to judge of legislation by a single legal precept, but that it should be examined in its entirety and all the provisions which may be applicable should be taken into consideration in order to determine under which one of them a definite case would come.

(*b*) That foreign individuals, without regard to the date when they acquired their rights and without taking into account any "positive act" will be deprived of such rights, unless they renounce their nationality with respect to such rights.

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[13] In five *amparo* cases instituted by the Texas Company, International Petroleum Company, and Tamiahua Petroleum Company. See Estados Unidos Mexicanos, *Semanario Judicial de la Federacion* (México, Antigua Imprenta de Murguía, 1922), quinta época, tomo x, p. 1308; *Foreign Relations*, 1921, vol. II, p. 464; *ibid.*, 1922, vol. II, pp. 680-681.

To this objection I beg leave to observe that—leaving aside the last assertion, that is, the one which refers to the so-called renunciation of nationality—the same explanation must be given as was advanced in treating the preceding objection, since the case does not come under article 4, but under article 14, which respects the rights in question.

(*c*) That the number of "positive acts" recognized shall be much less than those enumerated in the decisions of the Court.

The "positive acts" enumerated are: drilling; leasing; concluding any contract relative to the subsoil; investing capital in land with the object of obtaining petroleum from the subsoil; carrying out the work of exploitation and exploration; concluding subsoil contracts in which the price stated appears to be greater than that paid for the surface, because it was purchased for the purpose of searching for petroleum; and, in general, any other act which indicates a similar intention. It will be seen that this list of "positive acts" is limited to cases where petroleum exploration has been started or where contracts have been concluded to that end—cases which are precisely those set forth in article 14, in order that prior rights legally acquired may be confirmed and, therefore, respected.

Actually, article 14 of the petroleum law provides as follows:

"Article 14. The following rights will be confirmed without cost by means of concessions granted in conformity with this law:

"I. Those derived from lands on which petroleum operations were commenced prior to May 1, 1917.

"II. Those derived from contracts concluded prior to May 1, 1917, by the owner of the surface (*superficiario*) or his successors (*causa-habientes*) for express purposes of petroleum exploitation.

"Confirmation of these rights may not be granted for more than fifty years, counting, in the case of section I, from the date when exploitation work was commenced, and in the case of section II, from the date when the contracts were concluded.

"III. To owners of pipe lines and refineries who at the present time are operating under a concession or permit issued by the Department of Industry, Commerce and Labor, and for that which relates to the said concessions or permits."

(*d*) That even as to foreign individuals who performed "positive acts" and made the renunciation mentioned, confirmation of their rights must be applied for within a year or such rights will be forfeited, according to article 15.

As to this observation, I must state to Your Excellency that this article, far from injuring alien individuals in the case in question, favors them inasmuch as it gives them the right to have a title emanating from the Government; and it is to their advantage, moreover, that this Government have full knowledge of all such titles (*adquisiciones*) to which the same provisions will not be applied

which are to govern subsequent titles (*adquisiciones*), it being obvious, moreover, that no person can in any way be injured by applying for a confirmation of his rights.

The third objection of a general character made by Your Excellency is that, in contradiction to the statements made by the Mexican Commissioners in the conference held in Mexico City in 1923 [14] as to the policy of the Mexican Government to grant preferential rights to the owners of the subsoil [*surface?*] or persons entitled to exercise their preferential rights to the oil in the subsoil who have not performed a "positive act," the law does not recognize such preferential rights.

In this connection, permit me to state to Your Excellency that this supposed contradiction does not exist because the Mexican Commissioners stated that the then Executive [15] considered it just to grant the preferential right in question, and they added that this statement was not intended to constitute an obligation for an unlimited time on the part of the Mexican Government. In fact, it suffices to read carefully paragraph numbered IV of the minutes of the meeting of August 2, 1923, which reads literally as follows: [16]

"IV. The present Executive, in pursuance of the policy that has been followed up to the present time, as above stated, and within the limitations of his constitutional powers, considers it just to grant, and will continue in the future to grant, as in the past, to owners of the surface or persons entitled to exercise their preferential rights to the oil, who have not performed prior to the Constitution of 1917 any positive act such as mentioned above, or manifested an intention as above specified, a preferential right to the oil and permits to obtain the oil to the exclusion of any third party who has no title to the land or subsoil, in accordance with the terms of the legislation now in force as modified by the decisions of January 17, 1920,[17] and January 8, 1921,[18] already mentioned. The above statement in this paragraph of the policy of the present Executive is not intended to constitute an obligation for an unlimited time on the part of the Mexican Government to grant preferential rights to such owners of the surface or persons entitled to exercise their rights to the oil in the subsoil."

It suffices, as I said above, to read these minutes carefully in order to dispel completely the alleged contradiction, apart from the fact that the nongranting of preferential rights to the owners of the surface does not imply any retroactivity in the law.

Your Excellency then states in regard to the two laws that your Government does not accept the waiver of its nationality required of aliens and the agreement not to invoke the protection of their

[14] See *Proceedings of the United States-Mexican Commission, Convened in Mexico City, May 14, 1923* (Washington, Government Printing Office, 1925).
[15] General Alvaro Obregón.
[16] See *Proceedings of the United States-Mexican Commission*, p. 48.
[17] *Foreign Relations*, 1920, vol. III, p. 204.
[18] Not printed.

Governments, since this would be equivalent to the annulment of the relation between an American citizen and his Government, and, consequently, the releasing of the latter of any obligation to protect the former in the event of a denial of justice.

After reminding you of all that I have stated in this respect in my note No. 12816 of September 28, 1925 [19] and in my memorandum of December 5, 1925, before-mentioned, I wish to observe, in the first place, that there is no such waiver of nationality, since the alien retains the nationality he has. What the Constitution requires of aliens, in order that they may acquire certain property, is, that as regards such property, they agree to consider themselves as nationals. It is, therefore, a necessary consequence that such aliens undertake (only in respect to such property) not to invoke the protection of their Governments. Attention has already been called to the power which all countries have to impose upon aliens the conditions and requirements which they may believe expedient in order to permit such aliens to acquire real property. On the other hand, an alien who acquires property under these conditions, does so under a resolutory condition, and, in conformity with the jurisprudence of all countries, when a condition of this nature is fulfilled, the right so acquired is voided. This is absolutely different from a confiscation.

Your Excellency concludes by stating that, notwithstanding the statements of the Mexican Commissioners at the conferences I have mentioned to the effect that the Executive power would respect and enforce the decisions of the Judicial power, the petroleum law violates rights acquired under the provisions of Mexican law, of the present Constitution, of decisions of the Supreme Court of Mexico, and pledges given by the authorized representatives of the Government.

I must state to Your Excellency with regard to this point that the law does not modify, nor can it modify, these decisions. On the contrary, it gives them universal application through the provisions of article 14. Moreover, these decisions do not restrict the power of Congress to enact laws deemed to be expedient. Those laws which Congress has enacted do not violate rights lawfully acquired under provisions of Mexican law, of the present Mexican Constitution, and decisions of the Supreme Court of Mexico; nor are they contrary, as you say, to statements made by the representatives of our Government.

I must point out to Your Excellency that whatever may have been the offers of the Executive, they were made with the express statement that they fell within the limitations of his constitutional powers and did not encroach upon the prerogatives of the judicial and legis-

[19] Not printed.

lative branches. As organized by our Constitution, no branch of the Government except the Supreme Court had at its disposal any set standard by which to go when applying the provisions of paragraph 4 of article 27 of the Constitution until Congress enacted a law regulating this article. The decisions of the Supreme Court, always respected by the Federal Executive, cannot be considered as a doctrinal interpretation of general character of paragraph 4 of article 27 of the Constitution, but only as decisions rendered in the specific cases which gave rise to them. Such an interpretation, under the Constitution, can be made only by the Legislative power.

In the absence of a law regulating the Constitution in petroleum matters, the Supreme Court was empowered to render decisions in the form in which it did, and it can decide in applying the recently enacted petroleum law to new specific cases, whether this law is, or is not, constitutional. But the Federal Executive cannot give the decisions of the Court a universal application equivalent to a law regulating the Constitution. If he did so, he would exceed his powers.

Moreover, the decisions of the Supreme Court, when precedents are set by them, are only binding insofar as they interpret the law for the Federal courts. But, as indicated above, they can never bind, nor be obligatory upon, the Legislative power, since it alone is empowered to enact laws of general application throughout the nation.

Moreover, I take the liberty to call Your Excellency's attention to the fact that this happens in the United States where the Supreme Court has been known to change its decisions on various subjects—and not those of minor importance. Further, those variations in decisions were made without the intervention of a subsequent law or regulatory measure by the legislative power, as in Mexico, and in this case.

Referring to suggestions respecting the policy of the Executive, I take the liberty to state to Your Excellency that this policy is entirely similar to that of the Executive of the United States in the case of Japanese immigration. In fact, the Executive had entered into an arrangement—the Gentlemen's Agreement—with the Japanese Government regarding Japanese immigration into the United States. While this arrangement was in force the Congress of the United States, in the exercise of its sovereignty, which could not have been diminished by any action of the Executive, deemed it expedient, in the interest of the Republic, to pass an exclusion act which modified the arrangement entered into by the said Executive.[20] I do not believe that in this case, and in the one under reference, one can accuse the President of having changed his policy.

[20] See *Foreign Relations*, 1924, vol. II, pp. 333 ff.

These laws, therefore, violate neither the principles of international law nor those of equity. Far from that, they favor aliens in various ways, since they remove all uncertainty from the matters under discussion. And with regard to the petroleum law it may be noted that aliens who have acquired rights in the prohibited zones may retain them, which they could not do except for the provisions of article 14 in conformity with the pertinent section of article 27 of the Constitution. And, if there is nothing in the laws which is either retroactive or confiscatory, there is no just reason for the statement of the Embassy that it is unable to assent to an application of these laws to American-owned properties.

Finally, I take the liberty to call Your Excellency's attention to the fact that article 11 of the organic law of section 1 of article 27 of the Constitution in petroleum matters, empowers the Executive to regulate these laws. Now, it is known that the object of the regulations was to determine the manner in which the laws which they regulate were to be applied, and it is certain that the Executive, in making use of this authority, would take into account not only the express content of the laws, but also the principles of international law, of justice, and equity.

Only when the regulations shall have been issued will the legislation on the subjects indicated be complete, and only when taken in their entirety will it be possible to judge whether they violate, or respect and protect, the rights of the Nation as well as those of private individuals whether Mexicans or aliens.

I should like also to call Your Excellency's attention to the measure adopted by my Government in extending a spontaneous invitation to the interested oil companies in Mexico to be present at a conference during which their suggestions and points of view could be set forth in connection with the study for regulating the petroleum law; to hear, in the most ample spirit of equity, such arguments as might be presented, so as to endeavor, within the spirit of that law, to remove any difficulty which may arise, in order that through the enactment of the law, and its regulations, the petroleum industry might enter fully upon an uninterrupted period of prosperity. This attitude, toward which my Government is impelled by no other consideration than that of seeking a solution which will safeguard the interests of both parties, is the best proof of the sentiments of equity and justice which inspire every act of the Mexican Government; and, in this particular case, it is a demonstration of the respect and interest which a solution of questions such as petroleum receives. The Mexican Government seeks only to establish a policy defined by law, which will afford security and confidence for the develop-

ment of the industry and, in general, for foreign investors in Mexico who, having a proper consideration and respect for our laws, may come to Mexico to cooperate with us.

I also take the liberty to observe to Your Excellency that diplomatic representations are not considered justified because of the enactment of a law. They are only justified when the application of a law constitutes an injury. In such cases those affected have, in our laws, the recourse and means of asserting their rights before the Mexican courts, to which they can go in every case in which they believe their rights have been violated.

I am [etc.] AARÓN SÁENZ

812.6363/1693

The Secretary of State to the Ambassador in Mexico (Sheffield)

No. 760 WASHINGTON, *January 30, 1926.*

SIR: Adverting to my telegram No. 39 of January 28, 1 P. M.,[22] I enclose herewith the original of the Note dated January 28, which I desire you to deliver to the Minister for Foreign Affairs. There is enclosed, as well, an office copy for your confidential files.

In this matter you will, of course be guided by the request set forth in my telegram above referred to, especially that you refrain from letting your colleagues know that the Note is about to be or has been delivered, and from communication of any part of it to any foreign representative in Mexico without prior consultation with the Department. As this Note offers a method of solution, it is deemed best for the present to keep its contents confidential, in order that no pressure may be brought to bear from the outside upon President Calles or his Government.

I purpose handing a copy of this Note to the Mexican Ambassador today, and shall notify you when this has been done.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

The Secretary of State to the Mexican Minister for Foreign Affairs (Sáenz)

WASHINGTON, *January 28, 1926.*

EXCELLENCY: This Government, in response to the note delivered by Your Excellency to the American Ambassador on January 20, 1926,[23] notes with satisfaction that His Excellency the President of the

[22] Not printed.
[23] *Ante*, p. 605.

Mexican Republic proposes to frame the executive regulations covering the application and enforcement of the recent alien land law and the law relating to certain deposits of the subsoil in such manner that the application thereof will not be retroactive in respect of rights legally acquired under laws existing at the time the property or property right was acquired.

This Government expresses its sincere hope that such regulations may so regulate and restrict the application of these laws as to bring them into accord with the decisions of the Supreme Court of Mexico, later herein referred to, with the Agreements of 1923 and within the principles of the law of nations thus preventing their retroactive effect as to rights already legally acquired by American citizens.

The discussion of these matters between the two Governments is not of recent origin but goes back to the time following the adoption of the Constitution of 1917. The entire field was thoroughly covered in the discussion during the negotiations between the American and Mexican Commissioners in 1923 as shown by the signed record of their proceedings. From the beginning this Government in presenting its views has endeavored to call attention to the vital distinction between future acquisitions of property and the status of property rights legally acquired under laws existing at the time of the acquisition of the property or right. Every sovereign has the absolute right within its own jurisdiction to make laws governing the acquisition of property acquired in the future. This right cannot be questioned by any other state. If Mexico desires to prevent the future acquisition by aliens of property rights of any nature within its jurisdiction, this Government has no suggestion whatever to make. When, however, any foreign government seeks to divest aliens of property rights which have already been legally acquired, this Government, so far as its citizens may be concerned, rests under a positive duty to make representations and efforts to avoid such action. This Government has been and is now concerned only with property rights in Mexico duly and legally acquired by American citizens under laws existing at the time of the acquisition and has asked in the past and now asks that the guaranties afforded by the generally accepted principles of international law and equity be afforded by the Mexican Government for the protection of such rights.

Article II of the recent land law provides that any alien who may have acquired or may acquire ownership of agricultural lands, waters, and their accessories or concessions for mining or for the use of waters or for taking combustible minerals from the subsoil in the territory of the Mexican Republic shall agree before the Department of Foreign Relations to consider himself a national of Mexico in respect of his part of the property and shall agree not to invoke in respect

thereof the protection of his government with reference thereto under penalty, in case of failing in the agreement, of defaulting his property to the nation.

This conception of the rights of a nation under the rules of international law has never been accepted by this Government and in the past this Government has frequently notified the Mexican Government that it does not admit that one of its citizens can contract by declaration or otherwise to bind his own Government not to invoke its rights under the rules of international law. Under the rules applicable to intercourse between states, an injury done by one state to a citizen of another state through a denial of justice is an injury done to the state whose national is injured. The right of his state to extend what is known as diplomatic protection cannot be waived by the individual. If states by their unilateral acts or citizens by their individual acts were permitted to modify or withhold the application of the principles of international law, the body of rules established by the custom of nations as legally binding upon states would manifestly be gradually broken down.

The right of diplomatic protection is not a personal right but exists in favor of one state against another. It is a privilege which one state under the rules of international law can extend or withhold in behalf of one of its nationals. Whether or not one of its citizens has agreed not to invoke the protection of his government, nevertheless his government has, because the injury has been inflicted by one state against the other, the right to extend what is termed diplomatic protection.

Under Article IV of the recent land law, any foreigner who may own prior to the enactment of the law fifty per cent or more of the total stock interest in any company or corporation owning agricultural property in Mexico is prohibited from retaining such interest in excess of fifty per cent for more than ten years. Thereafter such alien must sell such a portion of his holdings as to divest him of the majority interest in such property.

This provision of the law is manifestly retroactive. It deprives the alien owner of many rural properties legally acquired under the laws of Mexico and requires him to divest himself of the ownership, control and management of his property. Your reference in the memorandum dated December 5, 1925,[24] to the Statutes existing in the States of Arizona and Illinois is based upon a misconception of those laws. Both the Illinois law of 1897 and the provisions of the Arizona Civil Code of 1913, relating to alien ownership of real estate, are expressly made to apply to future acquisitions of real property and do not apply to property already acquired. This

[24] *Foreign Relations*, 1925, vol. II, p. 540.

Government does not understand and would like to be further advised as to the meaning of your observation in the same memorandum that "the limitation imposed by the law upon companies possessing rural property for agricultural purposes tends to preclude possible conflicts in the application of the agrarian legislation since it is considered advisable to reserve ownership and cultivation of the majority of the land to Mexicans."

Even if a foreigner should be a minority stockholder in a company owning agricultural lands, this Government does not understand how the agrarian law could be applied to the interest of the Mexican citizen therein and not be applied to the interest of an American citizen who might be the owner of less than fifty per cent of the interest therein. The stockholders of a corporation own a proportional interest in its assets and any taking of agricultural property under the agrarian laws of Mexico, so proportionately owned by Mexican and American citizens, would nevertheless deprive the American citizen of some portion of his interest in the property.

This Government has also carefully considered the statement in your note of January 20, 1926, that in accordance with Article 14 of the law relating to the subsoil rights acquired before the going into effect of the Constitution will be confirmed.

This Government heretofore in the discussion of this matter has taken the position that lands acquired by American citizens in Mexico under the laws of 1884, 1892 and 1909 entitle the owners or lessees of the surface to the mineral fuels and oils contained in the subsoil and during the negotiations of 1923 the American Commissioners reserved in behalf of this Government all the rights of its citizens in respect of all lands in Mexico acquired by them before May 1, 1917. Nevertheless, this Government now expresses the hope that the regulations to be issued by His Excellency the President will confirm the rights of the owners of the subsoil who had, prior to the going into effect of the Constitution of 1917, acquired rights in accordance with the decisions of the Supreme Court of Mexico and who had performed positive acts as defined in the declarations and agreements made by the Mexican Government, under date of August 2, 1923, during the negotiations of that year, and in accordance with the repeated assurances of the Mexican Government many times since 1920 and more particularly during the negotiations with the American Commissioners in 1923.

What has disturbed this Government and prompted its recent inquiries as to the construction and interpretation to be placed on Article 14 of the recent law relating to certain deposits of the subsoil is the wording of the article itself. This Government has from time

to time recently called the attention of your Government to the threatened conflict between the decisions of the Supreme Court of Mexico, the agreements of 1923 and the terms of the law.

The Supreme Court of Mexico in an *amparo* case decided August 30, 1921,[24a] unequivocally held paragraph IV of Article 27 of the Constitution of 1917 not to be retroactive in cases where rights had been legitimately acquired prior to May 1, 1917, the date on which the Constitution went into effect. The same principle was announced in four other *amparo* cases establishing under the law of Mexico a precedent not to be broken.

The pertinent portion of this decision is:

"These premises being established, it must be ascertained whether paragraph IV of Article 27 of the present Constitution, which nationalizes, among other substances, petroleum and all solid, liquid or gaseous hydro-carbonates, is or is not retroactive. It is absolutely necessary to define the meaning of paragraph IV, because, if it is retroactive, the decrees complained of, which are based on this article, should also be applied retroactively, notwithstanding Article 14 of the Constitution; and if this paragraph is not retroactive, then the decrees are contrary to the said Constitutional text, and, because they are issued by the ordinary legislator, fall within the scope of said Article 14 of the most recent supreme law.

"Paragraph IV of Article 27 of the present Constitution can not be deemed retroactive either in letter or in spirit inasmuch as it does not damage acquired rights.

"By [*Not by?*] the letter thereof because it does not contain an express mandate to the effect that it shall be retroactive, nor does the wording thereof necessarily convey this idea; nor by its spirit as it is in consonance with the other articles of the same Constitution, which recognize in general the ancient principles upon which rest the rights of man and which grant ample guaranties to such rights, and because, holding it to be non-retroactive, it also proves to be in harmony with the principles expressed in the paragraphs which immediately precede it on the subject of private ownership from its inception, and also with the portions of the text relative to petroleum which immediately follow it as integral parts of the same Article 27 of the Constitution.

"From all this, it is inferred that, in consonance with the rules universally accepted for the interpretation of laws and those imposed by sound logic, it must be held that paragraph IV of Article 27 of our present Constitution is not retroactive, inasmuch as it does not damage former rights legitimately acquired. This precept establishes the nationalization of petroleum and its by-products as well as of the other substances to which it refers, amplifying the enumeration that existed in our former mining laws, but respecting the rights legitimately acquired prior to May 1, 1917, the date on which the present Constitution went into effect in its entirety.

"Considering, third: In view of all that has been before expressed and in strict compliance with the provisions of Section I of Article

[24a] For text of decision, see *Foreign Relations*, 1921, vol. II, p. 464.

107 of the Constitution, it is opportune to determine now whether in the concrete case on which this *amparo* is based, vested rights have been injured by violating the individual guaranties which the complainants invoke.

"In our Republic there have been in effect in successive periods the mining code of 1884, the mining law of June 4, 1892, and that of November 25, 1909, which latter in its second article granted the owner of the lands the right to explore and exploit oil freely in order to appropriate the oil he might find without the necessity of a permit from any authority, and also enabled him to transmit the said rights as he would any other property either for a consideration or gratuitously."

In pursuance of this binding construction by the Supreme Court of Mexico of Article IV of Section 27 of the Constitution of 1917, the Mexican Commissioners on August 2, 1923, as a part of the negotiations of that year stated, "in behalf of their Government in connection with the representations relating to the rights of the citizens of the United States of America in respect to the subsoil" as follows:[24b]

"[I.] It is the duty of the federal executive power, under the constitution, to respect and enforce the decisions of the judicial power. In accordance with such a duty, the Executive has respected and enforced, and will continue to do so, the principles of the decisions of the Supreme Court of Justice in the 'Texas Oil Company' case and the four other similar *amparo* cases, declaring that paragraph IV of Article 27 of the Constitution of 1917 is not retroactive in respect to all persons who have performed, prior to the promulgation of said Constitution, some positive act which would manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface: such as drilling, leasing, entering into any contract relative to the subsoil, making investments of capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation and exploration of the subsoil and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described. According to these decisions of the Supreme Court, the same rights enjoyed by those owners of the surface who have performed a positive act or manifested an intention such as has been mentioned above, will be enjoyed also by their legal assignees or those persons entitled to the rights to the oil. The protection of the Supreme Court extends to all the land or subsoil concerning which any of the above intentions have been manifested, or upon which any of the above specified acts have been performed, except in cases where the documents relating to the ownership of the surface or the use of the surface or the oil in the subsoil establish some limitation.

[24b] See *Proceedings of the United States-Mexican Commission*, pp. 47–48.

"The above statement has constituted and will constitute in the future the policy of the Mexican Government, in respect to lands and the subsoil upon which or in relation to which any of the above specified acts have been performed, or in relation to which any of the above specified intentions have been manifested; and the Mexican Government will grant to the owners, assignees or other persons entitled to the rights to the oil, drilling permits on such lands, subject only to police regulations, sanitary regulations and measures for public order and the right of the Mexican Government to levy general taxes.

"II. The Government, from the time that these decisions of the Supreme Court were rendered, has recognized and will continue to recognize the same rights for all those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who are in a similar situation as those who obtained *amparo;* that is, those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who have performed any positive act of the character already described or manifested any intention such as above specified."

On August 22, 1923, after the termination of these negotiations and the return of the American Commissioners, the Secretary of State transmitted to the Minister of Foreign Affairs of Mexico a message in part:[25]

"I have examined the report of the proceedings of the American and Mexican Commissioners, at Mexico City, closing August 15, 1923, and I have submitted the same to President Coolidge. I have the honor to inform you that President Coolidge approves the statements and recommendations of the American Commissioners as therein set forth. I shall be glad to be advised by you that General Obregon approves the statements set forth in the said report as having been made by the Mexican Commissioners.

"In the event that you are able so to advise me, I beg leave to suggest the following procedure with respect to the resumption of diplomatic relations. It seems to be advisable that we should agree upon a day on which the resumption of diplomatic relations should be formally announced. . . ."

To this message the Minister of Foreign Affairs of Mexico replied to the Secretary of State:[26]

". . . I have received your courteous message by which you inform me, on the one hand, to have examined the minutes of the work of the Mexican-American Commission adjourned on the 15th of this month at this City, and to have submitted same to the President, and on the other hand, that the President has deigned to approve the declarations and recommendations made by the American Commissioners. You suggest, furthermore, the procedure through which the reassumption of diplomatic relations could be accomplished,

[25] See telegram No. 119, Aug. 22, 1923, to the Chargé in Mexico, *Foreign Relations*, 1923, vol. II, p. 550.

[26] See note of Aug. 24, 1923, from the Mexican Minister for Foreign Affairs, *ibid.*, p. 551.

should President Obregón have approved the declarations of the Mexican Commissioners embodied in said minutes.

"In reply to all this, upon expressing to you the gratification with which this Chancellery has noted President Coolidge's approval of his Commissioners' recommendations and upon informing you that President Obregon has also approved the declarations made by his Commissioners, I take the liberty to submit to your consideration some slight modifications to the procedure you have been good enough to propose—modifications which undoubtedly will greatly facilitate the attainment of the ends in view,—to wit:

"*a*). That both Chancelleries simultaneously make the following or a similar statement to the press:

" 'The Governments of Mexico and that of the United States in view of the reports and recommendations that their respective Commissioners submitted as a result of the Mexico-American Conferences held at the City of Mexico from May 14th, 1923 to August 15th, 1923, have resolved to renew diplomatic relations between them, and therefore, pending the appointment of Ambassadors, they are taking the necessary steps to accredit, formally, their respective Chargés d'Affaires.' "

The reference by Your Excellency to the termination of the agreement with Japan in respect of immigration was undoubtedly made without recalling what has already been published,—the reservation constituting a part of the Agreement of 1911 between Japan and the United States. That reservation, fully set forth at the time in the Agreement, was "In accepting the proposal as a basis for the settlement of the question of immigration between the two countries, the Government of the United States does so with all necessary reserves and without prejudice to the inherent sovereign right of either country to limit and control immigration to its own domains or possessions".[27]

This Government believes that the Mexican Government will surely appreciate that all that this Government has said in connection with these matters arises from a genuine wish for friendliness and cooperation. In this way complete understanding can be arrived at and great and irreparable losses and damages to American citizens possessing property in Mexico be prevented. There exists a profound conviction that His Excellency the President of Mexico will formulate regulations under the terms of Article 14 of the law pertaining to certain property rights in the subsoil in harmony with the decisions of the Supreme Court of Mexico and the Agreements between the two Governments in 1923. This Government has felt great apprehension that the heretofore admitted rights of its citizens in Mexico were about to be disregarded by the terms of the laws under consideration.

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[27] See note to the Japanese Ambassador, June 16, 1924, *Foreign Relations*, 1924, vol. II, p. 403.

The Supreme Court of Mexico, as has been pointed out, declared that in the Republic of Mexico "There have been in effect in successive periods the mining code of 1884, the mining law of June 4, 1892, and that of November 25, 1909, which latter in its second article granted the owner of the lands the right to explore and exploit oil freely in order to appropriate the oil he might find without the necessity of a permit from any authority, and also enabled him to transmit the said rights as he would any other property either for a consideration or gratuitously". The statement made in behalf of the Mexican Government already quoted asserts the duty of the Mexican Government under the Constitution to respect and enforce the decisions of the judicial power. On behalf of their Government and with the approval of their Government, the Mexican Commissioners stated that in respect of lands where positive acts, fully defined in the agreement, had been performed or intentions manifested to perform any such act "The Mexican Government will grant to the owners, assignees or other persons entitled to the rights to the oil, drilling permits on such lands, subject only to police regulations, sanitary regulations and measures for public order and the right of the Mexican Government to levy general taxes".

Under Article 14 of the recent law relating to the subsoil the President of Mexico may confirm without any cost whatever these acquired rights in accordance with the decision of the Supreme Court. Indeed Your Excellency stated in your note of January 20, 1926, "in regard to this matter I must advise Your Excellency that the law (Article 14 of the present law) does not modify nor can it modify the decision of the Supreme Court".

This Government cannot fail to point out, however, that the exchange of a present title for a concession having a limited duration does not confirm the title. Such confirmation can be brought about by regulations in harmony with the Supreme Court decision. Nor can this Government fail to point out that anything less than a confirmation does not grant the owner in the language of the Supreme Court of Mexico, without the necessity of a permit from any authority, the right to appropriate such products of the subsoil and does not enable the owner to transmit his acquired rights as he would any other property.

This Government awaits with deep interest information as to the land law as it affects rural lands and other property rights and as to the nature of the regulations intended to be issued by His Excellency the President of the Republic in accordance with the Supreme Court decisions, the negotiations of 1923 and the rules of international law, equity and justice.

Accept [etc.] FRANK B. KELLOGG

812.6363/1765

The Mexican Minister for Foreign Affairs (Sáenz) to the Secretary of State [28]

[Translation [29]]

No. 1679 MEXICO, *February 12, 1926.*

MR. SECRETARY: I have the honor to reply to your note of January 28, 1926,[30] which begins with the following statements:

1st. That the American Government notes with satisfaction that the President of Mexico proposes to issue the regulations of the alien land law and the law relating to certain deposits of the subsoil, in such manner that their application will not be retroactive in respect of rights legally acquired in accordance with prior laws, and it is hoped that these regulations will be in accord with the decisions of the Supreme Court of Justice, with the agreements of 1923, and the principles of the law of nations.

2nd. That the same Government from the beginning has called attention to the vital distinction between future acquisitions of property and acquisitions made under prior laws; and

3rd. That every sovereign state has the absolute right to promulgate laws which determine the acquisition of property in the future, a right which cannot be questioned by any other state; wherefore, if Mexico desires to prevent the future acquisition by aliens of property rights of any nature within its jurisdiction, the American Government has no suggestion to make; but that when any Government seeks to divest aliens of property rights which have already been legally acquired, the American Government, so far as its citizens may be concerned, has the positive duty of making representations and efforts to avoid such action; wherefore, it has been and is now concerned only with the property rights legally acquired in Mexico by American citizens in accordance with the laws existing at the time of the acquisition, and has requested and now requests that the Government of Mexico for the protection of those rights afford the guaranties which the generally accepted principles of law and equity require.

The foregoing declarations are satisfactory to my Government because they involve points of view which are common to the Governments of Mexico and the United States. All the more since the most explicit recognition is given to the absolute right of Mexico to enact such laws as it may deem expedient, even though the effect thereof would be to exclude aliens from all acquisition of property in the country, a stage which has not been reached since the only demand is for certain requisites in cases specified by the laws; wherefore, the entire question is reduced to determining whether or

[28] Left with the Secretary of State by the Mexican Ambassador on Feb. 20, 1926.

[29] File translation revised.

[30] *Supra.*

no the laws under consideration are retroactive in their application or whether they assail or respect rights previously legally acquired.

But before proceeding further it is well to reproduce the opinion of Chief Justice Marshall, 7 Cranch, 116, 136, 144, who says:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

"All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.["]

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him, nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter can never be construed to grant such exemption."

Your Excellency states with regard to article II of the law approved by the Mexican Congress on December 31st, last, that the Government of the United States does not admit that one of its citizens can contract, by declaration or otherwise, to bind his own Government not to invoke its rights under the rules of international law, because the right of the state to extend diplomatic protection cannot be waived by an individual, since it is not his personal right but a privilege of the state which, in spite of everything, must extend the protection referred to.

It appears that the foregoing statement is due to some confusion. It is evident that an individual can not bind the state of which he is a citizen not to exercise a right that belongs to it, and in this sense the American doctrine is entirely correct; but the article under consideration does not so state. What it requires is that the alien shall consider himself a national in respect to the property which may belong to him in the Mexican corporation and shall not invoke the protection of his Government in respect to the same. It

is, therefore, an obligation contracted individually and producing effects only between the contracting individual and the Mexican Government, leaving the rights of the foreign state completely without injury. But if the individual who contracted the obligation violates it, the infraction must be sanctioned, because a law without sanctions is not a law. And if the infraction only affects the individual privately, leaving the rights of the state to which he belongs completely uninjured, it is not understood in what way it can be contrary either to international law or to the thesis sustained by Your Excellency's Government.

It appears, moreover, that in its general terms the Mexican law is less strict than American jurisprudence, because it does not require naturalization as a condition for acquiring any kind of real property, as is the case in other countries.

"Thornton, umpire, *Smith Bowen* v. *Mexico*, No. 442, Am. Docket, convention of July 4, 1868, MS. Op. III. 586.

"The umpire is of opinion that with regard to Mexico the claimant can not be considered to be a citizen of the United States. The umpire has always held that the purchase of real property in Mexico gave a foreigner the right to call himself a Mexican citizen if he wished to be so, but did not impose upon him the obligation, if he did not wish it. There being no regulation prescribed for carrying out the law upon this subject, the foreigner's silence would imply that he wished to remain a citizen of the nation to which he previously belonged.

"But in this particular case the claimant asked to be allowed to become a Mexican citizen for the purpose of being able to consummate the purchase of land in the State of Tamaulipas, on the frontier. The permission was granted him, though his naturalization papers were not issued, apparently because he failed to pay the legal fees. But in the following year, 1863, he purchased real property; and not only did he purchase it, but it was on the frontier, where foreigners were prohibited by law from holding real property; he thus doubly became a Mexican citizen." (Moore, *International Arbitrations*, vol. 3, page 2482.)

Your Excellency asserts that article IV prohibits any foreigner who may represent, before the law went into force, fifty percent or more of the total interest in any kind of corporation owning rural property for agricultural purposes, from retaining the interest in excess of fifty percent for more than ten years, after which time the alien must sell a part of his property, so that he loses the benefits of the majority interest in such property, a provision which is clearly retroactive, because it deprives the alien of many rural properties legally acquired, and requires him to divest himself of the ownership, control and management of it. The provision of this article is not exactly as expressed since it provides that aliens, if physical persons, can retain integrally their rights until their death, and therefore, far

from attacking acquired rights, it respects them, since the right of an individual can not be extended beyond his own life, except in the case of inheritance, which is provided for in article VI. Treating solely of foreign corporations which are shareholders in Mexican corporations owning real property for agricultural purposes, it is provided that they may retain the aforesaid rights for ten years, since under the Constitution of 1917, foreign corporations can not acquire real property in the Republic and it was necessary that for corporations which might be in such condition a reasonable period be fixed, so as not to cause them any injury. In all legislation it is admitted that the law is free to amplify, modify or restrict the capacity of that class of persons.

The principle in question, with regard to the period allowed for corporations, will be applied in very few cases, because it applies only to those in which foreign corporations are shareholders in Mexican corporations. And since the same article refers to future rights, such as those arising from the death of an individual now living, or the period of time subsequent to ten years, its effects can not be regarded as retroactive, since there was no acquired right but merely expectation of a right. And since the laws in force at the time of the acquisition are invoked, it is proper to recall that the precept of article 729 of the civil code, like all prior precepts on the subject, defines property as follows: "It is the right to enjoy and dispose of a thing without further limitation than those fixed by the laws." And since the latter are not immutable the right of ownership may be modified by them for the future.

It was in that sense that there were cited in the memorandum of December 5, 1925,[31] the provisions in force in the States of Arizona and Illinois applying to the acquisition of real property; and though the note I am now answering affirms that both the law of Illinois of 1897 and the provisions of 1913, of Arizona, relating to the ownership of real property by aliens, are made expressly to apply to future and not to prior acquisitions, it is seen that in some cases there is a limit set for the retention of rights already acquired, which is exactly the principle of the Mexican law. In the States cited and in those of Kansas, Kentucky, Minnesota, Oklahoma, Missouri and Washington, whose laws on the subject are similar, it is provided that an alien not domiciled in the country, is incapacitated from acquiring real property, except if he be an heir of an alien who may have previously acquired property; but even in this case he must divest himself of the inherited property within a period varying from three to six years, under penalty of forfeiture to the

[31] *Foreign Relations*, 1925, vol. II, p. 540.

State. Aliens are also permitted to accept liens and mortgages in security for obligations due them and to acquire at public sale the property so encumbered; but with the obligation of disposing of it within a period generally fixed at three years, under the same penalty as above stated.

Lastly, I venture to remark that when the prohibition law was enacted in the United States it paralyzed established businesses falling under its provisions—the Amendment meant to stop the whole business. (*Hamilton* vs. *Kentucky Distilleries*, 251 U. S. 146, 151, No. 1);[32] and to paralyze completely a business would seem to be tantamount to destroying legally acquired rights therein, but nevertheless the American Government was not deterred by that consideration.

Your Excellency says that the Government of the United States does not understand and would appreciate clarification of the meaning of the observation made in the memorandum of December 5, 1925, that the limitation imposed by the law upon corporations owning rural property for agricultural purposes tends to preclude possible international conflicts in the application of the agrarian legislation, since, although an alien might hold a minority of the stock in that kind of a company, it is not understood how the agrarian law could be applied to the interest of a Mexican shareholder and not to an American who might be the owner of an interest of less than fifty percent and how any dispossession of agricultural property proportionately owned by Mexican and American citizens, would deprive the latter of any part of their interests.

The observation of the Mexican Government finds its explanation in the fact that when an alien holds fifty percent or more of the total interest in a corporation of the kind under consideration, it is really he who can dispose of it; because, as a rule in corporations, decisions are made by majority vote and when under the application of the agrarian laws a case arises, where rights of the corporation are to be expropriated, if these rights pertain in the majority to Mexicans, the matter is settled in strict conformity to the legislation of the country, but if the said majority pertains to an alien, he applies to his Government for protection, which gives occasion for possible conflicts of an international nature, and it is obvious that if good relations with another State are to be maintained, it is essential to remove as far as possible any cause of friction.

With respect to article 14 of the law relative to the subsoil, which article provides for the confirmation of rights acquired before the Constitution went into effect, Your Excellency remarks that the Gov-

[32] This parenthetical statement was written in English.

ernment of the United States has taken the position that in lands acquired by American citizens in Mexico in accordance with the laws of 1884, 1892 and 1909, the owners and lessees of the surface are granted the right to the fuels, minerals, and oils in the subsoil, and your Government expresses the hope that the regulations to be issued by the Executive will confirm such rights of owners who may have performed positive acts as defined by the declarations made to the American Commissioners in the conferences of 1923. In this connection there is copied part of the decision rendered by the Supreme Court of Justice on August 30, 1921, wherein it is held that paragraph IV of article 27 of the Constitution of 1917 is not retroactive, which was also decided in four other cases in *amparo*, and there are likewise copied the declarations of the Mexican Commissioners in the sense that the Executive would respect and enforce the decisions of the Judicial power, confirming that he would continue to observe the principles contained in the decisions of the Court in the sense that the principle cited would not be retroactive in regard to any persons, who prior to the promulgation of the Constitution, may have performed some positive act showing the intention of the owner of the surface or of empowered persons, to exercise their rights to the petroleum in the subsoil.

As article 14 of the law regulating article 27 of the Constitution regarding petroleum provides that rights acquired before it went into effect will be confirmed in accordance with the terms thereof, there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled, and therefore the rights acquired in accordance with the laws of 1884, 1892, and 1909 will be confirmed; but it must be understood that those laws gave to the owner of the surface, or to the person who had right thereto, an optional right, that is, the power to appropriate for his own use the fuels, minerals, and oils contained in the subsoil, and therefore, until he had performed some act looking to said appropriation, no right was acquired. This was the understanding of the American Commissioners at the conferences of 1923 and they accepted it and Your Excellency's note reproduces it when it agrees that the rights which are to be confirmed will be confirmed provided there shall have been performed any of the positive acts enumerated in the said conferences and which are substantially the same as those referred to in article 14, and consequently when none of those acts have been performed and, therefore, the right alleged may not be confirmed, there will be no retroactivity since no acquired right will be assailed.

It is not possible to understand, with any degree of reason, that when a law gives to the owner of the surface the right to the subsoil, that it may be believed that he owns from the subsoil to the center

of the earth, to use the language of the old Roman law. Otherwise, for instance, when a subway is built without damaging the buildings or any other work whatsoever, it would be necessary to indemnify the owners of the surface which would be inadmissible and wholly unjustifiable. Similarly, the right of the owner of the surface extends upwards, and yet it would be absurd were he to complain that his right had been violated when a balloon or aeroplane passes over his property. Hence the necessity that the owner of the surface perform some positive act, that is, some act which at least manifests his intention to appropriate, and only in that case will he have an acquired right.

The legislation on the subject under consideration does not have in view a lucrative purpose, nor is it intended to secure thereby any advantage, but only to apply a principle of domestic public law which is traditional in the country, and further to define the situation and solve our problems by means of laws which will fix a standard and equable system with guaranties to all. The right of the nation to deposits of specified substances in the subsoil does not constitute an extraordinary principle; the Supreme Court of the Philippines has held in various decisions that the subsoil belongs to the sovereign, and consequently to the State, and the courts of the United States have held that the ownership of hydrocarbonates in the subsoil is governed by principles other than those applicable to the ownership of the surface. The mining law of Mexico establishes a system for mining property similar to that established for petroleum. Its application has given rise to no difficulty, nor has it hindered the development of industry and large enterprises. It has freed them from the difficulties which they would meet if subjected to local legislation. And finally, the declaration that the petroleum industry is a public utility is a guaranty for the interested parties, because it places them under the protection of the Federal power and grants them various advantages such as the right of expropriation.

Furthermore, the petroleum deposits are, for the most part, located in regions where ownership is denied to aliens by the Constitution; wherefore, if aliens were granted *dominio directo* over those deposits instead of *dominio util*, they would be placed in a more favorable position than the owners of the surface. Therefore, the law on the subject, instead of injuring the rights of the interested parties, places them in an advantageous position with regard to the law governing those possessing *dominio directo*, who are, in the majority of cases, owners of the surface.

Your Excellency states that after the negotiations of 1923, the Secretary of State transmitted to the Minister of Foreign Affairs of Mexico the note which you insert in which he stated that Presi-

dent Coolidge approved the declarations of the American Commissioners; that he requested to be informed whether General Obregón approved those of the Mexican Commissioners, and if so, suggested the procedure for the resumption of diplomatic relations. You also insert the reply of this Department of Foreign Relations, in which it was stated that President Obregón approved the declarations of the Mexican Commissioners and proposed certain modifications in the procedure suggested for the resumption of the relations between the two countries, but this latter insertion is not complete since it omits paragraph (*b*) reading as follows:[33]

"Subsequently, that is to say, for instance, ten or fifteen days after the date upon which the respective Chargés d'Affaires may have been formally accredited, that is, diplomatic relations having been resumed, the Conventions shall be signed as suggested by you.

"I make this suggestion being sincerely in the belief that the simultaneity or close proximity between the two acts aforesaid may unjustly give the former the erroneous impression of being conditional, as the Mexican Government since November 19, 1921, spontaneously proposed the signing of similar conventions and, as furthermore, is unnecessary since the Conventions that are to be signed could not come into force before the date of the opening of the United States Senate.

Resolved as it is, the resumption of diplomatic relations, the modifications proposed—without any sacrifice for American interests or for the purposes of the United States Government—tend only to assure the greatest and most firm cordiality in the future relations between the two Governments, permitting them to develop on the solid basis of reciprocal confidence, which is the only possible foundation of true friendship."

The paragraph that has just been copied is of the utmost importance because it shows plainly beyond question, that the conferences of 1923 were not a condition for the recognition of the Government of Mexico, and consequently, can never be given that character; but this explanation does not mean that Mexico fails to recognize the declarations made by its Commissioners.

Citing again the decisions of the Supreme Court of Justice, the declarations of the Mexican Commissioners, as to the fact that the Government must respect the decisions of the Judicial power and the statements of the Department of Foreign Relations that "the law (article 14 of the present law) does not modify nor can it modify the decisions of the [Supreme] Court," Your Excellency says that the Government of the United States can not fail to point out that the exchange of a present title for a concession having a limited duration does not confirm the title, nor grant the owner the

[33] See note of Aug. 24, 1923, from the Mexican Minister for Foreign Affairs, *Foreign Relations*, 1923, vol. II, p. 551.

right to appropriate the products of the subsoil without the necessity of a permit from any authority, nor transmit his rights as he would transfer any other property.

In this connection I again repeat that the decisions of the court can not be modified or altered in any manner either by the Executive or any other authority. On the other hand, there is no objection, since such is the purpose of the Executive himself, to reiterating the declarations of the Mexican Commissioners in the sense that, in conformity with article 14, there will be granted to owners, concessionaires, or other persons having rights to petroleum, permits to drill in the respective lands; although it is proper to state that the decisions of the court have not the scope of laws nor can they signify that the Legislative power loses its powers to issue those which it may deem expedient and that the Executive action is necessarily limited by the contents of the laws themselves.

To grant a concession in exchange for a present title is to confirm the latter, because the granting of the concession will have no other basis with respect to the former; and although it is true that concessions are for a limited duration, on the one hand, to determine the period for the future exercise of a right is not to proceed retroactively, because it does not modify the amount of the right already used up, but only applies a rule for the future, and on the other hand, the period of a concession having expired, the latter may be extended or another obtained, wherefore in practice no injury is caused by the application of the precepts under consideration.

The law of waters under Federal jurisdiction of December 14, 1910, also provided for the confirmation of rights to waters which may have been previously acquired, and it has been so functioning without any difficulty or any injury resulting therefrom to anyone.

Your Excellency concludes by saying that the Government of the United States awaits with deep interest information as to the agrarian law as it affects rural lands and other property rights, and as to the nature of the regulations intended to be issued by the President in accordance with the decisions of the Supreme Court of Justice, the negotiations of 1923, and the rules of international law, equity, and justice. In this connection, I wish to confirm to Your Excellency that the purpose of the President in regulating the laws is to conform to the principles of international law, justice, and equity.

The President is convinced, and it affords me satisfaction so to inform Your Excellency, that in the regulation of the laws which we have just been considering there will be defined all points which have been the object of explanations between the two Governments.

I avail myself [etc.] AARÓN SAENZ

812.6363/1765

The Secretary of State to the Ambassador in Mexico (Sheffield)

No. 804 WASHINGTON, *March 2, 1926.*

SIR: I am enclosing herewith for immediate delivery to the Minister for Foreign Affairs the original of my Note to him of March 1 in answer to his Note to me dated February 12. There is enclosed as well an office copy for your files. As telegraphed to you, I have today handed a copy of this Note to Ambassador Téllez, who has stated that he will telegraph it to his Government; whether merely a summary or in full, I, of course, am not in a position to say.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

The Secretary of State to the Mexican Minister for Foreign Affairs (Sáenz)

WASHINGTON, *March 1, 1926.*

EXCELLENCY: I am pleased to observe that by the terms of my note to you, dated January 28, 1926, and of your courteous reply, dated February 12,[34] the two Governments find themselves in accord as to the principle that should be applied in the adjustment of certain of the matters now under discussion between the two Governments. After re-stating the position of this Government set out in the first part of my note of January 28, Your Excellency stated "The foregoing declarations are satisfactory to my Government because they involve points of view which are common to the Governments of Mexico and the United States . . . , wherefore, the entire question is reduced to determining whether or not the laws under consideration are retroactive in their application or whether they assail or respect rights previously lawfully acquired."

The position of this Government in respect of property rights of its citizens in Mexico, as fully appears in the Conferences between the American and Mexican Commissioners in 1923 and as stated in my note of January 28, is that Mexico should not enact laws which in their application are retroactive in respect of rights legally acquired by aliens under laws existing at the time the property or property right was acquired. As I have already stated, Your Excellency declares this principle to be common to both Governments.

In view of this accord in principle, this Government is desirous of information from Your Excellency as to how the Mexican Government regards, in their practical application, some of the provisions of the Alien Land Law, promulgated on January 21, 1926.

[34] *Ante*, pp. 613 and 622.

Is Article 1 of this Law retroactive and in application will it be given retroactive effect? That is, does Article 1 apply to an alien who had acquired, or had an interest in any kind of company that had acquired, direct ownership in lands and waters within the prohibited zones prior to the promulgation of the Law on January 21, 1926? In respect of this same Article, would Your Excellency inform me as to whether your Government considers the Article to apply to mining, transportation, industrial companies and other enterprises not involving the direct ownership in lands and waters?

Is Article 2 of this Law, promulgated on January 21, 1926, retroactive in its application in the sense that an alien who, prior to the promulgation of the Law, had acquired an interest in a Mexican company, will be required to comply with Article 2?

Is Article 3 of this Law retroactive in the sense that it will be necessary for an alien, who possesses an interest in a Mexican company acquired prior to the promulgation of this Law, to apply for any permit?

As to Article 4 of this Law, I now understand from Your Excellency's note of February 12 that any alien who owned, prior to the promulgation of this Law, a stock interest of fifty per cent. or more of the total interest in any kind of company owning rural property in Mexico for agricultural purposes may retain such interest until his death without any permit or without compliance with Article 2 of the Law and that the right of his heirs as to such interest over and above forty-nine per cent. is determined by the provisions of Article 6 of the Law; but that in the case of a foreign corporation owning stock in a domestic corporation, the Government of Mexico maintains that such corporate interest shall be disposed of on or before ten years from the date of the promulgation of the law.

On the basis of the principle of non-retroactivity, is it the view of the Government of Mexico that Article 5 of the Law under consideration is not retroactive but that the rights, which are sought to be regulated by the Law under discussion, legally acquired by aliens prior to the going into effect of the Law, shall be conserved by their present owners until their death without the seeking of any permit under the terms of Article 2 and by their heirs under the provisions of Article 6?

Reverting to the prior inquiry as to whether mining, transportation, industrial companies and other enterprises not involving the direct ownership in lands and waters are covered by Article 1 of the Law, it is, of course, manifest that any acquired rights of aliens in such enterprises in whatever form held do not come within the terms of Article 5 independent of whether the activities in which the alien had an interest prior to the promulgation of the Law were conducted within or without the prohibited zones.

Am I correct in assuming that the provisions of Article 7 of the Law promulgated January 21 last are in antithesis to the provisions of Article 2 and that an alien who has acquired a right before the Law went into effect, which otherwise would come within the terms of the Law, is only required to make a declaration before the Department of Foreign Relations within one year following the date of the promulgation of the Law which in effect gives notice of his prior acquired rights thus bringing the application of the Law within the principle of the non-retroactivity of legislation? And that such declaration will merely be a statement of his existing right and title?

The provisions of Article 7 only apply to the rights which are the subject matter of the Law.

In view of the foregoing inquiries which are made with a sincere desire to clarify the matters under discussion between the two Governments, I see no occasion for repeating at length the principles set forth in my note of January 28 bearing on the inability of an individual citizen of the United States to make any contract or declaration which would be binding upon his own Government not to invoke its right under the rules of international law to extend diplomatic protection, should there be committed any act of injustice justifying under the rules of international law such diplomatic protection.

In your note of February 12, the statement is made that if the infraction only affects the individual privately, without in any way infringing the rights of the state to which he belongs, it is not understood how it could be contrary to international law. As pointed out in my note of January 28, an injury done by one state to a citizen of another state through a denial of justice, should there be a denial of justice, is an injury done to the state whose national is injured. Even though the individual should make a waiver, that could not estop his state in case of any act of injustice from extending its right of diplomatic protection or seeking redress in accordance with the principles of international law for the injury to the state, inflicted by another state, through an injury to one of its nationals. The injury to one of its nationals by another state is the basis of the right of his state to seek redress for the injury in conformity to the established standards of civilization which modern states have mutually acquiesced in and which have become a part of international law.

In making a reference to the prohibition laws of the United States in your note of February 12, it is probable that Your Excellency overlooked the fact that the liquor business in the United States has not been a property right but a licensed occupation which was subject to the fullest extent at all times to the police powers of the states, to license by the United States, to the war powers of the Federal Government, and now, subject under the Constitutional Amendment, to the police powers of the United States.

It does not seem necessary to discuss further the exchange of notes in August 1923 between the two Governments after the return of the American Commissioners. Inasmuch as you state in your note of February 12 that "this explanation does not mean that Mexico fails to recognize the declarations made by its Commissioners" and in another place state "In this connection I again repeat that the decisions of the Court (Supreme Court of Mexico) cannot be either modified or altered in any manner either by the Executive or by any other authority and, moreover, there is no objection since such is the purpose of the Executive himself to reiterating the declarations of the Mexican Commissioners".

However, for the purposes of clarification, I do desire to call Your Excellency's attention to the fact that the proceedings of the American and Mexican Commissioners were approved by President Coolidge and that the request was made by this Government that it be advised that President Obregón approved the statements set forth in the Report made by the Mexican Commissioners and that in the event that the statements were so approved, a certain line of procedure should be followed for the purpose of the resumption of diplomatic relations.

The additional paragraph which you quote from the note of the Minister of Foreign Relations of Mexico in 1923 had reference to the time of the signing of the Conventions, which the American Commissioners and the Mexican Commissioners had agreed, as appears in the formal minutes of the meeting of August 15, 1923, would be signed forthwith by duly authorized Plenipotentiaries of the President of the United States and the President of the United Mexican States in the event that diplomatic relations were resumed between the two countries. The suggestion was made that a time elapse between the resumption of diplomatic relations and the signing of the Conventions, set out in the proceedings of the Commissioners, with which this Government willingly complied.

Your Excellency states in your note of February 12 that

"As Article 14 of the Law regulating Article 27 of the Constitution in the matter of petroleum provides that the rights acquired before it went into effect will be confirmed in accordance with the terms therein set forth, there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled and, therefore, the rights acquired in accordance with the Laws of 1884, 1892 and 1909 will be confirmed; but it must be understood that those laws gave to the owner of the surface or to the person who had right thereto an optional right, that is, the liberty of appropriating for his own use the fuels, minerals and oils contained in the subsoil and, therefore, until he had performed some act looking to said appropriation, no right was acquired. This was the understanding of the American Commissioners at the Conferences

of 1923 and they accepted it and Your Excellency's note reproduces it when it agrees that the rights which are to be confirmed will be confirmed provided there shall have been executed any of the positive acts enumerated in the said Conferences."

The declarations of the Mexican Commissioners in the meeting of August 2, 1923, set forth in my note of January 28, specified that paragraph IV of Article 27 of the Constitution of 1917 is not retroactive in respect to all persons who had performed, prior to the promulgation of the said Constitution, some positive act which would manifest the intention of the owner of the surface, or of the persons entitled to exercise his rights to the oil under the surface, to make use of or obtain the oil under the surface and then in detail described the nature of such positive acts or intentions. But in the same declaration of the Mexican Commissioners it was stated in behalf of their Government that "they recognize the right of the United States Government to make any reservation of or in behalf of the rights of its citizens" and specific reference was made to the statement of the American Commissioners in behalf of their Government making such reservations in behalf of citizens of the United States should diplomatic relations between the two countries be resumed.

It was to this reservation made by the American Commissioners that I referred in my note of January 28 when I stated "during the negotiations of 1923 the American Commissioners reserved in behalf of this Government all the rights of its citizens in respect of all lands in Mexico acquired by them before May 1, 1917".

Nevertheless, I was only expressing to Your Excellency the hope of this Government that the regulations to be issued by His Excellency the President of Mexico would confirm the rights of the owners of the subsoil who had, prior to the going into effect of the Constitution of 1917, performed positive acts as defined in the Declarations made by the Mexican Commissioners under date of August 2, 1923, during the negtoiations of that year and approved by the Mexican Government.

This hope was expressed with greater confidence by reason of the statements in Your Excellency's note dated January 20, 1926, that

"The 'positive acts' enumerated are: drillings, leases, conclusion of any contract relative to the subsoil, the investment of capital in land with the object of extracting petroleum from the subsoil, the carrying out of the work of exploitation and exploration, the conclusion of contracts relative to the subsoil in which it appears that a greater price was given than had been paid for the surface due to the purchase having been made for the purpose of searching for petroleum and, in general, any other act manifesting an intention of similar character. It will be seen that the above enumeration of 'positive acts' is confined to cases in which petroleum exploration work has begun or contracts have been entered into for the purpose of carry-

ing out such exploitations, cases which are precisely those stated in Article 14, in order that rights previously lawfully acquired be confirmed and subsequently respected."

Your Excellency, in closing your note of February 12, states that the purpose of the President of Mexico in regulating the laws is to conform to the principles of international law, justice and equity, and that the President is convinced that in the regulation of the laws which we have just been considering, there will be covered all points which have been the object of discussions between the two Governments.

This Government would be pleased to be assured that the regulations will confirm the rights of American citizens in whatever form the property may be held without cost or added burdens in all cases where the positive acts enumerated in Your Excellency's note of January 20 have been performed. This Government cannot understand why reference is made to an exchange of title when the object is to confirm the titles already held in cases where such positive acts have been performed.

Your Excellency refers, in your note of February 12, to the Law of Waters under Federal Jurisdiction of December 14, 1910, which it is stated also provides for the confirmation of rights to waters which have been previously acquired. Were not such rights confirmed by the regulations without any change in the nature of the right or title?

Should a right have been acquired in the year 1885 under the Law of 1884 and the works constructed or the intention manifested in 1885, or by the nature of the contract of purchase or lease, would the Mexican Government think that the rights of the purchaser, or lessee, would be confirmed if not only the very nature of the title were changed but a concession granted limited to fifty years computed from the time the works began or from the date the contract was made or the intention manifested? The result would be to limit the use of property, admitted to be the property of the purchaser, to a beneficial use under new conditions for a maximum additional period of nine years.

This Government expresses the hope in the most friendly manner that in view of the statement in Your Excellency's note of February 12 that "there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled and, therefore, the rights acquired in accordance with the Laws of 1884, 1892, and 1909 will be confirmed" in cases where positive acts of the nature specified in the declaration of August 2, 1923, and in Your Excellency's note of January 20, 1926, have been performed, the Mexican Government will be able to assure this Government that

the rights of American citizens in respect of certain products of the subsoil, where positive acts of a nature which Your Excellency has specifically set forth have been performed, will be confirmed.

Accept [etc.] FRANK B. KELLOGG

812.6363/1823

The Mexican Minister for Foreign Affairs (Sáenz) to the Secretary of State [37]

[Translation [38]]

MEXICO, *March 27, 1926.*

MR. SECRETARY: I have the honor to refer to Your Excellency's note of March 1, 1926,[39] in which you were pleased to express your satisfaction that the two Governments find themselves in accord as to the principles that should be applied in the adjustment of certain of the matters now under discussion with regard to the two laws regulating section 1 of article 27 of the Constitution; and subsequently, in view of this accord of principles, Your Excellency states that your Government is desirous of information as to how the Mexican Government regards, in their practical application, some of the provisions of those laws, and for that purpose Your Excellency formulates various questions which I quote in order that each of them may be followed by an explanation of the views of the Executive.

"Is article 1 of this law retroactive and in application will it be given retroactive effect? That is, does article 1 apply to an alien who had acquired, or had an interest in any kind of company that had acquired, direct ownership in lands and waters within the prohibited zones prior to the promulgation of the law on January 21, 1926? In respect of this same article, would Your Excellency inform me as to whether your Government considers the article to apply to mining, transportation, industrial companies, and other enterprises not involving the direct ownership in lands and waters?"

Article 1 of the law published on January 21, 1926, is not retroactive, nor will it be given retroactive effect in its application, that is to say, it does not refer to an alien who had acquired or had an interest in any kind of a company that had acquired direct ownership in lands and waters within the prohibited zones prior to the promulgation of the said law. With respect to that same article my Government considers that it does not refer to mining, transporta-

[37] Left at the Department by the Mexican Ambassador on Apr. 6, 1926.
[38] File translation revised.
[39] *Ante*, p. 631.

tion, industrial companies, or to other enterprises which have no direct ownership in lands and waters.

"Is article 2 of this law [, promulgated on January 21, 1926,] [40] retroactive in its application in the sense that an alien who, prior to the promulgation of the law, had acquired an interest in a Mexican Company, will be required to comply with article 2?"

Article 2 is not retroactive in its application, because it does not require compliance by aliens who, prior to the promulgation of the law, had acquired an interest in a Mexican company, since the provision under consideration lays down the requisite therein stated in order that hereafter it be complied with by any alien wishing to join a Mexican company holding rights to the things referred to in article 2.

"Is article 3 of this law retroactive in the sense that it will be necessary for an alien, who possesses an interest in a Mexican company acquired prior to the promulgation of this law, to apply for any permit?"

Article 3 is not retroactive because the alien who, before the promulgation of the law, possessed an interest in a Mexican company, does not need to apply for a permit. This article is connected with the preceding one and therefore also provides for the following article.

In connection with article 4 of the law, Your Excellency understands—

"that any alien who represented [*owned*], prior to the promulgation of this law, a stock interest of 50 percent or more of the total interest in any kind of company owning rural property in Mexico for agricultural purposes may retain such interest until his death without any permit or without compliance with article 2 of the law and that the right of his heirs as to such interest over and above 49 percent is determined by the provisions of article 6 of the law; but that in the case of a foreign corporation owning stock in Mexican companies, the Government of Mexico maintains that such corporate interest shall be disposed of on or before 10 years from the date of the promulgation of the law."

As for the first part of the foregoing paragraph, it is true that an alien who prior to the promulgation of the law represented 50 percent or more of the total interest in any kind of company owning rural property for agricultural purposes may retain such interest without the need of a permit, or without compliance with article 2, and that the right of his heirs to such interest in excess of 49 percent is provided for in article 6. As to its effect, however, upon foreign corporations owning stock in Mexican companies under the afore-

[40] Omitted in the Spanish text.

said conditions, they must dispose of such corporate interest in excess of 49 percent within the term of 10 years; which does not mean that a retroactive effect is given to the application of the law, since it has to do with an act of the future and not with an act of the past; but if any dispute should arise on that point, that is to say, as to whether or not the application of the law under the terms last mentioned is retroactive it would be for the courts to decide it in accordance with the provision of article 14 of the Constitution.

"On the basis of the principle of nonretroactivity, is it the view of the Government of Mexico that article 5 of the law under consideration is not retroactive, but that the rights, which are sought to be regulated by the law under discussion, legally acquired by aliens prior to the going into effect of the law, shall be conserved by their present owners until their death without the seeking of any permit under the terms of article 2 and by their heirs under the provisions of article 6?"

My Government is of the opinion that article 5 is not retroactive, since the rights acquired by aliens prior to the going into effect of the law shall be conserved by their present owners until their death, without the seeking of any permit under article 2 and by their heirs in accordance with the terms of article 6.

"Reverting to a prior inquiry as to whether mining, transportation, industrial companies, and other enterprises not involving the direct ownership in lands and waters are covered by article 1 of the law, it is, of course, manifest that any acquired rights of aliens in such enterprises in whatever form held do [not] [41] come within [the terms of] [41] article 5, independent of whether the activities in which the alien had an interest prior to the promulgation of the law were conducted within or without the prohibited zones."

I repeat that article 1 does not include mining, transportation, and industrial companies and other enterprises not involving the direct ownership of lands and waters. Now the acquired rights of aliens in such enterprises, in whatever form they may be held, are included in article 5, independent of whether the activities in which the alien had an interest prior to the publication of the law were conducted within or without the prohibited zones.

"Am I correct in assuming that the provisions of article 7 of the law promulgated January 21, last, are in antithesis to the provisions of article 2 and that an alien who has acquired a right before the law went into effect which otherwise would come within the terms of the law is only required to make a declaration before the Department of Foreign Relations within one year following the date of the promulgation of the law, which in effect gives notice of his prior acquired rights, thus bringing the application of the new law within the principle of nonretroactivity of legislation; and that such declaration will merely be a statement of his existing right and title?"

[41] Omitted in the Spanish text.

The provisions of article 7 only apply to the rights which are the subject of the law.

In accordance with the article cited, aliens who before the law went into effect had acquired rights which are the subject matter of the law only have to make a declaration before the Department of Foreign Relations within one year following the date of the promulgation, which declaration must be a statement of such prior acquired rights. The terms in which this declaration may be made are to be provided for by the regulations, since the law does not say in what form it has to be made.

Your Excellency states that in view of the foregoing inquiries, you see no occasion for repeating at length the principles set forth in your note of January 28 bearing on the inability of a citizen of the United States to make any contract or declaration which would be binding upon his own Government not to invoke its right to extend diplomatic protection should there be committed any act of injustice justifying under the rules of international law such diplomatic protection.

On this point and with reference to what I had the honor to state in my previous note, I consider that even though an individual should waive application for the diplomatic protection of his Government, the Government does not lose its right to extend diplomatic protection in case of a denial of justice; but this is independent of the consequences that an individual may incur through failure to comply with an obligation which he has assumed.

With regard to the prohibition laws of the United States, Your Excellency says that the liquor business has not been a property right, but a licensed occupation, which was subject to the fullest extent at all times to the police powers.

Merely as an explanation of the reference made on this subject by this Department, permit me to state to Your Excellency that in Mexico property is understood to mean not only the dominion over a material thing, but also the same faculty over a right, and from this point of view the reference under consideration was made.

As for the declarations made by the Commissioners at the conferences of 1923, my Government does not disavow those made by its Commissioners, nor the fact that the same declarations were approved by President Obregón. Therefore, I have no objection to acknowledging the declaration of the Mexican Commissioners who affirmed in the name of my Government that "they recognize the right of the United States Government to make any reservations of or in behalf of the rights of its citizens," which declaration was made should diplomatic relations be resumed.

As Your Excellency will agree, that reservation was referred to in your note of January 28 and you stated that "during the negotiations of 1923 the American Commissioners reserved in behalf of this Government all the rights of its citizens in respect of all lands in Mexico acquired by them before May 1, 1917."

Your Excellency then goes on to say that your Government had expressed the hope that the regulations issued by the President of Mexico would confirm the rights of the owners of the subsoil who had, prior to the going into effect of the Constitution of 1917, performed positive acts as defined in the declarations of the Mexican Commissioners, which hope had all the more foundation in view of the statement in the note of this Department of January 20, 1926,[42] in which it declares with reference to that same point and in relation to article 14 of the law regulating section 1 of article 27 of the Constitution in the petroleum department, which the President of Mexico purposes in the regulation of the laws, to conform to the principles of international law, justice, and equity, in the conviction that in the same regulation there would be defined all the points that have been considered by both Governments.

Basing my opinion on these purposes of the President of the Republic I assure Your Excellency's Government that in the regulations on the subject the rights to the subsoil of American citizens who may have performed any of the positive acts enumerated in my note of January 20 will be confirmed.

Your Excellency adds that you cannot understand why reference is made to an exchange of title when the object is to confirm the titles already held in cases where such positive acts have been performed, and you are pleased to inquire whether the rights of waters under the law of December 14, 1910, were confirmed without any change in the nature of the right or title.

The cases of confirmation of rights to the subsoil are altogether analogous to those of confirmation of rights of waters with regard to which a title of confirmation is issued, as will be done with regard to the said rights to the subsoil. Article 74 of the regulations of the law of December 14, 1910, laid down all the requirements that should be met by an application for a confirmation of rights of waters; and compliance with that provision and others relating thereto has not injured any person, but rather, has served to avoid controversies between persons who have rights of waters.

Your Excellency makes a final inquiry in these words:

"Should a right have been acquired in the year 1885 under the law of 1884 and the works constructed or the intention manifested in 1885, and it would so appear from the nature of the contract or purchase or

[42] *Ante*, p. 605.

lease,[43] would the Mexican Government think that the rights of the purchaser or lessee would be confirmed if not only the very nature of the title were changed but a concession granted limited to 50 years, computed from the time the works began or from the date the contract was made or the intention manifested? The result would be to limit the use of property [, admitted to be the property] [44] of the purchaser, to a beneficial use under new conditions for a maximum additional period of nine years."

In the first place, the fact that the original title is confirmed by means of a concession gives to the owner the right to engage in the same activities which he would engage in under the said original title; in the second place, the period set is sufficiently long to enable him to exhaust a deposit of petroleum, and even were this not so, no damage would result, because the concession can be extended; and, in the third place, the extension of the concession does away with the limitation of the period set for the exercise of the right. As I have stated on another occasion, a new law can change the status of a right established by a previous law without its being retroactive; but granting that to be so on this point, that is to say, if it should be alleged in any case that the application of the law is retroactive, and any dispute should arise on that point, I must repeat what I have already stated with regard to the final part of article 6 of the law of January 21, 1926, that it would be for the courts to decide the point in accordance with the provisions of article 14 of the Constitution.

Your Excellency closes with the statement that your Government expresses the hope in the most friendly manner that, in view of the statement in my note of January 20, that the Mexican Government will be able to assure the Government of the United States that the rights of American citizens in respect of certain products of the subsoil, where positive acts of a nature set forth in my aforesaid note have been performed, will be confirmed.

In my turn I cherish the hope that all I have said above will give to Your Excellency's Government the assurances to which reference is made.

I avail myself [etc.] AARÓN SÁENZ

812.6363/1906

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *July 30, 1926.*

DEAR MR. AMBASSADOR: I enclose the original and three copies of another note relating to the Alien Land and Petroleum Laws. It is my idea that this note should be delivered immediately to the

[43] Mr. Kellogg, however, had said: " — manifested in 1885, or by the nature of the contract of purchase or lease."

[44] Omitted in the Spanish text.

Minister of Foreign Affairs, unless you feel that on account of existing circumstances delivery should be deferred, and unless you wish to suggest some change in the note itself. . . .

. . . . . .

I am [etc.] FRANK B. KELLOGG

[Enclosure]

The Secretary of State to the Mexican Minister for Foreign Affairs (Sáenz)

EXCELLENCY: I have the honor to refer to the correspondence which has passed between us on the subject of the alien land and petroleum laws. Since the receipt of Your Excellency's note of March 27, 1926, I have taken occasion to review this correspondence, as well as to examine carefully the regulations subsequently issued for the enforcement of the petroleum law. It now seems to me appropriate and useful, in the interest of a complete understanding, for me to attempt a brief summary of the situation, as my Government sees it, at this juncture.

The correspondence discloses little, if any, variation or difference of opinion with respect to the statement of certain principles which we have agreed lie at the basis of our consideration of these matters. Let me enumerate these fundamental ideas or principles:

First. Lawfully vested rights of property of every description are to be respected and preserved in conformity with the recognized principles of international law and of equity.

Second. The general understanding reached by the Commissioners of the two countries in 1923, and approved by both Governments at the time of resumption of diplomatic relations between them, stands unmodified and its binding force is recognized.

Third. The principle of international law that it is both the right and the duty of a government to protect its citizens against any invasion of their rights of person or property by a foreign government, and that this right may not be contracted away by the individual is conceded.

Fourth. The principle that vested rights may not be impaired by legislation retroactive in character or confiscatory in effect is not disputed.

These basic principles have repeatedly been advanced by my Government, and in their general statement they have all been endorsed by the Mexican Government. The differences between us arise wholly from the practical interpretation and specific application of these general conceptions to the existing situation.

I regret to say that, viewed from the standpoint of interpretation and practical application, the attitude and declared intentions of the Mexican Government, as expressed in its notes, are calculated to de-

feat the legitimate expectations entertained as the result of the agreement touching the general principles, above mentioned, and, in the judgment of my Government, amount in many respects to a rejection thereof in so far as the particular matters under discussion are concerned.

In this connection it may be helpful to review in its broader outlines the course taken by our exchanges of views.

As long ago as November, 1925, my Government began to look with anxiety and apprehension upon the possible effect upon American vested rights of the legislative program of the Mexican Government based upon Article 27 of the Constitution of 1917. It will be recalled that during the pendency of the bill which was later enacted as the Alien Land Law, I caused to be presented to Your Excellency an *Aide Memoire* of a personal nature directing attention to these apprehensions.[45] Your Excellency's reply assured me in substance that the pending legislation "respected in their entirety acquired rights".[46] I then proceeded to explain in somewhat more detail the position of my Government, and was in turn informed by Your Excellency that these representations were premature, that the pending legislation was not retroactive or confiscatory, that acquired property rights were being respected and that your Government had "the firm intention of doing nothing but what is just, fair and allowable under international law". The subsequent correspondence has been maintained on the part of this Government upon the faith of these assurances. As time passed and the alien land and petroleum bills were enacted into law, the idea was advanced by your Government that all apprehensions were groundless because in any event the power of the Executive was ample to protect vested interests through the issuance of appropriate regulations under the laws, and that such power would be exercised in that sense. In the note of Your Excellency, dated January 20, 1926,[47] it was said:

"It is known that the purpose of regulation is to determine the manner in which the laws which they regulate shall be applied, and it is certain that the Executive, in making use of the pertinent powers, will do so, taking into account not only the express content of the laws but also the precepts of international law and of justice and equity as well.

"Legislation in the subjects indicated will only be complete when the regulations shall have been issued, and only from the aggregate will it be possible to judge whether they violate or respect and protect the rights of the nation as well as private individuals, whether nationals or aliens."

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[45] See telegram No. 254, Nov. 13, 1925, to the Ambassador in Mexico, *Foreign Relations*, 1925, vol. II, p. 527.

[46] See note of Nov. 26, 1925, from the Mexican Minister for Foreign Affairs, *ibid.*, p. 538.

[47] *Ante*, p. 605.

Reference is also made on this point to Your Excellency's notes of February 12, 1926, and March 27, 1926.

May I now be permitted to point out by way of concrete illustration the manner in which, as it appears to my Government, the bases, upon which this entire discussion rests, are in danger of being in practice disregarded or rejected?

In the first place my Government finds itself unable to acquiesce in the fundamental conception of a vested interest as evidently entertained by the Mexican Government. Your Excellency has on several occasions virtually expressed property rights which are commonly regarded as vested in terms of a mere right of user or enjoyment, which might lawfully be interrupted or wholly taken away by laws or regulations affecting its future duration, or imposing conditions upon future enjoyment. For example, in Your Excellency's note of February 12, 1926, it is stated:

"To grant a concession in exchange for an actual title is to confirm the latter, because the granting of the concession will have no other foundation than respect for the former; and although it is true that concessions are for a limited duration of time, on the one hand, to determine the period for the future exercise of a right is not to proceed retroactively, because it does not modify the effects already consummated of a right, but only applies a rule for future use, and, on the other hand, the period of a concession having expired, the latter may be extended or another obtained, wherefore in practice no prejudice is caused by the application of the precepts under consideration."

Again in the note of March 27, 1926, speaking of the provision of the alien land law requiring foreign companies holding stock in Mexican companies to dispose of such corporate interests in excess of 49 per cent within the term of ten years, Your Excellency said that this "does not mean that the law is given retroactive effect in its application since it has to do with an act in the future and not with an act in the past". Again in the note of February 12, 1926, referring to Article 4 of the alien land law it is stated:

"And since the same article refers to future rights, such as those arising from the death of an individual now living or the period of time subsequent to ten years, its effects can not be regarded as retroactive, since there was no acquired right but merely expectation of a right."

Again in Your Excellency's memorandum of December 5, 1925, it was stated:

"You will observe in the appropriate provisions of the organic law which I am commenting upon that a long period is given to foreigners to divest themselves of the excess of 50 per cent of their participation in such companies. Therefore the provision is not

confiscatory, because the right is recognized, and it is merely its transformation which is required. This provision is not retroactive either, because it does not harm acquired rights since, as I said above, the form in which a foreigner holds a right may be changed by a sovereign nation as long as the right in its essence is respected. . . .

"A careful study of the law will be able to show that it cannot be retroactive and confiscatory in its several provisions since, even in the cases in which a period of time is established for certain effects of the law, these rights are not confiscated, but it is established that foreigners may divest themselves in prudent and ample periods."

On the theory thus announced, the Mexican Government claims the right to convert unqualified ownerships into terms for years by the simple device of requiring the existing titles to be exchanged for concessions of limited duration. Owners of the soil who acquire their titles prior to May 1, 1917, are, by the provisions of Article 14 of the Petroleum Law and of the regulations issued thereunder, required, under penalty of forfeiture, to apply within one year for "confirmation" of their titles and to accept "concessions" for not more than fifty years from the time the exploitation works began. In these circumstances American nationals who have made investments in Mexico in reliance upon unqualified titles would be obliged to file applications virtually surrendering these vested rights and to accept in lieu thereof concessions of manifestly lesser scope and value. The use of the word "confirmation" in this relation is to say the least misleading. The operation would be nothing but a forced exchange of a greater for a lesser estate. That a statute so construed and enforced is retroactive and confiscatory, because it converts exclusive ownership under positive Mexican law into a mere authorization to exercise rights for a limited period of time, is in the opinion of my Government not open to any doubt whatever.

On the same theory it is sought to justify the provision of the alien land law calling upon foreign absolute owners of stock in Mexican corporations holding rural property for agricultural purposes to dispose of their corporate interests in excess of 49 per cent within the term of ten years. Here again a plainly vested interest through ownership of stock is divested by compelling the holder, without his desire or consent, to dispose of the same within a limited time under conditions which may or may not be favorable to the transfer.

The foregoing conception of the nature of a vested interest, with the results to which it leads in practical application, as I have indicated can not be accepted by my Government. It strikes at the very root of the system of property rights which lies at the basis of all civilized society. It deprives the term "vested" of any real meaning

by limiting it to a retrospective significance. The very essence of a vested interest is that it is inviolable and can not be impaired or taken away by the state save for a public purpose upon rendering just compensation. No title can be secure if it is to be deemed vested only in the sense that it has been enjoyed in the past and that it is, therefore, subject to curtailment or destruction through the enforcement of laws enacted subsequent to its acquisition.

Pursuing this subject I now advert to the question of the rights to the oil deposits forming part of the subsoil. It is my understanding that the contention of the Mexican Government is substantially as follows:

That the owner of the surface whose title became vested prior to May 1, 1917, under Mexican laws then in force, acquired merely an optional right in the subsoil, and that consequently, until he had performed some act looking to an appropriation of the petroleum deposits he held no vested right therein.

The position thus taken by the Mexican Government is inseparably connected with what may be for convenience designated the Mexican doctrine of positive acts. That doctrine, of course, is without importance or application save where an inchoate or optional right is involved. *Ex vi termini* a vested interest demands the performance of no act of appropriation to support it. Obviously, therefore, if the owner of the surface prior to May 1, 1917, had a vested interest in the petroleum deposits in the subsoil, the doctrine of positive acts is without application.

It has been, and is, the position of my Government not only that the surface owner in those cases is the owner of certain subsoil deposits, including petroleum, as stated in my note of January 28, 1926, but that under any proper application of the doctrine of positive acts, the rights of American nationals claiming petroleum deposits under titles accruing prior to May 1, 1917, must in most, if not all instances, be effectively conceded. For this purpose I have emphasized the exceedingly comprehensive definition of positive acts laid down in the proceedings of the Commissioners in 1923; and I have also drawn attention to the express reservation made by the American Commissioners covering all rights of American citizens in the subsoil and petroleum deposits, which vested under the laws in force when the land was acquired. Your Excellency, to be sure, in his note of February 12, 1926, inadvertently stated that the understanding of the American Commissioners at the conference of 1923 was to the effect that titles acquired in accordance with the laws of 1884, 1892, and 1909 gave the surface owner nothing but an optional right, that is to say the liberty of appropriating for his own use the fuels, minerals and oils contained in the subsoil and that, therefore, until

he had performed some act looking to such appropriation no right was acquired. A careful reading of the proceedings fails to reveal any statement by the American Commissioners accepting this view. On the contrary, they took special pains to spread upon the record of the proceedings the express reservation which I have mentioned. There certainly would have been no occasion for them to do this if they had accepted the view that the surface owner acquired no rights in the subsoil in the absence of the performance of positive acts looking to its appropriation.

An analysis of the mining laws of 1884, 1892, and 1909 has convinced my Government that by the very terms of these statutes American nationals who acquired lands prior to May 1, 1917, whether by fee ownership or leasehold, obtained not a mere optional right to the oil deposits contained therein but the "exclusive property" and hence a vested interest in such deposits.

But even if the Mexican laws as they stood prior to May 1, 1917, had not conferred upon the surface owner "exclusive property" in the oil deposits so that his right thereto could be held to be merely an optional one, nevertheless a proper application of the doctrine of positive acts would protect his rights. I venture to refer again to the comprehensive character of the definitions and to Your Excellency's repeated acquiescence therein (notes of January 20, February 12 and March 27). The enumeration of specific positive acts is very sweeping indeed and concludes with the clause: "and in general any other act manifesting an intention of similar character". Notwithstanding the definite assurances given by Your Excellency my Government is unable, after a careful examination of the petroleum law and regulations, to conclude that these assurances are to be fulfilled, and that all of the positive acts enumerated in the definition and all of the manifestations of intention referred to are to be given effect for the purpose of confirming titles. The intention referred to in the definition may obviously be manifested in various ways. It is perhaps enough to point out that in January, 1916,[48] and in the following months prior to the promulgation of the Constitution of 1917, many of these American surface owners, in response to circular No. 111 [*117*] of the Department of Fomento, dated November 15, 1915,[49] directed specifically to companies or private persons engaged in the petroleum industry, registered and presented declarations, comprising among other data the name of the company, its domicile, its capital, and a description of the location of its property, its leases and fields. This listing of petroleum properties was a most public, solemn and official manifestation of the object for which the particular properties

[48] See *Foreign Relations*, 1916, pp. 741 ff.
[49] *Ibid.*, 1915, p. 891.

had been acquired. In many cases these lists of properties with the other data given were published by the Mexican Government.

Now Article 150 of the petroleum regulations provides that confirmation of the rights mentioned in Article 14 of the law shall be made without charge through concessions granted after the rights have been proved in the manner set forth in subsequent articles. Article 153 then states that the rights derived from contracts executed prior to May 1, 1917, shall be proved by documents legally valid, including:

"(*a*) Contracts of lease, exploitation or cession of rights to the subsoil or of promise of any of these operations made in a public instrument."

It is not easy to imagine a promise of such operations made in a public instrument of a more definite or solemn nature than that furnished by the listing with the Mexican Government of property, contracts, leases and fields pursuant to the request of the Department of Fomento, dated November 15, 1915. Nevertheless subdivision (*b*) of Article 153 of the regulations specifies as the basis for confirmation of titles:

"Contracts of purchase and sale (*compraventa*) in which it appears that the arrangement was carried out for the purpose of exploiting petroleum, or contracts in which, by reason of the price agreed upon, it shall appear that the arrangement was carried out for the same purpose."

Insistence upon this basis for confirmation not only ignores the manifestation of intention through official listing of petroleum properties as such, but is a distinct departure from and limitation upon the enumeration of positive acts made in the statement of the Mexican Commissioners of 1923, and confirmed in Your Excellency's note of January 20, which enumeration includes among positive acts "the conclusion of any contract relative to the subsoil, the investment of capital in land with the object of extracting petroleum from the subsoil". The understanding was clearly and unequivocally expressed that titles should be confirmed wherever investment of capital in land was made with the object of extracting petroleum from the subsoil, and the promise of such operations made in a public instrument filed in accordance with the circular of the Department of Fomento, is in the opinion of my Government, the best possible manifestation of intention. The requirement that the deed or lease of lands, or the lease of subsoil rights should on its face set forth the purpose for which the property is to be used is respectfully submitted to be a substantial departure from both the letter and the spirit of the undertaking as to positive acts.

My Government does not feel that it is just to require in any case that the deed or lease of lands, or the lease of subsoil rights, shall

have set forth the purpose for which the property was to be used. It is unreasonable to expect that the seller should have included in the instrument of transfer a statement of the purposes for which the purchaser was acquiring the property or right. If the property or right was in fact acquired with the object of extracting petroleum from the subsoil, and that object was manifested in any of the ways alluded to by the Commissioners of 1923, it comes within the understanding then arrived at between the two Governments.

To sum up the situation with respect to petroleum deposits, it appears that the rights acquired therein by American nationals prior to 1917 are proposed to be dealt with in the following manner:

First: By construing them to be merely optional rights instead of vested interests, in spite of the fact that the laws in force when they were acquired specifically conferred upon the surface owners "exclusive property" in the oil deposits "in all their forms and varieties".

Second: By cutting down the definition of positive acts so as to deprive the owners of all benefit arising from manifestations of intention which fall clearly within the original definition.

By this process, which my Government is deeply persuaded would be wholly unjustified, the owners of these subsoil deposits would be denied all protection, not only as holders of vested interests under the principles of international law and equity, but even if considered as holders of optional rights entitled to recognition by the performance of positive acts within the definition laid down by the Commissioners of 1923, and confirmed by Your Excellency.

My Government desires particularly to point out that even on the assumption that the subsoil rights under consideration were in their inception merely optional rights, as distinguished from vested interests (a position which has, however, never been conceded by my Government) it seems entirely within the power of the Government of Mexico by simple application of the doctrine of positive acts, as defined by the Mexican Commissioners in 1923, to confirm the titles in question without change. Your Excellency's note of March 27, 1926, contained the following assurance:

"I take these purposes of the President of the Republic for my basis in extending to Your Excellency's Government the assurances that in the regulations on the subject the rights to the subsoil held by American citizens who had performed any of the positive acts enumerated in my note of January 20 will be confirmed."

The Supreme Court of Mexico, in the Texas case, and in the other *amparo* cases, already referred to, definitely decided that the titles to lands on which positive acts, the nature of which the Mexican Government has specifically set forth to this Government, had been performed prior to the going into effect of the Constitution of 1917, were not affected by the Constitution. Your Excellency has assured

this Government that there can be no doubt that the regulations to be issued by the Executive will confirm the rights acquired in accordance with the laws of 1884, 1892 and 1909, provided any of the positive acts already enumerated shall have been executed or intentions of a similar character manifested. In behalf of your Government it was stated in the note of January 20th that Your Excellency must advise this Government "that the law (December 31, 1925) does not modify nor can it modify the decisions (decisions of the Supreme Court of Mexico) in question made and confirmed; to the contrary it renders the effects thereof universal through the provisions of Article 14."

In this connection it would appear that the practice followed in the case of confirmation of rights of waters furnishes an instructive analogy. In Your Excellency's note of March 27, 1926, it was stated:

"The cases of confirmation of rights to the subsoil are altogether analogous to those of the confirmation of rights of waters, with regard to which the title of confirmation is issued as will be done with regard to the said rights to the subsoil."

This was followed by a reference to Article 74 of the regulations issued under the law of December 14, 1910, which "laid down all the requirements that should be met by an applicant for a confirmation of rights of waters"; and it is declared that "compliance with that provision and the others on the subject has not prejudiced any person whatever, but rather has served to avoid disputes among persons holding rights of waters".

Article 31 of the Mexican Law of Federal Waters, December 1, 1910, provides that the rights which may have been granted or confirmed by the President of Mexico directly, or with the approval of Congress, are confirmed by operation of the law; and Article 74 of the regulations issued under that statute specifies the data to be furnished in order that confirmation of title may be established. I find there no suggestion of a change in the nature of the title. In other words, the practice under the 1910 law apparently affected a true confirmation of pre-existing titles in their entirety.

I can not refrain from re-emphasizing here the steadfast adherence of my Government to the principle stated in my note of January 28, 1926, and confirmed in terms by Your Excellency's note of February 12, last:

"That when any Government attempts to dispossess foreigners of property rights which have already been lawfully acquired, the American Government with respect to its citizens has the absolute duty of making efforts and representations to prevent it."

The exercise of this international right by a sovereign state in behalf of its own citizens can not be made to depend upon the will of another sovereign state. Under Article 2 of the Alien Land Law, as my Government understands it, every American citizen holding in Mexico agricultural lands, waters and their accessories, or concessions for mining or for the use of waters, or for taking combustible minerals from the subsoil, must enter into an agreement to consider himself a Mexican national in respect of his property rights, and not to invoke the protection of his Government. Thereafter by the very act of asking assistance of his Government, such citizen would forfeit his property. In Your Excellency's note of March 27, 1926, I find this passage:

"I consider that even though an individual should renounce applying for the diplomatic protection of his Government, the Government does not forfeit the right to extend it in case of a denial of justice; *but this is independent of the consequences that a private person may incur through failing to comply with an obligation assumed by him.*"

The second and underscored [*italicized*] portion of the foregoing sentence effectively nullifies the first. This Government can not, and does not, concede that the Mexican Government may exact from an American citizen, under pain of forfeiture, an undertaking of this character, the vital purpose of which would be to constitute the Mexican Government the sole judge of whether such citizen is, or is not, deprived of vested interests in violation of the law of nations.

In conclusion my Government has not failed to note the expressions of the Mexican Government concerning the underlying purpose and political significance of the proceedings of the American and Mexican Commissioners in 1923, which led to the recognition of the latter by the former. The statement of President Calles, transmitted to me in Your Excellency's note of November 27, 1925, declares that these conferences "were confined to an exchange of views intended to find, if possible a way for the two countries to resume diplomatic relations", and that they "did not result in any formal agreement other than that of the Claims Conventions, which were signed after the resumption of diplomatic relations". This position was, however, modified in subsequent notes of Your Excellency, wherein the binding effect of the declarations made by the Mexican Commissioners was acknowledged (notes of February 12, 1926, and March 27, 1926). Your Excellency, in his note of February 12, 1926, states that the "conferences of 1923 were not a condition for the recognition of the Government of Mexico and consequently can never be given that character". I can only say to Your Excellency in this connection that my Government continues

to regard the proceedings of 1923 as a negotiation of the highest importance upon which two sovereign states may engage. The paramount issue was that of recognition. Without the assurances received in the course of that negotiation recognition could not, and would not, have been extended, and my Government confidently relies upon the fulfilment of the assurances then given.

Accept [etc.] FRANK B. KELLOGG

WASHINGTON, *July 31, 1926.*

812.6363/1985

The Mexican Minister for Foreign Affairs (Sáenz) to the Secretary of State [50]

[Translation [51]]

MEXICO, *October 7, 1926.*

EXCELLENCY: I have the honor to refer to the courteous note of Your Excellency dated July 31, last,[52] in which you say that after a review of the correspondence exchanged between us with regard to the alien land law (Organic Law of fraction 1 of Article 27 of the Constitution), and to that of petroleum, and of a careful examination of the subsequent provisions issued for the enforcement of the second of these enactments, it appears to Your Excellency appropriate and useful in the interest of a complete understanding, to attempt a brief summary of the situation as the Government of the United States of America sees it in the present circumstances.

My Government cherished the assurance that all the questions relative to the interpretation of the laws above mentioned had been amply defined in the above cited correspondence and that while there did not exist uniformity of judgment (*criterio*) upon some points between both Governments, the American Government recognized the Mexican Government's right, in the exercise of its sovereignty, to express its own judgment (*criterio*) in its own laws and to apply to their full scope the provisions contained therein.

Notwithstanding the foregoing, in the identical spirit which animates Your Excellency to procure a better understanding, and in the light of the antecedents on the subject, I am pleased to say in due reply to Your Excellency the following:

Four fundamental principles are given in the note mentioned with respect to which Your Excellency asserts that there is little difference of opinion between the two Governments.

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[50] Left at the Department by the Mexican Chargé on Oct. 14, 1926.
[51] Supplied by the Mexican Embassy.
[52] *Supra.*

The first and the fourth of these principles are couched in the following terms:

First: "Rights of property of every description legally acquired are to be respected and guaranteed in conformity with the recognized principles of international law and equity."

Fourth: "The principle that acquired rights may not be impaired by legislation retroactive in character or confiscatory in effect is not disputed."

With respect to this last I must remark that the mere retroactive character of a law, taken by itself and until it does produce confiscatory effects or is harmful in any other way when applied, can not give rise to any objection whatsoever, nor be the cause of diplomatic representation. Taking into account this exception, my Government agrees with the two principles noted.

With regard to the second and third, each one of these requires that a reservation should be made.

The second states: "The general understanding (*acuerdo*) reached by the Commissioners of the two countries in 1923 and approved by both Governments at the time of the resumption of diplomatic relations between them, stands unmodified and its binding force is recognized."

I do not know the full scope of the words employed by Your Excellency and underscored by me: "That its binding force is recognized", for, frankly speaking, the Mexican Government can not recognize binding force equivalent to a treaty or a constitutional precept, in the outlines of policy presented by General Obregón through his Commissioners, all the more as their declarations and those of the American Commissioners did not take the character of a synallagmatic agreement.

The declarations of the Mexican Commissioners were not accepted by the American Commissioners in a form which constituted an agreement (*acuerdo*), except that they might consider it convenient to put on record in the name of the American Government their dissent with respect to the purposes expressed by the Mexican Commissioners, without prejudice to the rights of the citizens of the United States respecting the subsoil of the lands possessed by them. The Mexican Commissioners understood that reservation.

That is the construction to be put upon point five of the Declarations of August 2, 1923, which says literally:[52a]

"V. The American Commissioners have stated in behalf of their Government that the Government of the United States now reserves, and reserves should diplomatic relations between the two countries be resumed, all the rights of the citizens of the United States in

[52a] See *Proceedings of the United States-Mexican Commission*, p. 49.

respect to the subsoil under the surface of lands in Mexico owned by citizens of the United States, or in which they have an interest in whatever form owned or held, under the laws and Constitution of Mexico in force prior to the promulgation of the new Constitution, May 1, 1917, and under the principles of international law and equity. The Mexican Commissioners, while sustaining the principles hereinbefore set forth in this statement but reserving the rights of the Mexican Government under its laws as to lands in connection with which no positive act of the character specified in this statement has been performed or in relation to which no intention of the character specified in this statement has been manifested, and its rights with reference thereto under the principles of international law, state in behalf of their Government that they recognize the right of the United States Government to make any reservation of or in behalf of the rights of its citizens."

The terms of the above reservation clearly show that the declarations of the Mexican Commissioners were not unconditionally accepted by the American Government, as it would have been necessary in order to have the contents of the journal of that session on August 2, 1923, regarded as an understanding (*acuerdo*).

The American Chancellery appears to understand that there existed a promise of the Mexican Government to adjust its future acts, not only the legislative but the judicial and executive, to the points of view expressed in the memorandum of the Mexican Commissioners of August 2, 1923, and it is inferred that the American Chancellery so considers when in all its notes, official and unofficial, which we have mentioned before it lays stress upon the declarations of the Mexican Commissioners and upon the fact of their having been approved by President Obregón.

It is, however, incredible that the American Government would seriously claim that the recommendations of the Mexican Commissioners have the same force as a treaty no matter how much this may be inferred from the wording of its notes and even from the insistence with which those declarations are mentioned and put forth as negotiations of the highest importance and as stipulations upon which the recognition of the Government of General Obregón was conditioned.

The Mexican Government therefore feels constrained to reiterate its opinion expressed in its memorandum of November 26, 1925,[53] and reproduced later in its subsequent notes, to the effect that these conferences did not result in a formal agreement, outside of the Claims Conventions which were signed after the resumption of diplomatic relations by the Executives of both countries and which were submitted for the approval of the Senates of Mexico and of the United

[53] *Foreign Relations*, 1925, vol. II, p. 538.

States; and that the declarations of the Mexican Commissioners merely constitute a statement of the purposes of President Obregón to adopt a policy which although approved and followed in its main points by the present President cannot in any manner constitute a promise with the binding force of a treaty that the future Presidents must observe in all its details, and much less that it might bind the legislative power and the Supreme Court of Justice, curtailing their liberty of action as to the first in enacting laws when the question is to solve the problems of the country in general terms, and as to the second in deciding the concrete cases when they refer to conflicts which affect private parties.

Never might it be said, nor can the Mexican Government believe that the American Government so thinks, that the recognition of the Government of General Obregón might have been accorded on the condition that the policy outlined in the memorandum of the Mexican Commissioners respecting foreign interests should have to have the force of a treaty; but, even supposing it to be so, the American Government could not deny that President Obregón during his administration did adjust his acts to the moral promise involved in his approval of that memorandum, nor that the present President has departed from the general lines with respect to the foreign interests created in the country, nor to the general principles of International Law and of equity.

The Government of General Calles never repudiated the recommendations and purposes of the Government of General Obregón which it has always observed within its constitutional bounds because it deemed it convenient for the good of the country and the good understanding with the United States of America; but without admitting that those declarations have the binding force of a treaty which restricts the freedom of the Mexican Congress to enact laws or that of the Executive itself to issue regulations concerning the laws enacted by the Congress.

From all the diplomatic correspondence that preceded and followed the conferences of 1923, it is clearly inferred that the Government of General Obregón took special pains not to admit a conditional recognition subject to the outcome of the conferences being held and much less to the declarations of the Commissioners and therefore it caused a general surprise to my Government to find in the closing part of the note of July 31 an intimation that the recognition of General Obregón was subject to the declarations of his Commissioners when speaking on the subject Your Excellency says:

"I can only say to Your Excellency in this connection that my Government continues to regard the proceedings of 1923 as a negotiation of the highest importance upon which two sovereign states may

engage. The paramount issue was that of recognition. Without the assurances received in the course of that negotiation recognition could not, and would not, have been extended, and my Government confidently relies upon the fulfillment of the assurances then given."

That surprise is all the more natural as in the telegram of August 24, 1923, sent by this Ministry to Mr. Ch. Hughes,[54] a proposal was made to him that the resumption of diplomatic relations between the two countries and the signing of the Claims Conventions be not simultaneous nor very near because otherwise the first of those acts might unjustly be given the false appearance of being conditioned. And it was so done, Your Excellency's Government therefore admitting that the recognition of the Government of General Obregón was not conditioned.

As to the third principle which I mentioned above it reads as follows:

"Third. The principle of international law that it is both the right and the duty of a government to protect its citizens against any invasion of their rights of person or property by a foreign government, and that this right may not be contracted away by the individual is conceded."

On this point there is an apparent difference between the two positions (*criterios*) concerning the true scope of the right of a Government to protect its nationals in a foreign country.

The Government of the United States has always expressed the idea that an American subject may not of his own will cancel the relationship which binds him to his own Government so that the obligation of that Government to protect him in case of a denial of justice be extinguished and that the American Government considers itself under obligation to protect the just interests of its nationals even in the case where they have agreed to consider themselves as non-Americans with regard to certain property.

The right of States to protect their citizens or subjects abroad is recognized; that right is unassailable. But the foreign private persons are also given the right to apply to their governments for protection: the exercise of this right is subject to the will of the parties in interest and therefore they may forego its exercise without thereby affecting the right of the state concerned.

The Mexican Government, therefore, does not deny that the American Government is at liberty to intervene for its nationals; but that does not stand in the way of carrying out an agreement under which the alien agrees not to be the party asking for the diplomatic protection of his Government. In case of infringement of any international duty, such as a denial of justice would be, the right of the

[54] *Foreign Relations*, 1923, vol. II, p. 551.

American Government to take with the Mexican Government appropriate action to seek atonement for injustice or injury which may have been done to its national would stand unimpaired.

Under those conditions neither would the American Government have failed to protect its nationals nor the Mexican Government to comply with its laws.

Therefore, and on the supposition that there may have been a denial of justice, an injury or a wrong done to an alien, the matter would be solved by granting the proper reparation without prejudice to the legal sanction attending the infringement of the undertaking that may have been entered into.

It is further proper to offer two remarks of a general character before going into particulars.

The first has reference to the force and scope which may go with the writs issued by the Supreme Court of Justice of Mexico in cases of petroleum with respect to the non-retroactivity of Article 27. How far can those writs necessarily influence the Mexican legislation in the matter is a question that is to be decided in the light of the Mexican constitutional principles.

The American position (*criterio*) seems to be that the laws for the regulation of petroleum cases have to adapt themselves precisely to the conclusions arrived at by the Supreme Court of Justice in the five petroleum cases that are well known, that is to say, that the decisions of the Supreme Court of Justice are not only binding on the courts as precedents but also bear on the executive and legislative branches by constraining those two powers to adjust their legislation and executive acts to such decisions.

The Mexican Government, although aware of the force that jurisprudence of the Supreme Court within the limits of the evolution which that very jurisprudence may undergo in the course of time, can not lose sight of the fact that the nature of the decisions of that high tribunal in *amparo* cases is determined by the Mexican Constitution of 1917 within the same scope which the Constitution of 1857 gave to those same decisions, namely: that of mere resolutions of a concrete character going no farther than the very case in which they are handed down and in which it is expressly forbidden to make declarations of a general character concerning the laws or acts on which the *amparos* were based.

The other remark is the following:

The obligation of a state to protect its nationals may lead a government to the point of suspending the violations of the rights of those nationals which in the future may be occasioned by the enforcement of the laws; but in truth the diplomatic intervention properly so-called is not conceived otherwise than when it is a concrete case calling for the protection of an alien by his government.

To carry the foresight to such an extreme as to offer remarks concerning possible injustice that might be committed in connection with the prospective enactment of certain laws is tantamount to a government meddling (*se ingiera*) in the legislation of another; either by making those remarks before the laws are promulgated or by asking in euphemistic words that it be ignored and another put in its place, both being contrary to the principle of sovereignty of the nations.

The attempt to prevent in a general way the unjust applications that may be made of a law already promulgated is equivalent to one country intervening in the administration of the justice of another by attempting to insure beforehand the trend of the judicial decisions that may be rendered in the future in connection with conflicts concerning the application of that law.

A feeling of extreme courtesy and a sincere wish of cordiality caused the Mexican Government to take into consideration the unofficial memoranda submitted on behalf of the Government of the United States on the dates of November 17 and 27, 1925,[55] before the promulgation of the laws of December 26 and 31 commonly known by the name of "Petroleum Law" and "Alien Land Law".

The same feeling of courtesy moved the Mexican Government to listen with due attention to the American notes of January 8 and 28 and March 1, 1926,[56] presented by the American Government in connection with the framing of the said laws.

The Mexican Government, however, was aware that a diplomatic representation with regard to the consideration and early framing of the law and even in connection with its promulgation is an unusual case in the relations between sovereign countries.

The *a priori* discussion of the effects that a law may work on the nationals of another country is also something that can only be done on grounds of courtesy and in a sincere effort of good understanding between two countries and it was in that sense that the Mexican Government received the notes of January and March of this year and the recent one of July 31, but that makes no change in the Mexican Government's understanding that those diplomatic representations are only for the purpose of preparing a study of the concrete cases that may occur in the future, the solution of which would belong to the judicial authority and in particular to the Supreme Court of Justice of Mexico, if it be supposed that the administrative decisions are disputed.

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[55] See telegrams No. 254, Nov. 13, 1925, and No. 264, Nov. 25, 1925, to the Ambassador in Mexico, *Foreign Relations*, 1925, vol. II, pp. 527 and 529.

[56] See telegram No. 294, Dec. 31, 1925, to the Ambassador in Mexico, *ibid.*, p. 552; and *ante*, pp. 613 and 631.

Fortunately, while there is no concrete case of violation of a lawfully acquired right in existence there is in truth a cloud on the horizon of the friendship of the two countries.

Coming now to points of details, I shall begin with a reference to the waiver by aliens of their government's protection.

If it were merely a case of retroactivity, that is to say, of obtaining that with respect to rights acquired prior to 1917, aliens would be released from the obligation to waive that right, the matter would be extremely simple, seeing that every act of acquisition of real estate assumes in Mexico solemn forms by which it is governed and which remove from any doubt the authenticity of the time when the rights were acquired. As the point under discussion is the application of this constitutional precept hereafter, it seems natural to wait for the results of such application.

The American Government has gone so far as frankly to express its idea that the only interest it has in the subject bears on the past and that it would not find it improper for the Government of Mexico in the future absolutely to deprive aliens from the right to acquire real estate in the country; but although the Mexican Government had never had such thought in mind, the American Government could obviously recommend to its nationals, if it deemed it proper, to refrain from acquiring certain property in Mexico.

All the other questions that have been brought up for discussion in the diplomatic correspondence come to defining precisely the acquired rights and carefully studying whether the Mexican laws afford sufficient protection to such rights.

The central point from which we should start to pass upon the greater part of the concrete remarks offered by the American Government against the Petroleum Law is as to what are the acquired rights. On this point the difference between the American and Mexican position (*criterio*) is easily perceived.

According to the American position, the rights exist just because the law makes it possible for them to exist. From the Mexican position, a right cannot exist unless there be a positive act of man which gave it birth.

According to the Mexican position, it is not enough that the laws of 1884, 1892 and 1909 shall have left to the owners of the surface the right to exploit the substances in the subsoil to create acquired rights, but it is necessary that the owner of the surface should have performed some positive act in seeking the oil or in having the oil form part of his patrimony.

The matter was discussed at length in the sessions of the conferences held in 1923, particularly in the third session on the fifth, the fifth session on the eighteenth and the sixth on the nineteenth of May of that year. The same point was fully dealt with in the instruc-

tions given to the Mexican Commissioners known as "Mexican Document No. 1". It was the main topic of the five writs of the Supreme Court of Justice of Mexico in petroleum cases, and the Mexican position is well defined in point I of the declarations of the Mexican Commissioners of August 2, 1923. It is therefore unnecessary to insist on the ideas which underlie that position which has been made precise and reaffirmed in the recent correspondence exchanged between the two governments.

The note of July 31 in substance does nothing more than confirm the reservations made by the American Commissioners during the conferences of 1923.

For some time it appeared that the American Government had foregone the claim that Mexico should protect as if they were acquired rights, the prospects or possibilities in petroleum that might be found in any class of real estate acquired by Americans prior to 1917, and in the course of the recent diplomatic correspondence it seemed to be accepted that the proof of the existence of rights acquired in petroleum cases should be a positive act disclosing the intention of the owner of the surface to avail himself of the subsoil which act was to be executed before 1917.

The note of July 31, however, goes farther when it says that "*ex vi termini*", an acquired right does not require that any act of protection be performed to support it. That is to say, that the American Government does not agree that the owner of the surface should have declared his intention to exploit the oil through some positive act, but claims as an acquired right the mere possibility of acquiring it.

On this point the Mexican and the American positions are diametrically opposed.

The Mexican Government holds that the acquired rights, in order to be such, must have a positive act, an act of appropriation performed by the party concerned in order to put those rights within their patrimony.

Ex vi terminorum, the words "derechos adquiridos" imply a human effort and this is so whether the English phrase "vested rights" or the Spanish phrase "derechos adquiridos" is used.

The difference between "rights" and "vested rights" consists exactly in that these last named rights must be of such a nature that they are already within our patrimony. "Those in which the right is [*to*] enjoyment, present or prospective, has become the property of a particular person or persons, as a present interest" (Century Dictionary).

Adquirir is in all the Latin languages a word having the same meaning as the English "acquire" and this has exactly the same

connotation as the Latin word "acquirere", the etymology of which "ad-quaero", to seek for oneself, always indicates an action taken by the owner to achieve what he has a right to obtain.

And if, from the etymological field, we go to the juridical, the conclusion is also that there cannot be acquired rights properly so-called unless there be an act of appropriation, a possessory will (*voluntad posesoria*); neither is it necessary that the law should give its protection to more rights than those the conquest of which has cost an effort, be it physical, intellectual or financial.

To claim that the Mexican Government must protect and safeguard not only the acquired but also the potential rights is to impart to the idea of retroactivity of the laws an unjustified breadth.

The American Government has repeatedly said that its purpose in making observations regarding the petroleum laws has not the future but the past in view. But the fact that guarantee of rights which do not yet exist is sought and that the laws are discussed before they are promulgated as well as cases of conflict before they arise, might open the door to a supposition that the object is not a purpose to guarantee acquired rights but to insure the possibility of acquiring petroleum rights for foreigners in Mexican territory.

The problem being in this way precisely put, the first concrete question that arises is whether the law of December 26, 1925, in its Article 14, included all the positive acts disclosing the surface owner's intention to create interests in oil matters and whether that law does not omit certain other acts which might disclose the intention to create petroleum interests.

In Your Excellency's note of July 31, it is suggested that among the positive acts enumerated in Article 14 of the law of December 26, 1925, there are not found the declarations offered during the year 1916 and the months preceding the promulgation of the Constitution of 1917 in compliance with Circular No. 111 [*11?*] of the Ministry of Fomento dated November 15, 1915.

Your Excellency considers that the register of oil property gotten up in that connection was the most public, solemn and official manifestation of the purpose for which that very property was acquired. From that Your Excellency draws the conclusion that the requirements of Articles 150 and 153 of the regulations concerning the petroleum law unjustly put upon persons interested in this matter the obligation to produce evidence of the positive act of acquisition of oil rights through certain authentic contracts. On this point I venture to call Your Excellency's attention to the opinion (*criterio*) already expressed by the Supreme Court of Justice and in substance reproduced by the Mexican Commissioners in August, 1923, which demands a positive act showing the intention of the surface owner

to exercise the rights to the oil, "such as drilling, leases, execution of any contract concerning the subsoil, investment of capital in land for the purpose of obtaining the oil in the subsoil, subsoil prospecting and exploitation work, and in cases where the contract relative to the subsoil shows that the parties fixed and received a price higher than that which the area of the land would have commanded, on account of having been bought with the purpose of seeking petroleum, exploiting that oil in case it were found and in a general way performing and executing any positive act or evincing an intention of a character similar to that of those hereinabove described."

It is seen, therefore, that what the Supreme Court and the Mexican Commissioners consider as an act disclosing the intention is the investment of money or effort intended to obtain petroleum.

Your Excellency's remark that the American Government does not believe it fair to demand in any case that the title to the property or lease of the land should expressly name a petroleum object is, therefore, of more apparent than actual strength.

As a matter of fact, under the law of the State of Vera Cruz, where most of the petroleum land which was prospected and exploited prior to 1917 are located, every transfer of real estate and all contracts implying a division of the property must be of record in a public instrument when the value exceeds 200 pesos and in every case must be entered in the public register of property. The contracts entered into in good faith prior to 1917 by persons engaged in exploiting petroleum must have been made of record therefore in some authentic form and the very interest of the concessionaires so demanded when dealing with permits or leases with the purpose of petroleum exploitation.

The cases that might occur of a person, concern or company failing to make of record through a public instrument or to express in the public instrument which may have been made the purpose of the lease or the purchase, but nevertheless making the declaration and registered in accordance with the Circular of November 15, 1915, could be easily passed upon by the Department of Industry on terms of equity or be referred to the courts in order that the said courts with other evidence before them could decide whether the right should be confirmed; all of which would reduce to a minimum the cases of injury that might be suffered by those who being without authentic evidence of the positive act of petroleum appropriation might claim a confirmation of their rights to the subsoil.

Among all the questions that have been dealt with in the diplomatic correspondence exchanged between the two Governments in connection with the two laws above mentioned, the Organic Law of Fraction 1 of Article 27 of the Constitution and the Petroleum

Law, there are but two which maintain a semblance of concrete differences and deserve discussion, namely: the transformation of the ownership right to the subsoil into an administrative concession for a term of 50 years and the limitation of certain rights held by aliens to the life time of the natural person who owned the rights or to ten years in the case of an artificial person.

The measures that have been noted which are those that are referred to in Articles 14 of the Petroleum Law and 4 of the Organic Law of Fraction 1 of Article 27 of the Constitution both have the same purpose: that of adjusting pre-existing rights to the new legislation.

Whenever a law is enacted which brings a change in the ownership system, the main problem consists in laying down the temporary measures of a provisional character which make it possible to pass from one system to the other.

The difficulty of these measures consists in the fact that two tendencies are met,—that of the created interests which would prefer and demand that the same system of law be continued and that of the general interests of the nation which require that the old rights adjust themselves to the new principles.

In the matter of petroleum, the purpose of the foreigners who believe they have acquired rights to the subsoil antedating 1917 is that those rights be respected. The purpose of the Mexican Government is that the principles of the nationalization of the petroleum be applied. But there cannot be two laws one concerning the rights acquired prior to 1917 and another concerning rights acquired subsequently; and with regard to the rights acquired prior to 1917, neither can there be two ways of enforcing the law one for the nationals and one for the aliens. Neither can the operation of the Constitution be indefinitely suspended. It is, therefore, proper to seek the manner in which the rights acquired prior to 1917 subsist in practice within the new laws and this cannot be done except by placing the former acquired rights under the new rules under such conditions that although the legal theory on which they are based has been changed they are not altered or impaired.

Article 14 of the Petroleum Law requires owners who had petroleum rights acquired prior to 1917 to apply for their confirmation and offers such a confirmation by issuing a government concession entirely free of cost for fifty years.

The Government concession in exchange for the right acquired by title of private ownership seems to be a lessening of that right but is not so in practice. For with regard to the strength of the new title the Mexican mining laws show that a system independent of the ownership of the subsoil founded on a concession is as strong

and more secure than the system of private ownership; and as for the life of the concession fifty years appeared to the lawmaker more than enough to protect the working of any petroleum property among those that have been discovered up to date.

If it be taken into account that the most ancient investments of petroleum or the first operation works in Mexico do not antedate 1905, it will be seen that the greater part of the confirmations that may be applied for will be extended to at least the year 1955.

It is a fact, however, that the greater part of the investments of consequence made in the oil business in Mexico only date from 1909 to 1910. Therefore, the application of the law to those acquired rights would have to extend up to 1959 or 1960, that is to say, thirty three years from the year 1926 when the applications for confirmations would have to be made.

It is, therefore, seen that the danger of encroaching upon rights by limiting the life of a concession is so remote that it is not worth taking into account as a paramount point in the diplomatic discussion of the petroleum law.

And even if there should be left any petroleum rights of this nature of any commercial value in the years from 1959 to 1960 they would still be of such small consequence as compared with the future development of the petroleum industry under the new principles that they would assume the character of exceptions and as such exceptions, the conflict that would arise between the Mexican Government on the assumption that it would refuse to grant an extension of those rights and the person in interest who should deem that his interests had been injured could be deferred to the courts who would pass upon the concrete circumstances of the case and decide it in justice by avoiding any injury that might be caused thereby. But under the laws a concession may be extended or a new one may be given which finally removes any danger of injury to the parties in interest.

The one thing which does not seem logical is that taking into account the volume of interests created from 1910 to 1917 and comparing them with the interests that were created since 1917 up to 1926 and those which will be created in connection with petroleum the Constitution and the petroleum law should be regarded as inapplicable for the remote possibility of foreign interests being possibly injured on the theoretical assumption of the American Chancellery that some petroleum rights may have been acquired in 1883.

The best defense that may be offered for the petroleum law in that respect is the large number of applications for confirmation that have been filed and published, many of these being from foreign concerns.

The same considerations that have been herein before presented are applicable to the limitations put in Article 2 of the Organic Law of Fraction 1 of Article 27 of the Constitution upon natural and artificial persons in order to hold the shares which at present would exceed fifty per cent in Mexican corporations owning rural property for farming purposes.

The said article provides that said foreign persons may hold their interests until their death in the case of natural persons or for ten years in the case of artificial persons.

No matter how conservative the judicial, civil or international position (*criterio*) may be a government could not be required to protect the rights of a person beyond the time when that person disappears.

When the lawmaker frames a law limiting the enjoyment of certain rights to the life of a certain person without of course assuming to strip the heirs of their rights which at most goes no farther than limiting the capacity to testify or dispose of property after death and the capacity of the successors to inherit and any provision making a change in the capacity of bequeathing and inheriting has never been considered retroactive.

Before the death of a person there are absolutely no rights created or acquired for the heirs who are not even known nor is it known to what nationality they may belong except until the moment of the death of the creator of the inheritance.

The form in which certain rights may be transferred by inheritance has to do with the interests of unknown persons who are the heirs who may be aliens or Mexicans or even may not exist.

To permit all the foreigners who have interests incompatible with the new laws to retain them until death is the most which could be demanded of the Mexican Government as protection of the rights acquired by them.

Nevertheless, the Mexican Government has gone a step further, since in conformity with Article VI of the Organic Law of fraction 1 of Article 27 of the Constitution, it provided for the case of some foreign person acquiring by inheritance rights whose adjudication would be prohibited by the law, and in that case authorized permission for the adjudication with the sole obligation that the beneficiary should divest himself of these rights within a period of five years, counting from the date of the death of the creator of the inheritance, it be taken into account that this article holds not only for foreigners, heirs of foreigners, but also for foreigners, heirs of Mexicans.

Five years is a period more than sufficient for a person to dispose (of property) under convenient conditions and without haste which would force him to sell too cheaply the property which might belong to him by inheritance.

There is no idea of any injury to the right of a foreigner through this obligation which the law imposes, supposing that, as we have said before, the heir has no rights of any sort acquired before the death of the creator of the inheritance, and when the case arises the succession would be governed by pre-existing rules dictated by the State which is wholly sovereign to establish them and to which the heirs of real property situated in its territory must submit themselves.

With regard to artificial persons (*personas morales*) the same system cannot be adopted. Death puts an end to questions of nationality of a physical person, but artificial persons have at times a limited life and at others an indefinite life. The life of foreign artificial persons interested in Mexican business may be very long or have no end. Since Mexican law cannot limit this life, the legislator had to choose between two systems; either to fix a period for the dissolution of the Mexican company in which foreigners had an interest and order its liquidation after a certain time, or adopt the system which was employed in Article 4 of the Organic Law of fraction 1 of Article 27 of the Constitution, that is to say, fix a period sufficiently ample in which the corporation can dispose of its interests. The Mexican Government believes it has been much more liberal with this system than with the former.

With respect to artificial persons it does not attempt to curtail their possessions, and only imposes on them the obligation to transform this property incompatible with the law into another which can be (compatible) fixing a term of ten years for this to be accomplished.

In business practices and especially dealing with the interests of corporations the term of ten years is more than sufficient to enable a person to dispose, transfer, or exchange any kind of assets or property without damage; the danger that an artificial person could not for reasons other than of his own will dispose in ten years of such property without damage is so improbable that it is not worth while to undertake an argument that the law could not be made to apply. The disproportion between the numerous cases in which the law could be made to apply without prejudice or injury to the interested parties and those remote cases in which it could not be made to apply is so great that natural prudence of the two Governments counsels consideration of such cases as exceptional, to be submitted to the decision of the courts.

But there is still more. Articles 11 and 12 of the Regulations of the Organic Law of fraction 1 of Article 27 of the Constitution authorize this Department to extend the time limits set for disposition in those cases in which it would not be possible to do so in due time (*en términos hábiles*). And this, as should be clearly understood, excludes absolutely all danger of causing injury unjustifiably.

My Government cannot believe that the American Chancellery overlooks these considerations and the practical and true effects possible by the application of the law, to entrench itself under the theory that by the mere enactment of the law or its enforcement it should be considered as a prejudice or injury to the property of the Americans alone, when in effect no such prejudice or injury results.

The new laws concerning land, mineral and petroleum property are intended to govern a volume of rights which in reason are to increase gradually with years, and all such rights will have to adjust themselves to the new laws.

Investments which may be made in the future, and they will undoubtedly be made because capital and enterprising men will always adapt themselves to new legislative conditions, will indisputably be of much greater importance than the interests which exist at present. As time passes the investments made before 1917 will be smaller in comparison to the new investments. My Government cannot account for the insistence of the American Government in defending the interests acquired prior to 1917 against improbable injury without apparently concerning itself with those which may be created under the protection of the new laws.

My Government cherishes the hope that the observations presented in this note will be considered by Your Excellency's Government in the same spirit of concord and friendship which animates that of Mexico to arrive at a happy understanding with relation to the legislation in question.

I sincerely believe that the concrete points of difference between the American and Mexican positions offer a possibility so remote for the injury of foreign interests that the line of least resistance would without doubt be the application of those laws reserving to the courts such specific cases which might present themselves in case the administrative decisions are disputed.

Finally, I venture to call to Your Excellency's attention the fact that it would be to more of a purpose and of greater advantage than a purely academic discussion which without doubt is caused by the different conceptions of the principle of non-retroactivity, held by both governments, and since Your Excellency declares that the discrepancies arise on account of the practical interpretation and application of the laws, it would be more useful and profitable, I repeat, to point out those concrete cases which have violated or which violate international law, by disregarding legitimate interests of American citizens; for if the Government of Mexico does not correct such violations, it is and will be disposed to accept in justice the resulting claims of the American Government. But should such cases not exist there is no occasion whatsoever for protest, since it is not by the

simple enactment of a law, but by its application in determined cases, that injuries may be done. In this way each one will be solved in an equitable manner instead of discussing abstract questions.

I avail myself [etc.] AARÓN SÁENZ

812.6363/1985

The Secretary of State to the Chargé in Mexico (Schoenfeld)

WASHINGTON, *October 30, 1926.*

SIR: Enclosed is the original and one copy of a note addressed by me under date of October 30th to the Mexican Secretary for Foreign Relations. You are instructed to deliver this note immediately upon its receipt, and to advise me by telegraph of the date and hour of delivery.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

The Secretary of State to the Mexican Minister for Foreign Affairs (Sáenz)

EXCELLENCY: The note of Your Excellency, dated October 7, 1926, has received most careful consideration, and I have the honor to submit the following reply:

1. My Government observes that the Mexican Government, while contending that the retroactive character of a law may not of itself, in advance of actual confiscatory or otherwise injurious effects when applied, give rise to objection or be the subject of diplomatic representations, reiterates its adherence to the fundamental principle that acquired rights may not be impaired by legislation retroactive in character or confiscatory in effect.

2. My Government likewise notes the unqualified adherence of the Mexican Government to the fundamental principle that rights of property of every description legally acquired are to be respected and guaranteed in conformity with the recognized principles of international law and of equity.

3. My Government has not failed to appreciate the gravity of the situation arising from the position taken by the Mexican Government with respect to the negotiations of 1923. As my previous communications to Your Excellency have amply explained, the declarations of the Mexican and of the American Commissioners on that occasion, subsequently ratified by an exchange of notes between the

two Governments, constituted, in the view of my Government, solemn and binding undertakings which formed the basis and moving consideration for the recognition of the Mexican Government by this Government.

4. After a further review of the entire correspondence, and especially after a careful examination of Your Excellency's note of October 7, 1926, this Government finds no occasion to modify any of the positions which it has heretofore taken, and desires to be understood as maintaining those positions with the utmost emphasis. Although they have all been clearly set forth in my previous communications, and therefore need not be here restated, I deem it appropriate, in the light of the tenor and effect of Your Excellency's last note, to emphasize again the reservation made by the American Commissioners and formally stated on the record by the Mexican Commissioners, acting in behalf of their Government, at the meeting of August 2, 1923, and to recall to mind the passage on that subject appearing in Your Excellency's note of March 27, 1926.

My purpose in engaging upon this correspondence relating to the land law and the law concerning the rights to certain products of the subsoil was, in a spirit of genuine goodwill and friendliness, to point out so clearly as to leave no room for misunderstanding, the extremely critical situation affecting the relations between the two countries which would inevitably be created if those laws were enacted and enforced in such manner as to violate the fundamental principles of international law and of equity, and the terms and conditions of the understanding arrived at in 1923. That purpose has been fulfilled, the issues have been plainly defined, and my Government in conclusion reasserts that it expects the Government of Mexico, in accordance with the true intent and purpose of the negotiations of 1923, culminating in the recognition of the Government of Mexico by this Government, to respect in their entirety the acquired property rights of American citizens, which have been the subject of our discussion, and expects the Mexican Government not to take any action under the laws in question and the regulations issued in pursuance thereto, which would operate, either directly or indirectly, to deprive American citizens of the full ownership, use and enjoyment of their said properties and property rights.

Accept [etc.] FRANK B. KELLOGG

WASHINGTON, *October 30, 1926.*

812.6363/2017

The Mexican Minister for Foreign Affairs (Sáenz) to the Secretary of State

[Translation [60]]

MEXICO, *November 17, 1926.*

[Received November 26.]

EXCELLENCY: I have the honor to refer to Your Excellency's note of October 30 last [61] in reply to mine of October 7 in which I reiterated the adherence of my Government with the first two of the four proposals therein, namely:

1. Acquired rights may not be impaired by legislation retroactive in character or confiscatory in effect.
2. Rights of property legally acquired are to be respected and guaranteed in conformity with the recognized principles of international law and equity.

As for the third proposal, my Government has not disavowed the conferences of 1923. It has only stated, and repeated, that those conferences did not have, nor do they have, the force of a treaty, otherwise it would have been necessary to observe the constitutional practice of both countries by securing, among other things, its ratification by the respective Senates. Our two Governments mutually agreed that the proceedings of the conferences of 1923 would not be made a condition for the resumption of diplomatic relations between Mexico and the United States.

Finally, Your Excellency reiterates the reservation made by the American Commissioners and recognized by the Mexican Commissmissioners in the meeting of August 2, 1923. Regarding this point my Government refers to that same meeting and states that the Mexican Commissioners in turn reserve the rights of the Mexican Government under its laws and the principles of international law as to lands in the terms which appear in the respective minutes, a reservation which is of no less importance than that made by the American Commissioners.

Regarding section 1 of article 27 of the Constitution and the petroleum law, Your Excellency states that the American Government hopes that the Government of Mexico will respect in their entirety the acquired property rights of Americans, and will take no action under the laws in question and the regulations issued in pursuance thereto, which would operate, directly or indirectly, to deprive American citizens of the full ownership, use and enjoyment of the said properties and property rights.

[60] File translation revised.
[61] *Supra.*

My Government, on its part, hopes that the Government of the United States will indicate the concrete cases in which recognized principles of international law have been violated or will be violated in disregard of the legitimate interests of American citizens since in such cases it would be disposed to make indemnity for such violations.

The foregoing declaration makes it evident that there can be no justified motive for a misunderstanding between the Governments of Mexico and the United States over the questions which have been the subject of our correspondence.

I renew [etc.] AARÓN SÁENZ

812.6363/2078 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *December 22, 1926—11 a. m.*

[Received 11:21 p. m.]

516. Yesterday I had a two and a half hour conference with the Foreign Minister. He tried to limit the discussion chiefly to the petroleum law and regulations and to justify Mexico's contention that the law is not retroactive and confiscatory, and to argue that no material damage had been done or will be done thereunder to American interests. I widened the scope of the discussion by calling attention to the concern of my Government over the apparent uniform tendency of Mexican legislation to contain the same objectionable principles as in the petroleum law and its effect on the property rights of American citizens, such as the alien land law, irrigation, colonization, forestry, mining, etc. I stated that I had no authority to exceed the position taken in the diplomatic correspondence, and I adhered firmly to that position although I expressed the friendliest disposition toward the Government of Mexico.

The Foreign Minister did most of the talking during the long discussion but made no concrete suggestion for meeting the situation. He made no intimation that the Government of Mexico intended to enforce the sanctions especially of the petroleum law after December 31. He ended the interview with the plea that pending difficulties be settled without resorting to "force and violence."

It is my belief that this interview was important primarily as indicating a tendency of the Government of Mexico to yield to the firm position taken by us as specifically presented in your note dated October 30.

SHEFFIELD

812.6363/2078 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *December 26, 1926—11 p. m.*

376. Your 516, December 22, 11 A. M. I understand some of the companies have asked for an extension of time for filing applications for confirmatory concessions for purpose of taking up negotiations with a view to adjusting all the questions in dispute between them and the Mexican Government.

In view of Minister of Foreign Affairs' suggestion that pending difficulties be adjusted, if you deem it wise you may inform Minister that I am assured that such negotiations for adjustment will be taken up by the oil companies but as a necessary prerequisite that the time for application for confirmation of oil rights must be extended by the Congress before its adjournment.

A legally valid extension of time is considered by the companies and the Department as a possible method of meeting present crisis presented by the Petroleum Law.

As time is very important, please give this immediate attention and telegraph reply stating whether such extension prior to negotiation may be relied upon.

KELLOGG

812.6363/2083 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *December 27, 1926—2 p. m.*

[Received 8:17 p. m.]

522. Department's 376, December 26, 11 p. m. I understand that none of the important companies have asked for an extension of time for filing applications for confirmatory concessions. However, I have been informed that a proposal was made and is being considered in New York today that the companies will acknowledge the receipt of the Minister of Industry's reply of December 27 to the companies' message of December 13, and that this acknowledgment will be to the following effect: Though adhering to the view that no valid confirmatory concessions can be granted under the petroleum law and regulations, the companies have noted the good intentions of the Mexican Government and suggest that in order to carry out these intentions it is necessary that sufficient time be afforded to bring the law into conformity with the recognition of valid preconstitutional rights.

The assumption here is that the Mexican Congress will grant the President of the Republic general powers in the Departments of Industry and Finance so that if the companies make the suggestion last above described, the door will be open for further negotiations.

In view of the above my intervention with the Mexican Foreign Office at this time would most likely be misinterpreted by the Government of Mexico and thus hinder a settlement. I think it would be better for me to express interest in the suggestion of the companies after the suggestion has been made. If the Department has no objection, I shall pursue this course.

SHEFFIELD

812.6363/2085 : Telegram

The Director of the Association of Producers of Petroleum in Mexico (Stevens) to the Secretary of State

NEW YORK, *December 27, 1926.*
[Received December 28—11 : 10 a. m.]

The following telegram has this evening been sent to the President and Secretary of Industry, Commerce and Labor in Mexico City:

"The petroleum companies have received copies of a proposed form of confirmatory concession given by your department to our representatives on Monday evening, December 20th. We are also advised of the expressed intention of your Government to confirm rights acquired prior to May 1st, 1917. Study of the proposed form of confirmatory concession confirms the conviction expressed in the memorandum handed to you by the committee of the companies on March 23d last for the reason therein stated that the present law does not adequately provide for recognition of rights acquired prior to May 1st, 1917. The companies have therefore decided today that they cannot safely accept confirmatory concession under the present law. In view of these circumstances the companies respectfully suggest the advisability of proroguing the period allowed by article 15 of the law in order that modifications therein may be made effective which will harmonize the language of the law with the expressed intention of your Government.

We renew, Mr. Secretary, the assurance of our distinguished consideration.—Compañia Mexicana Holandesa 'La Corona', S. A.; Compañia Mexicana de Petroleo 'El Aguila', S. A.; Compañia Mexicana Productora y Refinadora de Petroleo 'La Atlántica', S. A.; Compañia Petrolera del Agwi; Compañia Petrolera Los Chijoles; Cortez Aguada Petroleum Corporation; Huasteca Petroleum Company; Humble Oil and Refining Company; Island Oil and Transport Corporation; Mexican Gulf Oil Company; Mexican Petroleum Company; Tuxpam Petroleum Company; New England Fuel Oil Company; Tamiahua Petroleum Company; Standard Oil Company of California; Richmond Petroleum Company; Standard Oil Company of New Jersey; Compañia Transcontinental de Petroleo, S. A."

GUY STEVENS

812.6363/2083 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *December 28, 1926—4 p. m.*

377. I concur in conclusions set forth in last paragraph of your 522, December 27, 2 p. m. Department has just received a copy of telegram sent last evening to President Calles and Señor Morones by Petroleum Companies in New York,[62] suggesting extension of time. Please keep Department closely informed by telegraph of all developments.

KELLOGG

812.6363/2105

The Director of the Association of Producers of Petroleum in Mexico (Stevens) to the Assistant Secretary of State (Olds)

NEW YORK, *January 3, 1927.*

[Received January 4.]

DEAR COLONEL OLDS: Although it is somewhat late, I am enclosing herewith a translation of the telegram received here December 30 in reply to the telegram sent to President Calles and Minister Morones on the night of December 27, of which you already have a copy.

Respectfully yours,

GUY STEVENS

[Enclosure—Telegram—Translation]

The Mexican Secretary of Industry, Commerce, and Labor (Morones) to the Director of the Association of Producers of Petroleum in Mexico (Stevens)

[MEXICO, *December 29, 1926.*]

Replying to your message of yesterday I respectfully make known to you that, having addressed (yourselves) to the Citizen President of the Republic in the same words in which you addressed (yourselves) to this Department, the said high official replied to you in a message of today as follows:[63]

"Your message of yesterday, in keeping (*consonancia*) with all the things (*hechos*) that have been taking place in connection with the discussion regarding the law regulatory of Constitutional Article 27 in the branch of petroleum and its Regulations, goes to confirm my view (*criterio*) that it is not the petroleum industry's own peculiar

[62] *Supra.*

[63] The President's reply to the oil companies was published in the Mexico *Excelsior* of Dec. 30, 1926. A copy of the reply in translation was transmitted to the Department in the Embassy's despatch No. 3469, Dec. 30, 1926; despatch not printed.

(*propio*) interest but causes very foreign (thereto) which lie back of (*motivan*) the attitude of rebellion of some companies (*empresas*) with regard to compliance with the law. The precepts of the law in question, issued by the legislative power of the nation within the sovereignty which our constitutional principles give to it, have been regulated and applied by this Executive power within the ample and liberal criterion allowed by our institutions, making clear in definite form the rights and obligations which they (said precepts) contain for the good of the industry, and I regret (*lamentando*) that all the facilities granted have not been reciprocated on the part of the companies (*empresas*) and individuals engaged in petroleum exploitation.

"I consider the law good, and also that its precepts, under the most rigorous juridical interpretation, neither injure nor destroy rights legitimately acquired, not only leaving amply guaranteed the interests of the industry but also assuring its greatest development to the advantage of those engaged in it; wherefore with regret (*pena*) I make known to you that I find no justification for the prorogation which you request.

"It surprises me that the Compañia Mexicana Holandesa 'La Corona', the Compañia Mexicana de Petroleo 'El Aguila', the Richmond Petroleum Company and the Compañia Transcontinental de Petroleo, which are Mexican corporations and which have submitted all their rights to the law (by) applying for their confirmatory concessions, should appear as signers of a petition for extension of the time for submitting, as does also the attitude of the Compañia Mexicana Productora y Refinadora de Petroleo 'La Atlántica' and the Compañia Petrolera Los Chijoles, which are Mexican corporations which have submitted (themselves) to all the laws by virtue of their articles of incorporation. Respectfully, General P. Elias Calles."

I repeat to you my assurances of esteem.

MORONES

REPRESENTATIONS BY THE UNITED STATES AGAINST THE ORDERS OF JUNE 8 AND AUGUST 24, 1926, RELATIVE TO PROVISIONAL PERMITS TO DRILL OIL WELLS

812.6363/1880 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

MEXICO, *June 15, 1926—5 p. m.*

[Received June 16—1:32 a. m.]

272. Petroleum department of Department of Industry, Commerce and Labor issued an order on June 8 giving special conditions governing issuance of provisional permits for drilling oil wells on lands the acquired rights to which have not been fully proven by the applicant companies, in substance as follows:

First, permits essentially provisional and subject to rights being proved within given period never to be extended beyond calendar year.

Second, applicant must execute bond for unlimited amount satisfactory to Department to guarantee value of petroleum which may be extracted in case he does not succeed in fully proving validity of his rights within period specified.

Third, if because of two preceding paragraphs permits are canceled, beneficiaries are required to reimburse Department for value of petroleum extracted under permits and in case this is not done Department will foreclose bond, making use of Department's compulsory powers to which bondsmen must expressly submit themselves.

Fourth, permits authorized for sole purpose of not interrupting petroleum exploitation and will maintain provisional nature until beneficiaries have legally proved their rights. Permits will contain statement that issuance confers no right on beneficiaries but by simply using permits the beneficiaries admit that they accept absolutely all the conditions mentioned in this order.

[Paraphrase.] I invite the attention of the Department to paragraph 3 of the order which may be given confiscatory effect. I am informed that a majority of the oil producers have decided to protest against the order. They will not accept surrender of rights provided for in paragraph 4. They state that the enforcement of the order will put an end to oil drilling.

A copy and translation of the order will go forward by next pouch. [End paraphrase.]

SHEFFIELD

812.6363/1883

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2401 MEXICO, *June 16, 1926.*

[Received June 25.]

SIR: I have the honor to refer to my telegram No. 272 of June 15, 5 p. m., reporting the issuance of an order by the Department of Industry, Commerce and Labor, on June 8, 1926, signed by Minister Morones, prescribing special conditions governing the issuance of provisional permits for drilling oil wells on lands, the acquired rights of which have not been fully proven by the applicant companies. A copy and translation of the order in question, which were furnished me by the representative of an American oil company, are transmitted herewith. It appears that the order has been circularized among all oil companies in Mexico and has not as yet been made public.

A meeting of the representatives in Mexico of the Oil Producers' Association took place today and it was agreed that a protest should be made against the order, the enforcement of which would, in their judgment, put an end to oil drilling by foreigners in Mexico. Before taking action, however, it is their intention to obtain the ad-

hesion to this position by individuals and companies not members of the association, in order that the action may represent unanimously all oil producers in Mexico.

I submit as of considerable significance the remark which was made to a member of the Embassy by the representative of one of the American companies to the effect that this order was further evidence of the intention of the Mexican authorities to confiscate foreign oil properties, which the Mexican Government considers would be fully justified by the terms of the order.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation [64]]

Order Issued June 8, 1926, by the Mexican Department of Industry, Commerce, and Labor

Special conditions governing provisional permits to drill petroleum wells on lands the acquired rights to which have not been fully proved by the petitioning companies.

1. The permits shall be essentially provisional, and shall be subject to the beneficiaries proving legally their rights within the period indicated for this purpose in each case, which can never extend beyond December 31 of the current year.

2. In order that these permits may be issued, the petitioning company or person must first execute a bond for an unlimited amount, to the satisfaction of this Department, to guarantee *the value of the petroleum which may be extracted from the wells drilled under these permits*, if the beneficiary should not succeed in fully proving the legality of his rights within the period indicated for this purpose.

3. If, as a result of the provisions of the foregoing articles, the permits should be canceled, the beneficiary thereof shall be obliged to refund the value of the petroleum which may have been extracted under the permit, and if he does not do so, the Department shall realize upon the bond furnished, *making use of the compulsory economic authority, to which the bondsmen must expressly submit.*

4. These permits are authorized for the sole purpose of not interrupting petroleum exploitation, and they shall be continued in their provisional character until the rights of the beneficiaries are legally proved; and it shall be stated in the permits that their issuance confers no rights whatsoever upon the beneficiaries, and that by *the mere use thereof the beneficiaries signify their absolute conformity to all the conditions enumerated in this order.*

June 8, 1926.

L. MORONES

[64] File translation revised.

812.6363/1880 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *June 21, 1926—5 p. m.*

212. Your 272, June 15, 5 p. m. Request Foreign Office to advise you promptly and specifically, first, under what authority of law order relative to provisional drilling permits was issued; second, what proof of acquired rights is essential under that order, and in this connection what provision has been made for proving title in cases where records of registry offices have been destroyed, whether certified copies made by keepers of public registry will be accepted and whether it is not a fact that under laws of the State of Vera Cruz deeds of property having a value of less than 200 pesos were not required to be public documents or registered; and, third, whether order is intended to apply to lands on which permits have heretofore been issued and in connection with which permits titles have been examined and approved by Petroleum Department of Department of Industry, Commerce, and Labor.

In view of great importance to oil companies of keeping up production and filling commitments and of possible hardships and delays involved in compliance with order mentioned, you will ask that it be withdrawn at least until matter can be further discussed and considered.

KELLOGG

812.6363/1895 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *July 16, 1926—4 p. m.*

[Received July 17—1:30 a. m.]

315. Embassy's despatch No. 2429, of June 22 regarding petroleum drilling permits.[65] Since Foreign Office has made no reply to this Embassy's note of June 22, save routine acknowledgment setting forth that the matter had been referred to the competent authorities, it is suggested that further representations are in order especially with regard to the direct quotations contained in our note which remain unanswered. This Embassy has learned that the order has been neither modified nor withdrawn; that the Mexican Government has stated to representatives of the petroleum companies that it will consider no compromise except with regard to the amount of the bond; and that the petroleum companies have declined to negotiate solely on that basis.

SHEFFIELD

[65] Not printed; it transmitted a copy of a note addressed to the Mexican Foreign Office, June 22, in the sense of Department's telegram No. 212, *supra*.

812.6363/1896 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

MEXICO, *July 19, 1926—2 p. m.*
[Received 9:12 p. m.]

317. My 315, July 16. Note dated July 17 received from Foreign Office states as follows:

"In advising Your Excellency that I have addressed the competent authorities requesting the necessary information, I beg leave to inform you of the surprise which has been caused my Government by the Embassy's action, which is not in accordance with attitude assumed by the representatives of petroleum companies which, taking advantage of the conciliatory spirit which animates the Department of Industry in the matter, are negotiating the matter directly with that Department."

[Paraphrase]. Morones, of course, has shown no conciliatory spirit except with regard to the amount of the bond, and, as set forth in Embassy's telegram number 272, June 15, 5 p. m., the petroleum companies considered that paragraphs 3 and 4 of the order jeopardize their rights more than paragraph 2 does regarding the unlimited amount of the bond which obviously is impossible of fulfillment. Moreover, Petroleum Producers' Association have declined to negotiate with regard to the amount of the bond, and have stated that they will not consent that Department of Industry act as a judicial body to pass upon property rights or titles.

Today I was informed that the Corona Company (Dutch) and the Aguila Company (British) will apply for concessions under the order and will accept conditions. The Marland Company appears undecided. Other companies are firmly opposed.[66] Note from Foreign Office fails to answer in any way the direct questions which were contained in the Embassy's note of June 22. [End paraphrase.]

SHEFFIELD

812.6363/1896 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *July 20, 1926—4 p. m.*

241. We understand note of Mexican Government quoted in your 317 to be only preliminary reply to your note dated June 22 on drilling permits. Please press for early reply in detail giving information requested. It is important for us to have this information as soon as possible.

KELLOGG

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[66] For correction of this statement, see the Ambassador's telegram No. 319, July 23, noon, p. 681.

812.6363/1900 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *July 23, 1926—noon.*

[Received 3:53 p. m.]

319. I now find that information transmitted in the last paragraph of Embassy's telegram number 317, July 19, 2 p. m. was incorrect. I was informed today that all companies including Corona, Aguila, and Marland are firm in their opposition to the order of June 8 if it remains unmodified.

SHEFFIELD

812.6363/1908

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2568 MEXICO, *July 23, 1926.*

[Received July 30.]

SIR: I have the honor to refer further to the Department's telegram No. 241, received on July 20, 1926, regarding oil drilling permits, and to state that the British Minister called on me on July 21 in company with Mr. J. A. Assheton, legal counsel for the Aguila Company, a British-owned organization, for the purpose of discussing the steps which were to be taken in connection with this matter.

I informed Mr. Ovey and Mr. Assheton in confidence of the steps which the Embassy had already taken and which were apparently already known to both. Mr. Assheton stated that his Company, while not wishing to make an issue of the question of unlimited bond, would not accept the conditions of the order as it now stood, particularly the third and fourth paragraphs. The Department will recall from my despatch number 2554 of July 20, 1926,[67] that this corresponds with the attitude as expressed to me of the Standard Oil and Huasteca companies. I was glad to be assured by Mr. Assheton that his Company would not, as erroneously reported in my telegram No. 317 of July 19, 1926, 2 p. m., agree to the conditions of the administrative order of June 8th. The British Minister stated that he intended, at a meeting with the President which would shortly take place, to present a memorandum prepared by the Aguila Company, protesting against the provisions of the order. I am transmitting a copy of this memorandum in a separate despatch.[67]

As reported in my telegram No. 319 of today, 12 noon, all of the oil producing companies in Mexico appear to be taking a firm atti-

[67] Not printed.

tude in opposition to the administrative order of June 8, 1926. The only difference of opinion among the companies at the present time seems to be as to the advisability of applying for concessions under the recently enacted petroleum law and regulations, thereby tacitly admitting the weakness of their position with respect to pre-constitutional rights. It is my understanding that both the Aguila and Corona companies, respectively British and Dutch owned, have applied for concessions to drill under the existing law.

I have [etc.] JAMES R. SHEFFIELD

812.6363/1918 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *August 6, 1926—1 p. m.*

[Received August 7—12:38 a. m.]

329. Embassy's despatch No. 2474, July 1.[68] I have been informed by representatives of two of the leading British oil companies that they are presenting a modified memorandum to the Mexican Department of Industry regarding the drilling permit order of June 8. They have been given to understand that the memorandum will be accepted and if so the order of June 8 will be virtually nullified. They believe that this changed attitude is due to the firm position assumed in our notes of June 22 and July 21.[69]

Despatch will go forward in today's pouch.

SHEFFIELD

812.6363/1926 : Telegram

The Chargé in Mexico (Lane) to the Secretary of State

[Paraphrase]

MEXICO, *August 19, 1926—11 a. m.*

[Received 10:48 p. m.]

348. Ambassador's No. 329, August 6, and despatch No. 2554, July 20.[70] The Secretary of Industry has now indicated to the representatives of the Oil Producers Association that he is disposed to modify

[68] Not printed; it transmitted the translation of a memorandum left with the Secretary of Industry, Commerce, and Labor by the Oil Producers' Association on June 24, 1926.

[69] Neither printed; for instructions upon which they were based, see telegrams No. 212, June 21, and No. 241, July 20, to the Ambassador in Mexico, pp. 679 and 680.

[70] Latter not printed.

the order of June 8 so far as the amount of the bond is concerned, but that he will not change his position with regard to those provisions of the administrative order to which the companies seriously object, namely, paragraphs 3 and 4, since such action, in view of our two notes on the subject, would be "derogatory to Mexican sovereignty". From a confidential source I understand that the reply to our note will state that the modified order meets with the approval of the petroleum companies. Representatives of Aguila, Huasteca, and Standard Oil state that if it is modified only as regards the amount of the bond, they will not accept it.

The Huasteca Company, which had over 125 drilling permits held up because they refused to accept permits under the provisions of the order of June 8, have, since the clauses [*sic*] of the Ambassador's note of July 21, received over 70 permits, none of which were issued under the conditions of the order. . . .

I think we should wait another two or three weeks before we again request a reply to the Ambassador's note of June 22, since, in my opinion, the Government will shortly make known its decision in the matter.

LANE

812.6363/1946

The Chargé in Mexico (Schoenfeld) to the Secretary of State

No. 2830 MEXICO, *September 15, 1926.*

[Received September 24.]

SIR: I have the honor herewith to enclose clipping from the *Diario Oficial* of September 14, 1926, covering the text of a Presidential order dated August 24, last, modifying the order of the Department of Industry of June 8, 1926, with regard to the granting of petroleum drilling permits.

The Department will observe that this decree is substantially in the terms of the proposed draft thereof, transmitted in Mr. Lane's despatch No. 2773, of September 3, 1926,[71] and that, with the possible exception of the change in the amount of bond required in the decree of June 8 and signature thereof by the President personally, the objections advanced by the United States in its recent notes on the subject have not been met.

. . . . . .

I have [etc.] H. F. ARTHUR SCHOENFELD

[71] Not printed.

[Enclosure—Translation [72]]

Executive Decree of August 24, 1926, Regulating the Issuance of Provisional Permits for Drilling Petroleum Wells

ORDER TO THE DEPARTMENT OF INDUSTRY, COMMERCE, AND LABOR

Special conditions governing provisional permits to drill petroleum wells on lands the acquired rights to which have not been fully proved by the petitioning companies:

1. The permits shall be essentially provisional, and shall be subject to the beneficiaries proving legally their rights within the period indicated for this purpose in each case, which can never extend beyond December 31 of the current year.

2. In order that these permits may be issued, the petitioning company or person must first execute a bond for $100,000 (one hundred thousand pesos), to the satisfaction of this Department for each one of the wells drilled upon the lands on which he has not yet proved his rights, to guarantee the value of the rights of the Nation to the petroleum which may be extracted from each one of the wells drilled on these lands, in case the beneficiary of the permits shall not fully prove the legality of those rights within the period indicated for this purpose.

3. If, as a result of the provisions of the foregoing articles, the permits should be canceled, the beneficiary thereof shall be obliged to refund the value of the national rights to the petroleum which may have been extracted under the permit, and if he does not do so, that Department shall realize upon the bond furnished, making use of the compulsory economic authority, to which the bondsmen must expressly submit.

4. These permits are authorized for the sole purpose of not interrupting petroleum exploitation, and they shall be continued in their provisional character until the rights of the beneficiaries are legally proved; and it shall be stated in the permits that their issuance confers no rights whatsoever upon the beneficiaries, and that by the mere use thereof the beneficiaries signify their absolute conformity to all the conditions enumerated in this Decree.

The Order of June 8 of the present year is hereby revoked.

Sufragio Efectivo. No Reelección.

National Palace, Mexico, D. F., August 24, 1926.

The President of the Republic,
P. ELÍAS CALLES, *Rúbrica*

Let it be fulfilled.

The Minister of Industry, Commerce, and Labor,
L. N. MORONES, *Rúbrica*

[72] File translation revised.

812.6363/1937

The Secretary of State to the Chargé in Mexico (Schoenfeld)

No. 1035 WASHINGTON, *September 25, 1926.*

SIR: The Department has received your despatch No. 2773 of September 3, 1926,[73] and your telegram No. 402 of September 17, 11 A. M.,[74] from which it appears that the President of Mexico signed a decree August 24 regulating the issuance of provisional permits for the drilling of petroleum wells, which became effective by official publication on September 14. It appears that this order is identical with the order of June 8, 1926, except that the amount of the bond is fixed in the new order at 100,000 pesos instead of being unlimited, and that the new order has been signed by the President instead of the Secretary of Industry, Commerce and Labor.

Referring to the correspondence which you have conducted with the Mexican Foreign Office regarding the *Acuerdo* of June 8, pursuant to the telegraphic instruction of June 21, 5 P. M., the Department desires you to press for a detailed reply giving the information asked for in that telegram. In this relation your attention is recalled to the fact that a preliminary reply of the Mexican Foreign Office was quoted in your No. 317 of July 19.

The Department also desires to be advised as to the attitude which the American oil companies have taken with respect to the new order.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

812.6363/1960

The Chargé in Mexico (Schoenfeld) to the Secretary of State

No. 2912 MEXICO, *October 1, 1926.*
[Received October 8.]

SIR: I have the honor to acknowledge receipt of the Department's instruction No. 1035 of September 25, 1926, file number 812.6363/1937, directing me to press for a detailed reply to the Ambassador's notes of June 22 and July 21, 1926, with respect to the *acuerdo* of June 8, regulating the issuance of provisional oil drilling permits.

A copy of the note which I am today addressing the Foreign Office is transmitted herewith for the Department's information.[74]

[73] Not printed; see despatch No. 2830, Sept. 15, from the Chargé in Mexico, p. 683.
[74] Not printed.

With respect to the last paragraph of the Department's instruction under acknowledgment, I have the honor to advise that I am taking steps to ascertain the attitude which the American oil companies have taken with respect to the new order and I shall not fail to advise the Department as soon as I am in receipt of the information desired.

I have [etc.] H. F. ARTHUR SCHOENFELD

812.6363/2098

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 3417 MEXICO, *December 23, 1926.*

[Received December 31.]

SIR: Referring to the Embassy's despatch No. 2912 of October 1, 1926, and to previous correspondence regarding the Mexican Government's order of June 8, 1926, on the subject of provisional drilling permits, and the modification of this order by Presidential Decree of August 24, 1926, I have the honor herewith to enclose translation of an official statement issued by the Department of Industry and published in today's press purporting to "clarify" this order.

No reply from the Mexican Government to the Embassy's note of October 1, last (a copy of which was enclosed with the despatch above mentioned) has been received.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation]

Official Statement Issued by the Mexican Department of Industry, Commerce, and Labor [76]

Certain petroleum enterprises have requested clarifications regarding the order issued by this Department dated June 8 and amended August 24, last, for the perforation of wells on lands to which the rights of the enterprises or private individuals might not have been duly justified.

The purpose of the Department in issuing this authorization was none other than to accede to a written petition of serious companies who offered to give the guarantees the Government demanded to its satisfaction in order to obtain permits with the purpose of not interrupting exploitation to the prejudice of the industry and of the enterprises and private individuals who, on account of their engagements might suffer some injury as the result of the paralyzation of their work.

[76] Printed from the Mexico *Excelsior* of Dec. 23, 1926

As is seen, this Department granted the authorization guided by a broad spirit of cooperation and interpreting the law in its most liberal sense, in view of its constant desire to grant to the industry all facilities compatible with the legal precepts.

As the first order of June 8 established unlimited bond to guarantee the drillings and the exploitations which might be made by virtue of this order and certain enterprises stated that they were unable to give this kind of guarantee, and since every order must be of general application, a new attempt was made to give greater facilities and the amended order of August 24 modified the unlimited guarantee by a fixed guarantee of 100,000 pesos for the bond, which for this purpose was to be given according to the provisions of the first order cited.

If, then, drilling permits are only to be granted to those who justify their rights in the lands they desire to drill, the Department, in giving this greater degree of facility, had to try to see that such liberality was guaranteed.

The bond established has two purposes:

I. To guarantee the amount of any royalty that might belong to the nation in case the land be national property;
II. To back up morally the authorization granted.

And if the enterprise benefited by the permits can not prove its rights by any of the means which our laws concede to it, it is logical that the nation should have the power to require the legal participation belonging to it in case the lands are national property and, in case they be not so, that the rights of third parties be protected; but if the beneficiaries should not pay the share which legally belongs to the Federal Government, the Department would be legally capacitated to make the bond effective without this implying that the interested parties were deprived of the judicial remedies the law grants in these cases if they think that this measure is violative of their rights.

If after the granting of the provisional permit the beneficiary should not prove his acquired rights in the land and petitions for his concession, the latter will be granted preferentially always saving the rights of third parties.

As for the granting of the bond, it is believed that it should be made before drilling is commenced, although it is not the purpose of the Department to cause unnecessary expenses, since if the drilling carried out were not productive this same bond can be used for a new drilling to be granted under similar conditions or will be cancelled if the said bond is not used for this purpose.

RESERVATION BY THE UNITED STATES OF THE RIGHTS OF AMERICAN CITIZENS WHICH MAY BE AFFECTED BY THE MEXICAN LAW OF COLONIZATION OF APRIL 5, 1926

812.52/1376

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2264 MEXICO, *May 20, 1926.*

[Received May 28.]

SIR: I have the honor to transmit herewith enclosed for the Department's information, the translation of the Law of Colonization, based on article 27, which appeared in *Excelsior* of May 20, 1926, together with five copies in the original Spanish.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation [77]]

Mexican Law of Colonization of April 5, 1926

Plutarco Elías Calles, Constitutional President of the United Mexican States, to the inhabitants thereof, be it known:

That in the exercise of the authority granted to the Executive in my charge by the decree of Congress of the 6th of January of the present year, I have deemed it expedient to issue the following:

FEDERAL LAW OF COLONIZATION

ARTICLE 1. In accordance with the provisions of article 27 of the Federal Constitution, the colonization of agricultural property privately owned under the provisions of this law, is declared of public utility.

ARTICLE 2. The following lands shall be subject to colonization:

I. Lands which are the property of the Nation and those which the Nation may acquire through the application of the Federal Law of Irrigation or through any other title.

II. Lands which the National Bank of Agricultural Credit may acquire for this purpose.

III. Lands privately owned included under the terms of this law.

ARTICLE 3. In the lands referred to in clauses I and II of article 2, the works of colonization shall be undertaken by the Federal Government, by the National Bank of Agricultural Credit, and by colonizing enterprises or companies either separately or in cooperation as determined by the regulations.

In the lands referred to in clause III, colonization may be undertaken by the owners when they voluntarily submit to the provisions of this law and its regulations.

[77] File translation revised.

ARTICLE 4. Privately owned agricultural property is subject to the provisions of the present law:

I. When its owners request it and the Federal Government authorizes it.

II. When within the region comprising a colonization project there are no lands comprehended in clauses I and II of article 2, and clause I of this article 4.

The following are excepted from the provisions of this clause:

(*a*) Lands which are being duly utilized for agricultural purposes.

(*b*) Lands which constitute an industrial agricultural unit planned and carried out in accordance with modern technology.

(*c*) Lands whose owners are directly utilizing more than 50 percent of each kind of available land.

Proof of the circumstances mentioned in the foregoing subclauses, as well as the declaration that a privately owned property or a part of it is subject to this law, shall be made by the Department of Agriculture and Fomento, after hearing the interested party and following the administrative procedure for which the regulations provide, and during which there shall be heard the opinion of experts, one of whom shall be named by the interested party himself.

ARTICLE 5. Within a period of 60 days from the date of notification of the declaration referred to in the last paragraph of the foregoing article, the owner may solicit authorization, subject to this law and its regulations, to colonize on his own account, or in connection with the Federal Government, the National Bank of Agricultural Credit, or a private enterprise.

ARTICLE 6. If the owner does not make use of the privilege granted him in the foregoing article, the Federal Executive shall decree the expropriation of the lands to the extent necessary for undertaking the colonization, and indemnification shall be made by means of the delivery to the owner of payment bonds which the colonists may make up to the value determined for the expropriated property. In case the National Bank of Agricultural Credit furnishes the amount necessary to make the payment of indemnification, the bonds of the colonists shall be delivered to it.

ARTICLE 7. Colonizing enterprises, the National Bank of Agricultural Credit, or the private individuals in the cases referred to by this law, must obtain authorization of the Department of Agriculture and Fomento to undertake colonization in conformity with the following provisions:

I. The authorization may only be granted in settled cases, where the farm [boundaries] have been fixed, and the Department has approved the plans of subdivision and colonization, as well as the period of payments, which cannot be extended, except in fortuitous cases or in case of *force majeure*, instances in which it may be necessary to grant an extension of time in order to carry out the project.

II. Persons petitioning authorization must prove their solvency or furnish security satisfactory to the Federal Executive, and must, furthermore, deposit in cash with the National Bank of Agricultural Credit 30 percent of the total value of the works to be undertaken, the investments to be supervised by the Department of Agriculture and Fomento.

When the petitioner is the National Bank of Agricultural Credit, it is only necessary to prove that there is an authorization for the amount of the corresponding disbursement.

III. Other provisions which may be provided by this law and its regulations.

ARTICLE 8. Lands to be colonized shall previously be put into condition through the construction of roads, irrigation works, fences, and, in general, through all kinds of land improvements which will guarantee a good economic development. They shall be subdivided into tracts whose development will be sufficient for the support and economic betterment of a rural family, in accordance with the following provisions:

I. In irrigable lands, 5 hectares as a minimum and 150 hectares as a maximum.

II. In lands of high seasonal rainfall, 15 hectares as a minimum and 250 hectares as a maximum.

III. In lands having other seasonal rainfall, 20 hectares as a minimum and 500 hectares as a maximum.

IV. In arid lands 50 hectares as a minimum and 5,000 hectares as a maximum.

ARTICLE 9. The lands will be colonized with national or foreign colonists.

The regulations shall determine the proportion of foreigners to be settled in each colony.

The acquisition of lands by foreign colonists shall be subject to the provisions of the organic law of clause I of article 27 of the Constitution, and its regulations.

ARTICLE 10. The following shall be given preference as colonists in the order enumerated:

(*a*) Renters on shares or tenants of the land to be colonized.

(*b*) Farmers domiciled in the locality.

(*c*) Expatriated farmers who desire to return to the country.

(*d*) Farmers in general.

(*e*) Individuals who are not farmers.

ARTICLE 11. The regulations shall fix the conditions which must be complied with in order that one may be admitted as a colonist. Among these shall be the following:

I. To be a preferred colonist one must prove that he is an experienced farmer, of age, healthy, and of good character.

In the case of foreigners, this proof must be made to the satisfaction of the Consul who has to visa the passports.

II. To show that he has the capital to operate a farm for the first year, or credit to obtain it.

Foreign colonists must deposit with the National Bank of Agricultural Credit the sum of 1,000 pesos per family. This amount may be withdrawn for expenses of cultivation and for maintaining a family, when the work is commenced.

III. To pledge himself to pay 5 percent of the value of the tract at the time of the first harvest, and likewise to pay the balance in annual installments to be determined in accordance with the regulations.

Failure to pay the annual installments shall give the colonist the right to an extension of all payments for one year, if this failure is due to loss of crops for causes not imputable to the colonist. In any other case failure to pay two annual installments shall be sufficient cause for the cancelation of the contract and the recovery of the parcel by the colony administration. The tract shall be allotted to a new colonist. Eighty percent of what may have been paid in shall be returned to the colonist. The 20 percent remaining, together with any increase in value of the land, shall go to the benefit of the colony in accordance with the provisions of the regulations.

IV. To pledge himself to pay from the first year the quotas for the general expenses of the colony, to farm the tract personally or to supervise the farm work and to comply with the regulations approved for each colony by the Department of Agriculture and Fomento.

ARTICLE 12. No colonist may transfer, mortgage, or encumber his parcel in any manner until he shall have completed his payments. In the meantime it shall be especially encumbered by this debt.

Any acts in violation of this provision shall be considered nonexistent.

ARTICLE 13. Transfers made after the payment of the parcel shall be invalid if made to a person who does not fulfill the requirements of this law to be a colonist, or if the maximum or minimum limits fixed for the respective areas of land which an individual may acquire within a colony are changed.

Similar rules shall be observed in the case of testamentary succession. Parcels must be auctioned to the persons who fulfill the requirements of a colonist in accordance with the regulations of each colony, depending on each case, or they shall be reconstituted, within the authorized boundaries of the respective colony.

ARTICLE 14. The colony shall be administered by the Federal Government or by the person or institution authorized for this purpose; but managerial powers shall begin to be given to the colonists as soon as they begin to pay their installments, and it shall be delivered wholly into their hands when 50 percent of the value of the lands has been paid.

ARTICLE 15. The Federal Executive through the Department of Hacienda and Public Credit and on the recommendation of the Department of Agriculture and Fomento shall determine the materials which may be imported free of duty when destined for colonization purposes.

Likewise, and within the authorization of the Budget of Expenses, the expenses of transportation within the country may be furnished to the colonists.

ARTICLE 16. Any questions arising from the application of the present law will be solved by the Executive, who is likewise empowered to issue all the supplementary provisions and such as may tend to the better enforcement of its precepts.

TRANSITORY

SOLE ARTICLE: The law of colonization of December 15, 1883, and all provisions on this subject now in force, are repealed.

Therefore I order this to be printed, published, circulated, and complied with.

Given in the Palace of the Federal Executive Power in Mexico the fifth day of April, nineteen hundred and twenty-six.

P. ELÍAS CALLES, *Rúbrica*

The Secretary of Agriculture and Fomento,
LUIS L. LEÓN, *Rúbrica*

812.52/1376

The Secretary of State to the Ambassador in Mexico (Sheffield)

No. 928 WASHINGTON, *June 11, 1926.*

SIR: The Department has received your despatch No. 2264 of May 20, 1926, with which you enclosed a translation of the so-called Law of Colonization, together with copies of the original text of the law. It is noted that the law provides for the expropriation of private property as well as lands of the nation.

An examination of the provisions of the law indicates that it is objectionable in that it provides for expropriation by administrative action without any provision for the usual and orderly judicial procedure whereby the owner of the land is permitted to introduce before a regularly constituted court his evidence in opposition to the

attempted expropriation, and to have the matter passed upon by such a tribunal which, if it sustains the expropriation, will presumably fix a just compensation to be paid the owner at the time of the taking of his properties.

On the contrary this law apparently contemplates no payment to the owner by the Government which expropriates the land, but remits the owner for his compensation to the payment by the colonist of very small annual installments with no provision for the payment of interest on deferred payments.

Therefore it appears that the law is lacking in the essential elements of justice usual in the law and procedure of nations concerning the expropriation of private lands for purposes of public utility.

The Department desires you to invite the attention of the Mexican Government to these considerations and to the possibilities which the law furnishes for the infringement of American rights, leading perhaps to further claims on the part of Americans against the Mexican Government through the General Claims Commission,[78] and adding to the difficulties already pending in respect of the land and petroleum laws,[79] and of expropriations under the agrarian laws.

You will add that it is recognized that the situation may be ameliorated to some extent by the provisions of the regulations to be issued for the enforcement of the law, and that your Government earnestly hopes that such may be the case, but that in any event it desires to place on record with the Mexican Government its reservation of the rights of American citizens which may be unfavorably affected by the law.

I am [etc.]

For the Secretary of State:
ROBERT E. OLDS

RESERVATION BY THE UNITED STATES OF THE RIGHTS OF AMERICAN CITIZENS WHICH MAY BE AFFECTED BY THE MEXICAN DECREE OF APRIL 8, 1926, REGARDING THE RESTITUTION AND DOTATION OF WATERS

812.81/4

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2217 MEXICO, *May 12, 1926.*
[Received May 20.]

SIR: I have the honor to transmit herewith enclosed for the Department's information, copy and translation of an Executive Decree

[78] For text of the convention under which this Commission was created, see *Foreign Relations*, 1923, vol. II, p. 555.
[79] See *ibid.*, 1925, vol. II, pp. 521 ff.; also *ante*, pp. 605 ff.

from the *Diario Oficial* of May 7, 1926 in regard to the procedure to be followed by the agrarian authorities in the matter of the restitution and dotation of waters.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation [81]]

Executive Decree of April 8, 1926, Regulating the Functioning of Agrarian Authorities in the Matter of Restitution and Dotation of Waters

Plutarco Elías Calles, Constitutional President of the United Mexican States, to the inhabitants thereof, know ye:

That by virtue of the authority which section I of article 89 of the Mexican Constitution and article 3 of the law enacted by the Congress of the Union on November 22, 1921, confer upon the Executive of the Union; and

Considering, that the Executive in my charge has given especial attention to the study of the agrarian problem, the complete solution of which tends to an assured and effective development of the agricultural wealth of the country through the economic and social improvement of the peasant classes who constitute the great majority of our inhabitants; and has prescribed for the attainment of the proposed aim all those measures in its program which have been deemed appropriate; and

Considering, that, although many of these measures have dealt with and solved some aspects of the agrarian problem, other measures covering aspects of great importance requiring immediate attention remain to be adopted; among these being that one dealing with the restitution and dotation of waters to the villages of the Republic, the regulations of which, on account of their importance, must be given priority; and

Considering, that while in the existing laws on the subject of waters, and particularly in the law of December 13, 1910, the utilization of waters was established as a privilege which the public authority could grant legally, only for the benefit of private interests, article 27 of the Constitution and the law of January 6, 1915, stipulated clearly the right of the villages to recover the waters of which they had been deprived or the dotation of those which they may require for the necessities of life, it being an unavoidable duty of the State to observe and apply fully these provisions which establish rights absolutely distinct from the right of petitioning for some favor or grant which every private person has; and

[81] File translation revised on basis of Spanish text transmitted to the Department by the Ambassador in Mexico in his despatch No. 2296, May 26, 1926; received June 4. (File No. 812.81/5.)

Considering, that for the application of the constitutional laws above-mentioned, the agrarian authorities, especially the national and local commissions, were created, for whose functioning in that which relates to the restitution and dotation of lands the agrarian regulations of April 10, 1922, were issued, which established nothing relative to the restitution or dotation of waters for which reason these authorities have been functioning in such cases, their actions being based on the 11th transitory article of the Federal Constitution and on the decree of November 1, 1923, relative thereto, which applied the constitutional provisions that were consistent with the legal side of the water problem; and

Considering, that the necessity for regulating the procedure of the agrarian commissions in that which relates to the restitution and dotation of waters is evident, as well as the determination of the part which the Department of Agriculture and Fomento should have in acting upon petitions in order that there should be unity of action among the public authorities who, in the exercise of their powers, are to supervise the legalization of the utilization of waters;

Now, therefore, I have deemed it expedient to decree the following regulations for the functioning of the agrarian authorities in that which relates to the restitution and dotation of waters.

ARTICLE 1. The following may request and obtain waters under the head of restitution throughout the Republic:

I. Villages.
II. Hamlets.
III. Congregations (*Congregaciones*).
IV. Joint ownerships (*Condueñzanos*).
V. Tribes.
VI. Communities.
VII. Villages and towns which have been totally or partially deprived of the waters which they formerly utilized for domestic and public purposes, as well as for the irrigation of lands which by any title or at any time they may have possessed in common.

ARTICLE 2. The following may petition for and obtain waters under the head of dotation for public and domestic purposes and for the irrigation of town site lands or those of communal ownership, or of commons which have been given into their definitive possession throughout the Republic:

I. Villages.
II. Hamlets.
III. Congregations.
IV. Joint ownerships.
V. Communities.
VI. Towns and villages, exclusively for the public and domestic uses of their inhabitants and the irrigation of their common lands.

ARTICLE 3. The restitution of waters shall be made whenever the interested parties prove authentically their rights to the waters in question; and that these were taken away from them subsequent to June 25, 1856, by any measure nullified by the 9th paragraph of article 27 of the Constitution.

The dotation of waters shall always be made and in all the cases where it is duly proved that the settlement requesting the waters does not have them or not in sufficient quantity for the domestic, public, and agricultural needs of the town. The dotation will be made of the volume of water strictly indispensable to fulfill these needs, the waters used by small properties being respected, unless the dotation is for the domestic uses of the petitioners.

ARTICLE 4. Dotations of waters may be made from those of private property, the property of the States, and the property of the Nation.

In the two first cases the waters shall be expropriated by the Nation, the usufruct shall pass to the benefit of the settlement. In the third case the dotations granted shall have the effect of restricting the utilization legally or otherwise, when the amount disposable is not sufficient to make the dotation effective and to maintain the previous utilizations in the same state.

The restitution and dotation of waters, whatever their jurisdiction may be, give to the settlement benefited the right to the use and utilization of the waters, which use and utilization shall be subject to the police supervision of the Administration of Waters of the Department of Agriculture and Fomento, as well as to the rules which the granting authorities may fix for their interior distribution.

ARTICLE 5. The utilization of waters which may be granted for any of the above-mentioned reasons, include, in favor of the settlement benefited, the legal right of way of waters across the lands of the national domain, commons, or private property which may be necessary due to the conditions of extent and location, as the above-mentioned granting authorities may determine. The right of way may be imposed even upon hydraulic works which other service of waters may have established; but in such case this service must be integrally respected whenever it shall not have been affected by the respective decision.

ARTICLE 6. The original petition must be signed by the person or persons whom the petitioners may designate as their representatives for this purpose, and it must be presented to the local Agrarian Commission of the corresponding unit of population.

ARTICLE 7. Upon receiving a petition, the local Agrarian Commission shall proceed to publish the same a single time in the respective official newspaper; it shall determine from the report of the Governor whether the settlement making the petition comes within

any of the political groups specified in articles 1 and 2 of these regulations, as the case may be. The same commission shall ascertain the nature of the waters requested, and shall consult directly with the regional office of the Department of Agriculture and Fomento in making its report.

ARTICLE 8. If the waters requested prove to be the property of the Nation or those under Federal jurisdiction, the local Commission, having made a statement as to the legality of the petition shall dispatch the papers to the National Agrarian Commission for its confirmation and decision. If the waters prove to be under the jurisdiction of the States or private property, the petition shall be acted upon by the local Agrarian Commission in accordance with the rules contained in articles 10 and 11 of the present regulations, and in the form and terms established by article 27 of the agrarian regulations of April 10, 1922.

ARTICLE 9. When the papers have been received by the National Agrarian Commission, an extract of the petition shall be published a single time in the *Diario Oficial* of the Federation and the papers shall be open to consultation of all those affected in the offices of the same Commission during a period of 30 working days which cannot be extended, counting from the date of publication, in order that they may take due note thereof and present within the same period the proofs and observations which they consider necessary.

The foregoing notice can be given directly to interested third parties when the National Agrarian Commission has sufficient data to identify and locate them; but in any case the sole publication of the extract of the petition in the *Diario Oficial* of the Federation shall be sufficient as a notification for all legal purposes.

ARTICLE 10. In the cases of petitions for restitution when the period referred to in article 9 has elapsed, an examination shall be made to determine whether the papers presented by the interested parties afford sufficient basis for the restitution sought; if so, the volume of waters to be restored shall be determined as hereinafter provided.

If the papers presented by the interested parties do not justify a restitution, the National Agrarian Commission shall immediately give the respective decision.

The volume restorable shall be the amount legally recoverable unless it be in excess of the actual needs of the petitioners, or unless the titles establishing the restitution do not fix a volume, in which case the procedure shall be determined in accordance with the provisions of the following article.

If any part of the volume restorable is utilized for domestic purposes by another settlement, this part shall be reduced to the indispensable minimum, and shall be deducted from that volume.

ARTICLE 11. In cases of petitions for dotation, where the period referred to in article 9 has elapsed, a study shall be made as to what is the volume which must be granted as a dotation to the settlement making the request.

The bases for this study shall be, in the case of irrigation, the irrigable area, the nature of the lands and the crops to which the latter are devoted, the climate, the loss of water through conduction, and the nature and importance of the existing legal uses of the water in relation to the total disposable volume of water; in the case of public and domestic uses, the census of population and number of head of cattle to be provided for; in any event, the amount of water strictly necessary for the respective uses will be fixed.

If it is indispensable to affect the existing legal uses, the volume by which each one of them shall be reduced shall be fixed in accordance with its nature or importance.

When several petitions are presented, all relating to the same stream or source of domestic water, no one of them shall be decided singly without a previous study of a general plan of distribution.

ARTICLE 12. Whenever a petition for restitution or dotation of waters affects the streams or reservoirs of water under Federal jurisdiction, the study made of the volume which is to be granted to the petitioning village shall be transmitted to the Department of Agriculture and Fomento, and, if required, a study of the volume necessary to reduce the existing use of the water. Together with these studies there shall be transmitted the necessary data and history of the case. The Department of Agriculture and Fomento, taking into account the regulations of all the uses and utilizations of waters under Federal jurisdiction under its charge, shall give its decision upon a project within a period of 30 days.

The duly assembled papers, together with the ruling of the Department of Agriculture and Fomento, shall be submitted for the consideration of the National Agrarian Commission in the form and terms established for cases of restitution and dotation of lands, to the end that it may formulate and recommend the respective decision. In each case care should be taken that there be uniformity of opinion between the Department and the Commission before the decision is submitted for the approval and signature of the President of the Republic.

When the decree has been issued by the President of the Republic, a certified copy thereof will be sent to the Administration of Waters, which must make the necessary readjustments and immediately notify the interested parties wherein their contracts, concessions, titles of confirmation are modified, and the volumes by which their use of the water is reduced.

ARTICLE 13. When a settlement is to receive provisionally through restitution or dotation lands which have been irrigated by previous owners or possessors of the affected rural property, there may be included in the decree the part relative to the utilization of the volume of waters which corresponded through accession to these irrigable lands, a volume which shall be fixed in relation to the total amount which the affected properties were using and the total surface which they irrigated.

Whenever a provisional possession of waters under the head of an accession is given to a village endowed with irrigable lands, the local Agrarian Commission shall immediately notify the Department of Agriculture and Fomento thereof, in the understanding that as an act of regulation is involved which, if it refers to the use of waters under Federal jurisdiction, is within the exclusive jurisdiction of the Department of Agriculture and Fomento, the provisional decision, in the part regarding the manner and conditions under which the village is to utilize the waters, may be modified by that Department if this is deemed advisable. The National Agrarian Commission shall be informed as to the modification made, for the action which may be necessary in giving the definitive decision in regard to the respective papers.

ARTICLE 14. If a settlement is in provisional or definitive possession of common lands, delivered to it by restitution or dotation, within which are included lands irrigated by previous owners or possessors of the affected rural properties, and it has not received the corresponding waters, it may petition the National Agrarian Commission to deliver the volume of water which, through accession, would correspond to the said irrigated lands.

The appropriate study shall be made by the National Agrarian Commission which will take into consideration the following factors: the total surface which has been irrigated by the affected property; the volume of water which the property was using; the manner and conditions under which it used the water; the legal precedents for the use of the water which may be formed in the Administration of Waters of the Department of Agriculture and Fomento, or in the corresponding offices; and the surface of irrigable lands which may have come into the possession of the settlement making the petition. If sufficient data cannot be collected to determine proportionally the volume of waters which corresponds to the irrigable common lands of the village, the decision shall be made, taking into consideration the needs of those lands, in accordance with the provisions of article 11.

If the waters affected by the accession are private property or State property, the National Agrarian Commission shall give and execute, itself, the respective decision.

In the case of waters under Federal jurisdiction, there shall be followed *in toto* the procedure established in article 12 of these regulations covering restitution or dotation of waters, except the procedure relative to the consultation with the President of the Republic, which will not be necessary whenever due care is taken that there be uniformity of opinion between the Department and the Commission, before the latter gives and carries out the pertinent decision.

ARTICLE 15. The utilization of waters under Federal jurisdiction for the benefit of common lands given in provisional possession which had not been irrigated before such possession, may only be made by means of a provisional permit granted by the Department of Agriculture and Fomento.

Likewise this Department may grant provisional permits for the utilization of Federal waters while the respective petitions for restitution and dotation of waters, whether for public and domestic uses or for the irrigation of lands definitively owned, are being acted upon.

ARTICLE 16. In order to aid free of charge the villages of the Republic which desire such aid in their negotiations with the agrarian authorities or with the Department of Agriculture and Fomento to obtain utilization of waters, as well as to expedite the application of the provisions of the present regulations, there is established the Office of Solicitor of Waters, directly under the Secretary of Agriculture and Fomento, for the better discharge of its duties.

ARTICLE 17. There are excepted the rights of persons who believe themselves affected by the application of the provisions of these regulations, in order that they may exercise them in the terms of article 10 of the constitutional law of January 6, 1915.

TRANSITORY

ARTICLE 1. Papers relating to restitution, dotation, and distribution of waters by accession, which have not been acted upon, must conform with the provisions of these regulations, and of those which in the future may be initiated at the request of settlements which have the right to make such request.

ARTICLE 2. The Office of Solicitor of Waters shall proceed immediately to put in proper form such papers as are now under consideration in the National Agrarian Commission, as well as those to which objection may have been made because of faulty procedure, and shall place the respective petitions in the hands of the local Agrarian Commission.

ARTICLE 3. The present regulations shall become effective from the day of their promulgation, all provisions to the contrary being null and void.

Wherefore, I order this to be printed, published, circulated and given due compliance.

Given in the Palace of the Federal Executive Power at Mexico City, on the 8th day of the month of April 1926.

P. ELÍAS CALLES, *Rúbrica*

The Secretary of State and of Agriculture and Fomento,

LUIS L. LEÓN, *Rúbrica*

812.81/6

The Secretary of State to the Ambassador in Mexico (Sheffield)

No. 936 WASHINGTON, *June 22, 1926.*

SIR: The Department has received your despatch No. 2217 of May 12, 1926, with which you forwarded copy and translation of an Executive Decree promulgated May 7, 1926, in regard to the procedure to be followed by the agrarian authorities in the matter of the restitution and dotation of waters. The Department has also received your despatch No. 2297 of May 26, 1926,[82] in which you set forth what you consider to be objections to the provisions of that decree.

The Department has given careful consideration to the decree in question and has reached the conclusion that it is objectionable in the following particulars:

It is provided in Article 3 that restitution of waters will be made whenever interested persons prove their rights to such waters, of which they were deprived subsequently to June 25, 1856. No provision is made for compensating persons who since that date may have obtained rights to such waters in accordance with existing laws of Mexico.

Article 4 sets forth that gifts of waters belonging to private property may be made to others and no provision is made for the payment of compensation to the owners of the property.

Article 5 provides for the placing on private property without compensation of a servitude for the passage of waters "even upon hydraulic works which other service of waters may have established."

Article 9 contemplates that a single publication in the *Diario Oficial* that a restitution or gift of waters has been requested shall constitute sufficient notice to the property owners affected by the request, even although such publication may never have come to their notice.

The provisions of Articles 11 and 14 appear to place property owners under the exclusive power of the National Agrarian Commission which is given sole authority to decide by how much the waters heretofore legally used by such owners may be reduced and given to others.

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[82] Not printed.

In general the decree is further objectionable in that it makes no provision for an orderly process of judicial hearing and determination such as is usual in matters of expropriation or [*of?*] private property for purposes of public utility.

In brief, this decree provides for the taking of private property on insufficient notice by the action of administrative officials alone and without compensation to the owners and thus is repugnant to the principles of fair dealing and justice.

You will bring the foregoing to the attention of the Mexican Government with a reservation as to all rights of American citizens which may be injuriously affected by this decree.[83]

I am [etc.]

For the Secretary of State:
ROBERT E. OLDS

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN CITIZENS ADVERSELY AFFECTED BY MEXICAN RELIGIOUS LEGISLATION

812.404/306

The Secretary of State to the Chairman of the House of Representatives Committee on Foreign Affairs (Porter)

WASHINGTON, *March 2, 1926.*

MY DEAR CONGRESSMAN: I received your letter of February twenty-sixth [84] enclosing a copy of the Resolution introduced by Congressman Boylan, which reads as follows:

"*Resolved*, That the Secretary of State is hereby authorized and directed, if not incompatible with the public interest, to furnish to the House of Representatives at the earliest possible date such data and information as he may have in respect of the expulsion from Mexico of citizens of the United States on account of their religious belief."

The only information I have as to the expulsion of citizens of the United States from Mexico is the following:

(1) In a despatch from the American Ambassador to Mexico,[84] I learned that Mesdames Semple, Evans, and Connelly of the Academy of the Visitation, a Catholic School situated at Coyoacan in the neighborhood of Mexico City, had been ordered expelled. Mr. Sheffield [85] interceded for them with the Minister of Foreign Affairs. The order was subsequently revoked but I am informed by the Ameri-

[83] On June 29, 1926, Mr. Sheffield addressed a note to the Foreign Minister in compliance with this instruction; he received a reply July 10 to the effect that the matter had been referred to the appropriate authorities for consideration. (File No. 812.81/7.)

[84] Not printed.

[85] James R. Sheffield, American Ambassador in Mexico.

can Ambassador that they believed it to be the best policy to close their school and leave the country and that they are leaving on the fourth day of March for Mobile, Alabama. I have today received a message that Madame Semple has informed the Embassy that all Government supervision has been withdrawn from property at Coyoacan.

(2) Another case which came to my attention was that of Dr. J. A. Phillips, a Methodist Episcopal ordained minister,[86] who was Principal of the Institute of the People, a school at Piedras Negras opposite Eagle Pass, Texas. The expulsion was also said to include three teachers. It was afterwards reported to me that the order had been revoked and I am now informed by the Embassy in Mexico that Phillips will be allowed to return to Mexico and the school will be re-opened provided he, being a foreigner and a minister of religion, does not teach. I take it in this case the expulsion is claimed on the ground that under the Mexican Constitution no ordained minister of any creed may teach in a school of primary instruction.

(3) There has been reported to me that Elder Ralph E. Brown of the Church of the Latter Day Saints was ordered to leave on February 20 by the Municipal Authorities of Tula de Allen de State of Hidalgo and that the following Mormon Missionaries from Ozuba, State of Mexico, have been given ten days by the Municipal Authorities in which to leave the State. No mention is made of their leaving the country. The names of the parties as near as I can make out are Owen V. Call, Daniel H. Higgenbottham, and one other person, whose name I cannot make out from the despatch, from Salt Lake City, and Alton S. Hays of Provo, Utah. Mr. Sheffield reports that he is doing everything he can on behalf of Madame Semple and any other American citizens who may be in difficulty and that he will continue to do so. He has been instructed to this effect.

It is impossible for me to determine in each one of these cases exactly the ground of expulsion but I assume on the ground that they are teaching in violation of the Constitution and Laws of Mexico, which I have furnished you.

Very sincerely yours,

FRANK B. KELLOGG

812.404/338

Press Release Issued by the Department of State, March 9, 1926

On the 4th instant the State Department instructed the American Ambassador at Mexico City,[86a] Mr. James R. Sheffield, to use his good offices on behalf of the American citizen, the Reverend Mr. F. J. Krill, who was reported to have been threatened with arrest in the State of Vera Cruz.

It was also suggested to the Ambassador that he express the earnest hope that in this or similar cases American citizens would not be

[86] Minister in the Methodist Episcopal Church, South.

[86a] Telegram not printed.

obliged because of their religious beliefs or practices to undergo actual hardship or injury, and that sufficient time be accorded them for the arrangement of their private affairs and the assembling of their personal effects.

It was further suggested that Mr. Sheffield state that it is the belief of this Government that from the point of view of comity, if for no other reason, this Government had the right to expect full consideration to be shown to American churchmen, and this Government is naturally concerned that American citizens should not suffer unduly from constitutional disabilities or restrictions imposed by sudden and rigorous application of law upon religious faiths.

The Reverend Mr. Krill's case was brought to the attention of the Foreign Office by the Ambassador and the Ambassador reports that on the afternoon of the 8th he received a telegram from Jalapa whither the Reverend Mr. Krill had gone to consult State authorities which read as follows:

"My case satisfactorily settled. (Signed) F. J. Krill."

The authorities further reported that they were disposed to permit the Reverend Mr. Krill to remain in Mexico.

312.1124 Caruana, George J. (Archbishop)

The Secretary of State to the General Secretary of the National Catholic Welfare Conference (Burke)

WASHINGTON, *May 18, 1926.*

DEAR FATHER BURKE: I am in receipt of your letter of May 14, 1926,[87] stating that information has reached you that His Excellency, the Most Reverend George Caruana, Apostolic Delegate to Mexico, an American citizen, has been notified by the Secret Police of the Mexican Government that he must leave Mexico within a period of six days. You add that you have been advised by the Chief of the Division of Mexican Affairs that the American Ambassador at Mexico City had interceded on behalf of Archbishop Caruana.

In reply I desire to inform you that Ambassador Sheffield telegraphed under date of May 12[87] that Archbishop Caruana had informed him that he received notice on the afternoon of the 12th instant that he must leave Mexico within six days. The Ambassador further reported that, in accordance with telegraphic instructions from the Department sent to him on April 30,[87] he would intercede on behalf of the Archbishop. Under date of May 13, the Ambassador telegraphed[87] that he had interceded with the Mexican Minister of Foreign Affairs on behalf of the Archbishop and that the Minister

[87] Not printed.

had promised to make an investigation and advise the Ambassador as to the reasons for the proceedings.

The Ambassador has now reported in a telegram dated May 15, noon,[88] that he had just received a memorandum dated the 13th instant, from the Foreign Office, stating that the Archbishop had been invited to leave the country. A further telegram received from the Ambassador, dated May 17, 10 A. M.,[88] stated that Archbishop Caruana left Mexico City for Washington via Laredo on the night of the 16th instant.

The Department has taken a deep interest in this case and, as you know, while Ambassador Sheffield was interceding with the Mexican Foreign Minister I made appropriate representations on behalf of the Archbishop through the Mexican Ambassador at this capital. I regret the outcome of these efforts but I feel that everything has been done that this Government could consistently do in the circumstances.

Sincerely yours,

FRANK B. KELLOGG

812.404/586

The Secretary of State to the Chargé in Mexico (Lane)

No. 995 WASHINGTON, *August 25, 1926.*

SIR: You are informed that the Mexican Ambassador called at the Department on August 13, and during a conversation held with the Secretary of State the question of the church and clergy in Mexico was introduced. The Secretary told the Ambassador as he had previously done that he had of course conferred with Catholics who had been to see him, and that wherever the personal or property rights of American citizens were invaded by the Mexican Government, in violation of either Mexican law or the principles of international law, the Secretary had protested and would continue to do so. He added that he had even gone further in cases where the Ambassador's government was probably within its legal rights in expelling American citizens, as he had done in the case of Archbishop Caruana, not basing his action upon a right of the United States Government but merely as a friendly country. The Secretary further said that he had informed the Ambassador of the communications the Department had received from Catholics throughout the country, and when he returned after a short absence from Washington he might desire to show the Ambassador the communications subsequently received. The Secretary also remarked that the re-

[88] Not printed.

ligious regulations issued by President Calles were creating a very unfortunate sentiment in this country not only among Catholics but also among other classes of people, and while he did not claim the right to dictate to Mexico what her internal policies should be, he thought it wise to inform Señor Téllez of the sentiment in the United States. The Ambassador replied that he was aware of such sentiment and stated that in his opinion the religious matter would be adjusted.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

RENEWED NEGOTIATIONS FOR A SETTLEMENT OF THE DISPUTE OVER THE RIO GRANDE BOUNDARY[89]

711.12151a/81 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *April 22, 1926—4 p. m.*

148. Reference Department's 176, August 11, 3 p. m., 183, August 17, 6 p. m., and 231, October 26, 3 p. m., and your despatches 983, August 19 and 362 [*1362*], November 16.[90]

Department informed that Mexican Boundary Commissioner Serrano wrote American Commissioner Curry March 16[91] that the Mexican Department of Communications and Public Works is disposed to commence work on defense plan and rectification in Rio Grande and that such work was delayed only by lack of decisions in pending banco cases in Rio Grande valley and therefore asked to be advised whether Curry was prepared to join with him in deciding banco cases so that works mentioned might proceed without loss of time.

Department does not doubt that Mexican Commissioner spoke with authority but before issuing instructions to American Commissioner would be glad to have Mexican Government confirm its Commissioner's statement.

In view of great desirability that proposed works be carried out before next flood season, Department instructs you to endeavor to obtain statement from Mexican Government at earliest possible date and to telegraph it promptly when received.

KELLOGG

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[89] Continued from *Foreign Relations*, 1925, vol. II, pp. 554–584.
[90] These telegrams and despatches printed in *ibid.*, pp. 577 ff.
[91] Letter not printed.

711.12151a/91

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2317 MEXICO, *May 28, 1926.*

[Received June 4.]

SIR: Confirming my telegram No. 250 of today's date, five P. M.,[92] I have the honor herewith to enclose copy with translation of a note from the Mexican Minister of Foreign Affairs under today's date in reply to my note of April 23, last, in pursuance of the Department's telegraphic instruction No. 148 of April 22, wherein I was directed to secure from the Mexican Government confirmation of the statement of the Mexican Commissioner on the Boundary Commission regarding the decision of pending banco cases and with a view to commencing work on the defense plan and rectification in the Rio Grande.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation [93]]

The Mexican Minister for Foreign Affairs (Sáenz) to the American Ambassador (Sheffield)

No. 6416 MEXICO, *May 28, 1926.*

MR. AMBASSADOR: I refer to Your Excellency's courteous note No. 1196 of April 23, last, in which, with regard to the proposed cut-offs in the Rio Grande, of which my notes Nos. 11089 and 14763 of August 18 and November 13, 1925,[94] respectively, treat, and in view of the recent letter from the Mexican Boundary Commissioner to the American Commissioner to discuss banco cases pending settlement, Your Excellency is good enough to request by instruction of your Government confirmation of the statement of Engineer Gustavo P. Serrano.

In reply, I beg leave to inform Your Excellency that the Mexican Commissioner proceeded in this case interpreting the instructions of this Department in the sense of submitting to the American Commissioner the expediency of bringing to settlement, in accordance with the convention of 1905 in force,[95] the pending banco cases, believing thus to remove one of the principal obstacles which have hitherto prevented the commencement of the construction of the general works of rectification and defense of the channel of the Rio Grande.

[92] Not printed.
[93] File translation revised.
[94] *Foreign Relations*, 1925, vol. II, pp. 579 and 582.
[95] For text of convention, see *ibid.*, 1907, pt. 2, p. 837.

Having thus attended to the request which Your Excellency was pleased to make in the note I am now answering, I take the liberty of adding to this subject, which affects such important interests, that the Mexican Government, disregarding for the moment other questions which are related thereto, or which it has been sought to relate thereto, would look with favor upon the possibility of taking up as a whole the works of rectification of the channel of the Rio Grande, subordinating their execution only to the previous determination of the sovereignty over the lands which will be segregated by the cut-offs on the basis, in general terms, of superficial compensation, in accordance with the spirit of the project proposed by the Engineer Commissioners of both countries.

I renew [etc.] AARÓN SÁENZ

711.12151a/91 : Telegram

The Secretary of State to the Ambassador in Mexico (Sheffield)

WASHINGTON, *June 12, 1926—4 p. m.*

197. Your despatch 2317, May 28. Letter Mexican Commissioner to American Commissioner, International Boundary Commission, dated March 16,[96] states he has been instructed by his Government that Department Communications and Public Works was disposed to commence work on proposed rectification plans "as presented to the Boundary Commission" and that execution these works was delayed only by lack of decisions in pending banco cases.

Minute number 61 of Commission,[97] to which Mexican Commissioner apparently refers, appears to relate only to cuts in Rio Grande for about eight miles down the river from Juarez and El Paso and provides that jurisdiction over parcels of land segregated from one side to another "will continue to be the same they had before the segregation, until the Governments of Mexico and the United States resolve otherwise."

Mexican note forwarded your despatch states instructions to Mexican Commissioner intended to direct him to propose to American Commissioner settlement of banco cases in order to remove "one of the principal obstacles" to river rectification, and states that Mexican Government would look with favor "upon the possibility of taking up as a whole the works of rectification of the channel of the Rio Grande subordinating their execution only to the previous determination of the sovereignty over the lands which will be segregated by the cut-offs on the basis, in general terms, of superficial compensation."

[96] Not printed.

[97] *Foreign Relations*, 1925, vol. II, p. 575.

It thus appears that Mexican Commissioner did not correctly interpret in all respects instructions from his Government.

An agreement between the two Governments for rectifying entire channel of Rio Grande and for determining in advance sovereignty over lands that would be segregated by cut-offs would necessitate much preliminary work and conclusion of treaty, thus delaying project of Commission for averting floods in vicinity of El Paso and Juarez, a matter which it is highly desirable to arrange for at earliest practicable date. However this Government holds itself in readiness to entertain any proposals which the Mexican Government may decide to make looking towards a settlement of the other issues involved.

Bring foregoing considerations urgently to attention Mexican Government and ask if that Government would not agree to approve Minute number 61, stating that, if so, this Government will instruct its Commissioner to proceed to dispose of pending banco cases.

KELLOGG

711.12151a/99

The Ambassador in Mexico (Sheffield) to the Secretary of State

No. 2534 MEXICO, *July 16, 1926.*

[Received July 23.]

SIR: Referring to my telegram No. 309 of July 13, 1926, 1 p. m.,[98] with respect to the Rio Grande Boundary matter, I have the honor to transmit herewith a copy and translation of the note from the Foreign Office on which my telegram was based.

I have [etc.] JAMES R. SHEFFIELD

[Enclosure—Translation [99]]

The Mexican Minister for Foreign Affairs (Sáenz) to the American Ambassador (Sheffield)

No. 8959 MEXICO, *July 10, 1926.*

MR. AMBASSADOR: I have noted Your Excellency's courteous note No. 1319 of June 14, last,[1] in which and in connection with my recent note of May 28, you state that an agreement between the two Governments for rectifying the entire channel of the Rio Grande and for determining in advance the sovereignty over lands to be segregated, would necessitate much preliminary work involving a delay prejudicial to the project approved by the International Boundary Com-

[98] Not printed.

[99] File translation revised.

[1] Note sent on basis of Department's telegram No. 197, June 12, 4 p. m., p. 708.

mission for averting floods in the vicinity of El Paso and Juarez; but that the Government of the United States, being disposed to listen to any proposal tending to the settlement of the other issues involved, asks if my Government is willing to approve Minute No. 61, in which case instructions will be issued to the American Boundary Commissioner to proceed to dispose of the pending banco cases.

In reply, I beg leave to state to Your Excellency that I agree with you, that the completion of the rectification plan for the entire Rio Grande channel, determining in advance the location of the cut-offs and the sovereignty of the lands segregated, would delay the works, the urgent necessity of which I realize.

My Government, in note No. 11089 of August 18, 1925,[2] desirous of avoiding the creation of new difficulties before the settlement of pending cases, decided, without rejecting them, to postpone the carrying out of the recommendations contained in Minute No. 61, but subsequently waived, in view of the urgency of the case, in note No. 6416 of May 28 of the present year, all the pending questions relating thereto. However, in the recommendations of said Minute, even in connection with cut-offs for a distance of eight miles below El Paso and Juarez and the stipulation that the jurisdiction over lands segregated should continue the same as prior to the segregation, it was not borne in mind that the proposed works would cut lands on which bancos have formed and that the carrying out of such works would completely obliterate traces of abandoned channels and the exact location of these presumptive bancos, which would justify a previous survey and delimitation thereof before obliterating these natural marks or traces.

However, since maps of the presumptive bancos of the valley of El Paso have been completed and presented to the International Boundary Commission, I take pleasure in stating that my Government is disposed to carry out the recommendations of said Minute No. 61, counting on the promise of Your Excellency's Government contained in the note under acknowledgment, to discuss the elimination of the bancos mentioned, thus ending the delay which the Government of the United States has continued with regard to this matter since 1911.

I should add that the willingness of my Government to carry out the recommendations of Minute No. 61 is based on the understanding that efforts will be made to carry out, within the shortest time possible, the general plan for the rectification of the Rio Grande channel from El Paso to Fort Quitman, upon the basis, in general terms, of superficial compensation, stipulating in a special convention the exchange of nationality of these parcels according to a standard similar to that adopted for the elimination of bancos.

I avail myself [etc.] AARÓN SÁENZ

[2] *Foreign Relations*, 1925, vol. II, p. 579.

711.12151a/103

The Under Secretary of State (Grew) to the Chargé in Mexico (Schoenfeld)

No. 1026 WASHINGTON, *September 20, 1926.*

SIR: The Department has received your Embassy's despatch No. 2534 of July 16, 1926, with which was transmitted a copy and translation of a note from the Mexican Foreign Office dated July 10, 1926, stating that the Mexican Government is disposed to carry out the recommendations of Minute No. 61, adopted by the International Boundary Commission, United States and Mexico, but upon the condition that the two Governments shall discuss the elimination of bancos in the Rio Grande and on the understanding that efforts will be made to bring about within the earliest possible time the general plan for the rectification of the river channel from El Paso to Fort Quitman "upon the basis, in general terms, of superficial compensation, calling a convention for the purpose of deciding the nationality of these parcels, using judgment similar to that adopted for the elimination of banks".[3]

In view of the conditions mentioned and since according to the Department's understanding it would be impracticable to carry out the works contemplated in Minute No. 61 in time to avert any flood which might come in the river this year, the Department, after discussing the matter with the American member of the International Boundary Commission and the authorities of the City and County of El Paso, Texas, has arrived at the conclusion that, instead of proceeding at this time to rectify the channel of the river for the few miles immediately below El Paso, it would be desirable to endeavor to come to an agreement with the Mexican Government upon a general plan for the rectification of the channel as far down as Fort Quitman and perhaps for a few miles below that point inasmuch as the Department's information indicates that in order to obtain the necessary velocity to preserve the rectified channel when established it would be desirable to complete the rectification to a point at the entrance to the Box Cañon.

Therefore, the Department desires you to suggest to the Mexican Government the appointment of Commissioners to prepare a Convention to be submitted to the two Governments for the purpose of

[3] In despatch No. 2883 of Sept. 27, 1926, the Chargé in Mexico reported that in a note of the same date to the Mexican Foreign Office based upon this instruction he had corrected the translation of the above passage to read: "upon the basis, in general terms, of superficial compensation, stipulating in a special convention the exchange of nationality of these parcels according to a standard similar to that adopted for the elimination of bancos." (File No. 711.12151a/111.)

dealing with the situation indicated. In presenting the matter to the Mexican Government, you will of course refer to the desire of that Government, as expressed in the Foreign Office note of July 10, 1926, to realize as soon as possible the general plan for the rectification of the river channel, and you will point out that if this matter should be dealt with in a Convention it would obviate any possibility of complaints being made of lack of existing authority by treaty to carry out recommendations made by the Boundary Commission in Minute No. 61 and would tend to simplify the procedure necessary to obtain appropriations for the funds to meet the expenses of the work. You will add that presumably provision could be made in the Convention for dealing with the national sovereignty over parcels of land which would be cut from the one country or the other by the rectification of the river channel and that the Commissioners to be appointed might also deem it advisable to include in the Convention provisions dealing with the sovereignty over parcels of land which have been heretofore separated from the one country or the other and are excepted by the provisions of Article II of the Convention of 1905 for the elimination of bancos from the operations of that Convention.

Finally, you will state that it has been suggested to the Department that the Commissioners to be appointed might well consider the question of the inclusion in the Convention of some provision for the protection of nationals of either country who have in good faith settled upon bancos in the Rio Grande and constructed improvements thereon. In this relation you will state the Department is advised that in some instances bancos were cut off more than twenty-five years ago and that in some cases no suggestion of the existence of a dispute as to the boundary line has arisen until after purchasers and occupants had gone upon the land and built homes thereon. As to this last mentioned point, you will say that the Department has, as yet, formed no opinion and merely calls attention to the matter as one which the Commissioners who may be appointed might desire to consider.

You will conclude by stating that if the Mexican Government is disposed to agree to the plan suggested it is hoped that Commissioners may be promptly appointed by the two Governments and that they shall meet at the earliest practicable date in order to consider the questions involved and, if possible, reach a speedy agreement upon the terms of the Convention, upon the conclusion of which it would seem practicable to proceed at once with the elimination of existing bancos in the river.

I am [etc.] JOSEPH C. GREW [3a]

[3a] Signature as stamped on file copy. The original instruction may have been signed by the Secretary of State.

711.12151a/117

The Chargé in Mexico (Schoenfeld) to the Secretary of State

No. 3073 MEXICO, *October 28, 1926.*
[Received November 5.]

SIR: Referring further to the Department's instruction No. 1026 of September 20, 1926, with regard to the appointment of a joint Commission on behalf of the United States and Mexican Governments to consider the proposed elimination of bancos and rectification in the Rio Grande, I have the honor herewith to enclose for the Department's information copy and translation of a note dated October 27, last, from the Mexican Minister of Foreign Affairs, in reply to my note of September 27, a copy of which was enclosed with my despatch No. 2883 of the latter date.[4]

I have [etc.] H. F. ARTHUR SCHOENFELD

[Enclosure—Translation [5]]

The Mexican Minister for Foreign Affairs (Sáenz) to the American Chargé (Schoenfeld)

MEXICO, *October 27, 1926.*

MR. CHARGÉ D'AFFAIRES: I have the honor to refer to your courteous note No. 1524 of September 27, last, in which, referring to mine of July 10 of this year regarding the recommendations of Minute No. 61 of the International Boundary Commission, Mexico and the United States, you state that, since it is impracticable immediately to carry out the proposed works in view of the proximity of floods, the Government of the United States is of opinion that there should be concluded a convention or general plan for the rectification of the Rio Grande from El Paso to Fort Quitman or lower if this work is considered technically necessary, proposing as a means for concluding the convention, the advantages of which are indicated, the appointment of commissioners to draft a convention to be submitted for the study and decision of both Governments.

In reply, I beg leave to inform you that in order to carry out the recommendations contained in Minute No. 61, I also think it expedient that both countries should sign a convention stipulating the conditions under which the works shall be carried out, as well as those which shall determine the status of the lands segregated thereby, both with regard to their sovereignty and their status as private property.

Nevertheless, since article I of the convention of March 1, 1889,[6] which established the International Boundary Commission, pro-

[4] Despatch No. 2883 and its enclosure not printed.
[5] File translation revised.
[6] Malloy, *Treaties*, 1776–1909, vol. I, p. 1167.

vides that the latter shall examine and decide all differences or questions that may arise in that portion of the frontier where the Rio Grande and Colorado Rivers form the boundary line, whether they grow out of alterations or changes in their beds or of works that may be constructed in the said rivers or of any other cause affecting the boundary line, my Government does not believe the naming of a special commission is necessary to take cognizance of these matters which consist exclusively in a change in the bed of the Rio Grande that will be caused by the carrying out of the projected works by Mexican and American engineers and regarding which from the technical point of view both countries are in agreement and, therefore, the International Boundary Commission itself is able to formulate the bases of the proposed convention in the same way as it proposed, in 1905, and provided the means for concluding the convention for the elimination of bancos.

Regarding the possibility that the commissioners who may be appointed include in the new proposed convention the matter of sovereignty over the portions segregated from one country or the other not included in article II of the convention of 1905, that is El Chamizal, the Island of Córdoba, and El Horcón, you will agree with me that such a possibility is not viable, since the controversy regarding the sovereignty over the Chamizal has been settled by an arbitration,[8] the award of which, though the Government of the United States has considered it null, is considered valid by that of Mexico.

To this end, with regard to the note of the American Embassy of February 19 of the present [*past*] year,[9] this Department proposed in a note of April 27 of this [*last*] year[10] not with regard to the question of sovereignty which is considered settled, but with regard to the validity or nullity of the award, that this matter should be submitted to the decision of the Hague Tribunal. The Mexican Government awaits a reply to this note in order to settle the case.

As to the Island of Córdoba and El Horcón, there is no pending difficulty whatever which makes necessary its study and consideration.

Finally, examining the final suggestion contained in your note under acknowledgment in the sense that the commissioners to be appointed might decide the expediency of including in the convention some provision for the protection of the nationals of either country who have in good faith settled upon the bancos in the Rio

[8] See *Foreign Relations*, 1911, pp. 565–605.
[9] See Embassy's telegram No. 48, Feb. 19, 1925, 3 p. m., *ibid.*, 1925, vol. II, p. 568.
[10] *Ibid.*, 1925, vol. II, p. 569.

Grande and constructed works or improvements thereon and regarding which you state that your Government has not yet formed any opinion, I take the liberty of pointing out that in these cases there must be complied with the provisions of article IV of the convention of March 20, 1905,[11] stipulating that property of all kinds situated on the bancos which shall in future be located on the land of the other country shall be invariably respected and its owners, heirs and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated, and that if in any case the citizens of either of the two countries should have established themselves on the bancos of the Rio Grande which formerly belonged to the other country and constructed works or improvements thereon, there will be no reason to refrain from restoring the property to its legitimate owner or, if this be impossible, to grant him just compensation.

Basing my opinion on the foregoing considerations I beg leave to inform you that my Government accepts in principle the idea of concluding a convention which shall establish a general plan of rectification of the channel up to Fort Quitman as the best means for reaching an effective and timely result, it being appropriate for the International Boundary Commission, in accordance with its powers and attributes, to draft the said convention, which shall not contain any provision contrary to the treaties and conventions in force.

I avail myself [etc.] AARÓN SÁENZ

[11] Art. IV of the convention of March 20, 1905, reads as follows:

"The citizens of either of the two contradicting countries who, by virtue of the stipulations of this convention, shall in future be located on the land of the other may remain thereon or remove at any time to whatever place may suit them, and either keep the property which they possess in said territory or dispose of it. Those who prefer to remain on the eliminated bancos may either preserve the title and rights of citizenship of the country to which the said bancos formerly belonged, or acquire the nationality of the country to which they will belong in the future.

"Property of all kinds situated on the said bancos shall be inviolably respected, and its present owners, their heirs, and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated." (*Foreign Relations*, 1907, pt. 2, p. 837.)

MOROCCO

ATTITUDE OF THE UNITED STATES TOWARD PROPOSED CHANGES IN THE STATUS OF TANGIER[1]

881.05/4

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 67 TANGIER, *February 12, 1926.*

[Received March 16.]

SIR: I have the honor to enclose herewith the French text, and English translation, of a communication which I have received from the Belgian Consul-General containing a proposal that direct official contact be established between the American Consular Court at Tangier and the Mixed Court, created under the provisions of the Tangier Convention of 18th, December 1923.[2] Identical communications have also been received from the Consuls General of Spain, of Great Britain, of France and of Holland in Tangier.

I also transmit to the Department herewith a copy of my reply to each of the notes above mentioned.

My communications to my colleagues set forth my personal opinion in regard to this matter, but I venture to trust that the position, which I have taken, may be found to be in accordance with the views of the Department on the subject.

I have [etc.] MAXWELL BLAKE

[Enclosure 1—Translation]

The Belgian Consul General at Tangier (Watteeuw) to the American Diplomatic Agent and Consul General at Tangier (Blake)

No. 110/A (M-3) TANGIER, *January 30, 1926.*

MR. DIPLOMATIC AGENT AND DEAR COLLEAGUE: The Convention of December 18th, 1923 signed at Paris between the British, Spanish and French Governments, and to which the Governments of Belgium and Holland subsequently adhered, stipulates by Article 13 that "as a result of the establishment at Tangier of the Mixed Court, as pro-

[1] For previous correspondence concerning the status of Tangier, see *Foreign Relations*, 1925, vol. II, pp. 590 ff.

[2] French text and English translation printed in Great Britain, Cmd. 2096, Morocco No. 1 (1924): *Convention Regarding the Organisation of the Statute of the Tangier Zone, Signed at Paris, December 18, 1923;* also in League of Nations Treaty Series, vol. XXVIII, p. 541.

vided in article 48, the capitulations shall be abrogated in the Zone.["] Article 48 adds that ["]an international jurisdiction, called the Mixed Court of Tangier, and composed of French, British and Spanish magistrates, shall be responsible for the administration of justice to the nationals of foreign Powers." It provides that the Mixed Court of Tangier will replace the existing Consular jurisdictions.

Accordingly, from June 1st 1925, the date upon which the Statute was applied, I divested myself, in favor of the aforementioned Mixed Court, of the jurisdictional powers which I held in regard to Belgian subjects and protégés, under the regime of the capitulations; the Belgian Consular Court, over which I presided at Tangier ceased to exist on the same date, and the Mixed Court of Tangier has thenceforth dealt with all new Belgian judicial cases, in civil, commercial and criminal matters, in accordance with the conditions set forth in the texts above referred to. Furthermore the Registrar's Office of the Mixed Court has, as a matter of course, replaced the Registrar's Office of the Belgian Consular Court, installed up to that time, in the chancery of the Belgian Consulate General.

It would appear useful to determine the conditions in which the relations of a judicial order between the Consular Court of your Diplomatic Agency and these new organizations should be continued. Two solutions appear to me to be possible.

1) Whenever the Consular Court of the United States of America would have to address this Consulate General on a judicial matter involving a Belgian interest, it would do so through our intermediary, but in acceding to your request, I could only transmit your demand to the Mixed Court. Inversely, whenever the Mixed Court, dealing with a Belgian matter, would have to enter into relations with your jurisdiction, this Court would have to pass its request through this Consulate General, which would transmit it to you. This procedure has the disadvantage of being lengthy.

2) Does it not appear possible to you to adopt a more simple method, and to agree that, concerning any case involving a Belgian interest or element before either of these two jurisdictions, the Consular Court of the United States of America and the Mixed Court of Tangier, as well as their respective Registrar's Offices, shall enter into direct written or verbal relations? You might let me know who, in the Diplomatic Agency of the United States of America, is the person that would be entrusted with this service.

The Mixed Court has already contemplated the necessity of having a Magistrate carry out this function, and the Judges forming the Tribunal have designated the President of the Section of Appeal.

It would be this high Magistrate, in the present hypothesis, who would assure the contact between the two jurisdictions.

I beg you will kindly let me know your views in this connection. So far as I am concerned, I should be pleased to see the second solution adopted, which simplifies and accelerates the procedure; it has therefore two advantages which we have not the right to neglect and which are essential in an international town, when judicial action must, in commercial and criminal matters (attachments, execution of judgments, arrests, hearing of witnesses, etc.) manifest itself with the least possible delay.

I avail myself [etc.] M. WATTEEUW

[Enclosure 2]

The American Diplomatic Agent and Consul General at Tangier (Blake) to the Belgian Consul General at Tangier (Watteeuw)

TANGIER, *February 6, 1926.*

MR. CONSUL-GENERAL AND DEAR COLLEAGUE: I have the honor to acknowledge the receipt of your communication of January 30th, 1926, submitting suggestions as to procedure to be adopted for the purpose of creating contact between the American Consular Court and the Mixed Court of Tangier, as a result of the fact that, conformably with the terms of the Tangier Convention of December 18th, 1923, the Belgian Consular Court has surrendered its extraterritorial jurisdiction in the Tangier Zone to the last mentioned Tribunal.

In reply, I would inform you that the proposal contained in your Note hereby acknowledged, for a "liaison" between the jurisdiction of the United States Consular Court and that of the Mixed Tribunal in Tangier, does not appear practicable, in the circumstances.

It is evident that the extraterritorial jurisdiction, and the position of the Consular Court of the United States in Tangier is entirely unmodified by the provisions of the Tangier Convention, to which the United States has not adhered.

The jurisdiction of the American Consular Court and the procedure followed in that Court, are entirely independent of, and separate from, the jurisdiction and procedure of the Mixed Court of Tangier, both Courts holding towards each other the position of foreign jurisdictions.

Belgian subjects being, as you explain, now deferred to the jurisdiction of the Mixed Court, it follows that an American plaintiff will automatically have recourse against a Belgian defendant in that Court, and will be subject to its rules of procedure and other regulations, so far as concerns the prosecution of his suit.

On the other hand Belgian subjects will continue to sue American citizens and protégés, who appear as defendants in suits, before the American Consular Court, the preliminary step in the procedure being, as heretofore, a note of introduction and indication of the plaintiff's nationality delivered by the Belgian Consul-General.

Reciprocally the nationality of any Belgian defendant will be officially certified to by the Belgian Consul-General, prior to the initiation of the American plaintiff's suit before the Mixed Tribunal, upon the request of the American suitor, following an administrative introduction of him to the Belgian Consulate General, by the American Diplomatic Agency and Consulate-General.

If the necessity is deemed to arise for attachments, injunctions and arrests, under the jurisdiction of the American Consular Court, by parties to a suit before the Mixed Court, it will be incumbent upon such parties to initiate, concurrently, independent proceedings to the end desired, before the Consular Court of the United States in Tangier.

Testimony required of American citizens and protégés, who will not voluntarily give their depositions in the course of proceedings interesting a Belgian subject before the Mixed Tribunal, may be taken by an American Consular Officer in Tangier, who is commissioned to take such depositions, on the exhibition of an order duly made to the parties concerned, by the Mixed Court, and signified to the American Consular Authority by the Belgian Consulate-General.

Finally, I find it difficult to conceive any circumstances, in Tangier, in which the execution of a judgment would simultaneously involve the jurisdiction of the American Consular Court and of the Mixed Tribunal, since judgments could be pronounced, and made executory by either Court, only against persons within the respective jurisdictions of these Courts.

In view of the foregoing, I venture to assume that adequate contacts for the administration of justice, between two separate and distinct systems of judicial control, each exercising independently identically similar powers, while co-existing side by side in the same community, are already provided for, without the necessity of creating any other nexus, than that which has been fixed by the customs of the country and confirmed by practices of long observance.

Please accept [etc.] MAXWELL BLAKE

881.05/4

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

No. 379 WASHINGTON, *March 25, 1926.*

SIR: The Department acknowledges the receipt of your despatch No. 67, of February 12, 1926, and enclosures, with respect to the proposals received by you for direct contact between the American Consular Court and the Mixed Court of Tangier.

The Department approves of the position you have taken as outlined in your letter of February 6, 1926 to the Consul-General of Belgium.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

881.00/1219

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 95 TANGIER, *May 4, 1926.*
[Received May 22.]

SIR: I have the honor to recall that, in my Despatch No. 16 of September 4th, 1925,[3] (pages 12–14) I pointed out that Tangier, was the natural *entrepot* for the distribution of imported goods over a considerable area of the neighboring Spanish Zone, and that the formalities inherent to any administrative measures adopted for the enforcement of Article 20 of the Tangier Convention would be detrimental to the trade and interests of Tangier and its merchants.

Article 20 confines the Customs revenue of the Tangier Zone to the duties levied solely on goods actually consumed within the limits of that Zone, and therefore contemplated a system of control over the trade passing between the Tangier and the Spanish Zones, for the purpose of establishing the proportion of Customs revenue due to each Zone.

Upon the enforcement of the Tangier Convention on June 1st, 1925, the French Protectorate Authorities who control the Customs Administration in Tangier, immediately put up a Customs barrier on the frontier between the Tangier and Spanish Zones and proceeded to levy duties on all articles entering Tangier over that frontier notwithstanding the fact that duties had already been collected thereon when entering Morocco through the ports of the French

[3] Not printed.

or Spanish Zones. The entire population of Tangier rose in protest against this measure, which was one of the principal causes of the disturbances in Tangier on July 2nd, last year. (See my Telegram No. 12 of July 2nd, 1925, 4 p. m.[4]).

Under the pressure of these protests, the Customs barrier was withdrawn. It was admitted however that the measure could not be condemned as an illegal method of applying the stipulations of Article 20 of the Tangier Convention.

The Tangier Legislative Assembly petitioned however that the adjustment of Customs Revenue Accounts between the three different Zones of Morocco should be effected by means of fixed annual payments to be agreed between delegates of their respective Customs Administrations. By this means the objectionable procedure of Customs control on the Zonal frontiers would become unnecessary.

Discussions were pursued on this principle, and a virtual understanding was arrived at by which the Tangier Treasury was to pay over to the Customs Administration of the Spanish Zone an annual sum of 500,000 Spanish Pesetas in compensation for the Customs duties and consumption taxes collected on goods, cleared through the Tangier Customs, but ultimately destined to pass into the Spanish Zone.

Consequently the transit of goods from Tangier into the Spanish Zone continued to be effected without let or hindrance, until April 15th, last, from which date the Spanish High Commissioner at Tetuan, on a few days notice, set up a Customs barrier between the Tangier and Spanish Zones, and the Customs duties, in addition to those already paid at the Tangier Customs House, were again levied at this barrier by the Spanish Zone Customs Officials on all merchandise entering their Zone from Tangier.

Whatever justification for this action the Spanish Authorities may adduce under the terms of Article 20 of the Tangier Convention, their action in demanding a second payment of Customs duties is a distinct violation of the treaties so far as American citizens and protégés are concerned.

I have accordingly pointed out to my Spanish Colleague the position which I take in the matter, and have verbally made all reservations respecting claims which may arise in connection with duties illegally levied on the goods of American citizens and protégés.

There is however a general impression that the situation will receive satisfactory solution within a very short period, as a result of the negotiations now proceeding between the signatories of the Tangier Convention to urge Spain to adopt a reasonable arrangement.

[4] Not printed.

Under these circumstances I have not deemed it advisable to follow up my verbal representations with a more formal action, pending the result of the above mentioned conversations, unless a specific case involving American interests, should demand my intervention.

An article from the local English weekly newspaper *Al-Moghreb Al-Aksa* dealing with the question is annexed hereto.[5]

I have [etc.] MAXWELL BLAKE

881.00/1236

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 106 TANGIER, *June 5, 1926.*

[Received June 22.]

SUBJECT:—Application of Article 20 of the Tangier Convention. Double duties collected on goods entering the Spanish Zone.

SIR: In further reference to my Despatch No. 95 of May 4th, 1926, on the above subject, I have the honor to inform the Department that, contrary to the expectations which I then foreshadowed, no satisfactory modification has been made to the dispositions adopted by the Spanish Authorities, in their enforcement of Article 20 of the Tangier Convention, and import duties, in addition to those collected by the Tangier Customs, continue to be levied by the Spanish Authorities, on goods conveyed by land from Tangier into the Spanish Zone.

Indeed the position has recently become aggravated by the fact that the export duties on Moroccan produce proceeding from the Spanish Zone for shipment from Tangier are now also collected by the Hispano-Shereefian Customs Administration at the barrier on the frontier of the Tangier Zone, and again by the Tangier Customs Administration when the produce is shipped at this port.

When making to my Spanish colleague the verbal representations on the matter reported in my despatch above mentioned, it was understood that he would communicate them to the competent Spanish Authorities and request them to make such administrative arrangements as would eliminate a violation of treaty provisions, in the premises, in regard to the interests of American citizens and protégés.

No response however has been received, and it would appear no longer possible to defer an explicit and formal protest on the part of the Department to the Spanish Government against measures adopted by the Spanish High Commissioner at Tetuan in violation of American treaty rights.

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[5] Not printed.

No specific complaint has so far been received from American citizens or protégés in Tangier, who are apparently endeavoring to route their goods into the Spanish Zone in such a manner as to avoid the inland customs barrier, but it is not possible to expect them indefinitely to refrain from utilizing the conveniences of the Tangier land communications, and an incident must inevitably arise in the near future.

It is therefore respectfully suggested that the Department instruct the Embassy at Madrid to protest to the Spanish Government against the levy, by the Spanish-Moroccan Customs Administration, on the confines of the Spanish and International Zones, of any import or export duties on the goods of American citizens and protégés, and to demand the immediate refund of any such duties as may have been collected thereon prior to the notification of this protest.

The note to the Spanish Government should include reference to the following points.

(1) The application of Article 20 of the Tangier Convention by means of the measures adopted by the Spanish Authorities violates the customs unity of Morocco and is contrary to the basic principle of the economic integrity of the Shereefian Empire, as provided in the Act of Algeciras.[6]

(2) The measures edicted by the Spanish Authorities in their application of Article 20 of the Tangier Convention involves the double payment of customs duties already levied upon American citizens and protégés by the Authorities of the customs at Tangier.

(3) The action of the Spanish High Commissioner at Tetuan in the premises is based upon an article of a convention to which the American Government has not adhered.

(4) The Spanish Government should be reminded that no formal recognition of the Spanish Authorities in Morocco has been made by the Government of the United States.

I have [etc.] MAXWELL BLAKE

881.00/1236

The Secretary of State to the Ambassador in Spain (Hammond)

No. 53 WASHINGTON, *July 2, 1926.*

SIR: There are transmitted herewith for your information copies of two despatches, dated May 4, 1926, and June 5, 1926, respectively, from the American Agent and Consul General at Tangier [6a] concerning the establishment by the Spanish authorities of a Customs barrier between the Tangier Zone and the Spanish Sphere of Influence in Morocco.

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[6] Signed Apr. 7, 1906; for text, see *Foreign Relations*, 1906, pt. 2, p. 1495.

[6a] *Supra.*

The Department is in full agreement with Mr. Blake that this Customs barrier, if applied to American citizens or proteges, constitutes an invasion of American rights in Morocco, although no specific complaints have as yet been received by this Government.

In the absence of such complaints, this Government hesitates to make formal protest to the Spanish Government. However, the Department desires that you bring the position of this Government, as outlined above, informally to the attention of the Spanish authorities, and that you express the hope that the Customs barrier will not be administered so as to impose duties upon the goods of American citizens and proteges passing between Tangier and the Spanish Sphere of Influence in Morocco and that thus the necessity of a formal protest on the part of this Government will be obviated.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

881.00/1251

The Ambassador in Spain (Hammond) to the Secretary of State

No. 100 SAN SEBASTIÁN, *July 6, 1926.*
[Received July 19.]

SIR: In connection with the reported divergence of views between the governments chiefly concerned on the question of the desirability of holding an international conference to discuss the Moroccan situation, I have the honor to transcribe the following remarks attributed to General Primo de Rivera by the Madrid *Informaciones* in an interview published in that newspaper on the 4th, instant:

"There is much talk about a new international conference to discuss the problem of Morocco. The time for such a conference has not arrived. It is necessary to wait until the disarmament of the tribes is a reality. When there is no longer any menace directed against the protecting Powers (France and Spain), then we will be able to speak again of the international problem. We desire that Tangier shall form a part of the Spanish zone. If we can not have sovereignty there as we have in Ceuta and Melilla, we at least desire that Tangier shall remain within our Protectorate with the remainder of the zone."

I have [etc.]

For the Ambassador:
EDWARD L. REED
Secretary of Embassy

881.00/1261 : Telegram

The Ambassador in Spain (Hammond) to the Secretary of State

SAN SEBASTIÁN, *August 15, 1926—1 p. m.*
[Received 5:15 p. m.]

60. The Minister for Foreign Affairs sent for me yesterday and said that he had been instructed by Primo to inform me of the resumption of negotiations regarding Tangier. Following is substance of his remarks:

Spain and Great Britain have agreed to admit participation of Italy in administration of International Zone if the latter country will adhere to the statute. Negotiations to this end are now going on in Rome. France has not yet concurred in this proposition but has submitted matter to consideration by experts and a decision is expected shortly.

Spain is very anxious to obtain control of International Zone and therefore intends to propose that the Zone be incorporated in her protectorate or, failing this, that the powers interested grant Spain a mandate over the Zone for twelve or fifteen years as a trial period preparatory to ultimate definitive cession of control. In either case Spain, prompted by the desire that the Straits be neutralized, would guarantee the neutrality of the Zone and agree not to construct fortifications or establish naval bases therein. She would also guarantee it absolute equality of treatment in trade and commerce.

He asked that I communicate these proposals to the Department by cable, adding that Spain is very anxious to gain the acquiescence of the United States as an interested power and party to the Treaty of Algeciras, which treaty would of course have to be modified if Spain's aspirations are realized. In conclusion he expressed the opinion that the proposals are calculated to meet the views of the United States regarding the neutralization of the Straits and the open door. Similar *pourparlers* are being had with the representatives of the other governments interested and he expects the negotiations to go forward rapidly.

In response to my question he denied categorically that the recent convention between Spain and Italy[7] which has elicited so much comment in the European press relates to other than the arbitration of disputes and the neutrality of either country in case of an attack on the other by a threatening state. He promised me a copy of this treaty which I shall send by the pouch.

Copies of this telegram mailed to London, Rome, Paris and Tangier.

HAMMOND

[7] Treaty of Friendship, Conciliation and Judicial Settlement, signed Aug. 7, 1926; for text, see League of Nations Treaty Series, vol. LXVII, p. 365.

881.00/1261 : Telegram

The Acting Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

[Paraphrase]

WASHINGTON, *August 16, 1926—7 p. m.*

5. Referring to telegram No. 60 of August 15, 1 p. m., from the Ambassador in Spain to the Department concerning Spanish control of the Tangier Zone.

Please report by wire such cases as involve Spanish sphere of influence, settlement of which should be required by this Government before recognizing the Spanish protectorate in that area as it exists now.[8] Also a brief statement of such further safeguards as, in your judgment, should be prerequisites to recognition.

It should not be divulged that Spain has approached this Government.

HARRISON

881.00/1288

The Ambassador in Spain (Hammond) to the Secretary of State

No. 136 SAN SEBASTIÁN, *August 16, 1926.*

[Received August 30.]

SIR: With reference to my telegram No. 60 of the 15th instant, reporting my conversation with the Spanish Minister of State regarding Spain's aspirations in the International Zone of Tangier, I have the honor to enclose a copy, with translation, of a memorandum on the subject sent me by Mr. Yanguas, which reached me this morning.

As this memorandum appeared to be much less comprehensive than that which I had made of the Minister's remarks on the 14th, I immediately sent a secretary of the Embassy to confer with Mr. Yanguas' private secretary. The latter was shown the notes of the conversation upon which my telegram under reference was based, and the omissions apparent in the Minister's memorandum were pointed out to him. He replied that my version of Mr. Yanguas' remarks was correct beyond doubt, and gave it as his opinion that there was no reason to modify the report I had made thereof to the Department.

The absence in the memorandum of any reference to the mandate proposal he explained as due to the desire of Spain to put forward first her proposal for the incorporation of Tangier in the Spanish Zone.

I have [etc.] OGDEN H. HAMMOND

[8] For correspondence previously printed concerning the attitude of the United States on the subject of the Spanish Zone in Morocco, see *Foreign Relations*, 1917, pp. 1095–1096; also *ibid.*, 1923, vol. II, pp. 585.

[Enclosure—Translation]

The Spanish Foreign Office to the American Embassy

SAN SEBASTIÁN, *15 August, 1926.*

The Spanish Government considers that the international régime tried in Tangier is, in practice, inapplicable, as shown by experience, and it believes that the problem would be solved by the incorporation of Tangier in the Spanish Protected Zone.

The Spanish Government feels it to be its duty to bring this conviction to the attention of the Government of the United States and to announce that it intends to open negotiations on this proposition with the Governments interested in the present statute.

His Majesty's Government is confident that this suggestion will be favorably received by the Government of the United States, and gives assurance that the exercise of its protectorate over Tangier will, if recognized, be based on the following essential principles:

1. Not to fortify Tangier.
2. Not to convert its port into a naval or aviation base.
3. Liberty of commerce, with equality of treatment for all nations.
4. Establishment of authorities and courts which will maintain order and guarantee the safety of foreign persons and property.

881.00/1297

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 129 TANGIER, *August 17, 1926.*

[Received September 8.]

SUBJECT: Application of Article 20 of the Tangier Convention. Duties on goods passing between the Tangier and Spanish Zones.

SIR: Following my Despatch No. 106 of June 5th, 1926, on the above subject, I now have the honor to inform the Department that the Administrations of the Tangier and Spanish Zones, have finally reached agreement upon a procedure which removes the necessity for the double payment of Customs duties upon merchandise entering either Zone from the other. This agreement went into force on July 25th, 1926.

Under these circumstances there would be no further occasion for the representations to the Spanish Government suggested in my Despatch No. 106 of June 5th, 1926, were it not for the fact that a clause in the above mentioned accord provides that it may be denounced by either party, upon six months' notice, or within two months, if the conditions thereof should fail to be carried into effect.

It is obvious therefore that there exists the contingency of a relapse into the conditions, signalized in my Nos. 95 of May 4th, 1926, and

106 of June 5th, 1926, as violating American treaty rights in Morocco. Complete silence on the part of the Department, in the premises, might eventually be construed as a tacit recognition of the rights claimed by the Authorities of the Spanish Zone, under Article 20 of the Tangier Convention of 1923, and it might be invoked as invalidating protests forthcoming from the American Government, upon any ulterior re-imposition of the duplicate Customs duties upon the property of American citizens and protégés, at the inland customs barrier between the two Zones.

It is therefore respectfully suggested that a communication upon the subject be addressed to the Spanish Government, substantially as follows, unless the American Ambassador in Madrid has already informally called the attention of the Spanish Government to the Department's Instruction of July 1st [*2d*], 1926,[9] copy of which was transmitted to me in the Department's No. 386 of July 1st, 1929.[10]

"The Department has been informed by the Diplomatic Agent at Tangier, Morocco, that, under authority claimed to be derived from Article 20 of the Tangier Convention of 1923, to which the American Government has not adhered, the High Commissioner of Spain at Tetuan, caused to be erected on the frontier between the Tangier and Spanish Zones of Morocco, a customs barrier, at which Customs duties, already paid at the Tangier Customs House, were a second time levied by the Hispano-Shereefian Authorities upon goods proceeding from the Tangier into the Spanish Zone.

These measures, which violated the provisions of treaties to which the United States and Morocco are parties, have now, according to later advices of the American Diplomatic Agent at Tangier, been voluntarily repealed, as the result of an accord between the Administrations of the Tangier and Spanish Zones, under which the illegal levy of duplicate customs dues has been eliminated.

The Department understands, however, that under the terms of one of its clauses, the above mentioned accord, in certain conditions may be denounced by either Administration, and such eventuality, would probably entail the re-imposition of the measures above mentioned. If the Spanish High Commissioner at Tetuan, should, at some future time, decide to revert to such action, the United States Government would find itself compelled to record its formal objections to the measures in question, and make all necessary reservations in regard to the interests of American citizens and protégés, unless proper dispositions were adopted by the Authorities of the Spanish Zone to prevent the impairment, in any degree, of the rights of American citizens in the premises."

The text, in English, of the Agreement dated July 25th, 1926, between the Administration of the Zone of Tangier and the High Commissariat of the Spanish Zone, is enclosed.[10]

I have [etc.] MAXWELL BLAKE

[9] *Ante*, p. 723.
[10] Not printed.

881.00/1264 : Telegram

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

[Paraphrase]

TANGIER, *August 18, 1926—3 p. m.*

[Received 5:21 p. m.]

Your telegram No. 5 of August 16, 7 p. m. My despatch No. 256 of November 22, 1921,[11] contains a list of American claims in Spanish Zone. The persons mentioned in enclosures 2, 3, and 5 to that despatch have presented various claims since then and further claims in addition to this list have been filed by the Atlantic Refining Company, David Bergel and the Rah Amin Company here.

After a satisfactory adjustment of these claims, if formal recognition is to be extended it should be preceded, as a measure of precaution, by an understanding including the following principles: (1) that such recognition does not imply on the part of the United States any relinquishment of American judicial rights guaranteed under the capitulations or other diminution of American privileges and rights under existing treaties, including the Madrid Convention,[12] and equality of treatment as provided in the Act of Algeciras; (2) that no fiscal enactments which may be promulgated by the Spanish authorities in their Zone beyond that authorized by existing treaties shall be enforced upon American nationals or protégés until they shall have been accepted by the American Government; (3) that the Spanish Government agree for the future not to apply to American nationals or protégés without the consent of the American Government the double collection of customs duties upon goods passing between the Spanish and the International Zones as referred to in Article 20 of the Statute of Tangier (see my despatch No. 106 of June 5, 1926); (4) that the Spanish Government agree to suppress various visa charges other than customary chancery fees on passports of Americans in Morocco and not to reimpose such charges in the future without the American Government's consent.

The principles upon which these reservations are based were all agreed to by the French Government before our recognition of the French protectorate in Morocco and they continue to be observed.[13]

Regardless of how sympathetically the eventual aspirations of Spain in Morocco may be looked upon in general, it does not seem that at this time it would be either safe or consistent to display in

[11] Despatch and its enclosures not printed.

[12] Convention between Morocco and other powers, signed July 3, 1880; Malloy, *Treaties*, 1776–1909, vol. I, p. 1220.

[13] See *Foreign Relations*, 1917, pp. 1093–1096.

favor of the Spanish Government any relaxation of the principles which we have previously thought to be of fundamental importance to our own interests in Morocco.

Also it is possible that, for bargaining purposes or otherwise, certain powers may advance adventitious reservations as the price of their agreement to the realization of Spanish aims. Therefore it is my suggestion that our attitude be one of caution (supplying such explanations as are necessary), so as to avoid being placed in a compromising position later by the terms of our reply to the first Spanish overtures toward an objective which not everyone believes may become a definite political reality.

A copy has been mailed to the Embassy at Madrid.

BLAKE

881.00/1268 : Telegram

The Ambassador in Italy (Fletcher) to the Secretary of State

[Paraphrase]

ROME, *August 20, 1926 — 1 p. m.*

[Received 1:50 p. m.]

98. A copy of Ambassador Hammond's telegram No. 60 of August 15 was received here today.

The subject of Spanish control of Tangier was mentioned in the course of a conversation with Under Secretary for Foreign Affairs Grandi. He endeavored to impress upon me that the Italian Government was only slightly more interested in the question of Tangier than was the United States. He stated that Italy had merely agreed to adhere to the Statute of Tangier at the wish of other powers and then only provided she be given equal rights.

It is my opinion that Italy is interested in the matters reported in the telegram from Ambassador Hammond, but does not believe it now necessary to become actively involved, preferring to leave the burden of the controversy for the time being with Spain and Great Britain as against France.

FLETCHER

881.00/1274 : Telegram

The Ambassador in Spain (Hammond) to the Secretary of State

SAN SEBASTIÁN, *August 25, 1926 — 4 p. m.*

[Received 7:35 p. m.]

62. My telegram number 60, August 25 [*15*], 1 p. m. Note just received from Foreign Office invites the United States together with France, Great Britain and Italy, as well as all states adhering to

Tangier statute, to participate with Spain in a conference at Geneva September 1st to examine Tangier question with special reference to Spain's desire for incorporation of International Zone with Spanish Zone. Full text of note follows by telegraph. Repeated to London, Paris, and Rome.

HAMMOND

881.00/1263 : Telegram

The Secretary of State to the Ambassador in Spain (Hammond)

[Paraphrase]

WASHINGTON, *August 25, 1926—6 p. m.*

40. Your telegram No. 60, August 15, 1 p. m. As the American Government has disclaimed repeatedly any political interest or responsibility in Morocco, it is now not in a position to make any comment upon the Spanish proposal that Tangier be united with the existing Spanish sphere of influence in Morocco.

If the other powers who are signatories of the Act of Algeciras proceed to consider this suggestion, the United States would be inclined to reexamine in a sympathetic spirit the matter of its future position in Morocco.

The Department has received information indicating that in this instance the Spanish Government is endeavoring to secure American support for use in its negotiations with the other powers who are signatories of the Act of Algeciras. This Government, while willing to deal with Moroccan problems in a friendly spirit, does not intend to allow itself to be used in support of any particular political thesis. Send copies by mail to London, Paris, Rome, and Tangier.

KELLOGG

881.00/1275 : Telegram

The Ambassador in Spain (Hammond) to the Secretary of State

SAN SEBASTIÁN, *August 26, 1926—4 p. m.*

[Received 10:40 p. m.]

63. My number 62, August 25, 4 p. m. Translation of Tangier note dated August 23rd follows:

"The Government of His Catholic Majesty directs me to submit to Your Excellency the Spanish point of view regarding the problem of Tangier as defined in recent declarations by the President of the Council, General Primo de Rivera.

"Spain has demonstrated by deeds known to all, the fullness of her intentions and her spirit of sacrifice on the altars of the common interest whenever an attempt has been made to find a formula for

settling the eternal Tangier question. She attempted in the treaties of 1904 and 1912 [14] the amputation of Tangier, a living cell of the zone of her protectorate; she took part in elaborating the international statute even though she did not have in its effective working-out a confidence which the facts have since shown would have been unjustified; she displayed a willingness to make every renunciation in order to facilitate the regime of internationalization. Her attitude would now be the same if the international regime could last. But the failure of this attempt is notorious. The good intentions of those who created it have been shattered by the truth and the question of Tangier continues being today as it has always been a cause of eternal preoccupation for the states interested in insuring that that important port of the Straits shall not be used for military purposes and that it shall not be converted into a navy or aviation base. His Majesty's Government is profoundly convinced that the solution which is most just and at the same time most consistent with the great interests of universal peace would be the incorporation of Tangier with the Spanish Zone in Morocco or the adoption of some other feasible and permanent solution free from the complicated and unworkable mechanism of internationalization.

"Geographically and economically Tangier is linked with the Spanish protected zone and it lacks the necessary resources to exist separately. The Spanish Government has tried to facilitate the execution of the statute and to this end it has lifted at a cost of economic sacrifices its customs cordon but it cannot of course dispense with a cordon of vigilance around the extensive zone outside Tangier which, contrary to our wishes, will always obstruct communication between that city and the interior of Morocco. The commerce of Tangier is undergoing a crisis as a result of this local isolation; the low value of the Hassani peseta which is a consequence of the separation from our Zone is making life more difficult; facilities are lacking for the employment of labor; and communism is beginning to ferment in a labor element which cannot under the present regime count upon a protective and energetic intervention by the authorities in accordance with the circumstances and necessities of the case. This Government considers unnecessary to emphasize the important influence which such a focus of communistic radiation might exert in the Islamic world and at the doors of Western Europe.

"Spain is carrying on in North Africa a work of civilization, for the international good rather than for her own profit. Her enormous sacrifices are for the purpose of guaranteeing the neutrality of that coast and opening a channel for free communication and for the commerce of all on a footing of perfect equality without discrimination. It would be unjust to deny her the indispensable means for carrying out this work which will never be completed if Tangier continues to be an asylum for rebels, a nest of conspiracies and a passageway for contraband of war. Tangier internationalized will always constitute a danger to peace. Tangier administered and governed by a responsible neutral country will cease being a constant

[14] For text of treaty of 1904, see *British and Foreign State Papers*, vol. CII, p. 432; for treaty of 1912, see *ibid.*, vol. CVI, p. 1025.

source of worry for all and will result in insuring the pacification of northern Morocco and the neutrality of that place which dominates the Straits that are the key to the Mediterranean.

"The Government of His Catholic Majesty has the honor to inform Your Excellency that it has initiated appropriate negotiations simultaneously with the Governments of London and Paris, cosignatories with that of Madrid to the Statute of Tangier, and with those of Rome and Washington who were invited to adhere to the statute, which negotiations it now desires to make extensive to all the states adhering to the statute, having at the same time the honor to suggest the great convenience of holding a meeting to examine the question jointly.

"To this end it has the honor to propose the date of September 1st for holding such a meeting at Geneva and it trusts that the Government of the United States will receive this suggestion favorably.

"I avail myself of this occasion, et cetera, Yanguas."

[Paraphrase.] The Spanish attempt to promote a conference at Geneva within so short a time seems to confirm numerous other indications that the Spanish Foreign Office is trying to establish a connection between Spanish aspirations in regard to the Tangier Zone and the position of Spain on the subject of a permanent seat on the Council of the League of Nations. [End paraphrase.]

Repeated by mail to Tangier, London, Paris and Rome.

HAMMOND

881.00/1276 : Telegram

The Ambassador in Italy (Fletcher) to the Secretary of State

[Paraphrase]

ROME, *August 26, 1926—7 p. m.*

[Received 11:29 p. m.]

103. In a conversation which I had this afternoon with Mussolini, he told me that the Spanish Government had approached the Italian Government on the Tangier question and had first suggested that Tangier be included in the Spanish Zone, but later proposed a mandate be given them. He stated that his reply had been that Italy was disposed to give sympathetic and friendly consideration to the Spanish proposal should a study of the subject show that Italian interests were adequately safeguarded.

With reference to the Spanish invitation to a conference on the Tangier question to meet on September 1st at Geneva as referred to in Ambassador Hammond's telegram of the 25th, Mussolini stated that his reply had been that Italy was prepared to accept the invitation provided the conference meet at Lausanne instead of Geneva

as he wished it to be made clear that this question was entirely distinct from the ones scheduled to be discussed at the coming meeting of the League, particularly the matter of permanent seats on the Council.

I replied that I had received no intimation of the attitude which might be taken by the American Government either with regard to this question or to the approaching conference. However, I called to his attention the reservations made by the United States upon our signature and ratification of the Act of Algeciras and referred to our traditional policy of declining to become involved in political questions of solely European concern. However, I referred to our interest from the economic point of view in the preservation of the open door there.

It is my understanding that the Italian Government is directing its diplomatic representatives to make known its views at Washington, Paris, and London.

I assume that should a mandate be granted to Spain it would emanate from the powers that are signatories to the Act of Algeciras; also that it is Mussolini's wish that this matter be separated completely from the League of Nations. Repeated to London, Paris, and Madrid.

FLETCHER

881.00/1309

The Secretary of State to President Coolidge

WASHINGTON, *August 27, 1926.*

MY DEAR MR. PRESIDENT: The Spanish Government has invited this Government to be represented at a conference at Geneva on September 1 to examine the Tangier question, with special reference to Spain's desire to incorporate the international zone of Tangier in the Spanish Zone.

Because of trade and shipping interests it has long been the policy of this Government to participate in international conferences concerning Morocco. The most important instance of this was American participation in the Conference of Algeciras in 1906. At that Conference a General Act was drawn up, signed by the United States, ratified by the President on advice of the Senate, and proclaimed in January 1907. The Act of Algeciras contained clauses relative to the regulation of police; to the regulation of traffic in arms; to the establishment of a Moroccan State Bank; to the methods of tax collection; to the customs; and to public services and public works. It confirmed the principle of the equal facilities in trade and commerce to all nations and retained their capitulatory

rights. It made Tangier the seat of the diplomatic representatives of the powers and practically placed the administration of that zone in their hands.

In proclaiming the Act President Roosevelt said:

"And whereas the said General Act and Additional Protocol were signed by the Plenipotentiaries of the United States of America under reservation of the following declaration:

> 'The Government of the United States of America, having no political interest in Morocco and no desire or purpose having animated it to take part in this conference other than to secure for all peoples the widest equality of trade and privilege with Morocco and to facilitate the institution of reforms in that country tending to insure complete cordiality of intercourse without [and] stability of administration within for the common good, declares that, in acquiescing in the regulations and declarations of the conference, in becoming a signatory to the General Act of Algeciras and to the Additional Protocol, subject to ratification according to constitutional procedure, and in accepting the application of those regulations and declarations to American citizens and interests in Morocco, it does so without assuming obligation or responsibility for the enforcement thereof.'

And whereas, in giving its advice and consent to the ratification of the said General Act and Additional Protocol the Senate of the United States resolved, 'as a part of this act of ratification, that the Senate understands that the participation of the United States in the Algeciras Conference, and in the formulation and adoption of the General Act and Protocol which resulted therefrom, was with the sole purpose of preserving and increasing its commerce in Morocco, the protection as to life, liberty and property of its citizens residing or traveling therein, and of aiding by its friendly offices and efforts in removing friction and controversy which seemed to menace the peace between the powers signatory with the United States to the treaty of 1880, all of which are on terms of amity with this government; and without purpose to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope.'"

During the War France proclaimed a protectorate over Morocco, excluding the Spanish Zone and the International Zone of Tangier.[14a] The United States has recognized the French Protectorate but has given up in so doing none of the rights acquired under the Act of Algeciras. There have been informal exchanges concerning similar

[14a] France established a protectorate over Morocco by a treaty signed with the Sultan of Morocco on Mar. 30, 1912. This was followed by a convention of Nov. 27, 1912, between France and Spain regulating the respective positions of the two countries in Morocco and providing for the setting aside of a special zone for Tangier under a regime to be subsequently determined.

recognition of the protecting status of Spain in its zone, but such recognition has never been given by this Government.

Three years ago, on the plea that the status of the International Zone of Tangier was unsatisfactory, Spain, France and Great Britain held a conference at which the Statute of Tangier was drawn up. The United States was not invited to this conference and, along with Italy, has never recognized the validity of the Statute, which, in changing the administration of the Tangier Zone and eliminating diplomatic representation, modifies American rights under the Act of Algeciras. We still maintain a diplomatic representative in Tangier and have repeatedly stated that we cannot admit any derogation of the rights acquired in 1906.

Tangier has now been governed under the Statute for a little over a year and the general impression seems to be that it is not successful. I cannot help feeling that the desire of Spain to incorporate Tangier in the Spanish Zone would probably lead to greater stability and, therefore, greater opportunities for the normal development of trade, and that by removing causes of friction, inevitable in either an international or a tripartite administration, it would insure understanding and peace.

At the Conference of Algeciras American interests in Morocco were defined as being: (1) A humanitarian interest in the welfare of the Moorish people; (2) Maintenance of the Open Door; (3) Protection of our treaty rights. These interests remain valid today and are steadily increasing with the growth of American commercial interests. I feel, therefore, that we cannot afford to hold aloof from the coming Conference, if it should be held.

We have obviously not time to send anyone from the United States and I should, therefore, like your permission to instruct Mr. Hugh Gibson, who is in or near Geneva, to attend the Conference to report to the Department and to insure that American interests, including especially all rights acquired under the Act of Algeciras are safeguarded. If it should be decided to incorporate Tangier in the Spanish Zone I feel that a friendly attitude toward Spain at this time would do much to allay the irritation caused in Spain lately by our commercial policy and that by insuring Spanish friendship we should be safeguarding the future of American commercial interests in Morocco. Nevertheless, I should want to be careful not to antagonize England or France which, I have reason to believe, may strongly oppose Spain's wishes. All this would, of course, be made clear to Mr. Gibson and especially that American participation must in no way be open to the imputation of political interference, but that the United States is solely interested in its economic rights.

I should appreciate a telegraphic reply as to your wishes in the matter, since it may be necessary to issue instructions within the next few days.[15]

Faithfully yours,

FRANK B. KELLOGG

881.00/1283 : Telegram

The Ambassador in Spain (Hammond) to the Secretary of State

SAN SEBASTIÁN, *August 28, 1926—10 a. m.*

[Received August 28—8:10 a. m.]

66. Minister for Foreign Affairs before leaving Madrid for San Sebastián yesterday told press correspondents that Spanish Government desires favorable solution of Tangier question before meeting of the League Assembly. He has also issued through the press an appeal for a "sacred union" of public opinion in support of Spain's position.

HAMMOND

881.00/1286 : Telegram

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

[Paraphrase]

TANGIER, *August 28, 1926—3 p. m.*

[Received August 29—9:13 p. m.]

In the light of information now in the hands of the Department received in telegrams from London, Madrid, and Rome relating to the incorporation of Tangier into the Spanish Zone, it would seem to become more apparent than ever that any expression of a definite opinion on this question by the American Government would be both impolitic and premature until the Spanish Zone as it exists at present has been granted formal recognition by us upon conditions such as those outlined in my telegram of August 18, 3 p. m. Consent by our Government to participate in a conference dealing with this question until the principles underlying our position had been adequately recognized and our preliminary concrete demands fully satisfied would seem to be improper.

By following the procedure outlined we would arrive at a complete settlement of our outstanding account with Spain and would regularize our relations with the Spanish Government in Morocco,

[15] A telegram from E. T. Clark, acting secretary to the President, dated Aug. 28, 1926, 10:05 a. m., conveyed the information that President Coolidge, then at Paul Smiths, New York, approved the designation of Hugh Gibson under the conditions stated (file No. 881.00/1282).

as has been done in the case of the French protectorate. This would be done without in any way interfering with our freedom of attitude on the Tangier question, which from our point of view is an independent and distinct issue, inasmuch as our Government has made no commitments respecting the present Tangier regime. Among the powers signatory to the Act of Algeciras our position is unique in that we have recognized neither the Spanish Zone nor the Tangier regime.

The suggested procedure would tend to accomplish several ends: Our material interests would be provided for and our future political problem would be simplified. At the same time our move would constitute a friendly political gesture toward Spain, which it may be desirable to make. If she interprets the political situation rightly Spain will put forward no objection to the logical basis of our position and will realize that thus the road will be opened for future treatment of matters involved in her attainment of Tangier by mandate or otherwise.

If obstruction on the part of Great Britain to the attainment of Spain's minimum requirements in connection with Tangier cannot be immediately removed by discreet concessions, the only alternative remaining will be an international conference as suggested by Spain, to be held at some central point in Europe.

It is likely that both France and Italy would be opposed to Geneva as a seat for the conference. They do not wish that place to be designated as the center for settlement of the Moroccan question, in view of the fact that it is the home of the League of Nations. It is quite likely that Great Britain will concur in this view. Spain has suggested Geneva in an effort to associate the Tangier question with her aspirations for a permanent seat on the League Council and with the idea of exerting influence on Great Britain. If it is brought to a decision, Britain will concede Spain's claim on Tangier and in turn Spain will give up her insistence on a permanent seat on the Council of the League.

Underlying the transaction one may believe that France and Great Britain are united in their desire that any discussion of the Moroccan question be not extended beyond the powers who claim to have special interests in Tangier, that is, Great Britain, France and Spain. Any attempt to involve the League of Nations in the discussion would defeat this end, which would also be the result if, as Spain has suggested, the matter were brought before all the powers signatory to the Act of Algeciras. Even if the proposed conference meets, a way out has apparently been left, namely, a grant to Spain by the Sultan of Morocco of such authority as she desires in Tangier. The other powers then would be expected to acquiesce in this generous act on the part of the Sultan.

Should this procedure be adopted it would mean that the right of foreign intervention in any Moroccan settlement had been undermined by disregarding the Act of Algeciras and it seems very doubtful whether a conference meeting under such circumstances would be successful, for it may be assumed that Italy would not give her consent to any arrangement based on the Act of Algeciras without receiving extensive compensation elsewhere. In this regard it may be noted that it was recently reported to Rome by the Italian Embassy in Washington that, following conversations with the State Department, it took the American attitude with regard to settlement of the Tangier question to be one of continued belief in the Act of Algeciras as the sole line upon which existing Moroccan problems can be solved.

Copies have been mailed to the interested Embassies.

BLAKE

881.00/1275 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Hammond)

WASHINGTON, *August 31, 1926—6 p. m.*

44. Your 63, August 26, 4 p. m. Please inform the Spanish Government as follows:

While reserving its attitude towards the specific proposal of the Spanish Government for the future administration and government of Tangier, the Government of the United States would be disposed to give favorable consideration to participating in a conference to discuss the Tangier question provided that all of the major Powers interested in Morocco should be present. The Government of the United States, however, doubts if any useful purpose could be served by such a conference unless the attendance of all of these major Powers interested in Morocco should be assured.

GREW

881.00/1289 : Telegram

The Ambassador in Spain (Hammond) to the Secretary of State

SAN SEBASTIÁN, *September 1, 1926—6 p. m.*

[Received 8:33 p. m.]

66. Department's 44, August 31, 6 p. m. Upon my handing a note in the sense of the instruction above-mentioned to the Minister of State, the latter stated that he as well as the Spanish Government deeply appreciated the attitude of the American Government in the premises and that he felt that the presence of the United States (a power disinterested politically) at a conference of this nature would be of the greatest help as an influence toward a fair settlement of

an extremely difficult problem. He said that Spain would continue her efforts to bring about a conference of the signatories of the Treaty of Algeciras although the connection between this question and that of a permanent seat for Spain in the Council of the League had ceased to exist. Both questions would be decided separately on their merits and there was therefore no longer any real special haste in calling a conference.

[Paraphrase]

When I asked him about the attitude of the other great powers interested in the Moroccan question he said that Italy was openly favorable to a conference, that the attitude of Great Britain was reserved, but that the British admitted in principle the validity of the reasons offered for proposing changes in the Statute of Tangier in Spain's favor, while the French, although they admitted the justification of Spain's call for a conference of the signatories of the Act of Algeciras, wished to postpone it for some time and possibly to nullify its benefits by calling for a previous arrangement between France, Spain, and Great Britain which should deal with the question on the basis of the treaty of 1912 and the Statute of Tangier of 1923, with this agreement to be placed before the conference for acceptance.

On the subject of the League of Nations, Yanguas said that Spain would dissociate herself from the League by a note which would be presented when the Assembly convened on September 6th.

He went on to say that this action made it more desirable than ever for Spain to strengthen the ties of friendship which united her to the United States and to the Latin American countries.

Copies have been forwarded by mail to Paris, London, Rome, and Tangier.

HAMMOND

881.00/1309

The Ambassador in Spain (Hammond) to the Secretary of State

No. 157 SAN SEBASTIÁN, *September 14, 1926.*

[Received September 27.]

SIR: I have the honor to refer the Department to my telegram No. 73 of September 9, 12 noon,[16] and to transmit herewith a copy, in original and in translation, of a note, No. 163 dated September 7, 1926, received from the Spanish Secretary of State relative to the invitation of the Spanish Government to the governments signatory to the Act of Algeciras to participate in a conference for the determination of the future status of Tangier.

I have [etc.] OGDEN H. HAMMOND

[16] Not printed.

[Enclosure—Translation]

The Spanish Secretary of State for Foreign Affairs (Yanguas) to the American Ambassador (Hammond)

No. 163 SAN SEBASTIÁN, *September 7, 1926.*

EXCELLENCY: With reference to Your Excellency's note of September 1, 1926,[17] I have the honor to express the profound gratitude of the Government of His Catholic Majesty for the especial evidence of the high esteem and appreciation given to Spain by the Government of the United States with respect to the initiative of this Government looking to the holding of a conference in which the Tangier question should be examined.

Coincidentally with the favorable reply of the United States and of other invited nations, the Spanish Government received the reply of the governments of Great Britain and France, in which the opinion was expressed that the method to be followed in an examination of the Tangier question should be preferably the one indicated by the two governments in proposing to that of Spain the assembling of a tripartite conference of the States signatory to the Statute.

The Government of His Catholic Majesty considers, as does that of the United States, that the Conference, the holding of which it had suggested to the latter at the same time as to the other governments signatory to the Act of Algeciras who retain interest in Tangier, would not be useful without the assistance of the principal Powers interested in Morocco.

In view of the opinion expressed by the Governments of Great Britain and France, the Spanish Government believes that its original idea may find opportunity for realization when the preliminary conversations to which it is now invited by the other two Powers signatory to the Statute of 1923, shall have prepared the way for a broader sphere of understanding, in which Spain considers, and will so state adequately at the proper time, that the coöperation of the United States should not be lacking.

I avail myself [etc.] JOSÉ DE YANGUAS

881.00/1309

The Secretary of State to the Ambassador in Spain (Hammond)

No. 91 WASHINGTON, *October 1, 1926.*

SIR: The Department has received your despatch No. 157, of September 14, 1926, transmitting a note, dated September 7, 1926, from

[17] Not printed; for substance, see telegram No. 44 to the Ambassador in Spain, Aug. 31, 1926, 6 p. m.

the Spanish Secretary of State, relative to the invitation of the Spanish Government to the governments signatory to the Act of Algeciras to participate in a conference for the determination of the future status of Tangier.

Unless you have already made acknowledgment of this note, the Department desires that you do so upon receipt of this instruction and that you inform the Spanish Government that this Government will view with friendly interest the outcome of the conversations referred to in the Spanish note of September 7, 1926, and that its policy continues to be that set forth in the Department's telegrams No. 40, August 25, 6 p. m., and No. 44, August 31, 6 p. m.

I am [etc.] FRANK B. KELLOGG

881.00/1297

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

No. 401 WASHINGTON, *October 14, 1926.*

SIR: The Department has received your despatch No. 129, of August 17, 1926, forwarding a translation of the agreement between the Administration of the Zone of Tangier and the High Commissariat of the Spanish Sphere of Influence, relative to Customs duties levied under Article 20 of the Tangier Statute.[18]

Note has been taken of your suggestion that representations be made to the Spanish Government with a view to safeguarding American rights in case the Customs barrier should be re-established. However, the Department is of the opinion that as this Government is not signatory to the Statute, which it does not recognize, its rights in Morocco remain intact, and that its position in this matter has been made sufficiently clear to the Spanish Government to obviate the necessity of representations at this time. Furthermore, as the probability of the re-establishment of the barrier appears remote, it is not believed that any useful purpose could be served at this time by making representations such as you suggest.

Should, however, the agreement be denounced by either of the parties you should, of course, make appropriate representations to your Spanish colleague at Tangier and should notify both the Department and the American Embassy in Madrid in order that further steps may be taken to protect the treaty rights of this Government.

[18] Translation of agreement of July 25, 1926, not printed.

A copy of this instruction has been sent to the American Embassy in Madrid with instructions [19] to take appropriate action upon being informed either by you or the Spanish Government of the abrogation of the agreement in question.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO PROPOSED CHANGES IN THE ADMINISTRATION OF CAPE SPARTEL LIGHT

881.822/108

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 76 TANGIER, *March 11, 1926.*
[Received April 1.]

SIR: I have the honor to inform the Department that under date of February 24th, 1926, I received from the Consul-General of Belgium (President by rotation for the current year of the International Commission of Cape Spartel Lighthouse) a circular stating that, at a meeting of the Commission to be held, on March 2nd, 1926, a communication received from the Mendoub, or Sultan's Representative at Tangier, would be brought up for discussion. A copy of this communication was attached to the circular in question, and reads, in translation as follows:—

Mendoub to Consul-General of Belgium, President of the International Commission of the Lighthouse at Cape Spartel.

The Shereefian Government, proprietor of the Lighthouse, intends to proceed immediately with the modernization thereof, and which is incumbent upon the said Government. It will entrust the Shereefian Services of Public Works with the direction of the works preconized by Mr. de Rouville. The Service of an improved Lighthouse demanding a select personnel and constant technical control of specialist engineers, the Shereefian Government proposes to the Commission that the service of upkeep and superintendence of the Lighthouse, when modernized, should be confided directly to the State Engineer for the Zone of Tangier. This functionary would present his reports and all explanations which would be required of him, both to the International Commission and to the Shereefian Government, he would be dependent upon the latter so far as concerns the repairs and future improvements of the Lighthouse, and the technical advice of the Shereefian Services of Public Works would always be assured to him.

Tangier, February 22nd, 1926
(Signed) Mohammed Bou Achrine.

[19] Instructions to Ambassador in Spain not printed.

It appeared to me that this proposition was in direct conflict with the terms of Article IV of the International Convention of 1865,[21] inasmuch as it contemplates the transfer from the Representatives of the Powers in Tangier, to the exclusive direction of the Shereefian Government, of the functions which have been exercised by the former under the International Convention above referred to. The procedure followed, in accordance with the terms of the Convention, on the last occasion when improvements to the Spartel Light were discussed, will be found in my despatch No. 442 of May 7th, 1914,[22]

Under the circumstances, I made, upon the circular convoking the meeting of the Lighthouse Commission, the following annotation:—

"Without specific instructions from my Government I am unable to assist at a meeting of the Commission, at which the discussion would appear to bear upon questions conflicting with the provisions of an International Convention subscribed to by the United States in 1865."

The measures proposed by Mr. de Rouville, Engineer in Chief of the Central Services of Lighthouse and Buoys, of the French Government, are set forth in a communication, dated Paris 29th, May 1925, addressed by him to the President of the International Commission of Cape Spartel.

A copy of this communication is herewith enclosed for the Department's information.[22] Owing to the highly technical description of the modifications recommended, no translation is submitted with the present despatch, which is concerned particularly with the political question raised, by the procedure proposed for carrying out the modifications, and the derogation, involved thereby, to the authority of the International Commission of Cape Spartel Lighthouse.

It will be evident from Mr. de Rouville's letter that his recommendations were solicited in an entirely informal way, were so presented and could not be considered to have any binding or authoritative effect upon the International Commission of Cape Spartel Lighthouse, composed of the Representatives of the Powers in Tangier.

Furthermore some criticism of these recommendations and other suggestions for the Modernization of the Cape Spartel Light were subsequently presented by other Governments, but no opportunity has been taken, as yet, to coordinate and define the various proposals to be ultimately submitted to the various Governments which are parties to the Convention.

Under these circumstances the decision of the Shereefian Government, as announced by the Sultan's Representative, in the communication to the President of the International Commission, as above quoted in translation, possesses a disturbing political element. It clearly

[21] Malloy, *Treaties*, 1776–1909, vol. I, p. 1217.
[22] Not printed.

contemplates a violation of the Convention of 1865, and should this action of the Maghzen, inspired by its French advisors, encounter resistance on the part of the other powers, it is doubtless the intention of the French Government to determine the denouncement, by the Sultan, of the Cape Spartel Convention.

. . . . . .

In 1923, at a conference in Paris between France, Great Britain and Spain, the two latter powers capitulated on the point of the sovereignty of the Sultan in the Tangier Zone, and in view of their long and persistent opposition to the French pretensions in this regard, there cannot have existed, on the part of Great Britain or of Spain, at that time, any illusions as to the mystery of the French motives.

Since the Tangier convention has been brought into application, France has lost no opportunity to assert, to enforce and to extend, every vestige of power or authority accorded to her vicariously in the name of the Sultan's delegate.

The collective authority which the representatives of the Powers in Tangier derive from the Cape Spartel Convention of 1865, is the only effective international control which has hitherto survived impairment by the French process of attrition upon international conventions in Morocco, but it is significant in this connection to observe that Article 53 of the Tangier Agreement of 1923 [23] provides as follows:—

ARTICLE 53. The Contracting Governments recognize that the Shereefian Government retains its property rights in the Cape Spartel Lighthouse, the Convention of March 31st, 1865 remaining provisionally in force.

On page 13 of my despatch No. 54 dated January 28th, 1926 (Moroccan events in perspective; Incidents, Episodes and Actualities) [24] I signalized as one of the elements of French policy in Morocco, Lyautey's manoevres for the mastery of Tangier, in order that France, as a great power, might take her seat at the entrance of the Mediterranean, in preparation for the future.

The elimination—in time of war—of all control but that of France over the Lighthouse at Cape Spartel, on the Straits of Gibraltar, will constitute no unimportant step towards the achievement of French aims in this direction.

. . . . . .

On the other hand, and to conclude, the Department may deem that although I may not have completely misread political symptoms,

[23] For text of agreement, see Great Britain, Cmd. 2096, Morocco No. 1 (1924); also League of Nations Treaty Series, vol. XXVIII, p. 541.

[24] Not printed.

I may be inclined slightly to exaggerate the consequences of the situation. While realizing that there is a deliberate design to serve a particular political aim, the Department may not apprehend that damage to our maritime interests will necessarily be involved therein, as a result of any disparities. I would in this case most respectfully request telegraphic instructions to this effect, in order that I may alter the attitude, which I have hitherto assumed, of declining to attend any meeting of the International Commission, in which the question of the Mendoub's letter might arise. My position, on this point is based upon the fact that the Commission is not empowered to discuss or consider in the conduct of its business, propositions which assume the assertion by the Maghzen of rights in conflict with the terms of an International Convention which has not yet been denounced.

It is my opinion, and I desire to make this plain, that a weak and subservient acquiescence on the part of the Commission, by permitting this question to be put before it at a formal meeting would constitute a first step in the surrender of the principle involved, and would facilitate the demolition of the Convention by the irregular means which the French Government is attempting to adopt in the premises, under the political symbol of the Sultan.

I have [etc.] MAXWELL BLAKE

POST SCRIPTUM. (March 12th). On the day following the drafting and signature of this Despatch, I received a circular, from the President of the Cape Spartel Lighthouse Commission convoking, without any reference to the Agenda, a meeting of the commission for March 16th, and on this circular, I inscribed the following annotation:—

"I refer to my annotation on the circular of February 23rd, and I desire to know the agenda for the meeting of the 16th instant. I have not yet received from my Government any instructions which would permit me to assist at a meeting of the Commission at which the letter of the Mendoub would be, even incidentally or indirectly, introduced into the discussions."

A few hours later the President of the Commission visited me, and having read my annotation, gave his verbal assurances that the Mendoub's letter would neither be mentioned, referred to nor made the subject even of unfinished business. He next asked what were my suggestions as to its disposition and I replied that I considered it to be his duty, as President of the Commission, to circulate this letter and to invite the members of the Commission to indicate the nature of the reply which should be made to the Mendoub. The President agreed to do so. The situation will be defined and clarified by this procedure, if it is not deviated from. . . .

881.822/107

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 79 TANGIER, *March 17, 1926.*
[Received March 31.]

SIR: I have the honor to inform the Department that I attended a meeting of the International Commission of Cape Spartel Lighthouse, which was held at Tangier on March 16th, 1926, to discuss the question of improvements to the Lighthouse.

The procedure adopted, in this connection, in the year 1914 was reported to the Department in my Despatch No. 442 of May 7th, 1914, (File No. 882).[25]

Owing to the disinclination of the Powers signatory to the International Convention of 1865 to incur, at this time, the expense involved in the appointment of another International Commission of Experts entrusted with drawing up the proposed modifications, the Commission decided to invite the State Engineer of Public Works, Delegate of the Shereefian Service of Public Works in Tangier, to communicate to it proposals which have been drawn up by the Maghzen, for the improvement of the Lighthouse.

The scheme of modifications submitted by this functionary to the Commission, at the meeting above mentioned, is annexed hereto, both in the French text and in English translation.[26]

It was resolved at the meeting, that the Representatives of the Powers, members of the Commission, should submit these proposals to their respective governments, accompanied by a request for telegraphic instructions as to their assent thereto. I therefore respectfully solicit the Department's cabled advice as to its approval of the project submitted. My communication to the President of the Commission of the eventual acquiescence of the United States Government in the scheme, will however be withheld until I have ascertained that the governments of all my Colleagues shall have likewise assented thereto.

The Department will recall that, on the former occasion when, in the years 1913 and 1914, improvements to the Cape Spartel Lighthouse were the subject of a decision in principle, it was contemplated that the governments who were parties to the International Convention of 1865, should share the cost of the modifications.

It will be observed that in the present instance, the Moorish Government signifies its willingness to carry out the works and to provide the necessary apparatus and materials at its own expense, notwith-

[25] Not printed.
[26] Not printed; it is dated Mar. 15, 1926.

standing the fact that the terms of the International Convention of 1865, according to the interpretation placed upon them hitherto, would appear to fix the burden of this expense upon the Representatives of the Powers which are members of the Convention.

The political significance of this spontaneous manifestation of liberality on the part of the Maghzen has been indicated to the Department in my Despatch No. 76 of March 11th, 1926, (File No. 882).

I would however respectfully suggest that there would be no occasion for the United States Government to put forward objections on this account, as no derogation to the Administrative and Controlling authority of the International Commission would appear to be attempted at the present time.

I have [etc.] MAXWELL BLAKE

881.822/107 : Telegram

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

WASHINGTON, *April 13, 1926—1 p. m.*

3. Your despatches Nos. 76, March 11, and 79, March 17.

(1) The Department approves your position in connection with the letter of the Mendoub;

(2) Acting in view of this Government's interest in the Cape Spartel Lighthouse, under the International Convention of 1865, and without prejudice to the provisions of that Convention, this Government does not desire to raise any objection to the proposed modernization of the Light if the other parties signatory to the Convention consent to the proposition made to the Commission by the Shereefian Government, on March 15, 1926.

KELLOGG

881.822/109

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 92 TANGIER, *April 24, 1926.*

[Received May 8.]

SIR: I have the honor to inform the Department that I have received its Telegraphic Instruction No. 3 of April 13th, 1926, 1 p. m., referring to my Despatches Nos. 76 and 79 of March 11th and March 16th [*17th*] respectively, relative to the improvements and modifications contemplated to the Light at Cape Spartel, and I note that, subject to the acquiescence of the Powers, the Government of the United States

would not oppose the modifications proposed, with the reservation that the procedure involved be not prejudicial to the provisions of the International Convention of 1865.

In further reference to this question, I have the honor to inform the Department that another meeting of the International Commission of Cape Spartel Lighthouse was called by the President, on April 15th, 1926. I did not attend this meeting, but requested that the Minutes of the proceedings be communicated to me, and intimated that I would make known to the Commission any observations that I might eventually deem necessary upon the matters discussed.

As a result of the discussions, it was proposed to annex to the Minutes of the meeting, a series of questions upon which the members of the Commission should request the telegraphic advice and instructions of their respective governments. The questions referred to were drawn up conjointly by the Consul-General of Belgium, President for the year 1926, of the International Commission of Cape Spartel, and Mr. Fayard, the Engineer-Delegate of the Service of Public Works of the French Protectorate. These questions will be found annexed to this Despatch, in the French text and in English translation, (Enclosure No. 1).[27]

There is also transmitted to the Department herewith, (Enclosure No. 2), copy of the French text, together with English translation, of a communication from the French Consul-General,[27] setting forth the views of the French Government, not only in regard to the proposed modifications, but also concerning the administration of the Lighthouse.

. . . . . .

Under these conditions, while recognizing perforce the practical advantages to be gained from accepting, in a large measure, the technical assistance which the Maghzen volunteers to afford the Commission, in the present circumstances, it would appear necessary to accompany such acceptance with pertinent reservations destined to safeguard the administrative independence attributed to the International Commission by the International Convention relating to its constitution.

It will be observed, for instance, that the Maghzen advances the claim that it should be entrusted, in complete freedom, with drawing up the project, issuing the calls for bids, defining the specifications of the contract, passing upon tenders submitted, adjudicating the contracts, directing the execution of the works, and that the means of carrying out the improvements to the Lighthouse should be left entirely to the initiative and the choice of the Maghzen. The latter, it will be seen, points to its claim as the logical consequence of its proprietorship of the Lighthouse and the fact that it defrays the cost of

[27] Not printed.

the modifications, repairs and necessary reconstruction. It is superfluous to observe that such contention is flagrantly inconsistent with the terms of the Convention of 1865.

It would appear that an unqualified acquiescence in the above demands would imply a virtual surrender into the hands of the "Maghzen" of the constitutional authority and functions of the International Commission; and the latter by a very rapid process would inevitably subside into an impotent assembly of figureheads, the sole remaining useful purpose of whose existence, would consist in the collection of the national annual subscriptions of the Governments adhering to the Convention, and in carrying on the clerical administration of the Commission's working funds. . . .

If the provisions of this Convention are to remain the effectual régime under which the Light at Cape Spartel is to be managed, the proffered assistance of the Direction General of the Public Works of the French Protectorate, should be accepted under the two-fold reservations: (*a*) That the technical and administrative operations in question, must be carried out by the Maghzen functionaries, in the name of the International Commission of Cape Spartel, and that the dispositions taken in this connection must previously be submitted to and receive the express approval of the Commission, and be carried out in conditions laid down by the latter, under similar procedure to that contemplated in 1914 with the assistance of the International Technical Commission. (*b*) That the accepted co-operation of the Maghzen Service with the International Commission, on the present occasion, cannot imply a permanent delegation, to the former, of any measure of the latter's authority or functions, and that it cannot be held to prejudice the existing rights of the International Commission to base its decisions and action, upon the advice of the competent departments of the various Governments, signatory to the Convention of 1865.

The above general reservations of principle would appear to cover the general proposals put forward by the Maghzen in the Memorandum Questionnaire, (Enclosure No. 1), above mentioned.

Some words of explanation are necessary however upon the question of the Sound Signal which is to replace the existing detonator.

Three types of Sound Signals were discussed at the meeting of the Commission: the "Nautophone," the "Diaphone" and the "Siren." The Delegate of the Shereefian Service of Public Works made observations on these various types. The use of the "Nautophone" was considered impracticable, few vessels being equipped with the necessary receivers. The "Diaphone," he admitted, was in principle more powerful than the "Siren," but the Maghzen's objection to the selection of this apparatus was based upon the fact that "Diaphones" were

manufactured only in England and in Germany, and that on account of the high rate of exchange of the currencies of these countries, the installation of a "Diaphone" would involve heavy cost. He therefore advocated the selection of the "Siren" which he stated might, properly devised, equal the "Diaphone" in power.

The foregoing particulars will, it is believed, suffice to indicate to the Department the purport of the claim made by the Maghzen, (see First Question, Item No. 1 of the enclosed Memorandum of enquiry) that it should be free to select the type of Sound Signal which, in its judgment, will sufficiently respond to the requirements of local conditions, account being taken of the expense to be incurred.

At the meeting, the Representatives of Italy, of France and of Belgium stated that they were authorized by their Governments to take a decision on this point, and they pronounced in favor of the adoption of the "Siren." The Representatives of Great Britain, of Spain and of the Netherlands have referred the decision to their Governments. The advice of the Department is therefore solicited on the question of the choice of the Sound Signal.

. . . . . .

It will be observed that the opportunity to submit bids for the contract is to be confined to the firms enumerated in the Memorandum Questionnaire, and that it seems taken for granted, since the American firms, the Macbeth Evans Glass Co., 101 Maiden Lane, and Julius King, 19 West 44th Street, New York, (see Department's Telegram of June 29th, 1923, 6 p. m., in reference to this Agency's Despatch No. 143 of June 7th, 1923 [28]), then notified their inability to bid, that neither these nor other American firms would now be interested in this contract. The Department may desire to raise objections to the procedure contemplated on this gratuitous assumption, even though further investigations may indeed fail to discover any American constructors of Lighthouse equipment desirous to submit their offers for this contract, either in regard to the lighting apparatus or to the Fog Signal.

It is believed however that in view of the relatively small importance of the contract (involving an amount of not more, perhaps, than $20,000 to $25,000) and the peculiar difficulties of local execution, that, unless an American contractor were in possession of unusual facilities, there should be great diffidence in recommending a participation in these bids, on the part of American firms.

However, providing the Department shares my opinion in this respect, and should it result that no American contractors are desirous of entering the competition, the matter of principle above indicated could be safeguarded by an informal objection to the limi-

[28] Neither printed.

tation of opportunity, accompanied by a statement that in the circumstances the United States Government refrained from pressing this matter in view of the urgency of the improvements under discussion.

In conclusion, I respectfully request the Department, upon receipt of this Despatch, to cable the terms of the reply which it desires to be made to the President of the International Commission of Cape Spartel Lighthouse, or in lieu thereof, to authorize me to draw up such communication myself, based upon the spirit and confined within the limits of the comments of this Despatch.

I do not desire to prolong the present Despatch by further developing the political aspect of this question, which has been fully discussed in my No. 76 of March 11th, 1926. However, I would observe that it becomes more evident than ever, from the conclusions inherent in the premises, that the directing impulse, concerning the present proposals for the amelioration of the Lighthouse, is distinctly political. The propositions above discussed, if adopted, are certainly designed to render increasingly complex the functions of the International Commission . . .

. . . . . .

I have [etc.] MAXWELL BLAKE

881.822/109 : Telegram

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

WASHINGTON, *May 17, 1926—2 p. m.*

4. Your despatch No. 92, April 24, 1926. The Department approves your conclusions in regard to the proposed modification to the Cape Spartel Lighthouse and you may draw up a reply to the President of the International Commission signifying this Government's acceptance of the proffered assistance of the Direction General of the Public Works of the French Protectorate strictly subject to the reservations of principle set forth on page 5 of your despatch under reference.[29]

As regards the question of sound signals, however, the Department has been informed by the expert of the Bureau of Lighthouses that there is nothing to choose between the Diaphone and Siren systems, that the latter is in far more general use on the oceanic coasts of the United States, and that its cost is half that of the Diaphone. The latter moreover is not manufactured in the United States. Unless, therefore, you find compelling reasons to the contrary, the Department is of

[29] See second paragraph on p. 750.

the opinion that the Siren system should be adopted, especially as a majority vote in favor of the Diaphone might, as you indicate, involve either the blocking of the much needed program or an unnecessary expenditure of funds on the part of the United States Government to meet the difference in cost between two systems which are equally efficacious.

The Department further approves your suggestion that you should make informal objections against the limitation of opportunity in the matter of bids, as indicated in paragraph 2, page 11, of your despatch under reference.[30]

KELLOGG

881.822/110

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 107 TANGIER, *June 7, 1926.*

[Received June 28.]

SIR: I have the honor to enclose herewith for the information of the Department, a copy of the communication which I have addressed to the President of the International Commission of the Lighthouse at Cape Spartel, in pursuance of the Department's telegraphic Instruction No. 4 of May 17th, 1926, 2 p. m.

I have [etc.] MAXWELL BLAKE

[Enclosure]

The American Diplomatic Agent and Consul General at Tangier (Blake) to the Belgian Consul General at Tangier and President of the International Commission of Cape Spartel Lighthouse (Watteeuw)

TANGIER, *June 3, 1926.*

MR. PRESIDENT: I have the honor hereby to inform you of the position taken by my Government concerning the subjects raised in the questionnaire, drawn up in pursuance of a resolution passed at the meeting of the International Commission of the Lighthouse at Cape Spartel, on April 15th, last.

The Government of the United States will acquiesce in the acceptance, by the International Commission of Cape Spartel Lighthouse, of the assistance offered by the General Direction of Public Works of the Shereefian Government, in regard to the drawing up of the projects, of the calls for bids, and of the definition of contract specifications, and also in connection with the examination of tenders, the

[30] See last paragraph on p. 751.

adjudication of contracts, and the direction of the execution of the works, for the improvements to the light at Cape Spartel. It must be understood however that the acceptance of such assistance is strictly subject to the following reservations of principle:—

(*a*) That the technical and administrative operations in question must be carried out by the Maghzen functionaries, in the name of the International Commission of Cape Spartel Lighthouse, and that the dispositions taken in this connection must previously be submitted to and receive the express approval of the Commission, and be carried out in conditions laid down by the latter, under procedure similar to that which was contemplated in 1914 with the assistance of the International Technical Commission.

(*b*) That the accepted cooperation of the Maghzen service with the International Commission, on the present occasion cannot imply a permanent delegation, to the former, of any measure of the latter's authority or functions, and that it cannot be held to prejudice the existing rights of the International Commission to base its decisions and action, upon the advice of the competent departments of the various Governments, which are signatories of the Convention of 1865.

My Government is of the opinion that the Diaphone and the Siren are equally efficacious systems of sound signals, and in view of the lower cost of the latter, advocates the selection of the Siren.

In conclusion, the Government of the United States desires me to point out to the Commission that the proposal to limit the opportunity for bidding to the firms enumerated in the questionnaire, and notably the gratuitous assumption that no firms in the United States would be interested, because two American Manufacturers approached three years ago were at that time disinclined to participate in the competition, constitutes a procedure which is open to objection. However, in view of the urgency of the improvements under discussion, the American Government refrains from pressing this matter further, in the present instance, but is convinced that its observations in this regard will suffice to indicate that the American Government will not acquiesce in the adoption of such procedure in the future.

Please accept [etc.] MAXWELL BLAKE

881.822/112

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 155 TANGIER, *January 20, 1927.*

[Received February 4.]

SIR: In reference to my despatch No. 107 of June 7, 1926, and to previous correspondence with the Department upon the Proposed

Improvements to the Light of Cape Spartel, I have now the honor to report that a meeting of the International Commission of the Lighthouse was held at Tangier on December 29, 1926, to consider the replies of the various Governments to the questionnaire,[31] transmitted in my No. 79 [*92*] [32] and which formed the subject of the Department's telegram No. 4 of May 17, 1925 [*1926*], 2 p. m.

At this meeting the Spanish Delegate proposed on behalf of his Government that the execution of the improvement works in question should be confided, not to the Public Works Department of the French Protectorate, as put forward at the last meeting of the International Commission, but to a special commission, composed of (1) a representative of the Public Works Department of the Spanish Zone, (2) a representative of the competent Department of the French Zone, and (3) a third member designated by the International Commission, and who should be neither French nor Spanish.

However when it was evident that this Spanish proposal would not be adopted, the Spanish Consul General stated that the main object of his Government in the premises was to conserve the International character of the Commission, and with this end in view, he subscribed to the point of view and reservations set forth in a memorandum of the Italian Representative, which had been read out at the meeting, regarding the conditions under which execution of the improvements by the technical services of the Zone of the French Protectorate, would be accepted.

The Department will be interested to be informed that the minutes of the meeting record the aforementioned views of the Italian Government as being substantially those formulated by the Government of the United States. As a matter of fact, apart from unimportant differences in wording the note submitted to the International Commission on behalf of the American Government (see enclosure to my Despatch No. 107 of June 7, 1926) and that communicated by the Italian Government are identical in tenor, the American conditions having been laid some 3 months in advance of those formulated by the Italian Government. In other terms the Italian conditions constitute almost a verbatim copy of the American conditions.

The reservations of principle in regard to procedure embodied in these notes have therefore been adopted by the International Commission.

It was apparent however that, so far as concerns the technical decisions to be taken, there still existed divergencies of opinion, and

[31] Not printed.
[32] *Ante*, p. 748.

in this connection, Mr. Fayard, the Representative of the Shereefian Government presented to the meeting a Memorandum for the consideration of the various Powers represented. It was agreed that this Memorandum should be submitted by each member of the International Commission, to his Government, together with a request for telegraphic reply thereto.

A copy in the French text and in English translation, of Mr. Fayard's note is attached hereto. [33] It suggests that Mr. de Rouville, Engineer in Chief of the Lighthouses of France, should, through direct contact and correspondence, with the Directors of the lighthouses of other countries signatory to the Cape Spartel Lighthouse Convention, elaborate a common technical scheme of improvements, for submission to the International Commission at Tangier. This method, it is stated, would appear preferable, from standpoints of economy and expeditiousness, to the assembly, in Tangier, of a special technical commission, such as was constituted in 1914.

I venture to suggest that the procedure above outlined might be adopted without objection, providing due deference is paid to the reservations, formulated by the American and the Italian Governments, and adhered to by the International Commission in Tangier, and I would respectfully solicit the Department's appropriate telegraphic instructions, after its perusal of the present report.

I have [etc.] MAXWELL BLAKE

881.822/112 : Telegram

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

WASHINGTON, *February 8, 1927—6 p. m.*

1. Your despatch 155, January 20. The Department perceives no objection to the adoption by the International Commission of the procedure suggested in Mr. Fayard's memorandum, provided that due regard is paid to the reservations formulated in your letter of June 3, 1926, to the President of the Commission.

KELLOGG

[33] Not printed.

DISCONTINUANCE OF THE EXTRAORDINARY FRENCH AND SPANISH JOINT NAVAL VIGILANCE OFF THE COAST OF MOROCCO[34]

881.00/1260

The Ambassador in France (Herrick) to the Secretary of State[35]

No. 6542 PARIS, *August 3, 1926.*

[Received August 13.]

SIR: With reference to my cable No. 305, August 3, 12 A. M.,[36] I have the honor to transmit herewith a copy and translation of a Note dated July 29, 1926, from the Foreign Office together with the text of the Memorandum concerning the Maritime Surveillance of the Moroccan Coast from August 1, 1926.

I have [etc.]

For the Ambassador:
SHELDON WHITEHOUSE
Counselor of Embassy

[Enclosure—Translation]

The French Ministry for Foreign Affairs to the American Embassy

PARIS, *July 29, 1926.*

On July 2 [*3?*], 1925, the French Government, in agreement with the Spanish Government forwarded to the interested Powers two notices[37] relative to the concerted measures of the two Governments with a view to ensuring together the surveillance of the Moroccan coast.

Following another examination of the situation, the two Governments deem that a return to common law is henceforth possible, and they have set forth their agreement in the enclosed memorandum, the provisions of which will come into force on August 1, 1926.

B.

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[34] For previous correspondence concerning joint naval vigilance off the coast of Morocco, see *Foreign Relations*, 1925, vol. II, pp. 602 ff.

[35] The receipt of a similar note and memorandum from the Spanish Government was reported in telegram No. 59 of Aug. 5, noon, from the Ambassador in Spain (not printed). The following reply was sent Aug. 7, 3 p. m.: "38. Your 59, August 5, noon. At your discretion you may remind the Spanish Government that the position of this Government remains that set forth in the Department's 43, July 31, 1925, 3 p. m. Kellogg." (File No. 881.00/1257.) Department's 43, July 31, 1925, not printed, but see telegram No. 297, July 31, 1925, to the Ambassador in France, *Foreign Relations*, 1925, vol. II, p. 606.

[36] Not printed.

[37] *Foreign Relations*, 1925, vol. II, pp. 604, 605.

[Subenclosure—Translation]

Memorandum Concerning the Maritime Surveillance of the Moroccan Coast From August 1, 1926

PARIS, *July 20, 1926.*

On the offing of the coast of French and Spanish territories, both as regards dominions and protectorates, situated to the North and West of Africa and included between the Algero-Moroccan frontier, 2°13′ West Longitude (Greenwich), and the mouth of the Oued Draa, 28°41′ North Latitude, French and Spanish warships will ensure, in the French and Spanish zones respectively, and jointly between Oued Bou Sedra and Oued Draa, that is to say between the parallels 29°31 and 28°41 North, the strict observance of the international measures and rules forbidding, on the one hand, any access to the Moroccan coast with the exception of open ports, and, on the other hand, any importation of arms, munitions and war material into Morocco. Along the entire coast the surveillance is limited to the six miles of territorial waters with the right of pursuit outside of this limit.

To this end the ships will survey and visit, if necessary, pursuant to international custom in such matters, any vessel which may be suspected, for well grounded reasons, of contravening the orders in question. This surveillance will be exercised both as regards arms, munitions and war material as well as merchandise suspected of being directed to ports or natural anchoring grounds not open to trade.

The maritime surveillance in the territorial waters of Tangier will continue to be exercised pursuant to the stipulations of Article 4 of the Convention of December 18, 1923.[38]

Ships and boats recognized by the surveying ships as trading in arms, munitions, war material and merchandise suspected of being directed to ports or natural anchoring grounds not open to trade, shall be brought before the competent local jurisdiction.

The present communication cancels and takes the place of the communications of July 2 [*3?*], 1925, on the same subject.

[38] Great Britain, Cmd. 2096, Morocco No. 1 (1924); also League of Nations Treaty Series, vol. XXVIII, p. 541.

NETHERLANDS

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

811.512356Shipping/10

The Secretary of State to the Netherlands Chargé (Van Asch van Wyck)

WASHINGTON, *September 13, 1926.*

SIR: The Department informs you of the receipt of a communication from the Treasury Department [1] regarding the draft of a Royal Decree, with English translation, to be issued by Her Majesty the Queen of the Netherlands, relative to the prevention of double taxation on income derived exclusively from the operation of ships, which was left at the Treasury Department on July 29, 1926. The English translation of the proposed decree reads as follows:

"We, Wilhelmina, by the Grace of God, Queen of The Netherlands, Princess of Orange-Nassau etc. etc.

"Whereas it is provided in the Unique Section of the Law of June 26, 1926, (Statute book No. 209), that we reserve Ourselves under No. 2 to make provisions, on a basis of reciprocity, preventing double taxation on earnings derived from the operation of ships, corresponding with equivalent provisions existing in the laws of foreign nations; and

"Whereas under Section 213, litt. b, No. 8 of the Revenue Act of the United States no tax is imposed on the income of an alien individual non-resident in the United States or 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, do hereby proclaim and make known:

"UNIQUE SECTION

"CITIZENS OF THE UNITED STATES NON-RESIDENT IN THE NETHERLANDS AND CORPORATIONS ORGANIZED IN THE UNITED STATES WHICH EFFECTUATE IN THE NETHERLANDS THE SEA TRANSPORT WITH SHIPS DOCUMENTED UNDER THE LAW OF THE UNITED STATES ARE (WITH RETROACTIVE POWER TILL JANUARY 1, 1921) NOT SUBJECT TO TAXATION AS FAR AS INCOME DERIVED EXCLUSIVELY FROM SUCH INDUSTRY IS CONCERNED."

The Treasury Department states that it interprets the proposed decree as exempting from tax the income from sources within the

[1] Not printed.

Netherlands received by citizens of the United States non-resident in the Netherlands and by corporations organized in the United States, which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States, such exemption applying to income received on or after January 1, 1921. It notes that the exemption is granted to corporations organized in the United States without limiting such exemption in any way.

The Treasury Department states that the decree as submitted to it meets the equivalent exemption requirements of Section 213(*b*)(8) of the United States Revenue Acts of 1921, 1924 and 1926.

I shall be pleased to have you inform me when the decree is issued.

Accept [etc.]

For the Secretary of State:
JOSEPH C. GREW

811.512356Shipping/24

The Netherlands Chargé (Van Asch van Wyck) to the Secretary of State

No. 3219 WASHINGTON, *October 19, 1926.*

SIR: I had the honor to receive your note of September 13, 1926 by which you informed me of the receipt of a communication from the Treasury Department regarding the draft of a Royal Decree, with English translation, to be issued by Her Majesty the Queen of the Netherlands, relative to the prevention of double taxation on income derived exclusively from the operation of ships, which was left at the Treasury Department on July 29, 1926.

In this note you stated that the English translation of the proposed decree reads as follows:

"We, Wilhelmina, by the Grace of God, Queen of The Netherlands, Princess of Orange-Nassau etc. etc.

"Whereas it is provided in the Unique Section of the Law of June 26, 1926, (Statute book No. 209), that we reserve Ourselves under No. 2 to make provisions, on a basis of reciprocity, preventing double taxation on earnings derived from the operation of ships, corresponding with equivalent provisions existing in the laws of foreign nations; and

"Whereas under Section 213, litt. b, No. 8 of the Revenue Act of the United States no tax is imposed on the income of an alien individual non-resident in the United States or 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, do hereby proclaim and make known:

"UNIQUE SECTION

"CITIZENS OF THE UNITED STATES NON-RESIDENT IN THE NETHERLANDS AND CORPORATIONS ORGANIZED IN THE UNITED STATES WHICH EFFECTUATE IN THE NETHERLANDS THE SEA TRANSPORT WITH SHIPS DOCUMENTED UNDER THE LAW OF THE UNITED STATES ARE (WITH RETROACTIVE POWER TILL JANUARY 1, 1921) NOT SUBJECT TO TAXATION AS FAR AS INCOME DERIVED EXCLUSIVELY FROM SUCH INDUSTRY IS CONCERNED."

You further informed me that the Treasury Department states that it interprets the proposed decree as exempting from tax the income from sources within the Netherlands received by citizens of the United States non-resident in the Netherlands and by corporations organized in the United States, which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States, such exemption applying to income received on or after January 1, 1921, and that it notes that the exemption is granted to corporations organized in the United States without limiting such exemption in any way.

You also advised me that the Treasury Department states that the decree as submitted to it meets the equivalent exemption requirements of Section 213 (*b*) (8) of the United States Revenue Acts of 1921, 1924, and 1926, and you finally stated that you should be pleased to have me inform you when the decree is issued.

In reply thereto I have in compliance with instructions from my Government the honor to inform you that the Treasury Department's above mentioned interpretation of the Royal Decree in question is correct and that the Decree in the form in which it was submitted was published on October 8, 1926 after having been promulgated on October 1, 1926.

Please accept [etc.] H. VAN ASCH VAN WYCK

811.512356Shipping/28

The Secretary of State to the Netherlands Chargé (Van Asch van Wyck)

WASHINGTON, *November 27, 1926.*

SIR: Referring to your note of October 19, 1926, and to other correspondence in regard to the double taxation of income derived exclusively from the operation of ships, it affords me pleasure to inform you that I have received from the Acting Secretary of the Treasury a letter dated November 8, 1926,[2] from which the following is quoted:

"Inasmuch as the Netherlands Government has promulgated the Royal Decree in the form in which it was submitted to this Depart-

[2] Not printed.

ment, and has informed this Government that the Treasury Department's interpretation of the Royal Decree is correct, it is held that the Netherlands satisfies the equivalent exemption requirements of Section 213 (*b*) (8) of the Revenue Acts of 1921, 1924 and 1926. Consequently, the income of a non-resident alien or a foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of the Netherlands is exempt from income tax imposed by the Revenue Acts of 1921, 1924, and 1926."

Accept [etc.]

For the Secretary of State:
LELAND HARRISON

PROPOSAL TO ALLOCATE TO THE NETHERLANDS GOVERNMENT THE FORMER GERMAN YAP–MENADO CABLE [3]

862i.73/42

Memorandum by the Under Secretary of State (Phillips)

[Extract]

[WASHINGTON,] *March 25, 1922.*

A brief report compiled from notes taken by John Van A. MacMurray [4] and L. Harrison [5] of an informal and unofficial meeting held in the reception room adjoining the Secretary of State's office on December 31, 1921.

There were present for the United States: The Secretary of State, the Under Secretary of State, Mr. John Van A. MacMurray, and Mr. Leland Harrison.

For the British Empire: The Right Honorable James Balfour, Mr. Brown, Mr. Sperling.

For France: Monsieur Sarraut, Monsieur Jusserand, Monsieur Kammerer.

For Italy: Mr. Rolando Ricci, Mr. Albertini, Mr. Celesia.

For Japan: Baron Shidehara, Mr. Saburi.

For the Netherlands: Mr. Van Karnebeek, Mr. de Beaufort.

Interpreter: Monsieur Camerlynck.

Mr. Hughes explained that the meeting was unofficial and outside the Conference [6]—he had taken advantage of the presence of Mr. Van Karnebeek to invite the representatives of the Principal Allied and Associated Powers to this informal meeting on his own behalf and on behalf of his Colleague Baron Shidehara.

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[3] For previous related correspondence, see *Foreign Relations*, 1920, vol. I, pp. 115–119 and 132–134; *ibid.* 1921, vol. II, pp. 291–292.

[4] Chief of the Division of Far Eastern Affairs.

[5] Leland Harrison, Foreign Service officer assigned to duty in the Department of State; appointed Assistant Secretary of State, Mar. 31, 1922.

[6] Conference on the Limitation of Armament; see *Foreign Relations*, 1922, vol. I, pp. 1 ff.

Mr. Hughes recalled the negotiations that had taken place between the United States and Japan regarding mandate rights in the Pacific [7] and also the question of the cables in the Pacific,[8] which were ceded to the Principal Allied and Associated Powers under the Treaty of Versailles.[9]

He was happy to say that a tentative agreement had been reached with his Japanese Colleague subject to approval by the other Principal Allied and Associated Powers regarding the allocation of the ex-German cables radiating from Yap.

His Colleagues would recall that the Netherlands also claimed an interest in these cables. He thought that the present might afford an opportunity to adjust the Netherlands interest.

Mr. Hughes then read the following tentative arrangement with Japan:

"1. The Yap–Shanghai cable to be assigned to and owned by Japan; the value of said cable to be credited by Japan to Germany in the reparation account conformably with the provisions in Part VIII, Section 1, Annex VII of the Treaty of Versailles.

"2. The Yap–Guam cable to be assigned to and owned by the United States; the value of said cable to be likewise credited by the United States to Germany.

"3. The Yap–Menado cable to be assigned to and owned by The Netherlands, in full and final satisfaction of all claims of the Netherland Government and its Nationals respecting their interests in the German-Netherland Telegraph Company.

"4. Each country to operate both ends of the cable which it owns under the foregoing plans of allocation.

"5. Arrangements to be made among Japan, the United States and the Netherlands for the regulation of their connecting cable services at Yap.

"6. Japan to lay a cable between Naba and Shanghai, which is to be connected with the existing Yap–Naba section, so as to establish Yap–Naba Shanghai services; the means of connection to be determined by Japan, having in view the promotion of facilities of communication.

"7. The Shanghai end of the Yap–Naba–Shanghai cable to be brought into the Japanese Telegraph Office at Shanghai, which will undertake the receiving and delivery of messages passing over said cable; provided, however, that with regard to messages emanating from or destined to the Great Northern Telegraph system, suitable arrangements will be made between the Japanese Telegraph Administration and the Great Northern Telegraph Company for the transmission of such messages.

"8. The operation by the United States or by The Netherlands of its own cable at Yap to be free from all taxation or control at the hands of the local authorities.

"9. The Principal Allied and Associated Governments jointly to communicate with The Netherlands, China and the Great Northern

[7] See *Foreign Relations*, 1921, vol. II, pp. 287 ff.
[8] See *ibid.*, pp. 307 ff.
[9] Malloy, *Treaties*, 1910–1923, vol. III, p. 3329.

Telegraph Company, in order to secure the necessary consent of each of these parties to the terms of the present arrangement in which such parties are respectively interested."

Mr. Hughes then made brief comments and explanations on the foregoing terms and pointed out that inasmuch as it would be necessary to have a connecting service arranged at Yap, a supplementary agreement would have to take into consideration technical questions as to through messages, rates, services, etc. It was also clear that China would have to be consulted with regard to landing rights in Shanghai for the proposed Naba–Shanghai cable, as well as for the conditions for the operation of the cable at Shanghai in connection there with other services.

Mr. Hughes stated that it had been the earnest endeavor of his Japanese colleague and of himself to preserve the rights of all concerned in the plan which he now laid before his colleagues.

Mr. Hughes asked Baron Shidehara for comment.

Baron Shidehara stated that he had nothing to add to what Mr. Hughes had said.

Mr. Balfour ventured to express his congratulations to the United States and to Japan on the happy conclusion of this agreement which in its broad lines was entirely acceptable to the British viewpoint.

. . . . . .

Mr. Ricci stated that he must refer the proposed tentative agreement to his Government for instructions. Italy's position *de jure* was the best of all of the Principal Allied and Associated Powers, as she is entitled to a fifth of the German cables. Italy, at the present time, has in fact none of the ex-German cables. She could not be asked to assent to a partial allocation of cables in the Pacific without corresponding consideration in the Atlantic.

Monsieur Sarraut stated that the French Delegation welcomed this new understanding between the United States and France in settlement of their outstanding differences in this connection. Subject to the approval of his Government, he considered the arrangement entirely satisfactory. Mr. Hughes again explained that the present meeting was entirely informal, not to take the place of formal communications of the proposed arrangement, but merely to facilitate arrival at a satisfactory understanding.

. . . . . .

8621.73/41

The Netherlands Chargé (De Beaufort) to the Secretary of State

No. 540 WASHINGTON, *February 25, 1922.*

SIR: I have not failed to communicate to my Government the text of the memorandum containing a tentative draft of an arrangement

between the Five Powers regarding the disposal of the Yap Cables formerly owned by the Netherland German Telegraph Company which memorandum was handed to me by the State Department in January last.[10]

Referring to paragraph three of this memorandum and acting upon instructions received from my Government, I have now the honor to inform the United States Government that the Netherland Government accepts the Yap–Menado Cable under the arrangement as set forth in the memorandum, copy of which is enclosed herewith.

Please accept [etc.] W. DE BEAUFORT

574.D1/528b

The Secretary of State to the French Ambassador (Jusserand)

WASHINGTON, *July 12, 1923.*

MY DEAR MR. AMBASSADOR: You will recall that at a meeting held in Washington on March 6, 1922, of sub-committee number one of the International Conference on Electrical Communications, the Chairman of this committee, at your suggestion and that of Sir Auckland Geddes,[11] submitted a tentative plan for the distribution of the former German cables.[12] It was understood at the meeting that the different representatives upon the committee would refer this tentative plan to their respective governments with a view to having them examine it and offer such suggestions as they might care to make regarding it.

I would appreciate it if you would be good enough to let me know, at your early convenience, what the views of your Government are with reference to the adoption of the plan in question.

I am [etc.] CHARLES E. HUGHES

574.D1/538

The French Chargé (De Laboulaye) to the Secretary of State

WASHINGTON, *September 10, 1923.*

MY DEAR MR. SECRETARY: By your informal notes of July 12th and August 31st, addressed respectively to Mr. Jusserand and

[10] Memorandum not printed; it consisted of the text of the draft of arrangement quoted in the Under Secretary's memorandum of Mar. 25, 1922, *supra.*

[11] British Ambassador in the United States.

[12] Not printed; the plan laid before the first subcommittee by its chairman, Mr. Henry P. Fletcher of the American Delegation, was for the equal distribution among the United States, Great Britain, France, and Italy of the estimated value of the former German cables in the Atlantic Ocean (file No. 574.D1 Subcommittee No. 1/17). For correspondence relating to the International Conference on Electrical Communications, see *Foreign Relations*, 1920, vol. I, pp. 107 ff.

myself,[13] you have expressed the wish to know the views of my Government with regards to the adoption of the plan submitted by the Representative of the American Government, for the distribution of the former German cables, at the meeting of Sub-Committee No. I of the preliminary conference on Electrical Communications held in Washington on March 6th, 1922.

Pursuant to the conversation I had a few days ago with Mr. Phillips, I have the honor to transmit to you in the note herein enclosed the results of the examination to which the French Government has proceeded on that subject.

Believe me [etc.] ANDRÉ DE LABOULAYE

[Enclosure—Translation [14]]

AIDE-MÉMOIRE

The French Government has examined with the closest attention the plan for distributing the ex-German cables as submitted to the representatives of the powers by Mr. Fletcher at the meeting of the first subcommission of the International Conference on Electrical Communications held at Washington March 6, 1923 [*1922*].

As this document constitutes only an initial attempt intended to enable the respective Governments to set forth their views on this subject, the French Government feels at full liberty to frame the following observations:

It wishes to remark first of all that certain data used in preparing the plan submitted by Mr. Fletcher are not entirely correct.

Thus the plan seems to take it for granted that the value of the ex-German cables has been permanently fixed by the Reparation Commission.

Now, to the knowledge of the French Government, certain appraisements which ought to figure in the fixation of this value, though, however, of slight importance (calculation of depreciation, wear and tear, deduction of certain expenses of establishment, etc.), are still under discussion before the Commission, while others which have been accepted by the other Allied Powers have not yet been accepted by the United States.

Furthermore, if we compare the figures appearing in Mr. Fletcher's distribution plan with those furnished by the Reparation Commission (subject to the slight uncertainties referred to above, the amount of which does not exceed 3 percent), we shall note considerable discrepancies among them as shown by the table appended hereto.

On the other hand it will be well to observe that in determining the value of the ex-German cables according to their cost price alone

[13] Note of August 31 not printed.
[14] File translation revised.

and after making a deduction for depreciation through wear and tear, the Reparation Commission is acting within its jurisdiction, since the purpose of its mission is to determine the intrinsic value of the cables with a view to crediting the value thereof to Germany. But it seems that, for purposes of a distribution among the Allied and Associated Powers, account ought to be taken of the degree of economic importance and utility of the cables. As a matter of fact it is impossible to place on the same footing cables which connect different points of the coast to Africa, the traffic over which is exceedingly small, and trans-Atlantic cables with much greater traffic.

As the French delegation proposed to the conference of October, 1920, it would be well therefore to assign to the value of each cable a coefficient to be fixed according to the data indicated above. Account ought also to be taken of the expenses of readjustment to which these cables have given rise.

Finally, the French Government has noticed that two ex-German cables whose approximate appraisement was made by the Reparation Commission, viz, the Yap-Shanghai and Yap-Menado cables, are not mentioned in the plan submitted by Mr. Fletcher.

Now these two cables constituted the subject matter of an agreement concluded in last December between Japan and the United States, and when, as in the case of the other agreements reached at Washington, the French delegate, Mr. Sarraut, gave it his endorsement, this was done only *ad referendum.*

The French Government by no means thinks of refusing its final approval to this arrangement, but it deems it its duty to maintain, as Mr. Jusserand expressly specified during the labors of the Commission, that the question of distribution of the cables forms an aggregate from which the Pacific cables cannot be separated. Consequently the Yap–Shanghai and Yap–Menado cables ought henceforth to appear in the distribution plan.

Furthermore, in the opinion of the French Government the Yap–Menado cable ought to appear therein with a different assignment than that given it in the American-Japanese agreement, since the Netherlands, which received it, does not figure among the five Allied and Associated Powers and possesses no right to the ex-German cables. As the French representative likewise pointed out during the course of the discussion, it will be the duty of that one of the five Allied and Associated Powers to which the cable is assigned, to conclude such arrangement afterwards with the Netherlands as it may deem proper. However, the value of the Yap–Menado cable will have to be placed, in the distribution, to the account of that power and the latter will be debited therewith toward Germany in the Reparations account.

On the other hand the French Government deems it necessary to frame certain objections as regards the principle involved in making the distribution in equal parts, as underlying the plan presented by Mr. Fletcher.

As a matter of fact this principle does not take into account annex VII, section I, part VIII (Reparation) of the Treaty of Versailles, in which Germany waived, in behalf of the Principal Allied and Associated Powers, all rights and titles which she possessed to the cables enumerated in said annex.

This transfer of the cables by Germany to the Principal Allied and Associated Powers is really in the nature of reparations. The provisions of the treaty which relate thereto appear in Part VIII (Reparation), viz. article 244 and annex VII. This character furthermore is confirmed in the final paragraph of this annex, which reads thus:

"The value of the above mentioned cables or portions thereof in so far as they are privately owned, calculated on the basis of the original cost less a suitable allowance for depreciation, shall be credited to Germany in the reparation account."

This annex VII is referred to in the second paragraph of article 237, relating to the distribution of the successive payments to Germany.

Now it should be observed that part VIII of the Versailles Treaty was accepted as valid by the United States and was mentioned as such in the enumeration contained in article II of the peace treaty between the United States and Germany of August 25, 1921.[15]

The value of the cables transferred to the Principal Allied and Associated Powers by the putting into force of the Versailles Treaty ought therefore to be considered as one of the payments referred to in article 237 but made exclusively for the benefit of the said Principal Powers. Article 237 furthermore provides that the payments of Germany "shall be distributed by the Allied and Associated Governments in the proportions determined by them in advance and based on the equities and rights of each."

Neither during the peace conferences nor since the treaty went into force has any arrangement been concluded on the distribution of the cables which is of such a nature as to diminish the validity of these provisions.

On the contrary, since the treaty went into force some general agreements have been concluded among the Allied Powers with a view to distributing Germany's payments among them and it would seem that in the absence of other bases the coefficients fixed at Spa,

[15] For text of treaty, see *Foreign Relations*, 1921, vol. II, p. 29.

for instance, on July 16, 1920,[16] might be utilized in fixing the distribution of the cables between France, Italy, Great Britain, and Japan. These countries would then have no transfer to make to one another in consequence of the assignment.

As the United States failed to participate in this agreement, it would seem to be now merely a question of the share due them by virtue of the provisions of article 237 of the treaty.

In addition to the foregoing considerations, owing to which the French Government regrets its inability to join in the distribution plan of the ex-German cables submitted to it, the French Government desires to state the reasons why it believes it is justified in urgently demanding that the ownership of the German cable from Brest to New York be preserved by France.

The French Telegraph Cable Company, as a matter of fact, now possesses only three cables:

1. The P. Q. cable, dating from 1879, worn out, in a bad condition, often interrupted, and hard to repair.
2. The Brest–Cape Cod cable, opened up to operation in 1898, but a long section of which is without intermediate landing or relay, whereby its transmitting capacity is reduced.
3. The ex-German cable, which, with an intermediate landing and relay at the Azores, possesses a transmitting capacity superior to the two preceding ones.

On the other hand the American cable companies, to which the Brest–New York cable would without doubt be retransferred, already own or control 13 cables connecting North America and Europe. Moreover these companies have, with the consent of the German Government, recently decided to lay two cables between the United States and Germany under very rapid conditions, these cables being provided with all improvements and enjoying a process which enables an efficiency obtained which was hitherto unknown.

Under these circumstances we are warranted in saying that the independence of communications between the United States and Europe is amply assured and that general American interests would not be threatened if the Brest–New York cable were left to France in the distribution to occur. While there is no doubt that the resumption of this cable and its assignment to the United States would gravely compromise the possibilities of operation of the French Cable Company and make it very difficult for it to insure free communication in future between the French Government and North America.

In framing the foregoing observations and suggestions, the French Government confidently hopes that the United States Government

[16] *Ibid.*, 1920, vol. II, p. 406.

will kindly take them into account when the question of distributing the ex-German cables comes up again for discussion.

[Subenclosure]

	Fletcher plan		Reparation Commission		Differences between valuations of the Reparation Commission and those of the Fletcher plan
	Length	Value	Length	Value	
	[*Miles*]	*Gold marks*	[*Miles*]	*Gold marks*	[*Gold marks*]
Emden–Fayal No. 1	1616	3,814,698	1616	3,904,159	+89,461
Fayal–New York No. 2	1785	6,780,009	1785	5,992,069	−787,940
Emden–Fayal No. 2	226	674,405			
Borkum–Teneriffe	1860	7,067,363	1860	7,125,158	+57,795
Teneriffe–Monrovia	1791	5,446,138	1791	5,457,951	+11,813
Monrovia–Lome	170	441,000	170	462,970	+21,970
Lome–Duala	610	1,740,058	610	1,737,940	−2,118
Borkum–Brest	240	600,000			
Emden–Fayal No. 2	91	271,553			
Emden–Fayal No. 2	1353	4,037,480	[a] 1669	[b] 5,010,223	+26,785
Fayal–New York No. 1	2290	6,780,009	2290	6,938,992	+158,983
Yap–Guam	563	1,171,348	563	1,196,464	+25,116
Monrovia–Pernambuco	1862	5,800,548	1862	5,847,299	+46,751
Constantinople–Constanza	185	550,332	185	633,062	+82,730
Emden–Vigo	860	1,247,910	860	1,243,255	−4,655
Yap–Shanghai			1790	5,343,367	
Yap–Menado			1076	2,350,315	

[a] The difference in length is only apparent. It arises from the fact that the figure of the Reparation Commission represents the total length of the cable, including the two sections assigned to Great Britain and France (1353 plus 226 plus 91=1669 [*sic*]).

[b] The value assigned by the Reparation Commission is likewise that of the total value of the cable. The figure 5,010,223 of the Reparation Commission should therefore be compared with the sum total of the three portions of cable referred to in the Fletcher plan (674,405 plus 271,553 plus 4,037,480=4,979,438 [*sic*]).

574.D1/581

The Secretary of State to the French Ambassador (Daeschner)

WASHINGTON, *September 15, 1925.*

EXCELLENCY: I have the honor to refer to Mr. de Laboulaye's note dated September 10, 1923, transmitting an *aide mémoire* containing the views of the French Government concerning proposals submitted by this Government for the distribution of the former German cables. I believe it is desirable to have a meeting of the First Committee of the Preliminary Conference on Electrical Communications which met at Washington in September, 1920, in order that a full exchange of views may be had regarding the distribution of these cables and a further effort made to reach an agreement respecting the final allocation of the former German cables in the Atlantic Ocean.

I shall be grateful if you will inform me whether your Government is prepared to resume the meetings of the First Committee of the Washington Conference of 1920, and, if so, whether November 2, next, will be convenient for holding the meeting and what officer will represent your Government at the Conference.

Accept [etc.] FRANK B. KELLOGG

574.D1/590

The French Ambassador (Daeschner) to the Secretary of State

[Translation [17]]

WASHINGTON, *November 3, 1925.*

MR. SECRETARY OF STATE: In compliance with the wish expressed by the letters of Your Excellency dated September 15 and October 6 last,[18] I had suggested to my Government in behalf of the American Government that the meetings of the First Committee of the Washington Conference of 1920 be resumed on the 10th of this month.

According to the answer I have just received from the Minister of Foreign Affairs I have the honor to inform Your Excellency that my Government would like to respond to that invitation but does not think that the contemplated meeting will achieve any result unless the propositions which the American Government might have to offer are first examined, on account of the objections caused by the Fletcher plan concerning the allotment of the German cables. It therefore asks that the meeting be not held on November 10. As a matter of fact, as my Government has already remarked, it cannot concur in Mr. Fletcher's plan and, in particular, cannot give up the Brest–Azores–New York cable.

With regard to the Yap–Menado cable, as Germany agrees that the value of the cable be not credited to her account the French Government makes no further reservations with respect to its being allotted to the Netherlands.

Finally, my Government sees no use in giving attention to the value of the cables in the allotment. The Reparation Commission will credit Germany with the whole amount of the estimate made by it after deducting the value of the Yap–Menado cable and will then transfer to the debit side of each power to which a cable is allotted, the value of that cable.

Be pleased [etc.] E. DAESCHNER

862i.73/59

The German Ambassador (Maltzan) to the Secretary of State

[Translation [19]]

WASHINGTON, *November 13, 1925.*

MR. SECRETARY OF STATE: I have the honor to request Your Excellency to be so kind as to give me information in the following matter:

[17] File translation revised.
[18] Latter not printed.
[19] Translation furnished by the German Embassy.

According to article 244 of the Treaty of Versailles and to annex VII thereto, Germany renounced her rights, in favor of the Allied and Associated Powers, to the cables Yap–Shanghai, Yap–Guam and Yap–Menado which formerly belonged to the German-Dutch Telegraph Company.

By this transfer Dutch interests were affected, since Germany, according to the Treaty concluded between the German and Dutch Governments at the time of the founding of the German-Dutch Telegraph Company 1901,[20] was not justified in disposing of property of the Telegraph Company without the consent of the Dutch Government. The Dutch Government objected to this violation of its interests with the result that the Allied and Associated Powers at the time of the negotiations, which took place in Washington in 1921, concerning the distribution of the former German cables, agreed that the cable Yap–Menado should be allotted to the Dutch Government as final and complete compensation for all claims of the Dutch Government and of Dutch subjects as regards their interests in the German Dutch Telegraph Company.

The Washington Agreement has not yet been ratified by the powers concerned. Consequently the transfer of the cable Yap–Menado to the Dutch Government has hitherto not been effected. The German Government, however, is very much interested in having the cable transferred as soon as possible for the following reasons:

For some time efforts have been made to arrange a compromise between the German Dutch Telegraph Company and its Dutch creditors who have formed a corporation for the protection of their rights. Such a compromise was already accomplished on December 12/23, 1924 and was confirmed by the German and the Dutch Governments. However, since the transfer of the cable did not take place during the time provided for by the agreement,—to wit, up to March 31, 1925,—the agreement according to its provisions relative thereto, became null and void.

Negotiations are going on at present with a view of renewing the agreement. The economic situation of the German-Dutch Telegraph Company makes it necessary to reach a final settlement as soon as possible and thus to avoid a liquidation of the company. A consolidation of the company can, however, only be attained if the transfer of the cable Yap–Menado takes place in the near future. (The fact, that the cable has not been transferred yet, is the only reason that makes it doubtful whether the agreement, which had been the result of negotiations covering a number of years, can now be renewed.)

[20] *British and Foreign State Papers*, vol. XCIV, p. 595.

The desire of the German Government to have the cable Yap–Menado transferred to the Dutch Government as soon as possible has already been made evident on another occasion.

After it had become known through a statement of an American and an English member of the Restitution Division of the Reparations Commission that the question whether the value of the cable Yap–Menado could be credited to Germany's Reparation account might prevent a prompt execution of the Washington Agreement concerning this cable, the German "Kriegslasten-Kommission" in Paris sent a note to the Reparation Commission on December 18, 1924 in which the German Government renounced its claim of credit of the value of the cable concerned.

By this renunciation the German Government on its part did all it could to make an immediate transfer of the cable to the Dutch Government possible, and therefore considers itself justified in requesting the expeditious transfer of the cable to the Dutch Government.

I have the honor to ask Your Excellency to be kind enough to provide me with a communication as to the present status of this matter. I should be particularly obliged for information as to which impediments prevent the ratification of the Washington Treaty and the execution of the agreement regarding the cable Yap–Menado at the present time, and when the removal of these impediments may be expected.

Accept [etc.] MALTZAN

8621.73/59

The Secretary of State to the German Ambassador (Maltzan)

WASHINGTON, *December 2, 1925.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note dated November 13, 1925, in which you refer to the provisions of the Treaty of Versailles whereby Germany renounced her rights in favor of the Allied and Associated Powers to the Yap–Shanghai, Yap–Guam, and Yap–Menado cables which formerly belonged to the German-Dutch Telegraph Company. You state that negotiations are going on at the present time with a view to renewing an agreement entered into between the German-Dutch Telegraph Company and its Dutch creditors and that a consolidation of the Company can only be attained if the transfer of the Yap–Menado cable takes place in the near future. You set forth the desire of the German Government to have the Yap–Menado cable transferred to the Dutch Government and request information concerning the present status of the matter.

As this matter is of interest to the Allied and Associated Powers on account of their rights in the Yap–Menado cable, I should be pleased to bring the matter to their attention if you so desire. I should appreciate it if you would inform me whether you would have any objection to my transmitting a copy of your note to the interested governments for their consideration in connection with any further action that may be taken respecting this cable.[21]

Accept [etc.]

For the Secretary of State:
ROBERT E. OLDS

8621.73/59

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *December 12, 1925.*

EXCELLENCY: I have the honor to enclose a translation of a note dated November 13, 1925, received from the German Ambassador at this capital,[22] setting forth the desire of his Government to have the Yap–Menado cable transferred to the Netherlands Government as soon as possible in accordance with the Washington Arrangement, and inquiring as to the impediments which prevent ratification.

I shall be grateful if you will be so good as to bring the contents of this communication to the attention of your Government and furnish me at an early date a statement of its views regarding the action to be taken in response to the request of the German Government that steps be taken as soon as possible to complete the transfer of the Yap–Menado cable to the Government of the Netherlands as final and complete compensation for all claims of the Dutch Government and of Dutch subjects as regards their interests in the German-Dutch Telegraph Company. Representatives of the Netherlands Government have also brought to my attention the urgency of a settlement of this matter without delay.

In the circumstances I am prepared to take the necessary steps for the definitive conclusion of the proposed Arrangement relating to the former German cables in the Pacific Ocean tentatively accepted at the conference at Washington.

Similar communications transmitting translations of the German Ambassador's note have been addressed to the Ambassadors of France, Italy and Japan at this capital.

Accept [etc.] FRANK B. KELLOGG

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[21] On December 5 the Department was informed that there was no objection.
[22] *Ante*, p. 771.

862l.73/66

The French Ambassador (Daeschner) to the Secretary of State

[Translation]

WASHINGTON, *December 28, 1925.*

MR. SECRETARY OF STATE: By a note dated the twelfth instant [23] Your Excellency was pleased to forward to me a note from the Ambassador of Germany to the United States in which was stated the interest attached by the German Government to having the Yap–Menado cable allotted without delay to the Government of The Netherlands in pursuance to the Washington Agreement.

In behalf of my Government I have the honor to inform Your Excellency that as you had already been informed by my note of November 3 last,[24] France no longer makes any reservation as to the Yap–Menado cable being allotted to The Netherlands since Germany foregoes having the value of the cable credited to her.

This point having been settled, the French Government wishes to say that it would decline to take part in any further conference regarding the allotment of former German cables unless it was understood that France will keep the Brest–Azores–New York cable.

I should therefore be very thankful to Your Excellency if you would kindly let me have the American Government's assurances in that respect.

Be pleased [etc.] E. DAESCHNER

862l.73/64

The British Chargé (Chilton) to the Secretary of State

No. 1100 WASHINGTON, *December 29, 1925.*

SIR: Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that His Majesty's Government recently received representations from the German Ambassador in London expressing the desire of the German Government that the Yap–Menado cable may be transferred to the Netherlands Government as soon as possible in order to facilitate an early settlement between the German-Netherlands Telegraph Company and its creditors. As you are aware, this transfer was agreed to by the Allied and Associated Powers during the negotiations held in Washington in 1921 but this agreement has not yet been ratified. It is understood that similar representations have been made by the German Government to the United States Government.

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[23] See note to the British Ambassador, Dec. 12, 1925, *supra.*

[24] Not printed.

Sir Austen Chamberlain [25] has requested me to inform you that he has replied to the German Ambassador to the effect that His Majesty's Government, in so far as they are concerned, desire to raise no objection to the immediate transfer of the cable, provided that the French, Italian, Japanese and United States Governments concur in that course.

The German Government having also approached the French, Italian and Japanese Governments in this matter, His Majesty's representatives in Paris, Rome and Tokio have been instructed to inform the Governments to which they are accredited of the terms of the reply of His Majesty's Government.

I have [etc.] H. G. CHILTON

862i.73/67

The Japanese Ambassador (Matsudaira) to the Secretary of State

No. 5 WASHINGTON, *January 8, 1926.*

SIR: In your note of December 12th, 1925,[26] you were good enough to forward to me a note from the German Ambassador at this capital setting forth the desire of his Government for the transfer at an early date of the Yap–Menado cable to the Netherland Government in accordance with the Washington Arrangement. While requesting me at the same time to furnish you with the views of my Government in regard to the action to be taken in response to the request of the German Government, you gave me to understand that you were ready to take the necessary steps for the definite conclusion of the proposed arrangement relating to the former German cables in the Pacific tentatively accepted at the Washington Conference.

I took steps immediately to communicate to my Government the contents of your communication under acknowledgment in order to ascertain its views on the subject, and I have now the honor to state pursuant to instructions from Tokio that so far as the Japanese Government is concerned, it has no objection to the definitive conclusion of the arrangement entered into between the Governments of the United States and Japan in the course of 1921 in regard to the disposition of former German cables in the Pacific.[27] In fact it will give great satisfaction to my Government if this arrangement be made a final and conclusive one at the earliest possible moment.

In bringing the above to your knowledge, I am charged to observe that when the question of the disposition of the former German

[25] British Secretary of State for Foreign Affairs.
[26] See note to the British Ambassador, Dec. 12, 1925, p. 774.
[27] See *Foreign Relations*, 1921, vol. II, pp. 287 ff.

cables was taken up in 1921 by the Powers to whom Germany ceded them, it was intended at first to effect their distribution by lines among these Powers. The Japanese Government therefore put forward claims for allocation to Japan of three cable lines centering on Yap Island. But in arriving at the arrangement with the United States above alluded to, Japan agreed to waive her original claims and remain satisfied with the cession to her of only the Yap–Shanghai line. In the meantime, however, a tentative plan regarding the disposition of the former German cables in the Atlantic was laid by the American Delegation before the 17th session of the First Committee of the Preliminary Conference on Electrical Communications, in which it was proposed that the estimated value of the cables in question should be distributed equally among the four Powers, the United States, Great Britain, France and Italy. This proposal was made apparently on the assumption that the provisions of the Versailles Treaty regarding the cession of the former German cables are capable of being construed to mean that the Allied and Associated Powers should share equally in the distribution of these cables. The Japanese Government therefore deemed it just and equitable to suggest that the total estimated value of all the former German cables should be distributed equally among the five Powers, namely the United States, Great Britain, France, Italy and Japan.

Accordingly, the Japanese Government gave instructions to its representative at Washington to make a suggestion at the following meeting of the said Committee with a view to amending the proposed plan to make it conform to its wishes. As you are aware, however, no meeting of this Committee has been held since the one before which the American proposal was made and no suitable opportunity has presented itself for the carrying out of these instructions.

In these circumstances, I am instructed to avail myself of this opportunity to remark that in the event of any plan looking to the equal distribution of the total estimated value of the former German cables being adopted at the coming meeting of the First Committee of the Preliminary Conference on Electrical Communications, the Japanese Government would like to see it so formulated that Japan will receive an equal share in the distribution of these cables according to their estimated value.

I beg to add that in making this observation at this juncture, the Japanese Government has no intention, so far as the allocation of the cable lines is concerned, to claim any other line than the Yap–Shanghai line as agreed upon in the tentative arrangement concluded between our two Governments.

Accept [etc.] T. MATSUDAIRA

862i.73/71

The Italian Ambassador (Martino) to the Secretary of State

No. 643 A 12 WASHINGTON, *February 13, 1926.*

MR. SECRETARY OF STATE: By the note dated December 17th [*12th*], 1925 [28] Your Excellency asked me to submit to the consideration of my Government the request directed to Your Excellency by the Governments of Germany and of Netherlands for the transfer to the latter of the Yap–Menado cable.

As Your Excellency is aware, the Italian Government, which has always desired the settlement of the question of the ex-German cables, had in 1922 accepted in its main lines the United States plan providing for the sharing of said cables in equal parts by the Powers concerned, a plan formulated by Mr. Fletcher in conformity with a general understanding reached by the representatives of the same Powers; and, precisely on the occasion of the Fletcher plan, the Italian Government had also adhered to grant to Netherlands the Yap–Menado cable, the value of which is not to be calculated in the German reparation assets.

The Italian Government, having examined Your Excellency's note of December 12, have directed me to inform Your Excellency that in conforming their acceptance in its main lines of the Fletcher Plan, they also maintain their adhesion to the transfer of the Yap–Menado cable to Netherlands, the cession to take place without further delay.

Accept [etc.] G. DE MARTINO

862i.73/78

Memorandum by the Assistant Secretary of State (Harrison) of a Conversation With the Netherlands Minister (De Graeff)

[WASHINGTON,] *March 18, 1926.*

The Minister stated that he presumed I knew the purpose of his call, e. g., the final allocation to Holland of the Menado–Yap cable. The Minister said that he had spoken with the Italian Ambassador, and that he had learned from him that the Italian Government had given an answer which was more or less favorable.

I replied to the Minister that the statement of the Italian Ambassador was just about the case. That I was glad to say that in response to our inquiries, in which we had informed the various governments that we were prepared to proceed to the signature of the Hughes-Shidehara agreement, replies had been made, all of

[28] See note to the British Ambassador, Dec. 12, 1925, p. 774.

which were favorable in principle. There remained, however, certain questions which had to be decided, particularly as to the form which the decision should take. It was uncertain just what the procedure would be in view of the replies that had been made to us. However, the matter was being carefully studied and he could rest assured that we had their interest fully in mind, and also the interest which has been expressed to us by the German Government, and that I would do everything possible to hasten a final favorable action. The Minister expressed his thanks.

L[ELAND] H[ARRISON]

NICARAGUA

EFFORTS BY THE UNITED STATES TO PRESERVE CONSTITUTIONAL GOVERNMENT IN NICARAGUA[1]

817.00/3383a : Circular telegram

The Secretary of State to the American Missions in Costa Rica, Guatemala, Honduras, and Salvador

WASHINGTON, *January 7, 1926—7 p. m.*

On October 25, General Chamorro seized the fortress dominating Managua and informed the American Minister that it was his express purpose to drive the Liberals from the cabinet and restore the Conservative Party to the power which it enjoyed before the last election. He stated that he wished Solorzano to remain President and himself to be appointed Minister of War and to have complete control of all arms. The American Minister immediately informed him that any Government assuming power by force would not be recognized by the Government of the United States. Chamorro forced Solorzano to sign a joint document agreeing (1) that the coalition pacts should be broken and be considered as of no value henceforth; (2) that the Government be entirely Conservative; (3) that full amnesty be granted to all participants in his military operations; (4) that the Government pay Chamorro 10,000 cordobas for the expenses of his uprising besides paying the troops; (5) that Chamorro be made General in Chief of the Army. Chamorro thus gained complete control. The middle of November he sent 1200 men to Leon and stated that they would be held there until Vice President Sacasa who was then in hiding should resign and he intimated that if milder means could not produce Sacasa's resignation sterner measures might be adopted toward relatives and friends of the Vice President. Sacasa escaped and is now in the United States.

Chamorro was elected Senator on January 3, and states his intention of being elected first *designado* on January 11, whereupon he will cause Solorzano to resign and through intimidation will keep Sacasa from returning to the country and he will thus be President.

The Legation in Managua has been instructed to inform Chamorro that the United States would not recognize any Government headed by him since such a government would be founded on a *coup d'etat*

[1] Continued from *Foreign Relations*, 1925, vol. II, pp. 636–646.

and hence is debarred of recognition under the General Treaty of Peace and Amity of 1923.[2] The Nicaraguan Minister in Washington has also been definitely told that Chamorro will not be recognized if he assumes the presidency and it is hoped that this categoric statement made both here and in Managua may prove effective in preventing his taking this step. The Department feels that the signatories of the 1923 Treaty should make clear to Chamorro their position in the matter and it hopes that the Government to which you are accredited will instruct its representative in Managua by telegraph to tell Chamorro immediately that he will not be recognized by it should he assume the presidency during the present presidential term of office. This statement should be made before January 11, and should also be made public. The Legation at Managua reports on January 5,[3] that Chamorro maintains that he can obtain recognition from the other Central American States.

KELLOGG

817.00/3384 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *January 8, 1926—7 p. m.*

[Received January 9—2:55 p. m.]

5. Department's circular of January 7, 7 p. m. At a conference of the President and the Minister for Foreign Affairs this afternoon the former pointed out that it was difficult for him to comply with the Department's suggestion as the Salvadorean Chargé d'Affaires, Managua, was here on leave of absence and there was no one to whom such instructions could be sent. I then observed that in such cases it was not unusual for Foreign Office to communicate direct with Foreign Office and that in view of the urgency I hoped that course would be adopted in this instance. After some hesitation because he feared that the Salvadorean message would thereby receive greater prominence than messages, if any, from the other Central American States, the President agreed and in my presence instructed the Foreign Minister to telegraph the Nicaraguan Government tonight that the Salvadorean authorities would not recognize Chamorro if he should assume the Presidency during the present presidential term. A statement will be given to the press tomorrow or Monday.[4]

Repeated to Managua.

ENGERT

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[2] See *Conference on Central American Affairs, Washington, December 4, 1922–February 7, 1923* (Washington, Government Printing Office, 1923), p. 287.

[3] Telegram not printed.

[4] January 11.

817.00/3385 : Telegram

The Minister in Guatemala (Geissler) to the Secretary of State

GUATEMALA, *January 9, 1926—4 p. m.*
[Received January 10—12:17 a. m.]

1. The President of Guatemala expressed much gratification at Department's January 7, 4 p. m. [*7 p. m.?*], saying that it will strengthen prestige of Washington treaties. The Minister for Foreign Affairs informs me that the diplomatic representative of Guatemala in Managua has been instructed by telegraph in harmony with the suggestion of the Department and that a statement will be published tonight.

Repeated to Central American Missions.

GEISSLER

817.00/3387 : Telegram

The Minister in Honduras (Summerlin) to the Secretary of State

TEGUCIGALPA, *January 10, 1926—10 a. m.*
[Received 10:15 p. m.]

3. The Minister for Foreign Affairs states that the Government of Honduras is in entire accord with the Department in regard to the strict observance of the General Treaty of Peace and Amity of 1923 and that its representative at Managua has been instructed by telegraph to make representations as indicated in the Department's urgent circular telegram of January 7, 7 p. m., but not to make public this declaration at the present time.

On account of menacing revolutionary movements from Salvador and Guatemala it appears that the authorities of Honduras are most anxious to avoid any act which might [tend] to alienate Nicaraguan sympathy and support.

Repeated to Managua.

SUMMERLIN

817.00/3389 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *January 11, 1926—10 a. m.*
[Received 2:17 p. m.]

9. Contending that he alone can dominate the present situation in Nicaragua and reasserting his determination to conduct such a government that the United States will be forced to recognize him, only an eleventh-hour change can prevent Chamorro from carrying out

his expressed plans of "assuming the Presidency" by Wednesday the 13th at the latest and thus forcing nonrecognition. The plan is to impeach Sacasa today; Congress to elect Chamorro *designado* tomorrow; Chamorro to secure Solorzano's resignation Wednesday by force if necessary and assume power. When this happens my further presence here will be out of the question and the Department's instructions are solicited as to plans for the care of the Legation. . . .

. . . . . .

EBERHARDT

817.00/3389 : Telegram

The Secretary of State to the Minister in Nicaragua (Eberhardt)

WASHINGTON, *January 12, 1926—4 p. m.*

4. Your 9, January 11, 10 a. m.

. . . . . .

Should Chamorro nevertheless assume the presidency there is no reason for you to leave. Your presence in Managua will be necessary to protect American interests. The Minister was not withdrawn from Honduras on account of revolution and provisional government there.[5] Our Minister is at present at Quito despite the fact that the régime now functioning there is not recognized by this Government.[6] During the tenure of office of the two Military Juntas in Chile the American Ambassador remained in Santiago.[7]

Should Chamorro assume office you will of course make it clear that this Government does not recognize him as President nor can it accord recognition to his Government. You will then address only personal letters and not official communications to the Minister for Foreign Affairs. They should be addressed to him personally omitting any title of office. Your representations should be confined strictly to protection of American interests. Passports issued by the new régime should not be visaed. This Government will not ask for exequaturs for American consuls in Nicaragua under the new régime nor will it accord exequaturs to consuls of the new régime in this country nor will it receive a new Minister accredited by the new authorities.

. . . . . .

KELLOGG

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[5] See *Foreign Relations*, 1925, vol. II, pp. 317 ff.
[6] See *ibid.*, pp. 64 ff.
[7] See *ibid.*, vol. I, pp. 581 ff.

817.00/3391 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *January 13, 1926—10 a. m.*
[Received 11:43 a. m.]

10. Congress yesterday declared the Vice Presidency vacant and sentenced Sacasa to two years' banishment from Nicaragua.

EBERHARDT

817.00/3395 : Telegram

The Minister in Costa Rica (Davis) to the Secretary of State

SAN JOSÉ, *January 15, 1926—10 a. m.*
[Received 2:15 p. m.]

6. Department's circular telegram dated January 7, 7 p. m. President Jimenez has definitely informed the Nicaraguan Chargé d'Affaires in Costa Rica that the Costa Rican Government will not recognize Chamorro should he assume the Presidency of Nicaragua. This decision has been made public. Repeated to Central American Missions.

DAVIS

817.00/3416 : Telegram

The Secretary of State to the Minister in Nicaragua (Eberhardt)

WASHINGTON, *January 22, 1926—3 p. m.*

11. Your 18, October [*January*] 20, 5 p. m.[8] Señor Castrillo addressed a formal note to the Secretary of State on January 19,[9] informing him that Solorzano having resigned Chamorro took charge of the executive power on January 17. I sent him the following informal reply today:

"Dear Doctor Castrillo:

In your communication of the 19th instant addressed to the Secretary of State you advise that President Solorzano having resigned his office General Emiliano Chamorro took charge of the executive power on January 17.

The hope expressed in your letter that the relations which have been close and cordial for so many years between Nicaragua and the United States will continue and grow stronger has been noted with pleasure. The Government and people of the United States have

[8] Not printed.

[9] Note not printed; Dr. Salvador Castrillo was Nicaraguan Minister in the United States.

feelings of sincerest friendship for Nicaragua and the people of Nicaragua, and the Government of the United States will of course continue to maintain the most friendly relations with the people of Nicaragua. This Government has felt privileged to be able to be of assistance in the past at their request not only to Nicaragua but to all the countries of Central America more especially during the Conference on Central American Affairs which resulted in the signing of a General Treaty of Peace and Amity on February 7, 1923, between the five Republics of Central America. The object of the Central American countries, with which the United States was heartily in accord, was to promote constitutional government and orderly procedure in Central America and those Governments agreed upon a joint course of action with regard to the non-recognition of governments coming into office through *coup d'etat* or revolution. The United States has adopted the principles of that Treaty as its policy in the future recognition of Central American Governments as it feels that by so doing it can best show its friendly disposition towards and its desire to be helpful to the Republics of Central America.

It is therefore with regret that I have to inform you that the Government of the United States has not recognized and will not recognize as the Government of Nicaragua the régime now headed by General Chamorro, as the latter was duly advised on several occasions by the American Minister after General Chamorro had taken charge of the citadel at Managua on October 25th last. This action is, I am happy to learn, in accord with that taken by all the Governments that signed with Nicaragua the Treaty of 1923.

I am, my dear Doctor Castrillo, Very sincerely yours, Signed Frank B. Kellogg."

You will please send a copy of this in an informal note to Señor Gutierrez Navas [10] saying that this represents the attitude and policy of this Government toward the present régime in Nicaragua. After your letter is delivered to Señor Gutierrez you may make a copy of my letter to Señor Castrillo public, telegraphing the Department when this is done in order that it may likewise be released to the press here.[11]

KELLOGG

817.2318/–: Telegram

The Chargé in Costa Rica (Gallman) to the Secretary of State

SAN JOSÉ, *May 5, 1926—10 p. m.*

[Received May 6—2:22 a. m.]

23. At the request of Minister for Foreign Affairs I called at Foreign Office tonight. He formally advised me that Cardenas, former Nicaraguan Chargé d'Affaires, today requested permission of President Jimenez to permit the passage of Nicaraguan troops through Costa

[10] Nicaraguan Minister for Foreign Affairs.

[11] Given to the Nicaraguan press January 25.

Rican territory in Colorado en route to Bluefields. This request was denied. Cardenas then requested permission to send unarmed Nicaraguan troops through the same territory, arms to be sent later over the same route. This request was also denied.

Minister for Foreign Affairs also formally advised me that the Costa Rican Government was determined to prevent invasion of Costa Rican territory by Nicaraguan troops at all cost.

He intimated that the Government of Costa Rica was deeply interested in knowing what measures the Government of the United States might adopt in order to prevent invasion of Costa Rican territory and probable bloodshed. He intimated further that presence of an American war vessel in the neighborhood of Colorado Bar might prevent the invasion of Costa Rican territory.

GALLMAN

817.2318/–: Telegram

The Secretary of State to the Chargé in Costa Rica (Gallman)

WASHINGTON, *May 7, 1926—4 p. m.*

9. Your 23, May 5, 10 p. m. You may reply to the Minister for Foreign Affairs that the Department is confident Costa Rica will maintain strict neutrality in the case of political disturbances in Nicaragua and not permit Costa Rican territory to be used as a base of operations by either faction. In so doing Costa Rica can count on the moral support of the United States Government, and, it is hoped, of the Central American Governments also.

The U. S. S. *Cleveland* has been ordered to Bluefields to protect American lives and property. The Department doubts the advisability of ordering another war vessel to Colorado Bar at this time. Watch situation closely and keep Department fully informed.

KELLOGG

817.00/3551: Telegram

The Consul at Bluefields (McConnico) to the Secretary of State

BLUEFIELDS, *May 8, 1926—4 p. m.*

[Received 12:50 p. m.]

Cleveland arrived 6th, marines landed 7th and Bluefields declared a neutral zone. Protection also accorded to Collector of Customs and customhouse at El Bluff. Business resumed and feeling of confidence prevails. Banco Nacional now fully protected but Government funds taken by Liberals [who?] are in control of Bluefields, El Bluff, Rama, La Cruz, Rio Grande, Bragmans Bluff and Corn Island. Americans at Cape Gracias request protection and those at Rama fearing an attack from Government troops are also asking for protection.

MCCONNICO

817.00/3561 : Telegram

The Secretary of State to the Consul at Bluefields (McConnico)

WASHINGTON, *May 15, 1926—6 p. m.*

Your May 8, 4 p. m., and May 10, 6 p. m.[12] The Department desires American naval forces will maintain strictest neutrality between contending factions. Neither Liberal forces nor Chamorro forces should be hindered in their military operations except so far as may be necessary to assure protection to American lives and property. Liberal authorities should not be prevented from exercising civil jurisdiction in territory occupied by them and Chamorro authorities should not be prevented from exercising similar functions in any territory which they now occupy or may reoccupy.

Press reports American forces have been disarming Liberals at Bluefields. Department presumes this applies only to neutral zone.

Department approves protection accorded to Collector of Customs and customshouse but does not desire that American forces be used in the interest of either faction to protect revenues or moneys belonging to the Nicaraguan Government. Repeat to Managua.

KELLOGG

817.00/3637

Press Release Issued by the Department of State, June 8, 1926

Mr. Eberhardt, the American Minister to Nicaragua, having been granted leave of absence, left Managua for the United States on June 7. Mr. Lawrence Dennis, Secretary of the Legation, will remain in Managua as Chargé d'Affaires ad interim.

Mr. Eberhardt's departure has no political significance whatever; he is simply availing himself of the leave of absence to which he is legally entitled during the current year. The attitude of the United States Government towards the Chamorro régime remains unchanged. The American Government continues to be, as it has always been, a warm friend of the Nicaraguan people, but it does not and will not recognize as the Government of Nicaragua the régime now headed by General Chamorro. Needless to say the American Government sincerely hopes that the Nicaraguan people will by a return to a constitutional form of government make it possible for the United States to extend recognition to such a government and enter into formal diplomatic relations therewith.

[12] Latter not printed.

817.00/3729 : Telegram

The Consul at Bluefields (McConnico) to the Secretary of State

BLUEFIELDS, *August 23, 1926—4 p. m.*

[Received 10:03 p. m.]

A warship is urgently needed to protect life and property of American citizens. Conditions growing worse, Rio Grande in the hands of Liberals. An attack on Bluff and Bluefields expected every moment. People of Bluefields are very apprehensive. The following is from the Chinese at Bluefields to the Chinese Minister at Washington:

"Please use your best efforts with the American Government to obtain protection of life and property of our colony during the present revolutionary movement and wire results through the American Consul at Bluefields."

McCONNICO

817.00/3729 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

WASHINGTON, *August 26, 1926—6 p. m.*

61. U.S.S. *Tulsa* has been ordered to Corinto, and U.S.S. *Galveston* to Bluefields.

KELLOGG

817.00/3738a : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

WASHINGTON, *August 27, 1926—6 p. m.*

63. I sent for the Nicaraguan Minister today and made the following statement to him. You should immediately ask an audience with General Chamorro and leave a copy with him, stating that you do so under instructions from your Government:

"The Government of the United States has viewed with grave apprehension the situation existing in Nicaragua brought about by the unconstitutional usurpation of the executive power by a military leader. That General Chamorro, who was one of the delegates to the Central American Conference of 1923 and, as the representative of his country, signed a treaty which has as its basic principle the prevention of revolution and the seizure of the Government through a *coup d'etat*, could have permitted himself to have brought disaster upon his country through the usurpation of the executive power is

almost unbelievable. The Government of the United States reaffirms its statement that it will not recognize General Chamorro as President of the Republic of Nicaragua.

Since the assumption of power by General Chamorro last January two revolutionary movements have already broken out in Nicaragua, and reports which have reached the Department show a state of unrest in that country which cannot but cause serious concern. Should events in Nicaragua continue their present course which can only result in ultimate civil war and economic chaos and imperil the lives and property of Americans and other foreigners in Nicaragua, the United States Government will be compelled to take such measures as it may deem necessary for their adequate protection.

While anxious and desirous to avoid interference in the purely domestic affairs of Nicaragua the Department of State cannot but point out that actions on the part of those in control of the Government of Nicaragua which according to present advices received by the Department are tending to prevent the free operation of the Financial Plans of 1917 [13] and 1920,[14] entered into between the Nicaraguan Government and its foreign creditors under the good offices of the Department of State, are being viewed with considerable anxiety by the United States Government.

It would now appear that the only way by which further bloodshed and serious disorders, which can only bring about the ruin of the country, may be avoided is by the withdrawal of General Chamorro from the position which he now holds and a prompt return to constitutional government. It is believed that as a first step towards this consummation a conference could be held attended by the political leaders of importance of all parties in Nicaragua, with a view to deciding upon a feasible plan."

[Paraphrase.] In case the political leaders should desire to take advantage of the neutral character of a United States war vessel on which to hold such a conference the Department of State would have no objection. However, should such a suggestion be made, the Department prefers that it should be made by the Nicaraguans themselves. It is the feeling of the Department that the situation calls for an agreement by all factions in Nicaragua which can guarantee the establishment of an administration satisfactory enough to all parties to prevent further revolutionary outbreaks and can facilitate the restoration of constitutional government in due season. [End paraphrase.]

KELLOGG

[13] See *Foreign Relations*, 1917, pp. 1112 ff.

[14] See César Arana, *Compilacion de contratos celebrados con los Banqueros de New York, con el Ethelburga Syndicate de Londres y con el Banco Nacional de Nicaragua, Inc.—Leyes relativas a los mismos contratos, 1911–1928* (Managua [1928–9]), vols. II and III.

817.00/3739 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *August 29, 1926—noon.*
[Received August 30—12:37 a. m.]

116. Department's telegram 63.[15] Last night I read the Secretary's statement to Chamorro who was visibly moved thereby but replied he had made up his mind to maintain his position against all Nicaraguans but would welcome intervention by American forces to whom he would cheerfully turn over government. I stated we did not wish solution along these lines but as indicated in Secretary's statement and expected him patriotically to avert further useless bloodshed. He expressed confidence that he would ultimately triumph over his opponents and determination to fight to the end.

An hour later I discussed communication with Adolfo Diaz[16] who is in constant conference with Chamorro. Former said he felt sure Conservatives would now succeed in peacefully coercing Chamorro to depart at once as first step toward settlement. Cuadra Pasos[17] arrives tomorrow when I expect important conferences.

DENNIS

817.00/3741 : Telegram

The Consul at Bluefields (McConnico) to the Secretary of State

BLUEFIELDS, *August 29, 1926—5 p. m.*
[Received August 31—10:25 a. m.]

United States ship *Galveston* arrived 26th and landed naval force. Bluefields declared neutral zone because *jefe político* in a decree issued 25th informed noncombatants that in view of critical condition they would be compelled in the event of a battle to defend their own lives and property.

Bluff threatened with bombardment tomorrow morning. Puerto Cabezas captured by Liberals after bombardment 28th. Several combatants injured according to a report. Manager of the company requests intervention of the Navy. Pearl Lagoon also in the hands of Liberals.

If Bluff is captured and Crampton, Collector of Customs, is replaced, what action must be taken? Crampton insists upon transferring funds to Chamorro regime. Liberals insist upon retention of revenues for the use of themselves, not for enemies.

Conditions at Bluefields with naval force in charge are quite satisfactory.

MCCONNICO

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[15] *Supra.*

[16] Nicaraguan Senator, ex-President of Nicaragua. See *Foreign Relations*, 1912, pp. 1016, 1063 ff.

[17] Representative of General Chamorro.

817.00/3779 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *September 10, 1926—6 p. m.*
[Received September 11—1:15 a. m.]

130. At 3 p. m. today General Chamorro handed me a signed letter of which the following is a translation:

"Managua, September 10. Chargé d' Affaires of the United States. Sir: Inasmuch as the people [*peace*] of the Republic is disturbed by revolutionary elements who have found a propitious occasion for their plans because of the international difficulties of my Government, which has not been recognized by the Governments of the United States and of Central America, I desire to make an effort on behalf of national tranquillity, establishing it, if possible, in a definite manner upon a policy of concord, which most [*moreover*] has always figured in the program of the Conservative Party.

Since my Government, both in the campaign carried on to dominate the emergency of last May as in that of the present, has demonstrated its ability to make prevail the principles of the Conservative Party with the unquestionable prestige of that group in which it has supported and supports my Government, I believe the moment has arrived to manifest once more our harmonizing spirit and a benevolent inclination to use gentler methods in order to realize our administrative policies.

To this end and with such intentions I apply to you, [accepting] the good offices of the Legation in your [worthy] charge, in order to see whether the ideals my Government cherishes may be put in operation in an honorable way which will mollify the situation of our opponents, thereby laying the basis of the partly [*peaceful*] living together of the two historic parties of the country.

In the way of realizing this you may count on my acquiescence for the holding of conferences between the representatives of both historic parties and of the Government in order to discuss and elaborate a plan of conciliation on the substantial basis of my withdrawal from power through the resignation [*deposit?*] of the Presidency in a member of the Conservative Party whom the National Assembly [*Congress*] may elect in order that he may carry on a Conservative administration with all the amplitude which may spring from the said conferences which surely will be within the broad views of our party.

It is my desire that the greatest success crown your mediation and the conversations which may result therefrom, but in case of [*for*] lack of agreement or any other unfortunate accident, these intentions of harmony fail, being convinced, as I am, that the international [situation?] is a considerable part of the causes of our intranquillity, I now hasten to declare through you to the American Department of State my intention of withdrawing from the Presidency, resigning it in favor of the Conservative whom the National Congress may elect as soon as peace be established in Nicaragua.

I believe that this declaration on my part will be sufficient for the Department of State to consider in a friendly manner our position and aid us in removing all the external conditions which have been propitious up to the present to the elements of discord which seriously [perturb] the life of our Republic. [With the assurances] et cetera. Emiliano Chamorro."

I await instructions as to reply. Fighting Bluefields. The Government is without funds unless taken from bank. Anarchy threatening. Prompt peace impossible without good offices of the United States.

DENNIS

817.00/3779 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

[Paraphrase]

WASHINGTON, *September 11, 1926—1 p. m.*

72. Legation's telegrams No. 128, dated September 10, 10 a. m., No. 129, dated September 10, 5 p. m.,[18] and No. 130, dated September 10, 6 p. m.

Because General Chamorro has requested the good offices of the Government of the United States for the purpose of reestablishing peace and constitutional government in Nicaragua, and because the Government of the United States is now, as it has always been, willing to lend its good offices to a friendly Nation in order to aid it (refer to the Department's telegram No. 69 dated September 9, 7 p. m.)[19] you are authorized to use your friendly good offices to the end that a truce may be established by the contending factions and that a conference may be held aboard an American warship provided all the contending factions express such a desire. In communicating with the Liberal leaders you will make it perfectly clear that you are merely using your good offices with the different factions for the purpose of obtaining a truce and restoring peace to the country. You will also make it clear that all agreements that may be reached are to be among the various political factions and that the Legation cannot be a party to such agreements, and that the Legation is merely exercising its good offices in this matter in order to restore peace and order in Nicaragua.

KELLOGG

[18] Neither printed.
[19] Not printed.

817.00/3789 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *September 13, 1926—5 p. m.*

[Received 10:40 p. m.]

134. I replied yesterday to Chamorro's letter [20] on basis Department's telegram September 11, 1 p. m. He will give me letter tomorrow covering details and submitting names of Liberal and Liberal Republican leaders he wishes to invite to conference. Legation's good offices in transmitting these invitations through Legations in neighboring countries and press here and there seem necessary. I propose to only transmit invitations to those whose names are submitted. It is thought preferable to hold conference in Corinto but not on war vessel. Chamorro will request United States to have naval authorities maintain neutral zone either of entire port and town or of small area around wharf and adjacent hotel as naval commander may prefer. This will be simple matter and afford ample security to delegates. I recommend I should be at once authorized, if requested, to offer this.

Exchange of notes on the proposed conference will be officially published soon. Conservative Party apparently unanimous in desire for conference and peace although somewhat doubtful of successful outcome. Inactivity here indicates willingness to attend.

DENNIS

817.113/121a : Telegram

The Secretary of State to the Minister in Costa Rica (Davis) [21]

WASHINGTON, *September 16, 1926—1 p. m.*

17. In view of the fact that there exist in Nicaragua conditions of domestic violence which might be promoted by the use of arms or munitions of war procured from the United States, the President of the United States, under a Joint Resolution of Congress approved by the President January 31, 1922,[22] has issued a proclamation [23] placing an embargo on the export of arms and munitions of war from the United States to Nicaragua. Please communicate the foregoing to the Government to which you are accredited for its information. You may also in your discretion suggest to the Minister for Foreign

[20] See telegram No. 130, Sept. 10, 6 p. m., from the Chargé in Nicaragua, p. 791.

[21] The same, on the same date, to the American Missions in Honduras (No. 32), Salvador (No. 59), and Guatemala (No. 44). A similar telegram (No. 296) of the same date was sent to the Embassy in Mexico.

[22] 42 Stat. 361.

[23] Dated Sept. 15, 1926; 44 Stat. 2625.

Affairs that in the interests of the promotion of peace and order in Nicaragua his Government might consider taking the same action or such other steps as might prevent the exportation of arms or munitions of war from his country to Nicaragua.

KELLOGG

817.00/3803 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *September 17, 1926—2 p. m.*

[Received 10:23 p. m.]

137. Please advise immediately whether United States will, as requested in writing by Chamorro, have neutral zone around wharf and hotel maintained by marines at Corinto for conference. This is necessary as lodging and meeting facilities of warship not adequate.

DENNIS

817.00/3820 : Telegram

The Consul at Bluefields (McConnico) to the Secretary of State

BLUEFIELDS, *September 23, 1926—10 a. m.*

[Received 11:15 p. m.]

Contending factions have agreed upon an armistice of 15 days beginning today with an extension of time if it is deemed advisable for the conference. Conservatives will withdraw to Rama, Liberals to Pearl Lagoon. Neutral zone extended to include Bluff and islands of lagoon of Bluefields. Escondido River opened to commerce and navigation. Admiral Latimer to act as arbitrator.

MCCONNICO

817.00/3821 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *September 24, 1926—10 a. m.*

[Received 8 p. m.]

142. After two days conference with me Liberal junta informs me it desires to attend conference on the basis of the Department's telegram of September 11, 1 p. m., authorizing my good offices, and is sending a mission of Federico Sacasa, Mariano Arguello, Benjamin Abaunza to Guatemala to talk with Juan B. Sacasa. Mission should leave in a day or two and conference be possible first or second week October. . . . It is clear now Liberals have poor military leaders and organization and resumption of hostilities would probably result in further useless disaster for them and country.

DENNIS

817.00/3908 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *October 10, 1926—10 a. m.*
[Received 4:40 p. m.]

162. Captain Wyman, United States Ship *Denver*, established neutral zone Corinto this morning at 7 o'clock to continue until three days after peace conference. Transfer took place under most favorable conditions. This is the first time neutral zone at Corinto in history.

DENNIS

817.00/3928 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

U. S. S. "DENVER," *October 18, 1926—9 a. m.*
[Received October 19—3:21 p. m.]

165. Preliminary meeting of the Secretariat of National Liberal and National Conservative delegations first met on the *Denver* on October 16, at 9 a. m.[24] It was [the decision] of both delegates [*delegations*] to hold the sessions on a war vessel and that the meetings be presided over by the undersigned. Because the delegates stated that a neutral chairman was necessary I agreed to lend my good offices as presiding officer. It was understood that I would incur no responsibility therefor or would sign no final agreement, and that no remarks by me in conference be entered upon the record, and that no statement would be given to the press or outsiders except those signed by the two secretaries.

Plenary session met on October 16 at 4 p. m. In the two sessions held yesterday there was a spirit of extreme conciliation, cordiality and frankness and both delegations were fraternizing. Last night the program of the conference was agreed upon, mentioning the reestablishing of peace on the basis of a constitutional government. After much discussion and disagreement by Liberals, the formula for the reestablishment of constitutional government was admitted to be the problem for discussion and settlement in the conference.

I anticipate the necessity of allowing both parties to talk themselves out and expect conference to last a week. It was agreed upon by both parties, the Liberals being very insistent that until settlement between themselves had been reached the conference should

[24] For the proceedings of the conference, see J. Barcenas Meneses, *Las Conferencias del "Denver," actas autenticas de las sesiones, con introduccion y lijeros comentarios* (Managua, Tip. y Encuadernacion Nacional).

be limited to the two belligerent parties after which time minor parties may be admitted.

The Government reports that on October 15 there was an engagement near the Honduran borders at Sonata with some 300 Liberals in which the latter were routed. The Liberal casualties were 17 killed and many wounded.

DENNIS

817.00/3923 : Telegram

The Secretary of the Conservative Delegation (Meneses) and the Secretary of the Liberal Delegation (Camorales) at the Corinto Conference to the Secretary of State

U. S. S. "DENVER" [*undated*].

[Received October 18, 1926—11:30 a. m.]

At the inauguration of the peace conferences on board the *Denver* both delegations send Your Excellency their respects and hope that under the friendly offices of the American Government peace will be restored.

J. BARCENAS MENESES
CAMORALES

817.00/3923 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

WASHINGTON, *October 19, 1926—3 p. m.*

93. For the Secretaries of the Conservative and Liberal delegations:

"I thank you for your telegram of greeting on the occasion of the inauguration of the conference at Corinto and most earnestly hope that through the patriotic efforts of all parties an amicable agreement will be reached restoring peace and tranquility to your country and thus insuring a return to that economic prosperity and progress so notable in recent years. Frank B. Kellogg."

KELLOGG

817.00/3943 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

U. S. S. "DENVER," *October 19, 1926—4 p. m.*

[Received October 21—11:30 a. m.]

167. The conference is now in a deadlock over formula for "reestablishment of peace on basis of constitutionality and the treaty of Washington."[25] A Conservative executive and government with

[25] *Conference on Central American Affairs*, p. 287.

participation for the Liberals is insisted upon by the Conservatives. However, the Liberals insist upon the acceptance of Sacasa as the only possible constitutional solution. In the conference this morning the Liberals went on record that they had received aid from the Mexican Government and that if they did not secure the acceptance of Sacasa in the conference they were prepared to go on with the revolution, counting on further aid from Mexico and certain other Governments. They admitted that they could not hope for success without such aid. They further declared that they were under no obligations to the Mexican Government for such assistance. This was ridiculed by the Conservatives. I feel that the Liberals are divided, one group in favor of continuing the revolution with the aid of Mexico, and the other being of a desire to compromise on the basis of more favorable concessions from the Conservatives. It is now desirable for me to have a clear, forceful statement from the Department with respect to the continuation of the revolution with the aid of other Governments, especially that of Mexico. In order to bring about peace and to avert disaster, we must smash the doctrine of constitutional restoration by means of foreign aid to revolution, once and for all.

Have received a report of a second conflict near Somoto yesterday, indicating that Liberals were repulsed with casualties consisting of 26 killed and 5 wounded.

The Government reports that two launches, the *Fernandino* and *Union*, left Limon, Costa Rica, with revolutionists for Nicaragua.

DENNIS

817.00/3931 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

CORINTO, *October 20, 1926—9 a. m.*

[Received 3:12 p. m.]

168. Liberal delegation presented to conference yesterday a basis of proposal that the following question be submitted to arbitration by the Secretary of State of the United States and representatives of the four Central American Governments:

"Whether the reestablishment of the Government of Nicaragua on the basis of constitutionality and the treaties of Washington must be made with Dr. Sacasa as Chief of State or whether it is possible legally to constitute a government without taking account of the said Vice President Dr. Sacasa."

I am informing conference [*delegates*] [26] today:

1. The proposition submitted by the Liberal delegation does not appear to constitute a justiciable matter subject to arbitration foreign governments but is a domestic political problem which must be settled by Nicaraguans.

2. While the Department is not disposed to answer hypothetical questions as to possible solutions, it would probably indicate, if requested, whether a definite plan for a new government agreed upon in the conference would under the Nicaraguan Constitution and the treaty of 1923 offer a satisfactory basis for *de jure* recognition.

DENNIS

817.00/3946 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

CORINTO, *October 21, 1926—10 p. m.*

[Received October 22—1 : 10 p. m.]

173. Conservative delegation formally declined to accept proposition of Liberals communicated my telegram October 20, 9 a. m. Conservatives objected only to arbitration by Central American Governments, alleging these Governments would not be impartial. To the surprise of all, Liberals this afternoon presented statement that, in view of refusal of Conservatives to accept their first proposition of Sacasa and their second proposition for the submission of the question as to Sacasa to arbitration by the United States and Central American Governments, they felt obliged to withdraw from conference. I immediately suspended session until tomorrow and had conference with Cuadra Pasos [27] and Espinosa.[28] The former offered Liberals reinstatement of the 15 Congressmen and the expelled magistrates, also two new members in Cabinet, all former posts held under Solorzano government, free elections in return for resignation of Sacasa, and acceptance of designation by Congress of Adolfo Diaz.

The change in attitude of the Liberals is possibly due to the receipt of news by mail steamer which arrived this afternoon from Salvador. Report from Customs Collector Pietro indicates both sides preparing for resumption of hostilities. Report from Puerto Castillo, Honduras, states filibuster vessel manned by Mexicans passed bay headed for Bluefields. Rumors allege that all arms and ammunition were taken off *El Tropical* before it left Salvador and since landed at some point on Bay of Fonseca and that a general uprising in Leon is to be

[26] Correction telegraphed by Mr. Dennis in his telegram No. 170, Oct. 20; not printed (file No. 817.00/3932).

[27] Dr. Carlos Cuadra Pasos, representative of General Chamorro at the conference.

[28] Dr. Rodolfo Espinosa, Liberal Party delegate at the conference.

expected soon. According to reliable information the Mexican consul in Managua is sending and receiving unusual quantity of codes and has close liaison with Liberal delegates.

The Liberals are on record in conference as having received and as counting on further Mexican aid to carry on revolution. Their sudden determination to break up conferences either is a bluff to secure the utmost in terms from Conservative delegation or has been taken on the receipt of definite assurance of further support from Mexico. The Conservatives in conferences have shown an extremely conciliatory attitude and proposed compromises while the Liberals have held out for Sacasa or nothing, offering as a compromise the preposterous proposition of an international arbitration of an interior Nicaraguan political problem. As to this proposition the Conservative delegation suggested [asking] for an official statement which I had already given privately to both sides in the negative, but Liberals declined this suggestion.

If, as it would appear, should Liberals not modify their attitude tomorrow morning, they are not desirous of peace except on basis of their triumph and if they propose to carry on their fight for constitutionality as they have threatened with Mexican aid, I feel the United States Government must be prepared to take prompt and adequate measures to prevent foreign intervening in Nicaraguan affairs. I have full assurance from Conservatives and Chamorro that in the event of failure of conference he will immediately withdraw and allow a provisional government to be formed which will at once proceed constitutionally to recognize the government. The United States Government should immediately lend its full moral support to the provisional government during the transition period and extend recognition upon the satisfactory election of the new President. Please instruct immediately.

DENNIS

817.00/3943 : Telegram

The Secretary of State to the Chargé in Guatemala (Ellis)

WASHINGTON, *October 22, 1926—5 p. m.*

50. Under date of October 19, Chargé d'Affaires Dennis advised the Department from Corinto that the Liberals went on record in meeting of conference stating that they had received aid from the Mexican Government and that if they did not secure the acceptance of Sacasa in the conference they were prepared to go on with the revolution, counting on further aid from Mexico and certain other governments. They admitted that they could not hope for success without such aid. They further declared that they were under no obligations to Mexico. The Chargé d'Affaires states that he feels that the Liberals

are divided, one group in favor of continuing the revolution with the aid of Mexico and the other desiring to compromise on the basis of more favorable concessions from the Conservatives. . . .

[Paraphrase.] In view of the foregoing and the fact that Mr. Dennis on October 21, stated that the conference is now engaged in discussing a practical solution, and that the spirit of both parties is more conciliatory and that he is hopeful of a satisfactory settlement, the Department feels that it is most necessary to inform Sacasa regarding the Department's position, in order that he may be held responsible should the conference fail because of any act on his part. [End paraphrase.]

You are therefore instructed to seek immediately a personal and private interview with Doctor Sacasa and say to him that the Department has learned that many Liberals have admitted receiving from Mexico arms and assistance in their efforts to overthrow the régime now functioning in Nicaragua and there is good reason to believe that rather than come to any agreement at the conference now being held at Corinto some of the Liberals would prefer to renew hostilities and continue their efforts to overthrow the Chamorro régime by force, counting upon further aid from Mexico and certain other governments. That the Department is sure Doctor Sacasa does not approve of this course and really desires to see peace restored in Nicaragua without compelling that country to suffer first the unimaginable horror and disaster of a civil war, which, if one party accepts aid and material assistance from abroad, may be of long duration and frightful intensity. That the Department considers the Central American countries obligated by Article 14 of the General Treaty of Peace and Amity of 1923 not to intervene under any circumstances, directly or indirectly, in the internal political affairs of any other Central American country, and that other countries not signatories of this Treaty and having no plausible ground or valid reason for interfering in the domestic affairs of Nicaragua are equally obligated to maintain a strict neutrality in the event of civil war in that country. The United States Government therefore, anxious as it is to avoid any interference in the internal affairs of Nicaragua, itself, would view with grave disfavor any such interference on the part of any other nation; and any faction or party which solicited or accepted such aid or assistance could count upon the firm opposition of the United States Government.

Investigate and report to the Department as soon as possible as to the departure of *The Star* with ammunition and Mexicans from Guatemala.

The penultimate paragraph has been cabled to Dennis for his information.

KELLOGG

817.00/3954 : Telegram

The Chargé in Guatemala (Ellis) to the Secretary of State

GUATEMALA, *October 23, 1926—3 p. m.*
[Received 10 p. m.]

95. This morning I discussed with Doctor Sacasa the contents of Department's telegram of October 22, 5 p. m., Military Attaché Gwynn being present. Sacasa demonstrating [*sic*] no definite or pertinent reply but explained at great length his personal position, pointing out that he is not a member of the revolution but an independent worker for the maintenance of the treaties and a constitutional order in Nicaragua. He said that he had received no information from Liberals at the peace conference and did not know whether they considered it best to continue the revolution. He admitted that his party had sought arms and ammunition from all possible sources. He refused to discuss Mexican or Central American participation but did not deny their intervention on behalf of Liberals in Nicaragua.

. . . . . .

ELLIS

817.00/3958 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

CORINTO, *October 23, 1926—10 p. m.*
[Received October 24—3 : 32 p. m.]

176. Final session of the conference to be held tomorrow morning, with vote of thanks by both delegations for American good offices. Neutral zone Corinto to continue until October 27, 4 p. m. Utmost cordiality reigns between delegates personally.

In final deliberative sessions today Liberals declined offer of Conservatives to restore members of Congress and Courts and to give two ministries local officials in Liberal departments and free elections on basis of resignation of Sacasa and withdrawal of Chamorro and designation of Senator Adolfo Diaz by Congress to complete present constitutional performance as President. Conservatives offered to consider further concessions. Liberals made counterproposal of provisional government headed by members of Progressive Party [such?] as Ramirez Calderon. Conservatives pointed out that the choice of such candidate resulted in disasters of Solorzano regime and they insisted on the designation of Conservative President. Conservatives maintained that a satisfactory government was only possible with a responsible leader of a major party and that while they were prepared

to make concessions on all other points they could not turn over power to one [*a*] candidate in whom they had not confidence. Failed [*Failing*] to [reach] agreement on this, the delegations decided close conference.

Liberal delegates have freely admitted in conversation that they cannot agree to one [*a*] Conservative President because this would mean abandonment of Mexican allies.

Conservative delegation informs me Chamorro will [deposit] Presidency this week in Adolfo Diaz or some other Conservative who will form provisional government which will hold a constituent election, make new constitution, and elect new President and Congress in accordance therewith.

Extension of armistice signed today at Bluefields between Arguello [29] and Moncada [30] to last three days after close of conference.

DENNIS

817.00/3970 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

CORINTO, *October 25, 1926—10 a. m.*

[Received 6:56 p. m.]

178. Referring to Department's number 95, October 20, 11 a. m.[31] Admiral Latimer inquires whether use of the term "belligerents" by the Department indicates recognition of belligerency by the United States. I understand there is no recognition of belligerency but admission of insurgency by the United States Government in respect of contending factions on Atlantic coast of Nicaragua. Please instruct. Repeated to Admiral.

DENNIS

817.00/3970 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

WASHINGTON, *October 28, 1926—4 p. m.*

101. Your 178, October 25, 10 a. m. Your understanding correct.

KELLOGG

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[29] Gen. Gustavo Arguello, *jefe político* of Bluefields.
[30] Gen. José Maria Moncada, Liberal Party general.
[31] Not printed.

817.00/3992 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *October 30, 1926—8 p. m.*
[Received 10:25 p. m.]

181. . . .

At 6 o'clock tonight, October 30, 6 p. m., in accordance with article 106 of the Constitution, Chamorro deposited Presidency in the second designate of Congress, Senator Uriza, the first designate [32] being absent in the United States. Uriza has informed me he will convoke immediately Congress in extraordinary session. First session should be held in eight or ten days.

Uriza, Cuadra Pasos, Alfonso Estrada and Martin Benard inform me that after a consultation with Conservative leaders and Congressmen, majority of whom are already in Managua, the Conservative Party proposes to carry out following program: (1) Reinstate excluded members of Solorzano Congress; (2) secure designation by said Congress of Adolfo Diaz as designate to receive the Presidency from Uriza, all to be accomplished within 15 days if possible. Some doubt is expressed in certain quarters as to the possibility of the election of Diaz by such a Congress due to refusal of some Conservatives to vote for him as designate. Cuadra Pasos tells me he believes however Diaz will be able to muster a majority even with reinstatement of the expelled members.

. . . . . .

DENNIS

817.00/3992 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

[Paraphrase]

WASHINGTON, *November 2, 1926—3 p. m.*

103. Legation's telegram number 181 dated October 30, 8 p. m. Considering the fact that Chamorro has withdrawn, it is the feeling of the Department that if Congress is convened in extraordinary session by Señor Uriza and is restored to its original form as elected in 1924, or if a sincere effort is made to accomplish this, then, because of the absence of Solorzano and Sacasa, the Government of the United States might properly recognize *de jure* a *designado* chosen by Congress.

[32] Vicente Rappaccioli.

It is not the desire of the Department to suggest or favor any candidate for Congress to designate. However, it is the feeling of the Department that should Adolfo Diaz be designated he would be a wise choice. According to the best information now before the Department he is honest and capable and has that firmness of character which is absolutely essential for any person called to fill the difficult position of President of Nicaragua during these disturbed times. Moreover, it is the understanding of the Department that Adolfo Diaz is not debarred by article 2 of the treaty of 1923. This is essential for recognition. The Department is loath to see a person appointed *designado* who would be unable to dominate the internal situation or who would be simply a tool of the stronger characters. In that event it is almost certain that the Nicaraguan situation will go from bad to worse, and peace and tranquillity will not be restored in the near future. The Department authorizes you to make such judicious use of the foregoing as you may think fit in discussing the situation informally with the political leaders, but it does not wish you to make any public statement in this connection. You should use the utmost care to avoid any criticism that the Government of the United States is endeavoring to direct Nicaraguan internal politics.

KELLOGG

817.00/4016 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

[Paraphrase—Extract]

WASHINGTON, *November 6, 1926—5 p. m.*

106. Should a Congress which may be considered as the duly constituted Congress of Nicaragua elect a *designado*, the Department would give careful consideration to recognizing him as the Constitutional President of Nicaragua. Should Doctor Sacasa subsequently establish a government in Nicaragua, the Department could not consider him other than a revolutionist.

The Government of the United States by withholding objection to a loan by bankers to the Provisional Government has given the only support which it feels it can give to the Provisional Government. The Department does not believe its moral support can go further.

. . . . . .

When a constitutional government is set up which the Government of the United States can recognize, the customary support will be lent to it.

In a few days Minister Eberhardt will sail to return to Managua.[34] The Department will inform you as to the date of his arrival.

KELLOGG

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[34] Mr. Eberhardt left Managua on June 7; see press release issued by the Department on June 8, 1926, p. 787.

817.00/4037 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

[Paraphrase]

MANAGUA, *November 9, 1926—4 p. m.*

[Received 8:08 p. m.]

194. I had a discussion today with Diaz at [*and?*] Cuadra Pasos and it was understood that:

1. The 21 members will be permitted to resume their seats on the understanding that the 6 declared not elected by the National Electoral Council registering later be unseated by the legally constituted Congress. The other 15 members will be permitted of course to retain their seats.
2. Diaz will be designated on November 15 or sooner.
3. Diaz will retain the present Cabinet until peace is reestablished and will make proposals to the Liberals as soon as practicable.
4. As soon as he is recognized, if the Department will receive his request favorably, he will ask the Government of the United States for a mission of United States Army officers to organize and instruct the constabulary.

I was furnished today with copies of the convocation telegrams to the 21 members; also with the replies of many of them.

The day of the inauguration of Diaz will probably be the day after his designation. If I were to attend the ceremony that fact would create a most desirable impression locally. Because of serious revolutionary movements now going on, several days' delay in recognition might suspend proceedings. If the designation proceedings are carried out as indicated, could the Department authorize me in advance to attend the ceremony the next day? Or could the Department reach a decision on the question of recognition within 48 hours? In the latter case, the inauguration would have to be postponed one more day.

DENNIS

817.00/4037 : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

[Paraphrase]

WASHINGTON, *November 11, 1926—1 p. m.*

108. Referring to Legation's telegram number 194 dated November 9, 4 p. m. The Department will give favorable consideration to according immediate recognition to the new President if designation is carried out in accordance with the present plans reported by you and which it is understood are according to provisions of the Constitution.

The Department desires to inform the four Central American Governments that it intends to recognize as constitutional such a government and afford them an opportunity to recognize it at the same time. However, the Department believes that it would be better not to inform these Governments of its intention until the new President has actually been designated and has assumed the office.

The Department authorizes you to attend the inaugural ceremonies provided the present plans are actually carried out.

KELLOGG

817.00/4044 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *November 11, 1926—6 p. m.*

[Received November 12—12:40 a. m.]

196. Diaz was designated this afternoon at 1 by Congress in joint session of both Houses. All 21 unseated members were admitted; 53 members present, of whom 44 voted for Diaz. Liberal members withdrew before vote and stated that they would present memorial tomorrow declaring they considered Sacasa President. Two votes were cast for resolution declaring Solorzano President. Inaugural ceremony to take place Sunday 14th at 4 afternoon which I shall attend.

Diaz and Cuadra Pasos called at Legation immediately afterwards. Diaz stated he would form a new Cabinet. Repeated to Central American Republics.

DENNIS

817.00/4059 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State

MANAGUA, *November 14, 1926—6 p. m.*

[Received 9:23 p. m.]

200. Adolfo Diaz took oath of office at 4:30 this afternoon.

DENNIS

817.00/4259

Press Release Issued by the Department of State, November 17, 1926

In announcing that formal recognition had been accorded the Diaz régime in Nicaragua by the American Chargé d'Affaires, Lawrence Dennis, acting under instructions from the Department,[35] the Secretary of State added:

"I am much gratified that a solution has been found for the Nicaraguan political problems which is in accordance with the constitution of that country and in harmony with the Central American Treaty of 1923. When General Chamorro seized the power a year ago it was of course impossible to accord recognition to his Government, since it originated in a *coup d'état*. When General Chamorro withdrew from power this left the way open for the election by Congress of one of its own members to assume the executive power as provided for by the Nicaraguan constitution under certain circumstances. The members of the Congress which was chosen at a popular election in 1924 were called to meet in an extraordinary session for this purpose and elected Señor Adolfo Diaz. Changes which had been made in the membership of this Congress during the régime of General Chamorro were nullified and members who had been expelled were invited to resume their seats, thus restoring the Congress to its original complexion. The entire Congress in joint session has a membership of sixty-four. Fifty-three members voted in the election of Diaz, and he received forty-five votes or an absolute majority of the total membership of Congress. The last constitutional President of Nicaragua, Carlos Solorzano, resigned in January 1926 and the Vice President elected with him has been out of the country since November, 1925. In the absence of these two the duty devolved upon Congress of naming a designate from one of its own members to fill out the unexpired term of President Solorzano.

"The Department has been informed that President Diaz intends to make overtures of peace and general amnesty to his political opponents, and that he will offer the Liberal Party participation in the new Government, including certain cabinet posts. I sincerely hope that this offer if made will be accepted by the Liberals, since only by cooperation between all factions can peace and tranquility be restored to that country now so unhappily torn by revolution, a condition which has invited interference from outside sources; a state of affairs which must cause concern to every friend of stability in Central America. It must be in the best interests, not only of Nicaragua but of Central America as a whole and all countries interested in its welfare, that normal conditions should soon be restored permitting a return to that prosperity and economic development which have been so marked in Nicaragua during the last decade and a half."

[35] Recognition was extended by note delivered by the American Chargé to the Nicaraguan Minister for Foreign Affairs on Nov. 17 at 11 a. m.

817.00/4161 : Telegram

Doctor Rodolfo Espinosa to the Secretary of State

[Translation [36]]

PUERTO CABEZAS [, *December 1, 1926*].

[Received December 2—midnight.]

I have the honor to inform Your Excellency that His Excellency, Dr. Juan B. Sacasa, Vice President of Nicaragua, on this day in this city, pursuant to the Constitution, assumed the Presidency of the Republic and organized his Cabinet as follows:

Minister for Foreign Affairs: Dr. Rodolfo Espinosa. Under Secretary: Dr. Geronimo Ramirez Brown.

Gobernacion: Dr. Leonardo Arguello. Under Secretary: Dr. Antonio Flores [Vega].

Treasury: Dr. Arturo Ortega. Under Secretary: Don Julio Portocarrero.

War and Marine: Gen. José Maria Moncada. Under Secretary: Col. Arturo Baca.

Fomento: Dr. Onofre Sandoval. Under Secretary: Dr. Ramiro Gámez.

Public Instruction: Dr. Modesto Armijo. Under Secretary: Don Hernan Robleto.

Your Excellency will remember that the constitutional order created by the elections of October 1924 was expressly recognized by your Government after the President, Don Carlos Solorzano, and the Vice President, Dr. Juan B. Sacasa, who were sworn by the National Congress, took possession of their high offices on January 1, 1925, in the presence of the Honorable Chargé d'Affaires of your Republic, Mr. Thurston. The lawful regime that had been recognized was interrupted by the *coup d'état* initiated by Gen. Emiliano Chamorro on October 25, 1925, and culminated when the latter on January 16, last, assumed the Executive power which he later transferred to Señor Sebastian Uriza who, in turn and in the same unconstitutional manner, transferred it to Don Adolfo Diaz. Constitutional order having been restored in my country with the installation of the legitimate government of His Excellency, Dr. Sacasa, this office has reason to believe that by the same fact the cordial friendship and official relations that have united our peoples and Governments are to be considered as restored, and that the recognition granted Señor Adolfo Diaz by your Government is no obstacle since I must assume that that recognition was due to the interpretation of it by Your Excellency's Government that in the absence of the President and Vice President the exercise of the Executive power corresponds to the first

[36] File translation revised.

designado elected by the Congress, for, if it was not so held, the Constitution of the country and the Central American treaties of Washington would be fatally injured.

It affords me satisfaction to state that the constitutionalist army, in arms against the *de facto* regime, has recognized the legitimate authority of His Excellency President Sacasa and has placed itself under his orders to maintain it and to defend the institutions of the Republic. The only remaining obstacle to peace is Don Adolfo Diaz who in agreement with General Chamorro has rebelled against the constituted authority; but the Government proposes to subdue them in a short time relying on the support of legal and material forces, and on public opinion, and on the moral force which it is to receive from the express recognition of Your Excellency's Government.

In taking charge of this office, I avail myself of the opportunity to express to Your Excellency the wishes of my Government and of myself for the prosperity of your friendly Nation and the happiness of its worthy *mandatorio* and the distinguished co-workers of Your Excellency.

With distinguished consideration, respectfully,

RODOLFO ESPINOSA
Minister for Foreign Affairs

817.00/4197 : Telegram

The Chargé in Nicaragua (Dennis) to the Secretary of State [37]

[Translation [38]]

MANAGUA, *December 8, 1926—8 a. m.*

[Received 12:54 p. m.]

"November 15. The Honorable Lawrence Dennis, Chargé d'Affaires of the United States. My dear Mr. Dennis: Upon assuming the Presidency I found the Republic in a very difficult situation because of the attitude, assumed without motive, by the Government of Mexico in open hostility to Nicaragua. It must be clear to you that, given the forces which that Government disposes of, its elements of attack are irresistible for this feeble and small Nation. This condition places in imminent risk the sovereignty and independence of Nicaragua, and consequently, the continental equilibrium on which the pan-Americanism is founded which the United States has fostered with such lofty spirit.

[37] This telegram is in reply to telegram No. 129, Dec. 7, from the Department, requesting the Chargé to cable the full text of a personal letter received by him from President Diaz; the Chargé had quoted an extract from the personal letter in his telegram No. 203, Nov. 17, to the Department. (File No. 817.00/4071.)

[38] File translation revised.

Naturally the emergency resulting from these conditions places in peril the interests of North American citizens and other foreigners residing in our territory and renders it impossible for a Government so rudely attacked, to protect them as is its duty and as it desires.

For these reasons and appreciating the friendly disposition of the United States towards weak republics and the intentions which your Government has always manifested for the protection of the sovereignty and independence of all the countries of America by morally supporting legitimate Governments in order to enable them to afford a tranquil field of labor for foreigners which is needed for the stimulation of the growth of the prosperity of these countries, I address myself to you in order that, with the same good will with which you have aided in Nicaraguan reconciliation, you may solicit for my Government and in my name the support of the Department of State in order to reach a solution in the present crisis and avoid further hostilities and invasions on the part of the Government of Mexico.

I desire to manifest to you at the same time that whatever may be the means chosen by the Department of State, they will meet with the approval of my absolute confidence in the high spirit of justice of the Government of the United States.

With the assurances of my highest consideration I subscribe myself your obedient servant and friend. Adolfo Diaz."

DENNIS

817.00/4198 : Telegram

The Ambassador in Mexico (Sheffield) to the Secretary of State

[Paraphrase]

MEXICO, *December 8, 1926—11 a. m.*

[Received 4:39 p.m.]

503. Press today published a telegram dated December 2 from Espinosa, the Foreign Minister of the Sacasa regime at Puerto Cabezas, to the Mexican Foreign Minister requesting Mexican recognition, and a telegram dated December 7 from the Mexican Foreign Minister to Espinosa extending recognition.

SHEFFIELD

817.00/4227a : Telegram

The Secretary of State to the Chargé in Nicaragua (Dennis)

[Extract—Paraphrase]

WASHINGTON, *December 8, 1926—7 p. m.*

131. . . . The Department of State has perceived with regret that there appears to be a tendency on the part of the Diaz administration to rely upon the Government of the United States to protect it against

the activities of the revolutionists by physical means. If President Diaz in his conversations with you should indicate that he expects armed assistance from the Government of the United States you are instructed to state plainly to him that the fact that the Government of the United States has recognized his Government does not imply any such obligation.

This Government is prepared to lend such encouragement and moral support to the Diaz government as it generally accords to constitutional governments with which it maintains friendly relations when they are threatened with revolutionary movements. The Government of the United States is not prepared to go further than this.

KELLOGG

817.00/4257 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

[Paraphrase]

MANAGUA, *December 15, 1926—11 a. m.*

[Received 4:30 p. m.]

239. Yesterday I received a note from the Foreign Minister asking me to forward to the Government of the United States a long communication stating that Mexican aid of the revolution if not checked would inevitably overthrow the Diaz government, and soliciting American aid to protect the lives and property of Americans and foreigners, to defend the independence of Nicaragua against Mexico, and to restore peace. The note states further that the government of President Diaz, having full confidence in the Government of the United States, authorizes in advance any measures which the Government of the United States may take for these ends.

EBERHARDT

817.00/4261 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *December 16, 1926—noon.*

[Received 2:45 p. m.]

240. . . . Chamorro turned over army yesterday, left Managua this morning at 4 o'clock, arrived at Corinto at 10 whence he is to sail today or tomorrow on a diplomatic mission to principal European countries.[39]

EBERHARDT

[39] General Chamorro sailed from Corinto on December 20.

817.00/4267 : Telegram

The Secretary of State to the Minister in Nicaragua (Eberhardt)

[Paraphrase]

WASHINGTON, *December 18, 1926—6 p. m.*

140. Department desires immediate answer to question as to whether Liberals have rejected peace proposal of President Diaz.

Upon receipt of request from shippers in the United States and authorization of the Nicaraguan Legation the Department will immediately issue licenses for arms to the Diaz government. Yesterday the Navy Department was requested to issue instructions to the Commander of the Special Service Squadron to afford all proper protection on the east coast of Nicaragua to American lives and property and to land forces if necessary for that purpose.

Protection has been requested by American interests at Bragmans' Bluff and other places.

It is the belief of the Department that you should fully understand its position with respect to the present situation in Nicaragua and realize that the Government of the United States cannot take any steps which would be considered as American armed intervention.

Telegraph Department immediately following data: Number of Government troops now under arms; relative positions of such forces in Nicaragua; and names and qualifications of the high commanding officers.

It was the understanding of the Department from the Legation's reports that President Diaz could count upon the support of a substantial majority of the people of Nicaragua and that his designation by Congress seemed to confirm this understanding. For this reason the Department cannot understand your reference to a possible general uprising against the Government of President Diaz contained in Legation's telegram number 237, December 13, 1 p. m.,[40] which would result immediately in the speedy collapse of the Diaz government accompanied by conditions of anarchy.

Department has been informed that Costa Rica is prepared to offer to mediate between the Government of Nicaragua and the party of Sacasa. Telegraph your views on this subject immediately, setting forth what effect such an offer would have on the present situation and whether there would be any chance of a successful outcome. Does the departure of General Chamorro from Nicaragua tend to bring about a peaceful solution of the situation?

KELLOGG

[40] Not printed.

817.00/4275 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *December 19, 1926—8 p. m.*

[Received 9:43 p. m.]

246. Your 140, December 18, 6 p. m. See Legation's telegram 201, of November 15th, its despatch 301 of November 24th, and Latimer's telegram November 22, 9 p. m.[41] These same peace terms have been made within last 10 days by Diaz through his representative in Salvador and again refused by representatives of Sacasa. Liberals repeatedly and openly state that they will not accept any peace terms so long as there is no prospect of active American intervention and they can continue to count on Mexican aid.

The "general uprising" mentioned in my 237 of December 13th[41a] referred to such an uprising on both coasts backed by Mexico. Diaz could formally [*formerly?*] and apparently still count on the support of the majority of Nicaraguans but such support cannot avail against Liberals aided as they seem to be by Mexico. In these conditions it is my opinion that neither Costa Rica nor mediation would serve any useful purpose. On the other hand were Mexico eliminated it is my further opinion that the Liberals would immediately be brought to treat with Diaz.

Chamorro's departure will facilitate solution only in giving Diaz a free hand to offer satisfactory peace terms. Chamorro is expected to sail tomorrow for Panama.

Diaz states that he now has some 7,000 men under arms distributed as follows: Jose Solorzano Diaz, nephew of President, general in chief of army, has some 1,500 men in vicinity of Managua, biggest group being 500 under General Viquez who took Rama in May.

General Arguello commands 2,000 troops on the Atlantic, 1,000 with him at Rama and 1,000 with Deldadillo at Perlas. They beat off Moncada in August at Bluff.

Hurtado has 200 men at Rivas. He beat Liberals at Casaguiana in August.

Saenz has 1,000 men at Leon. Vargas leads 800 men at Chinandega. Gomez leads 1,000 men at Quezalguaque. These generals are all seasoned fighters; believed to be loyal to Diaz and any of them better than the best leaders among the Liberals with the possible exception of Moncada. There are reported to be 200 armed Liberals in and about Leon and some thousand unarmed Liberals to have left for the coast of Casaguiana where they await arms to be brought by Mexican vessel when they will immediately launch the general uprising of Liberals referred to above.

[41] None printed.
[41a] Not printed.

In order maintain itself against Mexican-aided revolution the Nicaraguan Government must spend more than its revenues allow. The maintenance of the troops now under arms costs $10,000 per diem. Only [$?] 20,000 remain of the recent $300,000 loan and there is no prospect of securing further advances as bankers will not lend money to wage a futile war against a Mexican-aided opponent. When the Government reaches the end of its financial resources its soldiers cannot be expected to continue fighting and its overthrow by Liberal uprising should be comparatively easy. As the country is fairly evenly divided between Conservative and Liberals either party when out of power can raise sufficient men to overthrow a tottering government provided arms and ammunition are supplied in sufficient quantities by an outside government.

EBERHARDT

817.00/4431

Doctor Rodolfo Espinosa to the Secretary of State [42]

[Translation [43]]

PUERTO CABEZAS, *December 24, 1926.*

HIS EXCELLENCY, THE SECRETARY OF STATE: As I had the honor to inform Your Excellency in a wireless message of the 1st of this month,[44] confirmed by a detailed note of the same date, His Excellency, Dr. Juan B. Sacasa, elected Vice President of Nicaragua for the term beginning on the 1st of January, 1925, and ending on the 1st of January, 1929, assumed in this city the Executive power of the Republic and organized the Government over which he presides in the name of the Constitution and by the express will of the Nicaraguan people.

Yesterday, at about 11 a. m., the warships *Cleveland* and *Denver*, without any forewarning or action of any kind, forcibly landed the regular forces of the United States Navy in the semblance of war and placed this city, the provisional residence of the Executive power, under military occupation. After the landing had taken place, the commander of the *Cleveland*, Mr. Lewis, and another officer presented themselves at the Executive Mansion and gave His Excellency, President Sacasa, a violent verbal warning, which, at the request of the latter, they afterwards put in writing, as follows: [44a]

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[42] Transmitted to the Secretary of State by the Secretary of the Navy in letter of Jan. 14, 1927; covering letter not printed.

[43] File translation revised.

[44] *Ante*, p. 808.

[44a] The text of the memorandum which follows is not a translation, but is the exact English text as quoted by Doctor Espinosa.

"Puerto Cabezas, Nic., Dec. 23 de 1926.

Memorandum for Dr. Sacasa, confirming conversation of this afternoon.

The following territory is hereby declared neutral zone: Puerto Cabezas and Bilwi, including the outskirts for a distance of two miles.

There will be no carrying of arms, ammunitions, knives, etc., in the neutral zone. There must be no recruiting or any other activities carried on in the neutral zone, which have any bearing on the prosecution of hostilities.

Doctor Sacasa and his forces may leave the neutral zone by 4 p. m. 24th of December, 1926, by water, with their arms if they so desire; otherwise they must disarm and deliver such arms to the *Cleveland's* Landing Force Commander.

The radio station may send only plain messages and these messages must have no bearing on the prosecution of hostilities.

(fO) Spencer S. Lewis-Lt. Comdr. U. S. N. Commanding U. S. S. *Cleveland* Landing Forces, Puerto Cabezas, Nicaragua."

President Sacasa, deeply astounded by this attitude so offensive to the sovereignty of the Nation and so in conflict with the principles which regulate the relations of civilized peoples, orally and energetically protested against the unlawful proceedings in the presence of those who brought the notification.

Later, a commission of the Government consisting of the Minister of Fomento, Dr. Onofre Sandoval, and the undersigned, with Don Luis Mena Solorzano as their interpreter, met by appointment the Captain of the *Cleveland*, Mr. Wainwright, and in the presence of the Captain of the *Denver*, Mr. Wymann, and Commander Lewis of the *Cleveland*, confirmed the protest of the Government and people of Nicaragua against the unspeakable outrage of which they were the victims and asked for an explanation of what happened. The Captain of the *Cleveland* stated that he was obeying orders from Rear Admiral Latimer; that it was intended simply to establish a neutral zone; that Doctor Sacasa and the members of his government could use the wireless office to send messages in Spanish or English, but not in code, or relating to military matters; and that we could remove our military equipment without any interference, over a mole of the harbor, and to that end he had already spoken with the Bragmans Bluff [Lumber] Company so as to procure the trucks and other things necessary for the removal.

It is well to note here for a better appreciation of these facts that, while these things were going on, a detachment of marines which altogether numbered about 500, distributed in groups, surrounded the Executive Mansion, protected by a guard of 20 men; and the two war vessels had their guns trained some on the Executive Mansion itself, and others on the barracks in the city in which the small garrison of the place was quartered.

This morning messages in Spanish relating to the affair addressed to the Director of the Pan American Union at Washington and to the Representative in Costa Rica of the Constitutional Government were rejected by the wireless office. And a part of the armament which was on the mole for shipment and removal outside of the alleged neutral zone was held by the American forces under a pretext of inquiring whether that material came from the United States and had come after the laying of the embargo by the Department of State. Hours after the declarations of the *note verbale* signed by Commander Lewis had been put in writing, and also after the promises made to the Government's commission relative to the arms and messages, both were modified, that which was written and promised being ignored in an unusual manner.

At the same time and under the same conditions there were landed at Rio Grande, where the Government had a part of its war implements over which a garrison of 18 men was watching, about 600 American marines; they declared, of their own accord, that place to be a neutral zone, disarmed the soldiers, and took possession by violence of the war material there found. I must place it on record that the time chosen for this was when the main body of our army was far away, engaged in a severe battle at Pearl Lagoon, where the Constitutional armies were assured a practically final victory.

The mere statement of facts will bring to Your Excellency's mind the conviction that the American forces, which without any right are now holding by military force this city and that of Rio Grande, have violated the sovereignty of Nicaragua not only by setting foot on the territory of the Republic, but also by imposing restrictions on the highest official of the State, on him who represents the dignity of the Nation, because he was solemnly chosen by the free vote of the people in the full exercise of their inalienable rights.

It is pertinent to put it on record here that there was no ground or pretext whatsoever for the establishment of neutral zones. When the legitimate Government was installed, far from being exposed to any menace, American life and property were duly guaranteed, better than at any time, because it has been and is the constant aim of this Government to add prestige to its authority by strictly complying with the law and respecting all private interests in the territory which it controls.

The neutral zones in fact have been established by the American forces without the consent of the respective civil or military authorities, without the pretext of a threat to foreign interests, and only for the evident purpose of hampering the action of the lawful Government, in support, undoubtedly, of the *de facto* Government presided over by Señor Adolfo Diaz at Managua. That attitude is in

open contradiction to the positive statements made on the subject of Nicaragua by the Department of State when it gave assurances of its neutrality in the dispute because of the unquestionable right of the Nicaraguan people to choose their own Government and decide on their own destiny. The undersigned, as a member of the Liberal delegation at the peace conference on board the *Denver* at Corinto many times heard the American Chargé d'Affaires, the Honorable Lawrence Dennis, declare that the United States would observe an impartial attitude and would not intervene in favor of any one of the parties that are fighting in Nicaragua, because that was a domestic affair exclusively for the Nicaraguans to decide.

As the facts here related are not new—since in 1912, in order to maintain Adolfo Diaz in the Presidency of Nicaragua against the will of the Nation, a large force of American marines then as now set foot on our territory; and since there has been a repetition of intervention sought by the same Señor Diaz in order to impose him again as President against the Constitution and against public opinion—it is proper once for all to define what is the international statute [*status?*] of Nicaragua. Is it a free, sovereign, and independent Nation, capable therefore of choosing the Government that it sees fit, or must we arrive at the painful conclusion that it is a colony or a protectorate? Or is it that the United States of America has reached the point of forgetting that small nations have the right to an independent life in the international concert? Who names the President of Nicaragua: is it the people by their votes at the polls or the Government of the United States of America by its recognition?

The mere fact that Don Adolfo Diaz solicits the aid of foreign forces to maintain himself in power demonstrates that he has no standing with the people of the country, and the moral and physical support given him by your Government is his only title to usurp the office which under the Constitution belongs to His Excellency, Doctor Sacasa.

Would it not be more worthy of the greatness of your country to let the Nicaraguans determine their own affairs as they have a right to? That is what is demanded by the general rules of international law and the most elemental principles of equity and justice proclaimed by Your Excellency's Government and set forth as law in the Central American treaty of Washington. Thus we could directly arrive at the peace which is so much needed by my country, through the operation of its free institutions, and sincerely strengthen the relations between our peoples.

Because of all these facts, I hereby most energetically protest to Your Excellency in the name of the people and Government of Nicaragua, and I trust that in respect to reason and justice your enlight-

ened Government will be pleased to make the proper corrections, which will redound to the prestige and honor of the great American democracy.

I am [etc.] ROD[OLFO] ESPINOSA

817.00/4314 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *December 26, 1926—11 a. m.*

[Received December 27—11:40 a. m.]

254. President Diaz has ordered army to withdraw from Pearl Lagoon via False Bluff to El Bluff, Bluefields, where soldiers will disarm if required. They will proceed to Managua via San Juan River. Withdrawal not due to defeat but desire to avoid further futile conflict in coast region. Diaz wishes Navy to declare neutral zone at Rama which I strongly recommend on account of American interests there and to avoid futile hostilities. This would complete neutralization of important centers on Atlantic coast and contribute towards early peace. The Government is in full control on the west side.

EBERHARDT

817.00/4366

Draft Letter From the Secretary of State to the Secretary of the Navy (Wilbur)[45]

WASHINGTON, *December 28, 1926.*

SIR: I have the honor to acknowledge the receipt of your letter of December 18, 1926, referring to mine of December 17,[46] concerning the situation in Nicaragua, in which I stated that the adequate protection of American lives and property on the east coast of Nicaragua required the landing of American armed forces for that purpose, and recommended that Admiral Latimer be instructed to land such forces as might be necessary at Puerto Cabezas, Bragmans Bluff and such other places as he might deem necessary in order to prevent interference by the revolutionists with American citizens and American companies in the lawful discharge of their commercial activities.

I note in your letter above mentioned a paraphrase of a telegram which you have sent to the Commander of the Special Service Squad-

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[45] Attached to this draft letter is a memorandum by the Chief of the Division of Latin American Affairs, dated December 29, which reads: "The attached letter, prepared but not sent, was shown to the President and the Secretary of the Navy at a conference at the White House December 28. A telegram embodying the main points of this letter was drafted at the White House and despatched to Admiral Latimer the same evening."

For the text of the telegram as sent, see letter of the Secretary of the Navy to the Secretary of State, December 29, *infra*.

[46] Neither printed.

ron stating that the establishment and maintenance of neutral zones by the employment of landing parties, or the taking of such other measures as may be necessary for the protection of American lives and interests, will, it is hoped, control effectively the Liberal bases now present on the east coast of Nicaragua and will cut off the sources of further supplies which are arriving from outside and cannot with propriety be stopped at this time before landing.

Unfortunately your letter did not come to my personal attention until yesterday. I am afraid Admiral Latimer will take this as an instruction. Although I have the utmost confidence in his ability and discretion, I believe it would be wise for you to now instruct him to confine his activities to protecting the lives and property of American and foreign citizens where they are in danger and there is no other assurance of their protection. I assume this is all he has done.

It is not the Government's policy to intervene by armed force in the internal affairs of Nicaragua. This has been made perfectly plain by our action in the past. It is reported in the press this morning, although I do not credit it, that the whole east coast is to be declared a neutral zone. I do not think so-called neutral zones should be declared except where it is necessary for the protection of American citizens and their properties. While the State Department is loath to see munitions of war landed on the coast of Nicaragua which facilitates the continuation of hostilities between the two contending parties, I do not feel that American armed forces should endeavor to control this traffic providing the arms and munitions are not despatched from this country contrary to the provisions of the embargo on their exportation from the United States. I have been compelled reluctantly to recommend the landing of American armed forces but only for the protection of American and foreign lives and property and I feel that great care should be exercised by the American forces in Nicaragua to preserve the strictest neutrality between the revolutionists and the constitutional authorities.

I have [etc.]

817.00/4366

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

S.C. 117–24 WASHINGTON, *December 29, 1926.*

SIR: The following despatch which has been sent this date to the Commander of the Special Service Squadron in Nicaraguan waters is quoted for your information:

"The following instructions for your guidance; neutral zones should be of local nature only and solely for the protection of lives

and property of Americans and foreigners. There should be nothing in the nature of intervention or interference with the internal affairs of Nicaragua. Arms and ammunition found in the neutral zones at Rio Grande and Puerto Cabezas should be returned to owners. Ammunition held for inspection should be returned unless you know of some reason for holding same not yet disclosed, in which case advise us fully at once and await instructions. But in the future no arms or ammunition or armed forces of either party should be allowed to pass through the neutral zones. Keep the Department fully informed of any action taken by the forces under your command and any recommendations in the premises. Your action up to date is fully approved."

Respectfully,

CURTIS D. WILBUR

817.00/4362 : Telegram

The Secretary of State to the Minister in Nicaragua (Eberhardt)

WASHINGTON, *December 29, 1926—3 p. m.*

147. The Minister of Costa Rica has informed the Department that President Jimenez desires to offer his good offices as mediator between the contending parties in Nicaragua, and desires to know if the Department would see any objection to his doing so. In reply the Department has informed Señor Oreamuno that it sees no objection to President Jimenez taking this course if he desires to do so and that the Department will look with favor on any attempt made by the Costa Rican Government to bring about an agreement between the contending factions in Nicaragua and a peaceful and mutually satisfactory solution of the Nicaraguan problem.

You may informally advise President Diaz of the foregoing.

KELLOGG

817.00/4332c : Telegram

The Secretary of State to the Minister in Nicaragua (Eberhardt)

WASHINGTON, *December 30, 1926—4 p. m.*

148. With reference to Department's 147, December 29, 3 p. m., the Minister of Costa Rica advised the Department today that President of Costa Rica has officially requested President Diaz and Sacasa to inform him if the good offices of Costa Rica would be acceptable to both parties in bringing about a settlement of their difficulties based on neutral [*mutual?*] concessions. Please report at once what are the views of President Diaz in regard to accepting Costa Rican mediation.

KELLOGG

817.00/4334 : Telegram

The Minister in Nicaragua (Eberhardt) to the Secretary of State

MANAGUA, *December 31, 1926—3 p. m.*

[Received 10:20 p. m.]

257. Department's 148, December 30, 4 p. m. President Diaz telegraphed a reply yesterday to President Jimenez's offer of mediation stating that he had received similar [offer] from the Guatemalan Government which he had answered with a proposal to send a diplomat to Guatemala. While these conversations with the Guatemalan Government on mediation were in course, Diaz stated in his telegram he could not discuss a new offer of mediation.

President Diaz expressed surprise at the Department's indorsement of the Costa Rican offer of mediation, pointing out that, of the four Central American Republics, Costa Rica was alone in definitely declining the invitation of the American Government to recognize his government, moreover that President Jimenez had in an official and published statement declared that Sacasa had "title" while Diaz had "control" or "possession" and that the Costa Rican Government could not recognize a government in Nicaragua which did not realize these two conditions of title and possession. President Jimenez had therefore prejudged the political issue in Nicaragua and pronounced publicly a judgment against the constitutionality of the Diaz Government exactly in contradiction of the opinion officially proclaimed by the United States Government. Under these circumstances Diaz did not see how he could be expected to accept as impartial the mediation of President Jimenez and surely the United States could not recommend that he accept mediation by a biased party. Diaz added that he would prefer the mediation of the Guatemalan Government which while unfriendly to him was frank in its hostility and had at least observed in its communications to his government the courtesy of giving him and his Minister of Foreign Affairs the official titles which they claimed, while the President of Costa Rica had addressed President Diaz without using a title.

(Admiral Latimer just telegraphed that main base of supplies for revolutionists is Port Limon, Costa Rica.)

Diaz failed to see how the mediation of Costa Rica, known to be prejudiced against the Conservative Party in Nicaragua, could be expected to succeed in bringing about an agreement where the good offices of the United States, known to be impartial, had been unsuccessful owing to Mexican support of the revolution. The situation with respect of Mexican [influence?] remained unchanged. All Central American countries, in view of recent events in Nicaragua,

now naturally in awe of Mexico wherefore a conference held under the auspices of any one of them would necessarily be dominated by the overwhelming Mexican influence over both the Central American Government mediating and the Liberal delegates. The Salvadorean representative in Managua had confidentially indicated to Diaz (he made the same statement to this Legation) that in view of recent unchecked Mexican aid of the revolution his Government regretted its hasty recognition of Diaz at the invitation of the American Government since it was feared that Mexican displeasure thereat might soon result in a decision to support a revolution to overthrow the Salvadorean Government and since it was now generally understood that the United States was not disposed to check Mexican armed expeditions against Central American Republics, thereby leaving Mexico a free hand.

Diaz remarked that no conference held under the auspices of one Central American State had ever settled a conflict similar to that in progress and he referred to the proposal made by Guatemala last September for "fraternal action" to be taken by the Central American countries to bring about peace in Nicaragua in respect of which the Department had stated that it did not "think any beneficial results would be obtained by such action" (Department's telegram 71, September 10, 8 p. m.[47]).

Diaz concluded by saying that he is still repeatedly offering to treat with the Liberals for peace on the broadest bases but they so far decline to consider his offers.

The Legation is conferring with some Liberal leaders this afternoon with a view to bringing about conference between them and the Government.

EBERHARDT

817.00/4341 : Telegram

The Minister in Costa Rica (Davis) to the Secretary of State

SAN JOSÉ, *January 3, 1927—11 a. m.*

[Received January 4—12:15 a. m.]

1. President Jimenez sent the following message to Sacasa and Diaz on December 29th:

"The deplorable situation of Nicaragua profoundly affects the Costa Ricans. As matters are going, the victorious party will seat itself over ruins. If the mediation of Costa Rica were accepted by both groups I would offer it with the understanding that only

[47] Not printed.

mutual concessions can bring peace to Nicaragua. If you believe my mediation acceptable upon the base mentioned I would request you to inform me. I have addressed Don Adolfo Diaz in the same terms."

Sacasa replied as follows:

"I highly appreciate Your Excellency's message of the 24th [*29th*]. The Nicaraguan situation which afflicts Costa Rica saddens me profoundly. My persistent efforts for the reestablishment of constitutional peace and order by means of a correct application of the Washington pacts and my telegram to the Presidents of Central America on the 14th of November manifest my desire for a decorous, peaceful solution in accordance with the principles for which the Nicaraguan people threw themselves in the struggle, exasperated by the violence of made [*de facto?*] regimes. The brilliant victory of our arms at Laguna Perlas does not modify the impersonal criterion indicated and I receive (*acojo* in the Spanish text) with pleasure the mediation suggested through the noble patriotism of Your Excellency."

Diaz replied that the Guatemalan Government had offered mediation and that:

"In reply my Government said to that of Guatemala that it was disposed to send to that sister Republic a Legation for the purpose of informing [Guatemala] fully of our actual [*present*] political condition and to converse in the sense of its generous offer. This point has not been resolved and I therefore feel obliged to await until it is decided in order to be in a position to discuss any other mediation, however esteemed the person may be who has been a party to the new offer."

Repeated to Nicaragua and Guatemala.

DAVIS

NORWAY

STATEMENT BY NORWAY OF ITS PARAMOUNT INTEREST IN THE ISLAND OF JAN MAYEN IN THE ARCTIC OCEAN[1]

857.014/14

The Minister in Norway (Swenson) to the Secretary of State

No. 489 CHRISTIANIA, *September 23, 1924.*

[Received October 8.]

SIR: Referring to my No. 244, of July 5, 1923,[2] I have the honor to enclose herein copies, with translation, of a note from the Norwegian Minister of Foreign Affairs, dated the 15th instant, and of my reply thereto, dated September 23rd,[3] relative to the report to the effect that Mr. Chr. Ruud, a Norwegian citizen, has sold his alleged rights to the Island of Jan Mayen to an American residing in Christiania, and that henceforth the Island is to be considered as being American, according to the view of Mr. Ruud and the American purchaser.

I also enclose a clipping from *Morgenbladet*, issue of September 11, 1924, with translation, containing the item referred to by Mr. Mowinckel, and another from the same paper, issue of September 22, 1924, containing a statement from Mr. Ruud's attorney.[4]

You will also find enclosed copies, with translation, of Professor Mikael H. Lie's opinion[5] referred to in the clipping of September 11th.

Mr. Mowinckel is at present out of the city on a political campaign tour of the country. When he returns to his desk he will undoubtedly discuss the above matter with me. In case he does I shall report his observations.

I have [etc.] LAURITS S. SWENSON

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[1] Continued from *Foreign Relations*, 1923, vol. II, pp. 631–634.

[2] *Ibid.*, p. 633.

[3] The note of September 23 (not printed) stated that the Minister was communicating a copy of the Norwegian note of September 15 to the Department of State for its information.

[4] Neither printed.

[5] Not printed.

[Enclosure—Translation]

The Norwegian Minister for Foreign Affairs (Mowinckel) to the American Minister (Swenson)

CHRISTIANIA, *September 15, 1924.*

DEAR MR. SWENSON: I notice in *Morgenbladet* of the 11th instant that Mr. Chr. Ruud, a Norwegian citizen, is reported to have sold to an American, residing in Christiania, the rights which he claims to the Island of Jan Mayen, in the Arctic Ocean, and that henceforth the island is to be considered as being American, according to the view of Mr. Chr. Ruud and the American purchaser.

I have not verified this report, but I beg to point out, *ex tuto*, that the main portion of said island, on which a wireless station for weather forecasting was erected in the summer and fall of 1921, has been annexed, with a view to permanent occupation, by Engineer Ekerold, on behalf of the Norwegian Meteorological Institute, a Norwegian Government institution, which claims that the occupation is effective relative to all other occupations. I also wish to call attention to the fact that some time ago the Norwegian Minister at Washington notified your Government of this annexation.[6]

In addition I beg to refer to the statement contained in my predecessor, Mr. Michelet's, official communication to you dated June 30, 1923,[7] relative to the views and attitude of the Norwegian Government with respect to the international status of Jan Mayen.

JOH. LUDW. MOWINCKEL

857.014/28

The Norwegian Minister (Bryn) to the Secretary of State

WASHINGTON, *May 17, 1926.*

SIR: With reference to my note to Your Excellency's predecessor, dated April 21, 1922,[8] I hereby have the honor, acting under instructions from my Government, to inform the Government of the United States of the fact that the Norwegian Meteorological Institute (*Det Norske Meteorologiske Institut*) has, with a view to permanent occupation, extended its annexation on the Arctic island Jan Mayen, mentioned in my above note, so that the annexation of the Institute is now comprising the entire island of Jan Mayen.

Accept [etc.] H. BRYN

[6] See note from the Norwegian Minister to the Secretary of State, Apr. 21, 1922, *Foreign Relations*, 1923, vol. II, p. 632.

[7] *Ibid.*, p. 633.

[8] *Ibid.*, p. 632.

857.014/28

The Secretary of State to the Chargé in Norway (Gade)

No. 297 WASHINGTON, *August 25, 1926.*

SIR: There is transmitted herewith a copy of a note from the Norwegian Minister in Washington, dated May 17, 1926,[8a] from which it appears that the Norwegian Meteorological Institute has extended its occupation of the Island of Jan Mayen to include the entire Island.

In this connection, you are referred to the Department's instruction No. 66, dated November 9, 1922, and to the Legation's reply thereto, the Legation's despatch No. 244, dated July 5, 1923, together with its enclosure, a note from the Norwegian Foreign Office, dated June 30, 1923.[9] You will observe that in reply to the inquiry addressed to the Norwegian Government concerning its definition of the political status of the Island of Jan Mayen the Norwegian Foreign Office, in its note under reference, stated that in the opinion of the Norwegian Government this Island should be considered as "terra nullius".

It is called to your attention that in the note from the Norwegian Legation, dated May 17, 1926, in referring to the action of the Meteorological Institute, the terms "permanent occupation" and "annexation" are employed. If the Institute in question be officially a part of the Norwegian Government the question possibly is raised as to whether a declaration of "annexation" by the Institute, thus promulgated by the Norwegian Government, might not be regarded as tantamount to a declaration of annexation by the Norwegian Government itself.

With special reference to the previous assertion of the Norwegian Government that they regarded the Island of Jan Mayen as a "terra nullius", you are requested to make informal inquiries to determine whether the recent activities of the Meteorological Institute have, in the opinion of the Norwegian Government, changed the political status of this Island, and to inform the Department by mail of the result of such inquiries.

You are further advised that this question is not to be regarded as purely academic as, at times, questions have arisen in connection with the administration of the immigration laws concerning the political status of a resident of the Island of Jan Mayen.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[8a] *Supra.*

[9] *Foreign Relations*, 1923, vol. II, p. 633.

857.014/36

The Minister in Norway (Swenson) to the Secretary of State

No. 870 OSLO, *October 1, 1926.*

[Received October 18.]

SIR: With reference to the Department's instruction No. 297 of August 25, 1926, regarding the status of the Island of Jan Mayen, I have the honor to report that the following reply to an inquiry has been received from the Foreign Office.

Translation

"In a *note verbale* of the ninth instant the American Chargé d'Affaires referring among else to a note dated May 17, 1926, from the Norwegian Legation in Washington, enquired whether the recent activities of the Meteorological Institute on the Island of Jan Mayen had, in the opinion of the Norwegian Government, changed the political status of the island in question.

In this connection the Foreign Office has the honor to advise that the above-mentioned activities have greatly increased Norwegian interests on the Island, but that no occupation on the part of the Norwegian state has taken place.

The Foreign Office also has the honor to refer to its note of June 30, 1923, addressed to Minister Swenson.

Oslo, September 23, 1926"

The note referred to in the last paragraph was transmitted to the Department as an enclosure to this Legation's despatch No. 244 of July 5, 1923.[10]

I have [etc.] LAURITS S. SWENSON

[10] *Ibid.*, p. 633.

PANAMA

UNPERFECTED TREATY BETWEEN THE UNITED STATES AND PANAMA FOR SETTLEMENT OF POINTS OF DIFFERENCE, SIGNED JULY 28, 1926[1]

711.192/205

Minutes of the Twenty-third Meeting of the American and Panaman Commissions, July 27, 1926, 5 p. m.[2]

The draft of the treaty agreed upon in informal conversations between members of the two Commissions from June 18, 1925, to date was submitted to final consideration of the Commissions.

With reference to the Preamble, Doctor Alfaro inquired if the use of the word "sovereign" with reference to the rights granted to the United States by the Treaty of 1903[3] is meant to imply an extension of such rights or only a recognition thereof.

Mr. White replied that this was meant only as a recognition of all the rights granted to the United States by Article III of the Treaty of 1903.

Doctor Alfaro replied that this was satisfactory; that Panama stands by all her obligations and recognizes all those rights.

Doctor Alfaro requested the American Commissioners to confirm the agreement that the words "substitute Justices" in paragraph second of Article I are meant to include the substitute Justices known in the Republic of Panama as "suplentes", as well as those known as "conjueces". Mr. White confirmed the agreement between the two Commissions that the words "substitute Justices" are intended to include the substitute Justices known in the Republic of Panama as "suplentes", as well as those known as "conjueces".

Doctor Alfaro inquired in connection with paragraphs 3 and 4 of Article IV if private merchants renting space in the Canal wharves or in a bonded warehouse operated by the United States Government, or distributing merchandise by means of consignments in the terminal ports of the Canal "for orders" are included in the category of persons entitled to live in the Canal Zone.

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[1] For previous correspondence, see *Foreign Relations*, 1924, vol. II, pp. 521 ff. See also *post*, pp. 854 ff.

[2] The Commissions as originally constituted convened on Mar. 17, 1924, and adjourned *sine die* on Aug. 5, 1924, after holding 21 meetings. The Commissions as reconstituted in 1925 convened on July 18, 1925, and adjourned on July 27, 1926, after holding two formal meetings.

[3] *Foreign Relations*, 1904, p. 543.

Mr. White replied that the activities referred to by Doctor Alfaro would not, of themselves, entitle the persons mentioned by him to reside in the Canal Zone.

Doctor Alfaro asked the American Commissioners to confirm the arrangement agreed upon with reference to the provisions of paragraph 3 of Article IV and paragraph 2 of Article VI of the draft treaty. Mr. White stated that he was glad to confirm that it is of course understood that nothing therein contained affects the right of the Republic of Panama to collect customs duties or to impose sales or other taxes in the cities of Panama and Colon on goods imported, sold or consumed in those cities or in other parts of the Republic of Panama.

Referring to the term "enforce" used in Article VIII, which in the Spanish text has been translated "poner en vigor", and the term "enforcement", which in the Spanish text has been translated "ejecución", Doctor Alfaro requested that there should be an understanding as to the use of such terms in the English text of the treaty. Mr. White stated that it is the intention of the United States to continue substantially the same system that has been in force in the cities of Panama and Colon since 1904, namely: sanitary rules and regulations prescribed by the United States sanitary officers will be promulgated by decree by the President of Panama. The sanitary officers in the cities of Panama and Colon will supervise the observance of the sanitary ordinances and will prescribe for transgressors thereof the proper penalties and such penalties or fines or arrests will be executed by the administrative or police authorities of the Republic of Panama. Mr. White stated however that it is of course understood that this agreement in no wise curtails the rights of the United States under the penultimate paragraph of Article VII of the Treaty of 1903. Doctor Alfaro agreed.

Mr. White confirmed on behalf of the American Commission with reference to paragraph 1 of Article IX of the draft treaty, that it is not the intention of the United States to discriminate against the importation of radio sets and materials of any description because of their origin or country of manufacture. He stated that the provision agreed upon by the United States in the matter of licenses is for the purpose of the protection and operation of the Panama Canal.

With reference to Article X of the draft treaty Mr. White stated that the American Commission had agreed at the request of the Panaman Commission to take out of the penultimate paragraph reference to flying over the Canal Zone because the Panaman Commission had pointed out that this Article of the treaty referred to aviation in the Republic of Panama and not in the Canal Zone where it is of course understood control vests with the United States.

Doctor Alfaro confirmed the understanding that this reference was taken out as the treaty refers to aviation in the Republic of Panama and not in the Canal Zone where of course the United States prescribes the regulations for aviation.

Doctor Alfaro stated with reference to the last paragraph of Article XI of the draft treaty, by which Panama agrees to permit the armed forces of the United States to have free transit through the Republic for manoeuvres and other military purposes, that it was the understanding of the Panaman Commission that the provisions of Article VI of the Treaty of 1903 respecting compensation for damages caused the owners of private lands and private property by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the Canal, shall apply in the case of damages caused by the armed forces of the United States in manoeuvres or other military operations. Mr. White replied that the American Commission concurred with the understanding of the Panaman Commission that the provisions of Article VI of the Treaty of 1903 respecting compensation for damages caused to the owners of private lands and private properties by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the Canal would apply in the case of damages caused by the armed forces of the United States for manoeuvres and other military operations.

With reference to Article XII of the draft treaty Doctor Alfaro requested that the American Commission state in what proportion subsidiary silver currency is legal tender in the United States, in order to have established officially the proportion in which American silver coins shall be legal tender in Panama, in conformity with the monetary agreement. Mr. White stated that the extent to which the subsidiary silver coins of the United States are legal tender is governed by the provisions of Section 3 of the Act approved June 9, 1879,[3a] reading as follows:

"That the present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

Standard silver dollars, whose weight and fineness were established by the Act of January 18, 1837, at 412.5 grains .900 fine, are legal tender at their nominal or face value in payment of all debts, public and private, without regard to the amount, except where otherwise expressly stipulated in a contract.

[3a] 21 Stat. 7.

Doctor Alfaro stated that in various Articles of the treaty the English words "all" or "every" or other all inclusive terms are used. These had been translated into Spanish by the use of the definite article as such is the practice in the Spanish language where the definite article is used as all embracing and its use is not to be considered as making exceptions possible, unless specifically expressed, as might be understood if only the definite article were used in the English text.

Mr. White stated that the American Commission had been willing to agree to the translation into Spanish of the words "all", "every", et cetera, by the definite article in view of the explanation above made by Doctor Alfaro on behalf of the Panaman Commission.

Doctor Alfaro stated that it was the understanding of the Panaman Commission that the exception made in the first paragraph of Article VI permitting the United States to levy dues or taxes upon merchandise introduced into the Canal Zone for use or consumption therein does not conflict with Article V of the treaty providing that there should be granted reciprocal free importation of goods, wares and merchandise from the territory of the Canal Zone into that of the Republic of Panama and from the Republic of Panama into the territory of the Canal Zone. In other words, merchandise introduced from Panama into the Canal Zone for use or consumption therein would not be taxed by the United States. Mr. White stated that this also was the view of the American Commission.

Doctor Alfaro stated that it was the understanding of the Panaman Commission that the United States in the exercise of exclusive jurisdiction over radio station sites, the property thereon, and the personnel engaged in operating such stations, as well as the members of the military and naval forces of the United States supplying such stations, in accordance with the penultimate paragraph of Article IX of the treaty, would not exercise civil or criminal jurisdiction over other persons than those enumerated in that paragraph, who might be in the territory occupied by such radio stations. Such other persons would be turned over by the United States to Panama as the sovereign of the territory. Mr. White confirmed that this was also the understanding of the American Commission.

Doctor Alfaro stated that the Panaman Commission understood that Article XI of the Treaty, by which Panama agrees to cooperate in all possible ways with the United States in the protection and defense of the Panama Canal, does not impose on Panama the obligation to raise an army or establish a military service for the defense of the Canal. Mr. White concurred in this view on behalf of the American Commission.

The Panaman Commissioners said that they desired to state in connection with that part of Article I of the General Claims Convention [4] that refers to the so-called Colon Fire Claims, that in agreeing to submit to arbitration the question of the original liability of Colombia for the damages sustained in the fire that took place in Colon on March 31, 1885, and also the question of the extent to which the Republic of Panama may have succeeded in such liability in case any should be found to exist, it must be understood that the Republic of Panama has made it an invariable principle of her international relations to assume a share of the external debts of Colombia in proportion to her population in November 1903; that consequently and inasmuch as such claims originated in an event that took place when Panama did not exist as an independent Nation, but on the other hand the damages sustained in the Colon fire would constitute today an unliquidated debt of Colombia, assuming that Colombia had any responsibility, it must be understood that Panama takes and will maintain, when the discussion of the proposed tri-partite agreement comes up, the position that the arbitration of the second question of the proposed *compromis* should be confined to the decision of two propositions (in case it be found that Colombia had the original liability), to wit: the Panaman proposition that Panama is under no obligation whatsoever to pay any part of the damages and a contrary proposition that Panama should pay a proportional share of the claims as in the case of the external debt of Colombia; and it is with this understanding that Panama agrees to the terms of the Claims Convention in this matter. The Panaman Commissioners added that while Panama agrees to cooperate with the Government of the United States in the negotiation of an arbitral agreement between Panama, Colombia and the United States, Panama reserves the right to join Colombia in her contention that she has no liability in fact or in law on account of the Colon fire of 1885, inasmuch as Panama has always denied that such original liability has ever existed on the part of Colombia. Mr. White stated on behalf of the American Commission that it had taken due notice of the position of the Panaman Commissioners.

The meeting adjourned until July 28, 11 a. m., for the signing of the treaty.

FRANCIS WHITE	R. J. ALFARO
JOSEPH R. BAKER	EUSEBIO A. MORALES

[4] Signed July 28, 1926, p. 865.

711.192/217a

The Secretary of State to the Minister in Panama (South)

No. 433 WASHINGTON, *August 4, 1926.*

SIR: There is enclosed herewith for your confidential information a copy of the Treaty signed with Panama on July 28, 1926, together with copies of the five exchanges of notes made at the same time. There is also enclosed a copy of the Claims convention signed at the same time.[5]

You will of course not communicate these documents to anyone until the Senate shall have removed the injunction of secrecy thereon.

I am [etc.] FRANK B. KELLOGG

[Enclosure 1]

Treaty Between the United States of America and the Republic of Panama, Signed at Washington, July 28, 1926 [6]

The United States of America and the Republic of Panama, desiring to settle certain points of difference between them which have arisen out of the exercise by the United States of sovereign rights in the Canal Zone by virtue of the Treaty of November 18, 1903, as well as to regulate certain features of their future intercourse arising from the contiguity of the Republic of Panama and the Canal Zone, have resolved to conclude a Treaty and have accordingly appointed as their plenipotentiaries:

The President of the United States of America, the Honorable Frank B. Kellogg, Secretary of State of the United States of America, and the Honorable Francis White, Chief of the Division of Latin American Affairs, Department of State; and

The President of the Republic of Panama, the Honorable Doctor Ricardo J. Alfaro, Envoy Extraordinary and Minister Plenipotentiary of Panama to the United States and the Honorable Doctor Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of Panama on special mission;

Who, after communicating to each other their respective full powers which were found to be in due and proper form, have agreed upon the following:

ARTICLE I

Article XV and the last sentence of Article VI of the Panama Canal Treaty between the United States of America and the Republic of Panama dated November 18, 1903, are hereby superseded and the

[5] *Post*, p. 865.

[6] Filed separately as unperfected treaty No. B–10.

provisions of the second sentence of Article VI are hereby amended in the manner following so far as concerns the method of ascertainment of damages to the owners of private property:

Should it become necessary for the Government of the United States to acquire private property in conformity with the grants contained in said Treaty of November 18, 1903, after the date of this Treaty, the said Government shall give due and reasonable notice through diplomatic channels to the Republic of Panama, either by a note addressed by the Department of State to the Panaman Legation in Washington or by a note addressed to the Foreign Office in Panama City, stating the intention of the Government of the United States to acquire by expropriation said lands or properties in conformity with the grants contained in the Treaty of November 18, 1903, and title to the property shall be deemed to have passed from the owner thereof to the United States when the formality of giving the notice has been complied with. The Government of Panama shall thereupon take the necessary steps for the transfer of jurisdiction to the United States with due care for the interest of all inhabitants who might be in the territory whose jurisdiction is thus transferred. The value of said private lands and private property and the assessment of damages to them shall be appraised and settled by a Joint Commission composed of one of the Associate Justices or a substitute Justice of the Supreme Court of the Republic of Panama to be selected by the President of the Republic of Panama, and the Judge of the District Court of the Canal Zone, but in case of disagreement of the Commission an Umpire shall be appointed by the two Governments and he shall render the decision. All decisions by the Commission or by the Umpire shall be final. The appraisal of any such private property and the assessment of damages to it shall be based upon its value at the time the property is taken. No part of the work of the Canal or the Railroad or any of the auxiliary works relating thereto and authorized by the said Treaty shall be prevented, delayed or impeded by or pending proceedings of the Joint Commission or of the Umpire as established in this Article.

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of that portion of Manzanillo Island, at the Atlantic terminus of the Canal bounded and described as follows:

Beginning at a copper plug in the concrete dock which is near the northern end of the old Panama Railroad stone freight house in the city of Colon, said plug being 0.5 feet from the face of the dock and

equi-distant from either end, the coordinates of said plug being Latitude 9° 21′ plus 4682.0 feet and Longitude 79° 54′ plus 3315.5 feet; thence N 74° 15′ E a distance of 100.42 feet to an iron bolt concreted in the ground, the coordinates of said bolt being Latitude 9° 21′ plus 4709.3 feet and Longitude 79° 54′ plus 3218.8 feet; thence N 15° 52′ W a distance of 727.63 feet to an iron bolt in the center of the west end of 2nd Street, the coordinates of said bolt being Latitude 9° 21′ plus 5409.2 feet and Longitude 79° 54′ plus 3417.7 feet; thence N 74° 04′ E a distance of 379.93 feet to a cross cut in an iron ring in concrete at the intersection of 2nd and Bolivar Streets, the coordinates of said point being Latitude 9° 21′ plus 5513.5 feet and Longitude 79° 54′ plus 3052.4 feet; thence N 15° 59′ W a distance of 210.57 feet to an iron bolt in the center of Bolivar Street, the coordinates of said bolt being Latitude 9° 21′ plus 5715.9 feet and Longitude 79° 54′ plus 3110.4 feet; thence N 73° 49′ E a distance of 1038.11 feet to a copper plug concreted in a 2 inch pipe, the coordinates of said plug being Latitude 9° 21′ plus 6005.2 feet and Longitude 79° 54′ plus 2113.4 feet; thence N 65° 49′ E a distance of 315.3 feet to an iron bolt in the center of Coconut Alley, the coordinates of said bolt being Latitude 9° 22′ plus 86.9 feet and Longitude 79° 54′ plus 1825.8 feet; thence S 15° 54′ E a distance of 261.41 feet to an iron bolt concreted at the intersection of Coconut Alley and 2nd Street, the coordinates of said bolt being Latitude 9° 21′ plus 5883.0 feet and Longitude 79° 54′ plus 1754.2 feet; thence N 74° 11′ E along the center line of 2nd Street a distance of 179.24 feet to a copper plug concreted in the center of "G" Street, the coordinates of said plug being Latitude 9° 21′ plus 5931.8 feet and Longitude 79° 54′ plus 1581.7 feet; thence S 15° 56′ E along the center of "G" Street a distance of 1762.7 feet to a copper plug in the concrete at the intersection of 7th and "G" Streets, the coordinates of said plug being Latitude 9° 21′ plus 4236.9 feet and Longitude 79° 54′ plus 1097.8 feet; thence N 74° 06′ E along the center of 7th Street a distance of 1408.5 feet to a copper plug concreted in a 2 inch G. I. pipe in the center of the park circle at the intersection of 7th and "K" Streets, the coordinates of said plug being Latitude 9° 21′ plus 4622.7 feet and Longitude 79° 53′ plus 5749.6 feet; thence S 15° 52′ E along the center of "K" Street a distance of 755.2 feet to a copper plug in the concrete at the intersection of 9th and "K" Streets, the coordinates of said plug being Latitude 9° 21′ plus 3896.3 feet and Longitude 79° 53′ plus 5543.1 feet; thence N 74° 00′ E along the center line of 9th Street and the center line produced a distance of 960 feet more or less to the mean low water line of Manzanillo Bay; thence following along the said mean low water line northerly, westerly and southerly to point of beginning. All bearings refer to the true meridian.

It is agreed that the harbor of Colon shall consist of the maritime waters lying to the westward of the city of Colon and bounded as follows:

Beginning at mean low water mark on Limon Bay at a copper plug in a concrete monument, marked D prime on the map marked Exhibit A, the boundary runs N 78° 30′ 30″ W to a point in Limon Bay marked E on above mentioned map and located 330 meters east of the center line of the Panama Canal; thence turning to right and running in a northerly direction the line runs parallel with the above mentioned center line and at a distance of 330 meters easterly therefrom for a distance of 660 meters more or less to a point in Limon Bay marked F prime on above mentioned map; thence, turning to right and running in an easterly direction and paralleling the above mentioned southerly boundary to a point marked G on the above mentioned map; thence, on a bearing of N 74° 15′ E to a copper plug set in Panama Railroad concrete dock near the north end of the Panama Railroad stone freight house, said copper plug being the starting of the new Cristobal boundary; thence, turning to the right and running along the mean low water line in a generally southerly direction to the point of beginning.

And it is further agreed that there shall be added to the harbor of Colon the maritime waters lying in head of Boca Chica arm of Folks River to the northward of a line described as follows:

Beginning at a point (marked by a 2 inch G. I. pipe) at mean low water, on the southeastern shore of Manzanillo Island the coordinates of said point being Latitude 9° 21′ plus 466.9 feet and Longitude 79° 53′ plus 3987.3 feet, the boundary runs due south into Folks River, a distance of 334.9 feet; thence due west in Folks River a distance of 1473.7 feet; thence S 38° 30′ W in Folks River a distance of 1290 feet to the most southerly point on the western shore of Folks River, the coordinates of said point being Latitude 9° 20′ plus 5170 feet and Longitude 79° 54′ plus 257 feet; thence following mean low water line in a generally northerly and easterly direction to the point of beginning. All bearings refer to the true meridian.

It is further agreed that in the harbor of Colon the United States shall retain jurisdiction and control over all cables now laid including cable landings, and that it shall have the right to lay such other cables in the harbor as it may deem advisable and to land such cables on the shores of the harbor, retaining like control and jurisdiction over such additional cables and cable landings.

And it is further agreed that the water mains and sewers of the said city of Colon shall be available for the joint use of Colon and the area incorporated in the Canal Zone by virtue of this Treaty,

and such use of said facilities by the United States shall bear its equitable share of operation and maintenance charges, which charges shall be determined by the proportionate quantities of water and sewage passing through the said facilities in such joint use.

And it is further agreed, without impairment of the provisions of Article VII of the Treaty of November 18, 1903, that the United States will make provision to reimburse the Republic of Panama for the present value of such public improvements within the area incorporated in the Canal Zone by virtue of this Treaty, where said improvements have been provided under former agreement at the expense of the Republic of Panama, and that the determination of the amount of such reimbursement shall in the absence of direct agreement be made by the Joint Commission described in Article I of this Treaty.

The use, occupation and control of the land area described in this Article and of the water area lying between the harbor as established by this Treaty and the north boundary of the present harbor as established by the Boundary Convention between the United States and the Republic of Panama dated September 2, 1914,[7] are hereby granted to the United States in perpetuity as part of the Canal Zone and consequently the provisions of Article III of the said Treaty of November 18, 1903, shall apply thereto. For a further description of the land and water areas described in this Article reference is here made to a blue print which accompanies this Treaty signed by the American Plenipotentiaries on behalf of the United States and the Panaman Plenipotentiaries on behalf of the Republic of Panama and marked "Exhibit A".[8]

In consideration of the grant by the Republic of Panama to the United States of the use, occupation and control in perpetuity of the portion of Manzanillo Island and the water area mentioned and described in this Article, and of the other conditions of this Treaty, it is hereby agreed that the permanent boundary between the city of Colon and the Canal Zone on the western shore of Boca Chica (sometimes called Folks River) shall be as follows:

Beginning at the most southerly point on the western shore of Folks River, the coordinates of said point being Latitude 9° 20′ plus 5170 feet and Longitude 79° 54′ plus 257 feet; thence South 73° 41′ West a distance of 120 feet to a copper plug in the east curb of the Mount Hope Road, the coordinates of said point being Latitude 9° 20′ plus 5136.2 feet and Longitude 79° 54′ plus 372.5 feet; thence North 16° 05′ West, a distance of 794.3 feet to a second copper plug in the east curb of the Mount Hope Road, the coordi-

[7] *Foreign Relations*, 1915, p. 1123.
[8] Not printed.

nates of said point being Latitude 9° 20′ plus 5899.4 feet and Longitude 79° 54′ plus 592.5 feet; thence in northwesterly direction following the line of the east curb of the Mount Hope Road to its intersection with the line of the south sidewalk of 14th Street; thence in a southwesterly direction following the line of the said sidewalk to a point in the center of Bolivar Street; thence to the north along the center line of said Street until meeting another point also situated in the center of the said Street and marked point "B" on the map marked "Exhibit A".

All bearings mentioned in this Article and in the map marked Exhibit A refer to the true meridian.

And in further consideration of the grant by the Republic of Panama to the United States of the use, occupation and control in perpetuity of the portion of Manzanillo Island and the water area mentioned and described in this Article, and of the other conditions of this Treaty, it is agreed as follows:

The United States will undertake the construction of a paved highway, from Paraiso (in the Canal Zone), by way of Summit, Alhajuela, and Cativá, to a connection with the Canal Zone highway between Colon and Fort Randolph; and a paved highway from a point on the above described road south of Las Minas Bay to the town of Porto Bello, completing all necessary grading for roadbeds twenty-six (26) feet wide, with a concrete pavement not less than six (6) inches thick and eighteen (18) feet wide in the center, together with all necessary culverts, and single track bridges capable of carrying a fifteen-ton road roller.

It is agreed that the United States will enter on the construction of the highways described in this Article after the Republic of Panama shall have made provision satisfactory to the United States to reimburse the United States for all costs of construction of all said highways north of Alhajuela, excepting $1,250,000 which it is agreed will be the total expense to the United States of this portion of the highway system. It is also agreed that the total expense of the section of the highways described in this Article and lying between Paraiso and Alhajuela shall be borne by the United States.

Article III

1. The Republic of Panama agrees to build the roads specified in *a*, *b*, *c*, and *d* of paragraph 2 of this Article, completing all necessary grading for roadbeds twenty feet wide with a surfaced strip ten feet wide in the center. The Republic of Panama further agrees to construct new culverts along each of the roads mentioned of sufficient length to permit the subsequent widening of the roadbeds to twenty-

six feet. The United States agrees that if and when existing concrete structures between the Canal Zone line and the Quebrada Herradura near El Creo shall be incorporated in a new road it will widen such structures to the necessary extent at the time of placing the road surfacing specified in paragraph 2 of this Article. The Republic of Panama agrees that it will construct the necessary bridges on the roads to be built and that such bridges shall be made permanent structures with a single track and strong enough to carry a fifteen ton road roller. It is agreed by the High Contracting Parties that the foregoing conditions as to construction shall apply to the roads in Panaman territory as far as the culvert over the Quebrada Herradura, near El Creo, on the west, and Pacora on the east, but that if desired by the Republic of Panama the surfaced strip hereinafter referred to shall be omitted from the roads within those limits. The United States further agrees that when appropriations shall be made by the Congress of the United States for road construction in the Canal Zone it will pay to the Republic of Panama the sum of thirty-five thousand dollars ($35,000) for the prior construction by Panama of the bridge over the Caimito River.

2. The United States engages to complete the grading and to place substantial surfacing eighteen feet wide on the above specified roadbeds to the extent below indicated:

a. From the Zone line near Arraijan to the Caimito River, concrete pavement not less than six inches thick.

b. From the Caimito River through Chorrera and Laguna to the culvert over the Quebrada Herradura, in the vicinity of El Creo, bituminous macadam six to ten inches thick.

c. From the end of the present concrete road near Sabanas Police Station to a point about one mile beyond Tocumen River, concrete pavement not less than six inches thick.

d. From the end of the concrete road under (*c*) to Pacora, bituminous macadam six to ten inches thick.

e. On all the above described roads, the United States agrees to widen the roadbeds to twenty-six feet before placing the pavement or surfacing.

3. The United States further agrees that when the Republic of Panama shall build a road in Panaman territory to the line of the Canal Zone at the proper point it will either build and operate a steel bridge across the Canal at Pedro Miguel Locks or establish and operate a ferry across the Canal on the Pacific side and it will construct a connecting road with concrete pavement eighteen feet wide and not less than six inches thick from the bridge or the ferry landing to the Zone line near Arraijan and will construct the necessary bridges along this road to be of a permanent character.

4. Each High Contracting Party agrees to maintain the roads and bridges on the portion of the road system provided for in this Treaty which lies within its jurisdiction. The Government of Panama agrees that such sums as may be necessary for the proper maintenance of the road system within its territory, and not less than $55,000 per annum, shall be included in each biennial budget and set apart and expended exclusively for such maintenance. With a view further to assure the carrying out of this undertaking the Republic of Panama agrees that the expenditure of the funds above mentioned will be made only in accordance with the joint recommendation of the Chief Engineer in charge of the supervision and maintenance of road work in the Republic of Panama and an engineer to be designated by the United States.

5. The United States shall continue to have at all times the free and gratuitous use of all roads in Panaman territory and the Republic of Panama shall have at all times free and gratuitous use of all roads within the limits of the Canal Zone including the bridge across the Canal at Pedro Miguel Locks, except as military necessity in time of war shall dictate restrictions by the United States upon this right.

6. It is further agreed that the United States shall have in time of peace as well as in time of war the right to install, maintain and operate for official use telephone and telegraph lines along all roads to be constructed in Panaman territory in accordance with this Treaty.

7. It is agreed by the two High Contracting Parties that the road system provided for in this Article shall be completed within a term of three years from the date of the exchange of the ratifications of this Treaty.

Article IV

In order to strengthen the friendly relations which have so fortunately existed between the United States and Panama the United States agrees in perpetuity as follows:

1. With the exception of sales to ships which the United States will continue to make as heretofore, the sale of goods imported into the Canal Zone by the Government of the United States shall be limited by it to the officers, employees, workmen and laborers in the service or employ of the United States or of the Panama Railroad Company and the families of all such persons, and to contractors operating in the Canal Zone and their employees, workmen and laborers and the families of all such persons, and to such other persons as under the provisions of Section 4 of this Article may be permitted by the United States to dwell in the Canal Zone, and who

actually do dwell in said zone, it being understood that guests of the hotels operated by the Panama Canal or the Panama Railroad Company are not included unless they come under one of the other classes to which such sales may be made. It is furthermore understood that the provisions of this Section shall in no way prejudice the operation of such bonded warehouses as the United States may permit to be established in the Canal Zone. The United States will continue to extend the privilege of dealing at its commissaries and storehouses to such foreign diplomatic agents accredited to the Republic of Panama as the Panama Government may specifically request.

2. The Government of the United States will continue to cooperate in all proper ways with the Republic of Panama to prevent smuggling into the Republic of goods purchased in the commissaries.

3. The United States will not permit the establishment in the Canal Zone of private business enterprises other than those existing therein at the time of the signature of this Treaty. This provision shall in no wise be construed as prohibiting either the establishment of bonded warehouses, aforementioned, which are establishments for the assembling, storage, re-packing or distribution of merchantable articles in wholesale and not in retail quantities, or the operation of cable, oil, shipping or other concerns having a direct relation to the construction, operation, maintenance, sanitation or protection of the Canal.

4. With the exception of guests of the hotels operated by the Panama Railroad Company or the Panama Canal no person who is not comprised within the following classes shall be entitled to dwell within the Canal Zone:

Officers, employees, workmen or laborers of the United States the Panama Canal or the Panama Railroad Company;

Contractors operating in the Canal Zone and their employees, workmen and laborers;

Officers, employees or workmen of companies entitled by Section 3 of this Article to conduct operations in the Canal Zone;

Settlers employed in the cultivation of small tracts; hucksters, proprietors and clerks of small establishments for supply of these settlers and of other employees; and

Members of the families and domestic servants of all the beforementioned persons.

No dwellings belonging to the Government of the United States or to the Panama Railroad Company and situated within the Zone shall be rented or leased to persons not within the excepted classes.

5. In aid of the enforcement of the provisions of Panaman law the United States agrees not to permit the landing at the ports of Balboa

and Cristobal of any merchandise consigned to the Republic of Panama unless the invoices and manifests covering such merchandise shall be legalized by the Consular representatives of the Republic of Panama.

6. The Government of the United States will continue to extend to private merchants residing in the Republic of Panama the facilities for making sales to vessels transiting the Canal which they now enjoy, subject always to its police and military regulations.

ARTICLE V

There shall be complete reciprocal free importation of goods, wares and merchandise from the territory of the Canal Zone into that of the Republic of Panama, and from the Republic of Panama into the territory of the Canal Zone, provided, however, that no goods imported into the Canal Zone for sale in the commissaries or for sale to ships, according to this agreement, or for distribution or re-exportation in bonded warehouses shall enter the territory of the Republic of Panama without the payment of such duties as the Republic may have established, or will in future establish, upon foreign goods, it being understood, however, that any goods purchased in the commissaries may pass into the Republic of Panama without payment of import or other duties when they are used by or belong to the officers, agents, and employees of the United States, the Panama Canal, and the Panama Railroad Company, who reside or sojourn in the Republic of Panama during and in performance of their service with the United States, the Panama Canal, or the Panama Railroad Company and the goods are intended for their own personal use and benefit or that of their families, as well as any such goods belonging to or used by any contractor who is performing services in the Canal Zone for the United States, the Panama Canal or the Panama Railroad Company, or by representatives, agents, and employees of such contractors, and the families of all such persons, when the goods are intended for their own personal use and benefit and they reside or sojourn in the Republic of Panama during their service in the Canal Zone, and in addition such goods used by persons in the diplomatic or consular service of the United States and stationed in the Republic of Panama.

ARTICLE VI

Article IX of the said Treaty of November 18, 1903, is hereby superseded.

The United States agrees that the ports at either entrance of the Canal, and the waters thereof, shall be free for all time, so that there shall not be imposed or collected customs house tolls, tonnage,

anchorage, lighthouse, wharf, pilot or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal, or upon the cargo, officers, crew or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal or other works, and except upon merchandise introduced into the Canal Zone for use or consumption therein, and upon vessels touching at the ports of the Canal and which do not pass through the Canal.

The Republic of Panama agrees that the cities of Panama and Colon and their adjacent harbors shall be free for all time, so that there shall not be imposed or collected customs house tolls, tonnage, anchorage, lighthouse, wharf, pilot or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States directly or indirectly in connection with the construction, maintenance, operation, sanitation and protection of the Canal or auxiliary works; or upon the cargo, officers, crew or passengers of any such vessels, except duties and charges imposed by the Republic of Panama upon merchandise destined to be introduced for use or consumption in the territory of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The United States agrees to furnish to the Republic of Panama free of charge the necessary space for the establishment of customs houses in the ports of the Canal Zone for the collection of duties on importations destined to the Republic and for the examination of merchandise, baggage and passengers consigned to or bound for the cities of Panama and Colon, and to prevent contraband trade, it being understood that the collection of duties and the examination of merchandise and passengers by the agents of the Government of Panama, in accordance with this provision, shall take place only in the customs houses to be established by the Government of Panama as herein provided.

No charges of any kind whatsoever shall be imposed by the authorities of the United States upon persons passing from the territory of the Republic of Panama into the Canal Zone, and the authorities of the Republic of Panama shall grant reciprocal free passage of persons other than immigrants into the Republic, from the territory of the Canal Zone into that of the Republic of Panama.

The United States shall have the right in case of emergency to make use of the cities and harbors of Panama and Colon as places of anchorage and for making repairs, for loading, unloading, depositing or transshipping cargoes, either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

ARTICLE VII

It is agreed that no penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vehicles or persons by reason of the carriage of such liquors when they are in transit under seal and under certificate by Panaman authority from the terminal ports of the Canal to the cities of Panama and Colon and from the cities of Panama and Colon to the terminal ports of the Canal when intended for exportation, and between the cities of Panama and Colon and any other points of the Republic and between any two points of the territory of the Republic when in either case the direct or natural means of communication is through Canal Zone territory and provided that such liquors remain under said seal and certificate while they are passing through Canal Zone territory.

ARTICLE VIII

In furtherance of the purpose of Article VII of the Treaty of November 18, 1903, so far as it relates to the sanitation of the cities of Panama and Colon, it is agreed that the Government of the United States shall continue to enforce all quarantine and sanitary ordinances and regulations of a preventive or a curative character heretofore prescribed or that it may hereafter prescribe, for the cities of Panama and Colon and their adjacent harbors, and the enforcement of said ordinances and regulations by the United States shall be effected through the health officers whom the United States will maintain in each of the cities of Panama and Colon, it being understood however that the United States will not prescribe, nor the said health officers enforce, under this heading building or other regulations within the province of the municipal authorities of the Republic of Panama except in so far as such building or other regulations may relate to sanitary matters. It is agreed that the sanitary rules and regulations prescribed by the United States for the cities of Panama and Colon and their adjacent harbors will be promulgated by Executive Decree of the President of Panama. It is further agreed that whenever an epidemic or disease appears in or threatens any part of the Republic of Panama which may be considered by the Panama Canal authorities as a menace to the health of the Canal Zone and the cities of Panama and Colon, the Panaman authorities will, upon the request of the Government of the United States, apply to such region the quarantine and sanitary ordinances and regulations prescribed by the Chief Health Officer of the Panama Canal. In case the epidemic should be of such severity that the resources and efforts of the Republic of Panama appear to the Chief Health Officer of the Panama Canal to

be insufficient or unavailing to check or control the epidemic, the Republic of Panama grants to the United States the right and authority to enforce such ordinances and regulations in the same manner as prescribed for the cities of Panama and Colon. The foregoing measures shall continue in force until the menace to the Canal Zone and the cities of Panama and Colon has been removed. The expenses incident to the enforcement of such quarantine and sanitary measures as may be necessary shall be borne by the United States when, in accordance with the above provisions, it has taken over the enforcement of such measures.

All moneys collected in the cities of Panama and Colon from fines, penalties, and forfeitures under said ordinances and regulations shall be held by the Panaman authorities as an emergency fund to be used in special cases for sanitary purposes only in the respective cities of Panama and Colon, where collected, upon the approval of the Chief Health Officer of the Panama Canal.

In furtherance of the provisions of Article VII of the Treaty of November 18, 1903, it is agreed that the President of the United States and the President of the Republic of Panama will make agreements from time to time relative to the establishment of hospitals for the treatment of persons insane or afflicted with the disease of leprosy, and indigent sick in the Republic of Panama, on such conditions respecting the administration thereof, and such terms regarding the cost of construction and maintenance thereof, as the said Executives may determine by mutual agreement.

Article IX

The High Contracting Parties agree that with the exception of the stations specified in paragraph three of this Article and those owned and officially operated by the Government of Panama, no radio station, radio installation, or radio receiving set shall be imported, erected or operated in the territory of the Republic of Panama without a license issued by the Government of Panama. Panama will furnish to the United States notice of all applications for such licenses as they are made, and no license shall be issued in case objection is made by the United States, within fifteen days after receipt of such notice, to any such radio station, installation, or radio receiving set as endangering the efficient protection, defense or operation of the Panama Canal. Transfers of licenses shall be made only in the same manner as above provided for the original issue of the license.

Every license to a radio station, radio installation or radio receiving set in the Republic of Panama shall provide that the station, installation or receiving set shall at all times be subject to inspection

by the United States and censorship, control or closure by the Government of Panama. The Panaman Government agrees, upon request by the United States Government, to close without delay any radio station, radio installation or radio receiving set which is, in the opinion of the United States, detrimental to the safety or operation of the Canal and its defense or the operation of the United States Fleets or Forces. It is agreed, however, that with the exception of enemies in time of war the operating company or individual shall be duly reimbursed for losses due to such closure and that the damages arising out of such closure shall be appraised and determined by the Joint Commission provided for in Article I of this Treaty, and shall be paid by the United States in case such closure shall have been carried out by Panama at the request of the United States.

The Republic of Panama grants to the United States, with a view to the more efficient operation of the Canal, the right to install, maintain, and operate such radio stations in the Republic of Panama as the United States Government may deem necessary for use in connection with its other stations in the Republic of Panama or the Canal Zone, or for the purpose of controlling the movements of its Fleets or Forces. It is agreed that such radio stations erected, maintained, and operated by the United States in the Republic of Panama shall be open to the public service and shall transmit commercial business in the absence of commercial radio service by private enterprises, it being understood that Government messages shall have priority.

The Republic of Panama shall have complete sovereignty over the territory occupied by such radio stations as may be established by the United States in the Republic of Panama for the protection of the Canal and the management of United States Fleets or Forces, except that the United States shall exercise exclusive jurisdiction over such station sites, the property thereon and the personnel engaged in operating such stations, as well as the members of the military or naval forces of the United States supplying such stations. These provisions shall apply to the radio stations situated in La Palma and Puerto Obaldía now operated by the United States.

In case of war or threatened hostilities, the provisions of Article XI of this Treaty shall apply.

Article X

All aircraft and aviation centers in the Republic of Panama other than those pertaining to the defensive forces of the Canal and those owned and officially operated by the Government of Panama shall be subject to inspection by both the United States and the Panaman Governments to insure compliance with such rules and regulations as may hereafter be agreed upon.

Aircraft owned and operated by the nationals of the United States or Panama may operate in the Republic of Panama, provided both the aircraft and the operators thereof hold a joint United States-Panama license issued by a board composed of representatives of the Governments of the United States and Panama and otherwise conform to restrictions recommended in the Convention for the Regulation of Aerial Navigation signed at Paris, October 13, 1919, or such other restrictions as the two countries may from time to time jointly prescribe.

All aircraft other than those pertaining to the defensive forces of the Canal and those owned and officially operated by the Government of Panama must follow routes prescribed jointly by the United States and Panama in flying over the Republic of Panama and must land at airports or airdromes designated jointly by the United States and Panama and must otherwise conform to such restrictions as the two countries may from time to time jointly prescribe.

In applying and enforcing the rules and regulations regarding aircraft and aviation centers the two Governments shall regard as the deciding factor the safety of the Panama Canal.

The Republic of Panama agrees not to permit flying in Panaman territory over areas near the defenses of the Canal except in agreement with the United States.

In time of war or threatened hostilities the provisions of Article XI of this Treaty shall be applied.

Article XI

The Republic of Panama agrees to cooperate in all possible ways with the United States in the protection and defense of the Panama Canal. Consequently the Republic of Panama will consider herself in a state of war in case of any war in which the United States should be a belligerent; and in order to render more effective the defense of the Canal will, if necessary in the opinion of the United States Government, turn over to the United States in all the territory of the Republic of Panama, during the period of actual or threatened hostilities, the control and operation of wireless and radio communication, aircraft, aviation centers, and aerial navigation.

The civil and military authorities of the Republic of Panama shall impose and enforce all ordinances and decrees required for the maintenance of public order and for the safety and defense of the territory of the Republic of Panama during such actual or threatened hostilities and the United States shall have the direction and control of all military operations in any part of the territory of the Republic of Panama.

For the purpose of the efficient protection of the Canal, the Republic of Panama also agrees that in time of peace the armed forces of the United States shall have free transit throughout the Republic for manoeuvres, or other military purposes, provided, however, that due notice will be given to the Government of the Republic of Panama every time armed troops should enter her territory. It is understood that this provision for notification does not apply to military or naval aircraft of the United States.

Article XII

As long as the Republic of Panama shall make the gold dollar of the United States unlimited legal tender equally with the balboa established by Law 84 of 1904, the Government of the United States agrees to make the subsidiary silver currency issued by the Republic of Panama legal tender in the Canal Zone, with the following conditions:

1. That such Panaman currency shall not be legal tender for the payment of tolls for the use of the Panama Canal;

2. That the total nominal value of such Panaman subsidiary silver currency shall not exceed the amount of $1,000,000;

3. That the Republic of Panama, in order to maintain the legal parity and equivalence with the gold standard of such fractional silver coins, shall create and maintain a reserve fund by deposit with a responsible banking institution in the United States of a sum in lawful currency of the United States always equivalent to not less than fifteen per cent of the nominal value of the silver fractional currency issued by the Republic, and as the same is issued, together with an amount equal to the seigniorage on the silver coins issued, less all necessary costs of coinage and transportation;

4. That Panama further agrees to maintain the parity of its silver coinage with the gold standard by exchanging silver coins when presented in sums or multiples of twenty dollars or twenty balboas for gold, and by taking such steps with respect to exchange by drafts upon its reserve fund as will tend to prevent disturbances of the legal parity of the silver fractional currency of the Republic of Panama with the gold standard;

5. That such Panaman silver currency shall have an intrinsic value equal to or higher than the corresponding silver coins of the United States;

6. That the silver money of the United States shall be legal tender in the Republic of Panama to the same extent that it now is in the United States;

7. That the Republic of Panama shall not prohibit, restrict or impose any tax upon the exportation of gold coin.

ARTICLE XIII

It is expressly understood and agreed that nothing provided in this Treaty shall in any wise affect the rights of either of the two High Contracting Parties or be taken as being a limitation, definition, restriction or restrictive construction of the rights of either party under the Treaty of November 18, 1903, and the Treaty of September 2, 1914, except as expressly provided in this Treaty, and it is furthermore expressly understood that the rights of the Panama Railroad Company acquired by virtue of its concessions from the Republic of Colombia or otherwise and the rights of the United States acquired by virtue of their purchase of the rights of the French Canal Company, are in no manner altered, impaired or diminished by any of the terms of this Treaty.

ARTICLE XIV

The present Treaty shall be ratified in accordance with the constitutional forms of the High Contracting Parties and shall take effect immediately on the exchange of ratifications which shall take place at Washington.

In witness whereof, the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at the City of Washington the 28th day of July 1926.

[SEAL] FRANK B. KELLOGG
[SEAL] FRANCIS WHITE
[SEAL] R. J. ALFARO
[SEAL] EUSEBIO A. MORALES

[Enclosure 2]

The American Commissioners to the Panaman Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: With reference to the question of the statue of Christopher Columbus now standing on the grounds of the Washington Hotel in the city of Colon, and which was presented to the Republic of Colombia by Eugenie, Empress of the French in 1866, the American Commissioners take pleasure in confirming the understanding arrived at during the negotiations of the present treaty, that the Republic of Panama is recognized to have the ownership of said statue and that consequently it may be removed from its present location to such other place within the territory of Panama as may be deemed convenient by the Panaman Government.

Accept [etc.]

FRANK B. KELLOGG FRANCIS WHITE

[Enclosure 3—Translation]

The Panaman Commissioners to the American Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: The Panaman Commissioners have received with great gratification the note of this date in which the American Commissioners confirm the understanding arrived at in the present negotiations with regard to the statue of Columbus now standing in the grounds of the Washington Hotel in the city of Colon, presented to the Republic of Colombia in 1866 by Eugenie, Empress of the French, and the ownership of which is recognized to correspond to the Republic of Panama, with the right to remove it to such place within the territory of the Republic, as may be convenient.

Accept [etc.]

R. J. ALFARO EUSEBIO A. MORALES

[Enclosure 4—Translation]

The Panaman Commissioners to the American Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: Referring to Section 4 of Article IV of the treaty signed by us today with the American Commission in which is set forth the persons who shall be entitled to dwell within the Canal Zone and to whom dwellings belonging to the Government of the United States or to the Panama Railroad Company and situated within the Zone may be rented or leased, we desire to confirm the understanding arrived at between the Commissioners during the negotiations, that consular officers of career holding exequaturs from the United States are included within the category of those who are entitled to dwell within the Canal Zone and to whom dwellings belonging to the Government of the United States or to the Panama Railroad Company and situated within the Zone may be rented or leased.

Mention was not made in the treaty of consular officers of career holding exequaturs from the United States as it was not desired to give undue prominence to the fact that such persons may dwell in the Canal Zone and thus perhaps cause a number of such persons who now reside in the Republic of Panama to take up residence in the Canal Zone.

Accept [etc.]

R. J. ALFARO EUSEBIO A. MORALES

[Enclosure 5]

The American Commissioners to the Panaman Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: In reply to your note of today's date in which you confirm the understanding arrived at by the American and Panaman Commissioners in the recent negotiations that it is understood that consular officers of career holding exequaturs from the United States are to be considered as included among those persons enumerated in Section 4 of Article IV of the treaty signed by us today who are entitled to dwell within the Canal Zone and to whom dwellings belonging to the Government of the United States or to the Panama Railroad Company and situated within the Zone may be rented or leased, the American Commissioners take this opportunity to thank the Panaman Commissioners for this confirmation of the understanding reached during the negotiations.

Accept [etc.]

FRANK B. KELLOGG FRANCIS WHITE

[Enclosure 6—Translation]

The Panaman Commissioners to the American Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: Referring to paragraph 2 of Article IX of the treaty signed by us today with the American Commission in which it is provided that all radio stations, radio installations or radio receiving sets in the Republic of Panama shall be subject to control by the Government of Panama, we desire to confirm the understanding arrived at between the Commissioners during the negotiations that the Republic of Panama in the exercise of her control, may require the operator of every radio station, radio installation or radio receiving set to furnish the Government of Panama with a copy of every message received or sent by it and that the Government of Panama will supply copies of such messages to the agents of the United States, if the United States should advise Panama that it considered such measures necessary in the protection, defense or operation of the Panama Canal or the operation of the United States fleets or forces, it being understood that this phase of control by the Republic of Panama would not be exercised in ordinary circumstances but only in the case above stated.

With reference to the third paragraph of Article IX of the treaty it is of course understood, as brought out in our negotiations, that radio stations operated by the United States in the Republic of Panama shall be operated under such regulations as the United States may prescribe for them.

Accept [etc.]

R. J. ALFARO EUSEBIO A. MORALES

[Enclosure 7]

The American Commissioners to the Panaman Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: In reply to your note of today's date in which you confirm the understanding arrived at by the American and Panaman Commissioners in recent negotiations that it is understood that Panama in exercising control over radio stations, radio installations or radio receiving sets in the Republic of Panama may of course demand that copies of all messages received or sent by such radio stations, radio installations or radio receiving sets shall be supplied to the Republic of Panama, which will in turn furnish such copies to the United States, it being understood that such measures will not be taken in ordinary circumstances but only when the United States advises Panama that it considers such measures necessary in the protection, defense or operation of the Canal or the operation of the United States fleets or forces, and furthermore that it is of course understood that radio stations operated in the Republic of Panama by the United States will be operated under such regulations as the United States may prescribe for them, the American Commissioners take this opportunity to thank the Panaman Commissioners for this confirmation of the understanding on these points reached during the negotiations.

Accept [etc.]

FRANK B. KELLOGG FRANCIS WHITE

[Enclosure 8—Translation]

The Panaman Commissioners to the American Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: Referring to Article XII of the treaty signed by us today with the American Commission, in which arrangement is made to make the subsidiary silver currency issued by the Republic of Panama legal tender in the Canal Zone under certain conditions, we desire to state that the Republic of Panama will cause the silver currency referred to in said Article to be coined at one of the mints of the United States.

Accept [etc.]

R. J. ALFARO EUSEBIO A. MORALES

[Enclosure 9]

The American Commissioners to the Panaman Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: In reply to your note of today's date in which you state, with reference to Article XII of the treaty signed by us today, that Panama

will cause the silver currency referred to in said provision to be coined at one of the mints of the United States, we desire to express the thanks of the American Commission for this confirmation of the understanding reached by us during the negotiations for the treaty.

Accept [etc.]

FRANK B. KELLOGG FRANCIS WHITE

[Enclosure 10—Translation]

The Panaman Commissioners to the American Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: Referring to Article I of the treaty signed by us today with the American Commission, in which it is provided that the value of private lands and private property, and the assessment of damages to them shall be appraised and settled by a Joint Commission composed of one of the Associate Justices or a substitute Justice of the Supreme Court of the Republic of Panama, to be selected by the President of the Republic of Panama, and the Judge of the District Court of the Canal Zone, and that in case of disagreement of the Commission an Umpire shall be appointed by the two Governments and he shall render the decision, we desire to confirm the understanding arrived at between the Commissioners during the negotiations, that Panama agrees to the appointment at any given moment, for the responsible position of Umpire of the Joint Commission, of a citizen of the United States of America who is known in Panama for his eminent qualifications for the position.

Accept [etc.]

R. J. ALFARO EUSEBIO A. MORALES

[Enclosure 11]

The American Commissioners to the Panaman Commissioners

WASHINGTON, *July 28, 1926.*

SIRS: In reply to your note of today's date in which you confirm the understanding arrived at by the American and Panaman Commissioners in their negotiations that the Panaman Government agrees to the appointment to the position of Umpire, provided for in Article I of the treaty signed by the plenipotentiaries of the United States and Panama today, of a citizen of the United States of America known in Panama for his eminent qualifications for that responsible position, the American Commissioners take this opportunity to express to the Panaman Commissioners their gratification in receiving this confirmation of the understanding reached during the negotiations.

Accept [etc.]

FRANK B. KELLOGG FRANCIS WHITE

PROPOSALS BY PANAMA TO MODIFY THE UNPERFECTED TREATY BETWEEN THE UNITED STATES AND PANAMA, SIGNED JULY 28, 1926 [9]

711.192/253

The Panaman Legation to the Department of State

[Translation [10]]

MEMORANDUM

Article II of the Treaty signed between Panama and the United States on July 28, 1926, in its two final paragraphs provides the following:

"The United States will undertake the construction of a paved highway, from Paraiso (in the Canal Zone), by way of Summit, Alhajuela, and Cativá, to a connection with the Canal Zone highway between Colon and Fort Randolph; and a paved highway from a point on the above described road south of Las Minas Bay to the town of Porto Bello, completing all necessary grading for roadbeds twenty-six (26) feet wide, with a concrete pavement not less than six (6) inches thick and eighteen (18) feet wide in the center, together with all necessary culverts, and single track bridges capable of carrying a fifteen-ton road roller.

"It is agreed that the United States will enter on the construction of the highways described in this Article after the Republic of Panama shall have made provision satisfactory to the United States to reimburse the United States for all costs of construction of all said highways north of Alhajuela, excepting $1.250.000, which it is agreed will be the total expense to the United States of this portion of the highway system. It is also agreed that the total expense of the section of the highways described in this Article and lying between Paraiso and Alhajuela shall be borne by the United States."

According to data furnished by the Department to this Legation, the cost of the highway from Alhajuela to Colon is estimated in the sum of $2,148,00[0] and the cost of such part of the road as is situated in territory subject to the jurisdiction of Panamá is estimated in the sum of $2,037,000.00

The cost of the road from Colon to Portobelo is estimated in the sum of 1,855,000.00

The total estimate of highways north of Alhajuela thus reaches the amount of $3,892,000.00

Of this amount it is considered to be covered in advance by the Republic of Panama the amount offered as compensation for the transfer made to the United States of the jurisdiction over the northern area of the City of Colon, which the Republic of Panama

[9] For text of treaty, see p. 833.

[10] Translation supplied by the Panaman Minister October 18, 1926.

has at present, as per the express exception made in the Treaty of 1903.[11] Said amount is 1,250,000.00

Consequently there is a balance that the Republic of Panama would be bound to reimburse the United States amounting to $2,672,000.00

In conformity with the estimates that have been made and with the terms of the above-quoted provision, the United States will undertake the work of the Alhajuela–Colon–Portobelo road "after the Republic of Panama shall have made provision satisfactory to the United States" to reimburse the above-stated balance of $2,672,000.

It follows from this that the United States will not undertake the building of the above-mentioned highways until the Republic has taken the necessary steps to make the reimbursement or payment in reference. It also follows that the United States might not find satisfactory the measures that the Government of Panama should adopt in order to provide for payment of the amount referred to, and in this case they would also be exempt from beginning the work agreed upon. It might also happen that the Republic of Panama would encounter difficulties in raising the funds or in floating the loan that will be necessary in order to give the Government of the United States a security of payment that said Government would find and declare satisfactory. Such difficulties might perhaps exist for a considerable length of time and in such a situation the result would be that while Panamá complies at once and unconditionally with the obligation imposed upon her by Article II of the Treaty, which is extremely painful to national sentiment, the United States would remain for an indefinite length of time without fulfilling their obligation, which is eventual and conditional, in so far as it concerns the main compensation agreed upon for that concession.

In these circumstances a clear understanding is required on the following questions: What provision does the United States Government consider satisfactory to be made by the Government of Panama in order to reimburse the sum of $2,672,000 that the Republic must contribute to the cost of construction of the roads north of Alhajuela?

The importance of a previous understanding on this point is easy to see. One of the strongest objections advanced by the adversaries of the new treaty between Panama and the United States is that against the transfer of jurisdiction over the northern area of the City of Colon. The Department knows also with what earnestness and tenacity the Panaman Government, represented by the negotiating Commission, opposed that demand, and it also knows that Panamá agreed to it only because the American Commissioners emphatically stated that without such a stipulation the United States would not enter into any Treaty.

[11] *Foreign Relations*, 1904, p. 543.

The attitude of the Government of Panama was not inspired by a utilitarian criterion. The Government did not consider the fact that no material profit is received by its Treasury from the jurisdiction over the area of Colon where the Canal buildings are situated, neither did it take into consideration the serious responsibilities and expenses imposed by the exercise of such jurisdiction. The action of the Government of Panama was animated only by a sentiment of nationalism, to which the new extension of jurisdiction demanded by the United States was averse, and it was also animated by an earnest desire to see untouched the principle established by the Treaty of 1903 when the two cities of Panama and Colon were excluded from the concession of the Zone.

Therefore, when Panama agreed to such a transfer of jurisdiction she was moved by considerations of a higher order, and had to subdue the nationalistic sentiment in the present [*presence*] of the higher necessity of obtaining for the Nation the securities afforded to her economic life by the new Treaty.

Panama having resigned herself to this sacrifice, it was the desire of the Government that the province of Colon should receive a direct benefit from the provision agreed upon, and with that end in view she proposed that the compensation of $1,250,000 offered for the transfer by the Government of the United States, should be given in behalf of a road communicating the Cities of Panama, Colon and Portobelo. The Executive Power had not carried out any formal study of the possible layout of these roads and taking as a basis the average cost of other roads and the appropriations made on previous occasions by the National Assembly for such construction, it was approximately calculated that the sum of $1,250,000 would be sufficient to cover at least the greater part of the cost of construction. The estimate of the Canal authorities shows an average cost per mile of road very much higher than the calculations of Panama, probably due to serious engineering difficulties encountered, which are the cause of a considerable increase in the building costs.

The Government of Panama has a strong majority in the National Assembly which supports its political and administrative labor and the Government, loyal to its pledges, will do whatever is possible in order to insure the ratification of the Treaty by the Assembly. It happens, nevertheless, that a considerable number of Deputies who are supporters of the Administration have shown themselves adversaries of the Treaty in a frank and earnest manner, especially the majority of the deputies from the Province of Colon. The adverse elements within the Assembly and those outside of it would be considerably reinforced in their allegations if it should happen that the Republic of Panama should not receive the main direct and material compensation agreed upon for the transfer of jurisdiction in Colon.

From the view point of the interests of Panama, the highway connecting the Capital of the Republic with the Cities of Colon and Portobelo will develop regions that at present are uncultivated and uninhabited and will give a new impetus to the prosperity of the province of Colon and to the Republic in general. But from the view point of American interests it is evident that such a highway has also an inestimable strategic value, and in the event, God forbid that it should ever occur, but which unfortunately is possible, of a War it will be a great advantage not to be dependent upon the railroad only for land communication across the Isthmus, and to have available a good highway, which not only could replace the railroad in case of an interruption that might be due to several causes, but also could serve as well as an auxiliary of the Railroad in the traffic congestions that military exigencies are always apt to cause.

For the Republic of Panama with her scarce population, her industries in their infancy and her very limited resources, it will be an exhausting economic effort to appropriate for these roads an amount of over two and one half million balboas. As the State Department knows Panama has already made a formidable effort for the construction of highways in the Western region of the Republic, in which she has pledged for 25 and 30 years the interest of the Constitutional fund, the annuity from the United States as per the Treaty of 1903, and some other National revenues. Nevertheless, the funds that Panama has been able to raise have not been sufficient to undertake the continuation of the highways to Chiriqui in order to connect that very important province with the Capital by land, a necessity which day by day becomes more pressing. Those funds were even insufficient for the carrying out of the road program of 1923.

On the other hand, for the United States, possessor of the greatest resources and wealth known among the Nations of the world, an expenditure of a little over two and a half millions which would be justified as a military measure of undeniable value for the efficient protection of the work that constitutes the heart of her Naval defense, would mean nothing, or very little.

The Government of Panama, therefore, does not consider it improper to make the suggestion that the roads north of Alhajuela instead of being built in their totality by the Republic of Panama, be jointly built by Panama and the United States, Panama contributing the one and a quarter millions due her as compensation for the transfer of jurisdiction in Colon, and the United States covering the resulting balance.

The Minister of Panama takes the liberty of stating that cooperation in this form for the construction of the highway in reference would substantially conform with decisions already made by the Govern-

ment of the United States. In a memorandum dated June 30, 1917, the State Department said:[12]

"The fact that more adequate means of communication for transportation are necessary at this time in Panama, and also that the military value of such means of communication, as so clearly shown by the Commission's memoranda and the careful exposition of the needs of Panama by the members of the Commission during several conferences which they have had with officials of the Government of the United States, has induced the Government of the United States to decide to build certain roads entirely at its own expense. These roads will have the double value of aiding the development of the country and giving means of communication and transportation to the City of Panama from the interior, and also will serve a great military purpose. As these roads will lend themselves to the development of the interior of the Republic of Panama, the Government of the United States hopes that some arrangement may be made with the Government of Panama in the future, whereby, on account of the free use of these roads which will be offered to the people of Panama, the expense of the upkeep of such roads will be borne, in part, by the Government of Panama. It is desired to inform the Commissioners that the Government of the United States wishes to defer the consideration of the cooperation which they now so generously offer, until such time in the future as the road construction has commenced, when this question may be made the proper subject for consideration.

"For the information of the Commission it is desired to quote herewith the program for the building of these roads which has been approved by the Government of the United States:

"Southeast Area: Radial road from Sabanas Police Station into the Chagres Valley and up to San Juan on the Pequeni—25 miles. Road parallel to and in rear of the position Old Panama–Cerro Piñon, 12 miles. The Panamanian Government should surface the stretch of road from the Tapia River to Pacora, built by the Military, and extend same to Chepo.

"Southwest Area: Radial road from Corozal via La Boca-Farfan Beach permanent ferry (to be installed as a part of the Communication system recommended) to Chorrera, via Cabra Mountain–Calera Mountain Saddle; with branch to Arraijan; thence to Campana, terminating in rear of the position Cermeno–Compaña—36 miles. Lateral road from Capira to Protero—2 miles.

"Northeast Area: Radial road from the present Mount Hope–Fort Randolph Road, near Majagual, to Porta Real—8 miles. Lateral and intercommunicating roads along and in rear of the Santa Rosa position—6 miles.

"Northwest Area: Radial road from Gatun Dam to Cano Saddle—8 miles. Roads paralleling the Lagarto and Indio Positions—12 miles."

It may be observed that part of the program outlined in 1917 has been covered by the provisions of Article III of the Treaty of

[12] Memorandum not printed; but see *Foreign Relations*, 1917, pp. 1194–1204.

the 28th of July, but if it is taken into consideration that Panama has already expended five or six million balboas from her own Treasury, in the construction of roads and that part of those that have already been built are comprised in the program outlined by said Article III; and if a cursory calculation is made of what the United States bound themselves to expend by the agreement of 1917 and what they will disburse by the Treaty of 1926, it may be seen that the United States will be exonerated from their engagement of 1917 in a considerable amount, which would justify, besides the reasons above stated, the decision which has been suggested in respect to the highways north of Alhajuela.

The Government of Panama hopes that the Government of the United States will give sympathetic consideration to the contents of this memorandum, and awaits their answer with deep interest.

R. J. ALFARO

WASHINGTON, *October 14, 1926.*

711.192/318

Procès-verbal of a Conversation Held on December 8, 1926, Between the Panaman Minister (Alfaro), Representing the Government of Panama, and the Chief of the Division of Latin American Affairs (Stabler) and Mr. Stokeley Morgan, of the Same Division, Representing the Department of State

Mr. Stabler stated that the Department had given careful consideration to the Memorandum presented by the Minister of Panama on October 14th, on the subject of Article II of the treaty concluded between the United States and Panama the 28th of July, 1926, and that it was the conclusion of the Department that it would be impossible to obtain from Congress an appropriation that would enable the American Government to undertake the construction of the roads north of Alhajuela on the basis suggested by the Minister in his memorandum, that is to say, Panama contributing to its cost the sum of $1,250,000 and the United States contributing the balance, which according to estimates made, will amount to about two million six hundred thousand dollars. Mr. Stabler added that the War Department has stated that the roads in reference do not have special military importance and that they have to request from Congress appropriations for other works or expenditures that are more urgently needed. Therefore, it is thought by the State Department that a plan involving an actual modification of Article II of the new treaty

cannot be contemplated but that the United States Government is willing to do what it can to facilitate the carrying out of its provision about roads in a manner that is satisfactory to the Republic of Panama and in accordance with the provisions of the treaty.

Doctor Alfaro took up with further extension the reasons adduced in his Memorandum of October 14th and laid stress on the situation that would arise if the United States should require from Panama provisions for the reimbursement of the cost of the road in excess of the sum of $1,250,000 that would prove impracticable or difficult for Panama to make. In such a case, remarked the Minister, Panama would not receive for an indefinite time the compensation agreed upon in Article II for the special benefit of the Province of Colon and said article would impose an uncertain obligation on the United States while Panama is assuming a certain, definite and immediate obligation.

The Minister also adverted to that part of his memorandum where he speaks of the great financial effort already made by the Republic for the construction of highways and said that funds are still needed for the completion of the present road program; that it might be found difficult to make provisions for an additional expenditure of $2,672,000 for the roads north of Alhajuela and that if for that reason the construction of these roads could not be undertaken at once it would be very desirable to have $1,250,000 available for other roads urgently needed in other parts of the Republic instead of having that amount of money laid up in the United States Treasury.

Mr. Stabler stated that he was not in a position to make a formal proposal at this time but that he thought it would be possible to make an agreement before the treaty was ratified to the effect that in the event the Government of Panama does not desire to undertake the construction of the highways north of Alhajuela, and provide for reimbursement to the United States of the cost of construction of such highways in excess of the sum of $1,250,000 as contemplated in Article II of the treaty, the Government of the United States will undertake, should it be found practicable, the construction of such highways and public works as the Government of Panama may desire to have executed in any part of the Republic of Panama to the extent of $1,250,000, which sum is referred to in Article II of the Treaty signed between the United States and Panama July 28, 1926, or should the construction through its own agencies of such highways or public works be considered by the United States impractical it will place to the credit of the Republic of Panama the sum of $1,250,000, to be applied to the construction of highways and public works in a manner to be decided upon by the Government of Panama.

Doctor Alfaro stated that he would inform his Government the position of the State Department and that after he received definite instruction on the subject he would again communicate with the Department.

The conference ended at five-thirty p. m., December 8, 1926.

For a permanent record of this conversation this *procès verbal* is signed by the officials named herein.

JORDAN HERBERT STABLER R. J. ALFARO
S. W. MORGAN

711.192/263

The Panaman Minister (Alfaro) to the Secretary of State

[Translation [13]]

No. D–369 WASHINGTON, *December 17, 1926.*

MR. SECRETARY: The Government of Panama is deeply interested in the realization of important and costly public works which the development of the country imperatively demands, but in the endeavor to carry out its desires it meets with an obstacle in the limited pecuniary resources at its disposal.

In connection with the conversations which I have held recently with the Department regarding the manner in which article II of the treaty of July 28, 1926, should be fulfilled, my Government desires to offer the following suggestion to Your Excellency's Government. Panama would release the Government of the United States absolutely from the compensation which article II of the new treaty imposes on it, maintaining, regardless, the agreement concerning the transfer of jurisdiction in the area north of the city of Colon, provided that the Government of the United States will make or see that there is made to the Republic of Panama a loan of $30,000,000 for a term of not less than 50 years and at an interest rate not greater than 4 percent, the loan to be used for the total redemption of the present external debt of the Republic and for the construction of roads and other public works of vital importance, which program of construction could be the subject of a separate agreement. The Republic of Panama would guarantee the fulfillment of this obligation with its excise taxes, especially with the revenues pledged as a guarantee of the loan to be redeemed, and for this purpose it would seek authorization from the National Assembly which is now in session.

This agreement could be carried out by an additional protocol to the new treaty. If the United States by this means should lend its most valuable cooperation to the development of the Republic, no sacrifice whatsoever on the part of Your Excellency's Government would be imposed.

I avail myself [etc.] R. J. ALFARO

[13] File translation revised.

819.154/233

The Panaman Minister (Alfaro) to the Secretary of State

[Translation]

No. D–370 WASHINGTON, *December 18, 1926.*

MR. SECRETARY: With reference to Article II of the treaty entered into between Panama and the United States on July 28 of the present year, I wish to ask, in the name of my Government, what are the provisions satisfactory to the Government of the United States which should be taken by the Government of Panama to reimburse the Government of the United States for the cost of construction of the roads north of Alhajuela in excess of the sum of $1,250,000, which construction is referred to in the above-mentioned Article of the Treaty.

I avail myself [etc.] R. J. ALFARO

711.192/263

The Acting Secretary of State to the Panaman Minister (Alfaro)

WASHINGTON, *December 21, 1926.*

SIR: I have received your note of December 17, in which you state that the Government of Panama is deeply interested in the realization of important and costly public works which the development of the country imperatively demands, but that in the endeavor to carry out its desires it meets with an obstacle in the limited pecuniary resources at its disposal.

You add that in connection with the conversations which you have held recently with the Department regarding the manner in which Article II of the Treaty of July 28, 1926, should be fulfilled, your Government desires to offer the following suggestion to the Government of the United States:

Panama will release the Government of the United States from the compensation which Article II of the new Treaty imposes on it, regardless of the agreement concerning the transfer of jurisdiction in the area north of the City of Colon, provided that the Government of the United States will make or see that there is made to the Republic of Panama a loan of $30,000,000 for a term of not less than fifty years and at an interest rate not greater than four per cent, the loan to be used for the total redemption of the present external debt of the Republic and for the construction of roads and for public works of vital importance, which program could be a matter for separate agreement. The Republic of Panama would guarantee the fulfillment of this obligation with its excise taxes, especially with the revenues pledged for the loans which would be redeemed, and for this purpose

it would seek authorization from the National Assembly now in session.

The contents of your note and the nature of the proposal have been given my most careful attention and study with a view to approaching the wishes of your Government in a spirit of friendly cooperation. I am nevertheless obliged to inform you that, to its regret, my Government cannot see its way clear to enter into any agreements such as are proposed in your note.

Accept [etc.] JOSEPH C. GREW

819.154/233

The Secretary of State to the Panaman Minister (Alfaro)

WASHINGTON, *December 23, 1926.*

SIR: I have received your note of December 18, in which you state that, with reference to Article II of the Treaty signed between Panama and the United States on July 28 last, you wish to inquire on behalf of your Government the nature of the provisions satisfactory to the United States Government which the Government of Panama should take to reimburse the United States for the cost of construction of the highways north of Alhajuela in excess of the sum of $1,250,000 referred to in the Treaty.

In reply I have the honor to inform you that this subject has been given most careful attention by the officials of the United States Government directly concerned with the carrying out of the obligations imposed upon the United States by Article II, all of whom are keenly desirous of assisting Panama so far as may be possible to reap the advantages of the road construction program envisaged in the Treaty. Therefore, in reply to your note I am pleased to be able to inform you that the Government of the United States will undertake as soon as possible after the ratification of the Treaty by both parties the construction of the road from Colon towards Puerto Bello or from Colon to Alhajuela whichever the Government of Panama may prefer, expending thereon the sum of $1,250,000. From the point thus reached the United States Government will continue the construction of the road as soon as funds are deposited by the Republic of Panama to the credit of the Panama Canal using those funds as they accrue until the road program is completed.

Sincerely hoping that this will meet the desires of the Government of Panama I beg [etc.]

FRANK B. KELLOGG

819.154/234

The Panaman Minister (Alfaro) to the Secretary of State

[Translation [14]]

No. D–387 WASHINGTON, *December 30, 1926.*

MR. SECRETARY: I have the honor to refer to Your Excellency's courteous communication dated the 23rd instant, whereby Your Excellency answers my note of the 18th inquiring which are the provisions that Panama must make to reimburse the United States for the costs of construction of the roads north of Alhajuela in excess of the sum of $1,250,000. in conformity with the provision of Article II of the Treaty of the 28th of last July.

Your Excellency is pleased to inform me that the Government of the United States will undertake as soon as possible after the ratification of the Treaty by both parties the construction of the road from Colon towards Portobelo or from Colon to Alhajuela whichever the Government of Panama may prefer, expending thereon the sum of $1,250,000. From the point thus reached the United States Government will continue the construction of the road as soon as funds are deposited by the Republic of Panama to the credit of the Panama Canal, using those funds as they accrue until the road program is completed.

Under instructions from my Government, I have the honor to state that the measure proposed by Your Excellency's Government would substantially depart from the stipulation of the Treaty, inasmuch as the Treaty speaks of a reimbursement of funds whereas the method set forth in Your Excellency's note would constitute an advancement of funds. In other words Panamá would not refund to the Government of the United States the sums disbursed by the latter in excess of the sum of $1,250,000, but it would draw funds from its treasury to deposit same to the credit of the Canal authorities for the purpose of having them use those funds in the construction of roads exceeding such amount.

If the final stipulation of Article II should be complied with in this manner there would be no reason for its being in the Treaty, as it is clear that when the National Government has funds available for public works that it can undertake by itself, it is not in a position to put another Government in charge of the disbursement of its own funds for the execution of such public works. Such a practice on the other hand would be incompatible with clear principles of our internal public law.

[14] Translation supplied by the Panaman Minister.

My Government understands that in conformity with the stipulation of the final sentence of Article II of the Treaty the United States is to disburse the total cost of roads North of Alhajuela and the Republic of Panama is to re-imburse the United States for such cost, deducting therefrom the sum of $1,250,000. which is the consideration offered for the grants that Panama makes to the United States by said article.

If, as I hope, the learned Government of the United States concurs in this understanding, I pray Your Excellency to state which provision of the Government of Panama is deemed satisfactory to the Government of the United States for the purpose, as the Treaty says, of "reimbursing the United States for all costs of construction of all said highways North of Alhajuela excepting $1,250,000."

I avail myself [etc.] R. J. ALFARO

CLAIMS CONVENTION BETWEEN THE UNITED STATES AND PANAMA, SIGNED JULY 28, 1926 [15]

Treaty Series No. 842

Treaty Between the United States of America and the Republic of Panama, Signed at Washington, July 28, 1926 [16]

The United States of America and the Republic of Panama, desiring to settle and adjust amicably claims by the citizens of each country against the other, have decided to enter into a Convention with this object, and to this end have nominated as their plenipotentiaries:

The President of the United States of America, The Honorable Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the Republic of Panama, The Honorable Doctor Ricardo J. Alfaro, Envoy Extraordinary and Minister Plenipotentiary of Panama to the United States and the Honorable Doctor Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of Panama on special mission;

who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

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[15] In connection with this treaty, see also penultimate paragraph of the minutes of the twenty-third meeting of the American and Panaman Commissions, July 27, 1926, p. 832.

[16] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, Jan. 26, 1929; ratified by the President, Sept. 11, 1931; ratified by Panama, Sept. 25, 1931; ratifications exchanged at Washington, Oct. 3, 1931; proclaimed by the President, Oct. 6, 1931.

ARTICLE I

All claims against the Republic of Panama arising since November 3, 1903,[17] except the so-called Colon Fire Claims hereafter referred to, and which at the time they arose were those of citizens of the United States of America, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America arising since November 3, 1903, and which at the time they arose were those of citizens of the Republic of Panama, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country, by reason of losses or damages suffered by any corporation, company, association or partnership, in which such citizens have or have had, a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership, of his proportion of the loss or damage suffered is presented by the claimant to the Commission; and all claims for losses or damage originating from acts of officials or others acting for either Government, and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity. As an exception to the claims to be submitted to such Commission, unless by later specific agreement of the two Contracting Parties, are claims for compensation on account of damages caused in the manner set forth in Article VI of the Treaty of November 18, 1903,[18] for the construction of the Panama Canal, which shall continue to be heard and decided by the Joint Commission provided for in that Article of the Treaty.

With regard to the exception above made respecting the claims for losses suffered by American citizens as a result of the fire that occurred in the City of Colon on March 31, 1885, the Government of Panama agrees in principle to the arbitration of such claims under a Convention to which the Republic of Colombia shall be invited to become a party and which shall provide for the creation or selection of an arbitral tribunal to determine the following questions: First, whether the Republic of Colombia incurred any liability for losses sustained by American citizens on account of the fire that took place in the City of

[17] Date of the uprising on the Isthmus which resulted in the independence of Panama; see *Foreign Relations*, 1903, pp. 252 ff.

[18] *Ibid.*, 1904, p. 543.

Colon on the 31st of March 1885; and, second, in case it should be determined in the arbitration that there is an original liability on the part of Colombia, to what extent, if any, the Republic of Panama has succeeded Colombia in such liability on account of her separation from Colombia on November 3, 1903, and the Government of Panama agrees to cooperate with the Government of the United States by means of amicable representations in the negotiation of such arbitral agreement between the three Countries.[19]

The hearing and adjudication of particular claims in accordance with their merits in order to determine the amount of damages to be paid, if any, in case a liability is found, shall take place before a special tribunal to be constituted in such form as the circumstances created by the tri-partite arbitration shall demand.

As a specific exception to the limitation of the claims to be submitted to the Commission against the United States of America it is agreed that there shall be submitted to the Commission the claims of Abbondio Caselli, a Swiss citizen, or the Government of Panama, and Jose C. Monteverde, an Italian subject, or the Government of Panama, as their respective interests in such claims may appear, these claims having arisen from land purchased by the Government of Panama from the said Caselli and Monteverde and afterwards expropriated by the Government of the United States, and having formed in each case the subject matter of a decision by the Supreme Court of Panama.

The Commission shall be constituted as follows: One member shall be appointed by the President of the United States; one by the President of the Republic of Panama; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this Convention in naming such a third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article 49 of the Convention for the Pacific Settlement of International Disputes concluded at The Hague October 18, 1907.[20] In case of the death, absence or incapacity of any member of the Commission, or in the event of the member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

Article II

The Commissioners so named shall meet at Washington for organization within six months after the exchange of ratifications of this

[19] For correspondence regarding Colombia's attitude with respect to the arbitration of the Colon fire claims, see pp. 4 ff.

[20] *Foreign Relations*, 1907, pt. 2, pp. 1181, 1191.

Convention, and each member of the Commission before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for his decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Commission may fix the time and place of its subsequent meetings, either in the United States or in Panama as may be convenient, subject always to the special instructions of the two Governments.

Article III

The Commission shall have authority by the decision of the majority of its members to adopt such rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this Convention.

Each Government may nominate agents or counsel who will be authorized to present to the Commission orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

Article IV

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a Secretary; those Secretaries shall act as joint Secretaries of the Commission and shall be subject to its instructions. Each Government may also appoint and employ, any necessary assistant secretaries and such other assistants as may be deemed necessary. The Commission may also appoint and employ any other persons necessary to assist in the performance of its duties.

Article V

The High Contracting Parties being desirous of effecting an equitable settlement of the claims of their respective citizens, thereby affording them just and adequate compensation for their losses or damages,

agree that no claim shall be disallowed or rejected by the Commission through the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VI

Every such claim for loss or damage accruing prior to the signing of this Convention, shall be filed with the Commission within four months from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed two additional months.

The Commission shall be bound to hear, examine and decide, within one year from the date of its first meeting, all the claims filed.

Three months after the date of the first meeting of the Commissioners and every three months thereafter, the Commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined, within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VII

The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of claims filed with the Commission that such claims have been heard and decided.

This provision shall not apply to the so-called Colon Fire Claims, which will be disposed of in the manner provided for in Article I of this Convention.

ARTICLE VIII

The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country, and the balance shall

be paid at the City of Panama or at Washington, in gold coin or its equivalent within one year from the date of the final meeting of the Commission, to the Government of the country in favor of whose citizens the greater amount may have been awarded.

ARTICLE IX

Each Government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two Governments.

ARTICLE X

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Washington as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate in Washington this twenty-eighth day of July 1926.

[SEAL] FRANK B. KELLOGG
[SEAL] R. J. ALFARO
[SEAL] EUSEBIO A. MORALES

BOUNDARY DISPUTE WITH COSTA RICA

(See volume I, pages 539 ff.)

PARAGUAY

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND PARAGUAY

711.342/a

The Secretary of State to the Minister in Paraguay (Kreeck)

No. 332 WASHINGTON, *August 26, 1926.*

SIR: This Government has, as you are aware, entered upon the policy of negotiating with other countries general treaties of friendship, commerce and consular rights, of which the central principle in respect of commerce is an unconditional most-favored-nation clause governing customs and related matters.[1] This policy was inaugurated pursuant to the principles underlying Section 317 of the Tariff Act of 1922;[2] it seeks assurances that equality of treatment for American commerce will be maintained in all countries. Besides the provisions relating to commerce these treaties include provisions relating to rights of nationals of each country in the other country, protection of property, and rights and immunities of consuls. This Government now desires to enter into such a treaty with Paraguay.

The first treaty to become effective expressing the present policy of this Government was the Treaty of Friendship, Commerce and Consular Rights with Germany, signed December 8, 1923,[3] ratifications of which were exchanged October 14, 1925. Similar treaties have been signed by the United States with Hungary, Esthonia[4] and Salvador,[5] of which the one with Esthonia has been brought into force by exchange of ratifications.

Treaties containing the unconditional most-favored-nation clause were signed with Turkey on August 6, 1923,[6] and with Panama on July 28, 1926.[7] Several others are in process of negotiation. *Modi vivendi* based upon the same principle, entered into with the following countries, are in force—Brazil, Czechoslovakia, Dominican Re-

[1] See *Foreign Relations*, 1923, vol. I, pp. 121 ff.
[2] 42 Stat. 858, 944.
[3] *Foreign Relations*, 1923, vol. II, p. 29.
[4] *Ibid.*, 1925, vol. II, pp. 341 and 70, respectively.
[5] *Post*, p. 931.
[6] *Foreign Relations*, 1923, vol. II, p. 1153.
[7] *Ante*, p. 833. The treaty of July 28, 1926, with Panama does not contain the unconditional most-favored-nation clause.

public, Finland,[8] Greece, Guatemala,[9] Latvia,[10] Lithuania, Nicaragua, Poland (including Danzig),[11] Rumania and Turkey.[12] A similar agreement entered into with Haiti on July 8, 1926, becomes by its terms operative October 1, 1926.[13]

Two copies of the treaty of December 8, 1923, with Germany are enclosed. You are requested, unless you perceive objection, to inquire whether it would be agreeable to the Government of Paraguay to proceed to the negotiation with the United States of a similar treaty. A special draft will, of course, be prepared for presentation to Paraguay if this proposal is acceptable to the Paraguayan Government. It is not unlikely that certain departures from the text of the German treaty should be made either in the special text to be submitted to the Government of Paraguay or, on behalf of either party, during the course of negotiations. It is probable that the provisions of Article II of the Treaty of Friendship, Commerce and Navigation concluded by the United States and Paraguay on February 4, 1859,[14] relating to navigation of the rivers Paraguay and Paraná, should be incorporated into the proposed new treaty. Articles XIV and XV of the treaty with Germany should be omitted from a treaty with Paraguay in view of the Convention Facilitating the Work of Traveling Salesmen, signed October 20, 1919,[15] and now in force between the United States and Paraguay.

It may be useful for you to bear in mind that in adopting the unconditional in place of the conditional most-favored-nation clause the United States has brought its commercial policy into accord with that prevailing among important commercial countries. It would be gratifying if, among its early treaties embodying this principle, the United States could celebrate a general commercial treaty with Paraguay. The treaty of 1859 is now out of date in important respects and this Government hopes that a comprehensive modern agreement may now be entered into. You will of course keep particularly in mind in this connection that a most-favored-nation clause with a condition, such as that contained in Article III of the treaty of 1859, would not now be acceptable to the United States.

Though the Department, in proposing a treaty with Paraguay is influenced chiefly by its policy of concluding with other countries generally treaties containing the unconditional most-favored-nation clause, you are nevertheless desired to use especial diligence in seeking

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[8] See *Foreign Relations*, 1923, vol. I. pp. 453 ff.; *ibid.*, 1924, vol. I, pp. 615 ff. and 666 ff.; and *ibid.*, 1925, vol. II. pp. 86 ff.

[9] See *ibid.*, 1924, vol. II, pp. 273 ff. and pp. 290 ff.

[10] See pp. 500 ff.

[11] See *Foreign Relations*, 1925, vol. II. pp. 500 ff.; *ibid.*, 1924, vol. II, pp. 510 ff.; and *ibid.*, 1925, vol. II, pp. 692 ff., respectively.

[12] See pp. 900 and pp. 1000 ff.

[13] See pp. 405 ff.

[14] Malloy, *Treaties*, 1776–1909, vol. II, p. 1364.

[15] See *Foreign Relations*, 1919, vol. I, p. 45, footnote 47.

a favorable response from the Paraguayan Government for the purpose of forestalling any efforts that other countries may be planning to make in order to interpose in South America arrangements based upon special privilege—a policy wholly antagonistic to the policy of equality of treatment which the United States is undertaking to promote. You may recall in this connection that in 1923 this Government renounced the preferential customs treatment which certain American products had been receiving in Brazil and requested instead a pledge of equal footing with other countries in the Brazilian market.

For your strictly confidential information and guidance the Department has been informed of a movement on the part of Spain to seek from the countries of Latin America special commercial concessions in return for certain advantages to be accorded to their commerce in Spain. In this connection see the Department's circular instruction dated April 19, 1926.[16]

The Department either has transmitted or expects at an early date to transmit instructions, similar to the present instruction, to the American missions in the other South American capitals except that of Panama, with which country as stated a treaty has recently been signed, and that of Ecuador, the political regime now functioning in which is not recognized by the United States.

I am [etc.] For the Secretary of State:
JOSEPH C. GREW

711.342/orig.: Telegram

The Minister in Paraguay (Kreeck) to the Secretary of State

[Paraphrase]

ASUNCIÓN, *October 5, 1926—5 p. m.*
[Received 11:30 p. m.]

12. With reference to the Department's instruction No. 332, August 26, 1926, Foreign Minister is favorably disposed and desires immediately a draft of the treaty together with text in Spanish.

KREECK

711.342/—: Telegram

The Secretary of State to the Minister in Paraguay (Kreeck)

[Paraphrase]

WASHINGTON, *October 20, 1926—6 p. m.*

13. Legation's cable No. 12, October 5, 5 p. m. Department is pleased to learn that the Foreign Minister is favorably disposed towards negotiating a treaty. A draft of the treaty and instructions are being prepared and will go forward shortly by pouch.

KELLOGG

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[16] Not printed.

711.342/4

The Minister in Paraguay (Kreeck) to the Secretary of State

No. 227 ASUNCIÓN, *January 20, 1927.*

[Received February 17.]

SIR: With reference to the possibilities of a new commercial treaty with Paraguay, the Department will recall that I had the honor, on October 5th, 1926, to advise by cable such was possible, cautioning that the text should be forwarded to me quickly, while the attitude was most favorable. Upon January 1st, 1927, by cable,[17] I again asked for the treaty.

With today there comes the public declaration of the National Chamber of Commerce of its opposition to new treaties incorporating "the most favored nation clause", and urging that the Government demand the exclusion of such, or the modification of the clause, or to refuse to enter the negotiations. It is contended that Paraguay must, for economic reasons, have from Argentina special consideration, which must be protected.

There is set forth, in the argument against the inclusion of such a clause, the action of Uruguay in its treaties with France, Germany and England, modifying the clause, interpreting it to exclude "any advantages by treaties, of whatever date, entered into between Paraguay, Argentina and Brazil." Likewise they set forth the action of Chile in refusing to enter such treaties, without special consideration being given to those nations upon whom its economic life is somewhat dependent.

It is regretted the text is so late in arriving, for without a doubt, active opposition from the Paraguayan National Chamber of Commerce will enter into the negotiations.[18]

I have [etc.] GEO. L. KREECK

BOUNDARY DISPUTE WITH BOLIVIA

(See volume I, pages 531 ff.)

[17] Not printed.

[18] No draft treaty was presented to the Paraguayan Government and negotiations were discontinued.

PERSIA

DECISION THAT WHEN CHANGE OF REGIME NECESSITATES NEW CREDENTIALS, PRECEDENCE OF DIPLOMATS OF SAME RANK IS DETERMINED BY DATE OF ORIGINAL RECEPTION

123 P 53/260

The Minister in Persia (Philip) to the Secretary of State

No. 22 TEHERAN, *February 7, 1926.*

[Received March 11, 1926.]

SIR: I have the honor to advert to my despatch No. 4 of January 12, 1926,[1] in which I reported to the Department the presentation to His Majesty the Shah of my credentials as Envoy Extraordinary and Minister Plenipotentiary to Persia.

I had been interested to learn on my arrival at Teheran that, apart from the newly appointed Ambassador of the Soviet Government, no other diplomatic representatives had as yet presented new Letters of Credence since the accession of Reza Shah Pahlavi.

It appeared probable, therefore, that my seniority in the diplomatic corps would be established in the customary manner, and that I would accordingly be ranked, officially, above my colleagues, the other Foreign Ministers Plenipotentiary who had all, with the exception of the newly appointed Afghan Minister, presented Letters of Credence to the Kajar regime.

I believed the Department would not attach any particular importance to the matter, and I did not mention it to the Persian officials. But I understood, privately, that the Ministry for Foreign Affairs entertained the opinion as stated above.

A somewhat amusing situation developed soon after, for I learned from several of my colleagues that at the suggestion of the British Minister prior to my arrival they had agreed that each should retain under the new regime the same degree of seniority as had been established by the presentation of their old credentials regardless of the date of presentation of the new letters, yet to be received from their Governments.

The Soviet and Turkish representatives are vested with ambassadorial rank, therefore the question of precedence among the Ministers did not affect theirs.

. . . . . .

[1] Not printed.

The occasion of the first official gathering of the diplomatic corps after my arrival at Teheran was the banquet and reception given to celebrate the inauguration of the Son of the new Shah as Crown Prince.

Before this event, I became aware that the question of my precedence was the subject of considerable discussion among my colleagues, one of whom informed me that the British Minister had been particularly active in his insistence that the old order of precedence was the correct one. I represented my position to them as one of friendly interest only, and signified my willingness to abide tentatively by the opinion of the Ministry for Foreign Affairs. At the same time, I stated that the matter being one which involved my official position I desired in the interest of my Government, to have any rights which might be involved to be clearly defined.

Subsequently, I had a talk with Mr. Ala' (Hussein Alai), who had been requested by the Foreign Office to approach me in the matter. Mr. Ala' had consulted several works on international law and usage and had come to the conclusion that the foreign diplomatic representatives who remained as such, without interruption, during the period of transition from one governmental regime to another retained their seniority, irrespective of the date of presentation of their new Letters of Credence. A precedent for such a course was cited as having been created in France on the initiation of the Second Empire, etc.

I was also visited by Mr. Anonchiravan, the new "Chef de Protocol" of the Foreign Office, who expressed the embarrassment of the Government which was of the opinion, in the first instance, that my rank had been established by the date of presentation of my credentials. He said that additional information had been acquired, however, which established the fact that a similar situation had recently arisen in Egypt at the time of the change of Government there. The Foreign Office had learned that a discussion had then taken place among the chief diplomatic representatives at Cairo, with the result that it had been decided to maintain the seniority of the representatives as it had existed prior to the change, and irrespective of the dates of presentation of new Letters of Credence. The fact also was mentioned that all of the Chiefs of Mission now resident in Teheran had been officially received by the Shah at the time of his accession, which was considered tantamount to an official recognition of the continuation of their status, as well as their seniority. The Department will recall that upon that occasion the British Minister acted as Dean of the Corps owing to the absence of the former Turkish Ambassador. At that time the Soviet had not raised the rank of its representative to that of Ambassador.

I informed Mr. Anonchiravan that I placed myself in the hands of the Ministry for Foreign Affairs with regard to the present solution of this question; that, as it appeared to have assumed a certain importance, I felt under the necessity of submitting the opinion of the Foreign Office to my Government for its consideration and for its approval of my action.

. . . . . .

I have [etc.] HOFFMAN PHILIP

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123 P 53/260

The Acting Secretary of State to the Minister in Persia (Philip)

No. 461 WASHINGTON, *March 13, 1926.*

SIR: The Department has received and read with interest your despatch No. 22 of February 7, 1926 with regard to the question of precedence among the diplomatic representatives in Teheran subsequent to the overthrow of the Kadjar Dynasty and the accession of Reza Shah Pahlevi to the throne of Persia.

The Department has noted the attitude at first assumed by the Persian Government that you would take precedence over your colleagues bearing the rank of Minister by reason of the fact that you were the first foreign representative of that rank to present credentials to the new Shah. It has furthermore noted the grounds on which the Persian Foreign Office reconsidered its original opinion.

The Department approves of your action in having refrained from taking any part in the discussions relating to this matter pending the receipt of definite instructions setting forth the policy to which this Government has in the past consistently adhered when situations similar to that obaining in Teheran have arisen.

The leading authorities on International Law and Diplomatic Practice appear to hold that the date of the original reception of the Diplomatic Representatives by the Chief of State shall determine the order of precedence among diplomats of the same rank and that in case of a change of monarch or regime necessitating the presentation of new credentials, the original precedence of such foreign representatives is not thereby disturbed (see Moore's *International Law Digest*, Vol. IV p. 734).

There are enclosed for your further information on this subject:[2]

(1) A copy of a despatch No. 287 of February 24, 1875 from Mr. Cushing, the then American Minister at Madrid, together with the Department's return instruction No. 147 of March 24, 1875 (*Foreign Relations*, part 2, 1875, pp. 1105–1108),

[2] Only the second of the enclosures listed is being printed.

(2) A copy of an instruction No. 67 of May 28 [*27*], 1886 from Secretary Bayard to Mr. Charles W. Buck, the then American Minister to Peru. (Ms. Inst., Peru, Vol. XVII, p. 217),

(3) An excerpt from Satow's *Diplomatic Practice* Vol. I, pp. 343–345,

(4) An excerpt from Pradier-Fodere's *Cour de Droit Diplomatique*, p. 339,

(5) An excerpt from Foster's *Practice of Diplomacy*, p. 71.

In view of the above precedents which are consistent with the practice of this Government in such cases, the Department deems it proper that you acquiesce in the point of view as set forth by the representatives of the Persian Ministry of Foreign Affairs in their conversations with you with respect to the order of precedence to prevail among the Diplomatic Representatives in Teheran.

Should you see no objection, you may furthermore inform the Persian Government of this Government's position and of the precedents therefor. You may also inform your British and your other colleagues. It is believed that such action on your part may assist in establishing a useful precedent and thereby perhaps obviate in the future the recurrence of a situation of uncertainty as to precedence among diplomatic representatives in Teheran or elsewhere.

I am [etc.] JOSEPH C. GREW

[Enclosure]

The Secretary of State to the Minister in Peru (Buck)

No. 67 WASHINGTON, *May 27, 1886.*

SIR: Your No. 94 of the 24th ultimo,[3] intimating that new formal credentials to the lately elected President of Peru, might withdraw the opportunity which circumstances now seem to offer you, of being Dean of the Diplomatic Corps at Lima, is received and the suggestion will be borne in mind. As a general thing new credentials (maintaining the same rank) do not alter the precedence gained by priority of original reception. This is the rule the United States follows. We have already recognized the present Provisional Government of Peru, as in transit toward a provisional constitutional Government.

You will adopt whatever may be an acceptable form of recognition of the President on his taking office. If new credentials should be needed, you will report the fact, when they can be sent.

I am [etc.] T. F. BAYARD

[3] Not printed.

PERU

BOUNDARY DISPUTE WITH COLOMBIA

(See volume I, pages 534 ff.)

TACNA-ARICA QUESTION

(See volume I, pages 260 ff.)

PORTUGAL

EFFORTS BY THE UNITED STATES IN BEHALF OF AMERICAN HOLDERS OF PORTUGUESE TOBACCO MONOPOLY BONDS

853.51/226

The Minister in Portugal (Dearing) to the Secretary of State

No. 842 LISBON, *June 13, 1924.*

[Received July 3.]

SIR: I have the honor to call the attention of the Department to Decree No. 9761 of June 3, 1924, a copy of which I enclose herewith,[1] regarding payment of interest on the Portuguese external debt. In this connection I beg to refer the Department to my despatch No. 702 of February 15, 1924,[1] in which I reported the action of the Portuguese Government in determining to pay interest in paper at a fixed rate of exchange on the internal 6½ percent loan of 1923.

Both these measures are ruinous for Portuguese credit and become all the more alarming in the suggestion they carry that they are progressive steps on a downward path towards repudiation. They are a sort of repudiation because in both instances the obligation was to pay interest in gold or its equivalent.

The last decree would also seem to indicate that the budget and exchange questions are proving too much for the abilities of the present Government. These questions are by no means simple and the abilities mentioned are not extraordinary.

The decree affects to lay the burden only upon Portuguese holders of the external debt but my Dutch and Belgian Colleagues tell me, and they say our French Colleague feels the same, that in the arrangements for paying foreign holders their nationals are discriminated against in favor of the British. My British Colleague tells me he has only sent a summary of the measure to his Government. Everyone, however, condemns the decree and suspicion as to what the Government may do next is very great. It is pointed out that in certain previous cases where the Portuguese Government had the option of paying interest and redeeming bonds in German marks, it took advantage of its technical right to do so and practically robbed all holders of such bonds of their property.

[1] Not printed.

The decree is being violently attacked and there is a strong movement in the Parliament to have it revoked. It is doubtful whether this will be done. Meanwhile, as the renewed downward movement of the exchange would indicate the situation grows worse and confidence is more seriously shaken than ever.

In case any American holders of the Portuguese Government's external securities approach the Department, I shall be glad to have the Department's instructions. Some of my Colleagues, the French, Belgian and Dutch, feel that the decree must be met with a protest at least and are so reporting to their Governments.

The decree may be summarized as follows:

After pointing out the difficulties of balancing the budget on account of falling exchange and attempting to justify the measures already taken in the case of the 6½% loan of 1923, it is stated that the same principle must be applied to the external debt, the various issues affected being mentioned.

An appeal is then made to the sense of patriotic duty and the self interest of Portuguese holders of the bonds, who are told that they are called upon for a temporary sacrifice, and it is announced that interest and redemption shall henceforth be paid, under certain conditions in escudos, which means paper escudos.

In justification it is pleaded that Spain and Italy have done the same thing under similar circumstances. A system of stamping is devised to identify bonds held by Portuguese and to distinguish them from those held by foreigners.

For the convenience of the Department I enclose to the Department herewith a rough translation [2] which in spite of its shortcomings will, it is hoped, enable the Department to seize the various details. Special attention is called to the time limit—until July 30, 1924, mentioned in Article 5—provided for foreign holders who may wish to secure their rights as to interest and redemption payments.

I have [etc.] FRED MORRIS DEARING

853.51/236 : Telegram

The Acting Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *August 6, 1924—6 p. m.*

32. Reference your despatch 842 of June 13, 1924. Inasmuch as Decree 9761 of June 3, 1924, specifies only British bondholders domiciled in England as having the right to be paid in London, it appears that American holders of these bonds would be deprived of the right to receive payment in sterling. For this reason, and in view of the fact that most of the bonds held by Americans were purchased in the

[2] Not printed.

London market, you are instructed to request the Portuguese Government to grant to American holders of the bonds in question equality of treatment with respect to right to receive sterling payment in London.[3]

Cable reply.

GREW

853.51/245 : Telegram

The Acting Secretary of State to the Chargé in Portugal (Carroll)

WASHINGTON, *October 14, 1924—2 p. m.*

37. Department's telegrams 32, August 6, 6 p. m., and 35, September 4, 7 p. m.:[4]

You are instructed to continue representations and to press for early and favorable decision.

Department is not clear as to whether paragraph 2, Article 2, of decree 9761 means that British bondholders are to receive the actual amount of sterling specified on the coupons.

Cable report on this point.

GREW

853.51/247 : Telegram

The Chargé in Portugal (Carroll) to the Secretary of State

LISBON, *October 17, 1924—10 a. m.*

[Received 5:38 p. m.]

51. Department's 37, October 14, 2 p. m. British bondholders will receive the actual amount of sterling specified on the coupon.

CARROLL

853.51/247 : Telegram

The Acting Secretary of State to the Chargé in Portugal (Carroll)

WASHINGTON, *October 30, 1924—2 p. m.*

39. Your 51, October 17, 10 A. M. You are instructed to hand the following note to the Portuguese Foreign Minister immediately:

"My Government has instructed me to express its deep concern at the unwarranted discrimination and financial loss which American holders of Tobacco Monopoly Bonds would suffer as the result of the enforcement of the provisions of Sections 1 and 2 of Article Two of the Decree of June 3, 1924, No. 9761. These sections provide that

[3] A note, dated Aug. 14, 1924, based on Department's telegram No. 32 was presented by the Minister in Portugal to the Portuguese Minister for Foreign Affairs.

[4] No. 35 not printed.

the payment of maturing coupons is to be made only in Paris except to British subjects domiciled in England, who will be paid at London. The Bonds in question, which were bought by the American holders thereof in reliance upon the good faith of the Portuguese Government and in the belief that payment would be made in accordance with their terms, provide in Section 2 of Article Four for payment in different kinds of money, including pounds sterling, at the option of the holder.

Since the Portuguese Government has shown its good faith in authorizing payment to be made to British holders at London in pounds sterling, my Government is confident that the Portuguese Government does not desire the American holders of these bonds to suffer loss and that the Portuguese Government will accordingly see its way clear to amend the Decree in question so as to permit American holders of these bonds to receive payment pursuant to the provisions of the loan contract and on terms equally favorable to those enjoyed by Bond holders of any other nationality."

GREW

853.51/259 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *February 3, 1925—6 p. m.*

[Received 6:45 p. m.]

5. Foreign Minister requests [on] behalf of Portuguese Treasury statement supposed number bonds tobacco loan 1891 to 1896 held by American citizens. Please reply by telegraph.

DEARING

853.51/259 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *February 7, 1925—7 p. m.*

6. Your February 3, 6 p. m. Estimates of American holdings have been requested from appropriate agencies and will be forwarded as soon as possible.[5] However, in your discussions with the Portuguese Government you will continue to be guided by the considerations set forth in the Department's telegram 39, October 30, 2 p. m. The actual extent of American holdings has no bearing on the situation. In no case would this Government consider such estimates as in any way limiting the rights of its citizens.

HUGHES

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[5] On March 20 the Department telegraphed the Minister that its information indicated that Portuguese tobacco bonds of 1891 in this country totaled 300,000 francs and that no tobacco bonds of 1896 appeared to have been placed here (file No. 853.51/265).

853.51/278

The Minister in Portugal (Dearing) to the Secretary of State

No. 1094 LISBON, *June 4, 1925.*

[Received June 26.]

SIR: I have the honor to refer to the Department's instruction No. 642, of April 27, 1925,[6] directing me to report with regard to a recent agreement whereby the Paris Stock Exchange had reestablished the quotation of Portuguese stocks and bonds, among which were the three series of the 3% External Loan, and to my despatch No. 957 of January 10, 1925,[6] stating the substance of a conversation between the then Portuguese Minister for Foreign Affairs and the Belgian Minister at Lisbon in which I took part, concerning the discrimination shown in the matter of the various foreign holders of the Portuguese tobacco bonds, and to transmit herewith a memorandum of a conversation which I recently had with a member of the Ministry of Finance, Dr. Alberto Xavier, germane to the question, together with copies and translations of two interviews[7] granted by Dr. Xavier to a representative of the *Diario de Noticias.*

I have [etc.] FRED MORRIS DEARING

[Enclosure—Extracts]

Memorandum by the Minister in Portugal (Dearing)

[LISBON,] *May 30, 1925.*

I saw Dr. Alberto Xavier, Director Geral da Fazenda Publica,[8] in the Ministry of Finance, this afternoon at 5 o'clock. It had been difficult to arrange the meeting, but I was received by Dr. Xavier most courteously. I learned in my talk with him that the Government Tobacco Monopoly 4½% Bonds of 1891 and 1896 are not included among the Portuguese issues whose quotations have been reestablished by the Paris Stock Exchange.

. . . . . .

. . . He said there had been a misunderstanding on the part of the authorities of the Paris Bourse, but that when he had explained the state of affairs the 3% bonds of the various series outstanding were again admitted to quotation.

The situation with regard to the tobacco monopoly bonds, 4½% series of 1891 and 1896, is different, and these bonds are not yet quoted for reasons that will be set forth a little later.

. . . . . .

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[6] Not printed.
[7] Interviews not printed.
[8] Director General of the Treasury.

Dr. Xavier said that there were two situations to deal with in France. The number of French holders of Portuguese External bonds, particularly the tobacco bonds, is not yet known, but as the time limit for stamping expires June 30th next he hopes soon to know the extent of the French holdings.[9] When he does know, he will arrange for foreigners in Portugal and the colonies to have their bonds stamped so they may be treated in the same way as foreigners outside of Portugal and the colonies. He feels he cannot do this until the French situation clears up, as Portuguese holders might contrive to escape if he attempted it.

The other phase of the French situation is the fact that from the start the Portuguese tobacco monopoly has been financed and controlled by a French group. This group is in relation with a strong Portuguese group which holds many of the tobacco bonds. Dr. Xavier feels pretty sure that this group holds the larger number of the tobacco bonds in French hands. The present tobacco monopoly expires next year. In granting a new contract to the monopoly the Portuguese Government wishes to make and not to have to accept conditions. So there is a struggle going on between the French and the Portuguese, the French who hold the tobacco bonds and who control the monopoly trying to arrange the situation so as to get all they can from it, the Portuguese Government trying to escape the exactions of the monopoly backers and to make the monopoly a more fruitful source of revenue.

. . . . . .

FRED MORRIS DEARING

853.51/278

The Secretary of State to the Minister in Portugal (Dearing)

No. 678 WASHINGTON, *August 31, 1925.*

SIR: Reference is made to your despatch No. 1094, of June 4, 1925, and the enclosed memorandum concerning your conversation with Dr. Alberto Xavier, of the Ministry of Finance, on May 30, 1925, regarding Portuguese Government Tobacco Monopoly 4½% Bonds of 1891 and 1896.

The position of the Portuguese Government as therein described is not satisfactory to this Government, and you are therefore requested to renew your representations on behalf of American holders of these bonds.

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[9] In order to prevent the bonds of the external loan from passing out of the hands of Portuguese nationals, who were to be paid interest in paper escudos at a fixed rate while holders of other nationalities were to be paid in sterling or its equivalent, it was determined that all bonds should be stamped, in either London or Paris.

In this connection you may inform the Portuguese Government both in writing and in person that this Government is surprised and disappointed by the reluctance of the Portuguese Government to conform to the terms of the contract which are clearly expressed on the face of the Bonds; that this Government fails to understand the motives which permit a clear discrimination in favor of British holders and which postpone consideration of this Government's representations until a composition has been reached with the French holders of these Bonds; that such a policy does not inspire confidence in the good faith of the Portuguese Government, nor will it strengthen Portuguese credit in this country; and that this Government would appreciate a prompt and unequivocal reply in order that its course may be guided accordingly.[10]

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

853.51/304

The Minister in Portugal (Dearing) to the Secretary of State

[Extract]

No. 1272 LISBON, *December 2, 1925.*
[Received December 17.]

SIR: I have the honor to enclose to the Department herewith a copy of the *Diario do Governo* No. 258 dated November 28, 1925, which appeared only at noon today, containing the text of the decree, No. 11, 289,[11] authorizing the Minister of Finance to carry out the immediate liquidation of the balance of the debt arising from the bonds of the 4½% Tobacco Loan of 1891 and 1896, in the form that may be most compatible with the interests of the State. . . .

. . . . . .

I have [etc.] FRED MORRIS DEARING

853.51/303 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *December 11, 1925—midnight.*
[Received December 12—6:15 p. m.]

45. Foreign Minister asks to be informed how many Tobacco Bonds are held by Americans, their value in sterling and where deposited.

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[10] A note based on this instruction was presented by the Minister in Portugal to the Portuguese Minister for Foreign Affairs, Sept. 21, 1925.

[11] Not printed.

Have pointedly called his attention to last two sentences Department's instruction number 6, February 7, 7 p. m., but said I would inquire again by telegraph. Please reply by telegraph.[12]

DEARING

853.51/308 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

[Extract]

WASHINGTON, *January 8, 1926—9 p. m.*

1. Your despatches 1272, December 2; 1278, December 7; 1280, December 9; and 1283, December 12, 1925.[13] You may inform the Portuguese Government that this Government out of consideration for the state of affairs consequent to the recent change of government in Portugal has refrained from pressing for an immediate and unequivocal reply to its representations regarding the Tobacco Bonds. However, this Government has no intention of permitting its forbearance in this respect to be construed as indicating any change in its attitude, which continues to be that expressed in the Department's instruction of August 31, 1925.

The issuance of Decree No. 11289 of November 28 encouraged this Government to hope that prompt effect would be given to its provisions, and this hope was strengthened by the inquiry of the Foreign Minister, as reported in your 45, December 11, midnight.

However, this Government now feels that sufficient time has elapsed for the new Portuguese Government to have taken appropriate measures to meet the just claims of American holders of the Tobacco Bonds.

If, therefore, no satisfactory reply to your representations is received at an early date after you have communicated the contents of this telegram to the Portuguese Government, you are instructed to present your note of September 21 to the Portuguese Government in its original unaltered form.[14] This Government regrets that its action should have to take this form but in view of the unsatisfactory attitude of the Portuguese Government it is unable to perceive that any other course is open to it.

. . . . . .

KELLOGG

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[12] The Department referred the Minister to its telegram No. 6, Feb. 7, 1925, 7 p. m., p. 883.

[13] Despatches of December 7, 9, and 12 not printed.

[14] See footnote 10, p. 886; the phraseology of the note had later been modified slightly at the request of the Permanent Secretary General of the Portuguese Ministry for Foreign Affairs.

853.51/311 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *January 12, 1926—6 p. m.*

[Received January 13—6:42 a. m.]

2. Department's 1, January 8, 9 p. m. Foreign Minister has just informed me official gazette will publish decree this week opening a credit for repurchase tobacco bonds.

Instructions of Department's 1 will be carried out as developments indicate to be best. Shall report again soon.

DEARING

853.51/312 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

[Paraphrase]

LISBON, *January 13, 1926—7 p. m.*

[Received January 14—9 a. m.]

3. My 2, January 12. Portuguese Foreign Office has inquired through Dr. Teixeira, who came personally to Legation this afternoon, if possible to have tobacco bonds held by Americans all placed in one bank in America and one bank in London, stating that the Portuguese Government will immediately pay both the principal and the arrears of interest in sterling as soon as this can be done. This arrangement is what the Portuguese Government desires but I do not understand that payment will not be made if this cannot be done. Dr. Teixeira said that he would send me a note this week quoting text of decree which will open necessary credit and stating that the principal and interest of tobacco bonds held by Americans will be paid in sterling or its equivalent. . . .

DEARING

853.51/312 : Telegram

The Acting Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, *January 15, 1926—5 p. m.*

2. Your telegram No. 2, January 12, 6 p. m., and No. 3, January 13, 7 p. m.:

While the Department appreciates Dr. Teixeira's suggestion that all tobacco bonds held by Americans be concentrated in one bank in the United States and one bank in London, the Government of the United States feels that it would be inappropriate for it to take any steps in that direction until it has been able to scrutinize provisions of the decree referred to by Dr. Teixeira in order to determine whether it safeguards satisfactorily or not interests of the American bondholders, and until after decree has been published.

. . . . . .

GREW

853.51/314 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *January 19, 1926—noon.*
[Received January 20—9 a. m.]

4. Department's telegram 2, January 15, 5 p. m. Additional note from Foreign Office dated January 12th states decree was number 11388; was published in *Diario Official* [*Diário do Govêrno*] of January 8th and that the Portuguese Government's decision of "last November" to pay principal and interest cannot be carried out without knowing who are holders of bonds, number of bonds held and where bonds are deposited, and requests that American holders deposit bonds in one place or in smallest number of places possible.

[Paraphrase.] All the decree does is to place the Portuguese Government in funds; it does not state specifically what will be done for the American holders of bonds, but it is published in the *Diário do Govêrno* like other decrees and is neither more nor less binding than those Department mentioned. [End paraphrase.]

Text in its essential part is:

"There is opened in the Ministry of Finance and in its favor, a special credit in the amount of 20 million escudos 'to defray expenses of whatever order or character, that must be incurred either within the country or abroad, for the immediate repurchase of the outstanding balance of obligations of the four and a half percent loans of 1891–1896 (tobacco)'."

. . . . . .

DEARING

853.51/315 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

[Paraphrase]

LISBON, *January 21, 1926—noon.*
[Received January 22—9:40 a. m.]

5. My No. 4, January 19. I have just received note dated January 19 from Foreign Office informing me that redemption of the bonds and payment of arrears of interest tobacco loan will be made in pounds sterling so that American citizens will receive same treatment that was accorded British subjects. Probably this is note promised me by Dr. Teixeira. The Department will observe that there is no direct statement where Americans will be paid, although this may be London, and that by failing to state a place, date, and period for making payment, treatment equivalent to that accorded British holders of bonds is by no means accorded to Americans.

DEARING

853.51/314 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *January 22, 1926—5 p. m.*

3. Your 4, January 19, noon. This Government is gratified by the issuance of Decree No. 11388 providing a credit for the repurchase of Tobacco Bonds. However, it still requires a definite assurance from the Portuguese Government that this credit will be applied to American-held bonds before it can take any action in the sense desired by the Portuguese Government.

Your suggestion that the Portuguese Government designate a bank in America or Europe where bonds belonging to Americans may, within a certain period, be presented and paid as to principal and arrears of interest and this fact be made public would offer a solution satisfactory to this Government, providing that adequate time is given for the presentation of the bonds, and you may so inform the Portuguese Government.

KELLOGG

853.51/315 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, *January 23, 1926—4 p. m.*

4. Your telegram No. 5, January 21, noon, crossed Department's No. 3, January 22, 5 p. m. Department is further gratified by note of January 19 from Portuguese Foreign Office informing you that bonds held by Americans will be paid, principal and interest, in pounds sterling.

Department assumes, therefore, that Portuguese Government is preparing and will promulgate shortly a decree designating place for payment and indicating suitable period within which bonds held by Americans may be presented for payment. When such action has been taken by Portuguese Government, the Government of the United States will endeavor to notify the American bondholders, through the appropriate channels, so that the tobacco bonds may be promptly presented and the situation liquidated.

KELLOGG

853.51/315 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, *February 3, 1926—6 p. m.*

5. Department's No. 4, January 23, 4 p. m. Unless you are aware that Portuguese Government is actually preparing appropriate decree

for promulgation at early date, Department suggests that you consider advisability of taking action as outlined in Department's No. 35, November 17, 4 [7] p. m.,[15] and its No. 1, January 8, 9 p. m. Please cable how matters stand and your recommendations.

KELLOGG

853.51/327 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

[Paraphrase]

LISBON, *February 14, 1926—3 p. m.*

[Received February 15—11 a. m.]

10. Department's No. 5, February 3, 6 p. m. Foreign Office and Ministry of Finance have reached agreement and former proposes the following which Ministry of Finance has promised to confirm on the 17th:

The Portuguese Government will open credit for . . . . . pounds sterling, February . . . . ., in . . . . . bank, New York, and requests the Department to inform all American holders of tobacco bonds known to it that upon presentation at their American branches abroad their bonds will be purchased immediately at face value and that all arrears of interest will be paid in sterling or its equivalent. If later on other bona fide bondholders as of today's date appear, their bonds will also be purchased in the same way. The credit will remain open for . . . . . months until all bonds held by Americans as of today's date will have been acquired.

Please cable whether this procedure, if carried out, will be satisfactory as final disposal of case.

Following points should be given consideration:

1. By purchasing, instead of paying or redeeming, I think that Portuguese Government expects to escape necessity of settling with other foreign bondholders. This treatment would not seem to be exactly equivalent to that accorded the British and may seem to make us a party to Portuguese plan.

2. The Foreign Office fears that unstamped and thus unidentified bonds may be transferred to Americans for collection. It is my impression that most, if not all, bonds held by Americans are stamped and identified, but I stated expressly that I could not guarantee this and that if unstamped bonds were held bona fide as of this date they would have to be taken up.

3. I pointed out impossibility of keeping action taken a secret, and the impropriety of our aiding secrecy. The Foreign Office accepted the situation.

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[15] Not printed.

4. I also pointed out that definite commitment to settle American claims was lacking, and received assurance that the official note stating the procedure outlined above would be adopted and would convey such assurance at the beginning.

5. Absence of such a decree as was assumed in Department's number 4, January 23, 4 p. m., leaves us in a position somewhat dissimilar to that of the British, but if the proposed procedure gives the substance of our demands perhaps it would be unwise to insist upon the issuance of a decree that might complicate efforts now under way here, and are attracting much attention, to find solution for the tobacco regime, and might be criticized as undue interference.

6. Dr. Teixeira greatly desires that if the procedure outlined above is satisfactory our note of September 21, even in the revised form, be not presented at all. I assured him that I would inform the Department so that it might consider matter but that I could not say how Department might feel.

7. I emphasized the necessity of keeping the credit open as long as would be needful and the Department may indicate the period it deems desirable.

8. I said that I thought that the initial credit should be for 30,000 pounds sterling at least, but that I could not indicate how much might be necessary and that Government of Portugal should be prepared to furnish further credits; I drew attention to the 20 million escudos provided for by decree No. 11388 as providing an ample margin.

9. The settlement now of this question will open the way for various American concerns now interested in enterprises in Portugal and wishing to place bonds in the American market to go ahead.

DEARING

853.51/327 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, *February 19, 1926—4 p. m.*

9. Your No. 10, February 14, 3 p. m. Provided Government of Portugal makes suitable arrangements for payment in full of principal and interest, the Government of the United States will not insist on issuance of a decree but will accept instead a note stating arrangement substantially as set forth in second paragraphs of Department's telegram No. 3, January 22, and No. 4, January 23, and first paragraph your No. 10, February 14, 3 p. m. Upon the receipt of such a note from the Portuguese Government the Government of the United States will communicate Portuguese proposal to American bondholders so far as they are known to it and will give suitable publicity.

Your point 2. Department assumes that American bona fide holders of bonds as of the date of the Portuguese note will receive full payment whether their bonds are stamped or not.

Your point 6. If the Portuguese note is satisfactory the Government of the United States will be disposed to withdraw its note of September 21, 1925.

Your point 7. Department suggests period of 6 months which will be extended if necessary, but leaves this point to your discretion.

Your point 8. Department concurs.

KELLOGG

853.51/330 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

[Paraphrase]

LISBON, *February 20, 1926—6 p. m.*

[Received February 21—3 p. m.]

12. I have just received a formal official note from the Portuguese Foreign Office complying with all our demands but requesting that the matter be not divulged until public announcement be made regarding settlement with all bondholders, which will appear not later than April 5 and probably considerably sooner. Redemption can be effected through Baring Brothers, the Portuguese Government's bankers in London. Unless instructed otherwise I shall send text of note by pouch.

DEARING

853.51/341

The Portuguese Minister for Foreign Affairs (Borges) to the American Minister (Dearing)[16]

[Translation]

LISBON, *February 20, 1926.*

MR. MINISTER: I have the honor to inform Your Excellency that in compliance with the representations made by Your Government on behalf of American citizens who are holders of bonds of the Tobacco Loans of 1891 and 1896, the Government of the Portuguese Republic engages to redeem these bonds, both as to principal and arrears of interest, in Pounds Sterling so that the treatment accorded to these American citizens will be equivalent to that given to the most favored holders. This redemption will be carried out through the bankers of the Portuguese Government in London, Messrs. Baring Brothers, to whom will be given at the proper time the necessary instructions so that through them or their correspondents or branches abroad the repayment referred to may be carried out.

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[16] Transmitted to the Department by the Minister in Portugal as an enclosure to his despatch No. 1388, Feb. 22, 1926.

The Portuguese Government through its bankers in London will make public by means of an announcement, before the 5th of April of the current year 1926, the fact that all bonds of the Tobacco Loans referred to will be redeemed, both as to principal and to interest to be received and in arrears.

Immediately after the publication of this announcement American holders of these securities may present them to the bankers referred to, who will give them all necessary information and will make the required payment, provided that on the occasion of presentation the holders prove that the securities presented are their property and were acquired in accordance with the laws governing the matter prior to March 17, 1924, in accordance with the terms of Article 5 of the decree of June 3, 1924.

The Portuguese Government requests Your Excellency to be so good as to ask Your Government not to make these engagements public nor to communicate them to American holders until the announcement above mentioned has been made by the bankers referred to, Baring Brothers, so that negotiations now under way with holders of the same securities of other nationalities which have the same end in view shall not be prejudiced, as they certainly would be by a premature revelation of the engagement herein taken with regard to American holders.

I avail myself [etc.] VASCO BORGES

853.51/341 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, *March 22, 1926—8 p. m.*

12. Portuguese note of February 20 goes far to meet wishes of this Government but it desires further understandings before it can feel completely satisfied.

1. The Government of the United States assumes that all American bona fide holders of bonds will be paid in full, regardless of whether their bonds are stamped, upon presentation to bankers of the bonds accompanied by reasonable evidence of character of their ownership.

2. Certain of the tobacco bonds held by Americans have been drawn since publication of decree 9761. The Government of the United States understands that such bonds will be paid in full, with interest, up to date on which they were drawn.

3. As the 1891 issue of bonds will in any case mature April 1, the Government of the United States feels that in justice to American holders of bonds announcement of redemption of the bonds should

be made prior to that date, and this Government would appreciate being informed at earliest possible moment exact date on which announcement will be made.

If the Portuguese Government promptly assures you in a satisfactory manner on above points, you will then be authorized to withdraw this Government's note of September 21, 1925. Cable your report.

KELLOGG

853.51/351 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *April 7, 1926—7 p. m.*
[Received April 8—10:45 a. m.]

19. My telegram number 18, April 6, 10 a. m.[17] It developed in long conversation with Xavier today that Portuguese Government desires American holders to accept payment in three installments April–October 1926, April 1927, as agreed with all other holders fearing, since there are not enough funds on hand or in sight to settle all claims in full at once, that bonds held by others will be passed into American hands for immediate collection [if] American claims are completely satisfied now. I made no commitment.

Xavier verbally conceded points specified in the Department's telegram 12, March 22, 8 p. m. Full report by mail.[17]

DEARING

853.51/354 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *May 13, 1926—7 p. m.*

13. Your despatch No. 1442, April 9.[17] Department feels it would be helpful to American bondholders if Portuguese Government or Baring Brothers would designate some agency in the United States with which American bondholders could deposit bonds and receive proper receipts. Foreign Office indicates willingness to do this in its note to you of April 8. If Portuguese Government will designate such agency or have Baring Brothers do so the Department, upon being informed who has been so designated, will inform American bondholders of record with the Department of the arrangements which the Portuguese Government has made for payment of bonds and will suggest that bondholders communicate with the agency in the United States authorized by the Portuguese Government or Baring Brothers to act in the matter.

[17] Not printed.

Upon being informed by Portuguese Government with whom American bondholders may deal in the United States, you may withdraw note September 21, 1925.

Please urge Portuguese authorities to expedite consummation of matter as suggested above, in order that notice may be communicated to American bondholders as soon as possible.

KELLOGG

853.51/363 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *June 10, 1926—2 p. m.*

18. Your despatch No. 1470 May 17.[20]

(1) Has the requisite action been taken by the Portuguese authorities? If not, you should remind them courteously of paragraphs 2 and 3 of the Department's No. 13, May 13, 7 p. m.

(2) American holdings are unofficially estimated at 12,000 pounds sterling but the number of American bond-holders is not known to the Department.

KELLOGG

853.51/364 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

LISBON, *June 15, 1926—5 p. m.*

[Received June 16—9:10 a. m.]

32. Department's telegram 18, June 10, 2 p. m. Tobacco matter delayed by revolution and vacancy Finance Portfolio but desired action promised this week.

DEARING

853.51/370

The Minister in Portugal (Dearing) to the Secretary of State

[Extract]

No. 1559 LISBON, *July 16, 1926.*

[Received August 2.]

SIR: I have the honor to inform the Department that after much insistence I have finally received from the Foreign Office copy of the note from Baring Brothers, referred to in my despatch No. 1537, of July 1st, 1926,[20] regarding the naming of an agent in New York to receive Portuguese Tobacco Bonds presented by American holders.

[20] Not printed.

I can see no reason why an agent cannot be named at New York, not only to receive the bonds, but also to pay them there, if this Government will only instruct the Bankers to do so.

In any event, it is apparent that the Bank is quite willing to have Kidder, Peabody & Co., act as a receiving agent.

. . . . . .

I have [etc.] FRED MORRIS DEARING

853.51/370 : Telegram

The Secretary of State to the Minister in Portugal (Dearing)

WASHINGTON, *August 4, 1926—7 p. m.*

23. Your despatch 1559, July 16, tobacco bonds. In view of the assurances given you by the Portuguese Government, as reported in your despatch 1470, of May 17, 1926, your telegram 32, June 15, 5 p. m., and your despatches 1508, of June 15, and 1519 of June 23, 1926,[21] the Department perceives no reason for further delay on the part of the Portuguese Government. It therefore instructs you to press for prompt action in order that the matter may be definitely concluded. Please report by telegram when this action has been taken.

KELLOGG

853.51/372 : Telegram

The Chargé in Portugal (Benton) to the Secretary of State

LISBON, *August 9, 1926—noon.*

[Received 7 : 12 p. m.]

43. Reference Department's 23, August 4, 7 p. m. Following is translation of note from the Foreign Office dated August 1st and received August 8th.

"I have the honor to advise Your Excellency that, according to information received today from the General Director of the Public Treasury, instructions have been given to the bankers, Baring Brothers and Company of London, with a view to complying with the wishes of Your Excellency with regard to the bonds of the tobacco loans of 1891 and 1896."

Reporting by mail.[22]

BENTON

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[21] With the exception of telegram No. 32, none of these documents are printed.

[22] Despatch No. 1587, Aug. 9, 1926, not printed.

On Nov. 2. 1926, the Department informed the Minister in Portugal that it had been advised, under date of Oct. 25, 1926, by Kidder, Peabody & Co., of the procedure whereby American holders of the Portuguese Government tobacco monopoly bonds might secure payment, and that the Department now regarded the matter as closed (file No. 853.51/380).

RUMANIA

AGREEMENT BETWEEN THE UNITED STATES AND RUMANIA ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 26, 1926

611.7131/63

The Minister in Rumania (Culbertson) to the Secretary of State

No. 145 BUCHAREST, *March 1, 1926.*

[Received March 26.]

SIR: Referring to the Department's Instruction No. 45 of February 3, 1926,[1] relative to a *modus vivendi* to be effected by an exchange of notes with the Rumanian Government, to my telegram No. 10 of February 26th[1] and to the Department's reply No. 10 of February 27th,[1] I have the honor to transmit copies of my Note providing for reciprocal most-favored nation treatment, addressed to the Minister for Foreign Affairs and of his identic Note in the French text.

Referring to the first paragraph of the Department's Instruction mentioned above, I have the honor to state that I advised the Minister for Foreign Affairs of the Department's desire to undertake the negotiation of a treaty of friendship, commerce and consular rights with Rumania and that we expected that the exchange of notes would not be used as an excuse for delaying the negotiation of such a treaty. The Minister for Foreign Affairs assured me that the exchange of notes would not be used as the occasion for delay and that as soon as certain studies were completed in the Ministry of Finance he would be glad to take up with me the discussion of a general commercial treaty.

I have [etc.] W. S. CULBERTSON

[Enclosure 1]

The American Minister (Culbertson) to the Rumanian Minister for Foreign Affairs (Duca)

No. 16 BUCHAREST, *February 26, 1926.*

MR. MINISTER: I have the honor to make the following statement of my understanding of the agreement reached through recent conversations held at Bucharest on behalf of the Government of the United States and the Government of Rumania with reference to

[1] Not printed.

the treatment which the United States shall accord to the commerce of Rumania and which Rumania shall accord to the commerce of the United States.

These conversations have disclosed a mutual understanding between the two Governments which is that in respect of import and export duties and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Rumania, and Rumania will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports and exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Rumania than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in Rumania of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Rumania, on the exportation of any articles to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country;

Every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Rumania, by law, proclamation, decree or commercial treaty or agreement, to the products of any third country will become immediately applicable without request and without compensation to the commerce of Rumania and of the United States and its territories and possessions, respectively;

Provided that this understanding does not relate to

(1) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(2) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

The present arrangement shall become operative on the day of signature, and, unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

I shall be glad to have your confirmation of the accord thus reached.

Accept [etc.] W. S. CULBERTSON

[Enclosure 2—Translation]

The Rumanian Minister for Foreign Affairs (Duca) to the American Minister (Culbertson)

No. 12006 BUCHAREST, *February 26, 1926.*

MR. MINISTER: I have the honor to send you the following statement concerning the agreement reached through recent conversations held at Bucharest on behalf of the Government of the United States and the Government of Rumania with reference to the treatment which the United States shall accord to the commerce of Rumania and which Rumania shall accord to the commerce of the United States.

These conversations have disclosed a mutual understanding between the two Governments which is that in respect of import and export duties and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, and the treatment of commercial travelers' samples, the United States will accord to Rumania, and Rumania will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment; and that in the matter of licensing or prohibitions of imports and exports, each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favorable, with respect to commodities, valuations and quantities, as may be accorded to the commerce of any other country.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions, of any articles the produce or manufacture of Rumania than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in Rumania of any articles the produce or manufacture of the United States, its territories or possessions, than are or shall

be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions, or in Rumania, on the exportation of any articles to the other or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country;

Every concession with respect to any duty, charge or regulation affecting commerce now accorded or that may hereafter be accorded by the United States or by Rumania, by law, proclamation, decree or commercial treaty or agreement, to the products of any third country will become immediately applicable without request and without compensation to the commerce of Rumania and of the United States and its territories and possessions, respectively;

Provided that this understanding does not relate to

(1) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(2) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

The present arrangement shall become operative on the day of signature, and, unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

I shall be glad to have your confirmation of the accord thus reached.

Accept [etc.] I. G. DUCA

REPRESENTATIONS BY THE UNITED STATES AGAINST RUMANIAN LEGISLATION REGARDING SUBSOIL RIGHTS IN LANDS HELD IN PERPETUAL LEASE

871.63/32

The Minister in Rumania (Culbertson) to the Secretary of State

No. 108 BUCHAREST, *January 9, 1926.*

[Received January 29.]

SIR: I have the honor to transmit herewith a copy of a note on the subsoil rights of certain embatic lands in Rumania which I today handed in person to the Minister for Foreign Affairs and which I

reinforced with additional observations. In view of the important American interests involved and the possible early enactment of the proposed law prejudicing those rights prompt action in this case seemed to me imperative. A telegraphic confirmation of my position, if approved by the Department, will aid me greatly in further efforts which I may have to make to protect American interests threatened by the proposed law.

I also have the honor to transmit herewith a memorandum on the status of the Rumanian Mining Law prepared by Mr. Hamilton C. Claiborne, Secretary of Legation.[2] The embatic land question is discussed on pages 22 to 24. From time to time this memorandum will be used as the background for other despatches on the Mining Law and kindred subjects.

I have [etc.] W. S. CULBERTSON

[Enclosure]

The American Minister (Culbertson) to the Rumanian Minister for Foreign Affairs (Duca)

No. 152 BUCHAREST, *January 6, 1926.*

DEAR MR. MINISTER: My attention has been called to a draft of a law, dated December 22, 1925, entitled "Proiect de Lege pentru Interpretarea Art. 24 din Legea pentru Reforma Agrara din 17 Iulie 1921," passed last month by the Rumanian Senate and now pending before the Chamber of Deputies which declares that the subsoil of "Embatic" lands, "Terenurile in Embatic" is the property of the State and that concessions agreed to by the owners of "Embatic" lands are null and void. This draft of law, by its terms, is retroactive, so that concessions obtained since July 17, 1921, the date of the Agrarian Law, are declared invalid.

The Constitution of the Rumanian State of March 29, 1923, Article 19, and the Mining Law of July 4, 1924, Art. 256, declare that the landowner may consent to a concession on his land if it is situated in a Commune where normal exploitation has taken place since August, 1914. At the time of the passage of the Agrarian Law of Expropriation July 17, 1921, "Lege pentru Reforma Agrara din Oltenia, Muntenia, Moldavia si Dobrogea din 17 Iulie, 1921", the Rumanian Parliament decided that "Embatic" lands, that is, lands held under perpetual lease, are expropriated in favor of the holder, who thus became the landowner with the right to lease his lands under the conditions shown above.

The question having been raised as to the ownership of the subsoil rights of these lands, it was taken before the Rumanian courts which overruled the contention of the Ministry of Agriculture and Domains and established the principle that the holders of "Embatic"

[2] Not printed.

lands are the owners of the subsoil rights thereof, and that they alone may consent to petroleum concessions. This decision of the lower courts was confirmed on February 29, 1924, by the Supreme Court (Curtea de Casatie) Section II, decision No. 81.

Under this principle of law thus reaffirmed by the highest court of Rumania, companies entered into valid contracts with owners of the subsoil rights of certain "Embatic" lands, and by virtue of these contracts such companies are now the legal owners under Rumanian law of these subsoil rights.

However, on the motion of the Ministry of Agriculture and Domains, the draft of a law referred to above has already passed the Senate and is now before the Chamber of Deputies. If this bill becomes law it would apparently impair the validity of contracts entered into in good faith by these companies and it would abrogate vested rights legally acquired under Rumanian law, affirmed by the Rumanian Supreme Court. This validity of contracts will be defeated even if the concessions approved after 1921 have been consolidated by final judgment (Art. 260 of the Mining Law).

I take the liberty of bringing to Your Excellency's personal knowledge these facts as they have come to my attention. If they are correct, the project of law, if enacted, would seriously prejudice American rights entitled to protection under accepted principles of friendly international relations. Necessarily therefore I look with concern, in which I am sure my Government will share, upon the proposal to enact such a law. A careful examination of the proposed law will, I believe, convince Your Excellency that the provisions of the law are not entirely in accord with the principles of consideration for established rights.

Please accept [etc.] W. S. CULBERTSON

871.63/32 : Telegram

The Secretary of State to the Minister in Rumania (Culbertson)

[Paraphrase]

WASHINGTON, *February 13, 1926—4 p. m.*

6. Legation's despatch No. 108, dated January 9. The Department approves your action in informing the Foreign Minister that the proposed legislation regarding subsoil rights in embatic lands would, if enacted into law, seemingly destroy vested subsoil rights lawfully acquired by American interests.

You may supplement your representations with a statement that the Government of the United States would view with concern any action by the Rumanian authorities which would prejudice American interests in subsoil rights acquired in accordance with the laws of Rumania and in good faith.

It is suggested that you forward to the Department a translation of the proposed law regarding embatic lands together with a full report as to the status of the pending legislation; also, a translation of the decision of the Rumanian Supreme Court to the effect that the holder of embatic lands is the owner of the subsoil rights in the land.

KELLOGG

871.63/34

The Minister in Rumania (Culbertson) to the Secretary of State

No. 138 BUCHAREST, *February 18, 1926.*

[Received March 11.]

SIR: Referring to the Department's telegram No. 6 dated February 14 [*13*], 1926, I have the honor to report that I have supplemented my former Note to the Minister for Foreign Affairs on embatic lands (copy transmitted with my despatch No. 108 of January 9, 1926) by another Note, a copy and translation of which I transmit herewith. I emphasized orally to the Minister for Foreign Affairs the Department's views on this subject. He said that the Minister of Agriculture and Domains and the Minister of Industry and Commerce were discussing the matter and that he expected to be able to hand me a satisfactory reply within a few days.

Referring to the last paragraph of the Department's telegram No. 6 of February 14th [*13th*] last, I have the honor to transmit herewith: (1) translations of those sections of the constitution (an English translation of which was transmitted with this Legation's despatch No. 404 of May 14, 1925 [*1923*]) and of the laws of Rumania relating to embatic lands (the entire text of the Law for Agrarian Reform of July 17, 1921, was transmitted to the Department with the Legation's Despatch No. 617 of June 9, 1924, regarding the Agrarian Expropriation Law in Bessarabia);[3] (2) a translation of the decision of the High Court of Cassation and Justice;[3a] (3) Original and translation of the proposed amendment to the Agrarian Expropriation Law, to which we have made objections.[3a]

There is no change in the status of the proposed amendment as reported in my despatch No. 108 mentioned above. Parliament, owing to the Communal elections now taking place is not in session; but in all probability it will meet and the Chamber of Deputies will take action on this bill before the end of the month.

I have [etc.] W. S. CULBERTSON

[3] None printed.
[3a] Not printed.

[Enclosure]

The American Minister (Culbertson) to the Rumanian Minister for Foreign Affairs (Duca)

No. 13 BUCHAREST, *February 15, 1926.*

MR. MINISTER: Referring to this Legation's Note No. 152 of January 6th last,[4] addressed to Your Excellency relative to the bill-of-law regarding the so-called "embatic" lands, I have the honor to inform Your Excellency that I am now instructed to supplement the representations made in that Note by the statement that my Government would view with concern any action on the part of the Rumanian authorities that would prejudice American interests in subsoil rights acquired in good faith and in accordance with the law of Rumania.

I avail myself [etc.] W. S. CULBERTSON

871.63/35

The Minister in Rumania (Culbertson) to the Secretary of State

No. 171 BUCHAREST, *April 6, 1926.*

[Received May 3.]

SIR: Referring to my despatch No. 138, dated February 18, 1926, relating to the bill of law affecting embatic lands, I have the honor to report that in the closing days of parliament this bill of law was enacted without debate and without notice of any kind to this Legation or to the parties interested. The text transmitted with the above-mentioned despatch is a true translation of the Rumanian text which was published in the Official Monitor of April 1, 1926, and enclosed herewith.[5]

On several occasions the Minister for Foreign Affairs had given me his oral assurance that the law would be modified in a way satisfactory to American interests and I am advised by Mr. Hughes, the Managing Director of the Romano-Americana Company, that similar assurances were given to him by responsible parties in the Ministry of Industry and Commerce.

On account of the change of government I have made no further representations to the Rumanian Government. I have talked the matter over at length with Mr. Hughes and he advises me that conferences with members of the new government reveal a possibility that this law may be interpreted in such a way as not to affect existing contracts. It was his judgment that for the time being further representations should not be made to the new Rumanian government but that an opportunity be given it to establish an interpretation of the law which will recognize existing rights.

I have [etc.] W. S. CULBERTSON

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[4] *Ante*, p. 902.

[5] Not printed.

RUSSIA

DISAPPROVAL OF FLOTATION IN THE UNITED STATES OF GERMAN LOANS TO BE USED TO ADVANCE CREDITS TO THE SOVIET REGIME

861.51/2010

Messrs. Davis, Polk, Wardwell, Gardiner & Reed to the Secretary of State

NEW YORK, *March 17, 1926.*

SIR: We are writing on behalf of our clients, Messrs. W. A. Harriman & Co., Inc., who are negotiating a credit to be extended to German industries who sell to Russia upon a plan substantially as follows:

1. The German industrials will organize an export company under the management of five leading banks and industries.

2. This German export company to sell its Three to Five-Year 6½% Dollar Notes to an American banking group, the Reischsbank to act as Trustee and to take full responsibility of the principal and interest until the same is invested in the following manner: By the purchase of Three to Five-Year Dollar Notes of German industrials who sell for export on time payments. These notes are to be accepted by the purchasers of goods and are to carry the guaranty of the German Government to the extent of sixty per cent. of their value and to be guaranteed as to the balance of forty per cent. by certain German banks acceptable to the Reichsbank and to our clients, W. A. Harriman & Co., Inc.

Our clients are informed by cable that this matter has been discussed with Mr. Gilbert,[1] who sees no objection to the plan and feels that it is sound business from the American viewpoint, and also that Mr. Schacht, representative of the Deutsche Bank, is much in favor of the plan and is giving it his personal support.

We should be obliged if you would inform us whether the Department has any objection to our clients undertaking this business.

Respectfully yours,

DAVIS, POLK, WARDWELL, GARDINER & REED

[1] S. Parker Gilbert, agent general for reparation payments.

861.51/2010

The Secretary of State to Messrs. Davis, Polk, Wardwell, Gardiner & Reed

WASHINGTON, *April 2, 1926.*

SIRS: The Department has received your letter of March 17, 1926, in which you inquire whether the Department has any objection to the flotation in the American market by Messrs. W. A. Harriman and Company, Incorporated, of a loan of $25,000,000 to $35,000,000 to a German export company to be formed by German industrials, the proceeds of the loan to be used to extend credit to German industrials in order to sell goods in Russia on the plan outlined in your letter and in your telegram of March 18.[2]

It clearly appears from the information before this Department that, in its essence, the proposed transaction would be Russian financing and in effect the flotation in the United States of a loan for the purpose of making an advance to the Soviet regime. That regime, as you know, has repudiated Russia's obligations to the United States and to American nationals.

In the circumstances, I have to advise you that this Government would not view the proposed financing with favor at the present time.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

861.51/2056

The New York Trust Company to the Secretary of State

NEW YORK, *July 10, 1926.*
[Received July 12.]

HONORABLE SIR: The State Department is undoubtedly familiar with the negotiations between the German and Russian Governments whereby arrangements were made for purchases by Russia in Germany on long credit terms up to a total of 300,000,000 marks.

Various negotiations have been conducted with a view to making this arrangement operative, but until recently it has been impracticable to bring the arrangement into force.

Under the general arrangement German manufacturers selling to Russia under this credit would receive the Russian obligation for the goods sold, but would in addition be guaranteed against loss to the extent of 35% by the German Government, and 25% by the various

[2] Not printed.

German states. These guarantees total 60%, making 40% risk to be borne by the German manufacturers.

The principal difficulty has been to provide the actual funds whereby the manufacturer could discount the Russian obligation which he receives, which will bear as well 60% guarantee of the German Government and states.

The German banks are the natural source of such funds, but controversies regarding rates have heretofore prevented the credit coming into operation.

Arrangements have been made recently whereby the manufacturers could discount with a syndicate of leading German banks up to an amount of 120,000,000 marks out of the total of 300,000,000 marks, and the German banks are now endeavoring to arrange the balance.

At the present time easy money conditions prevail in Germany and funds are readily available. Forseeing the possibility of later tighter money conditions in Germany, the German banks seek a plan whereby if they undertake a further portion of this credit, they will have arrangements whereby they can make a portion of their advances liquid by rediscounting the obligations received.

Statutory provisions of the Reichsbank limiting to ninety days the period of its advances makes the paper ineligible at that source, so that to accomplish their purpose, the German banks must seek external credit facilities.

No general plan has been agreed to by the syndicate of German banks concerned, but the leaders, Messrs. Mendelssohn & Company and the Deutsche Bank, are seeking to devise a satisfactory plan.

They have therefore approached us placing the matter in our hands as far as their influence lies, and ask our consideration of the following plan—the terms of the agreement with Russia provide that on sales of German products two and a half years' credit shall be given with respect to 50% of the purchase price, and four and a half years' credit with respect to the remaining 50%.

Covering the portion on which two and a half years' credit is accorded, they propose that we, on behalf of a syndicate of American banks, enter into an agreement which will provide that during a period of two years, we will hold at the disposal of the German banks a revolving credit whereby for such periods as they require during two years, we will agree to rediscount, with the endorsement of the German banks, such portion of these obligations bearing the name of the German seller, and the Russian obligor, if the German banks find it convenient to so rediscount.

With respect to such rediscount, these obligations are to bear the endorsement of the German banks, but it is understood that the endorsement is to apply to that 40% of the obligation which is uncovered by the guarantees of the German Government and states.

The amount of such revolving rediscount credit has not been fixed, but the discussions vary from twenty million to thirty million dollars, and it is understood that during the period of two years German banks can rediscount with the American banking syndicate for periods of ninety days, and pay off, and again rediscount at their convenience during such two year period.

I am familiar with the fact that the State Department has heretofore given some consideration to this credit, and in addressing you at this time for further consideration of the matter, I am proceeding upon the theory that the proposal before us differs in certain fundamental facts from that originally considered by you.

1. This credit is not a participation with the Germans in a credit to Russia, but is a revolving rediscount credit extended to the German Banks in which their direct endorsement covers 40% of the risk involved in the underlying obligations, consisting of the Russian State Purchasing Agency in Germany, the name of the German supplier, and in certain cases the obligation of the Russian State bank. The 60%, which the endorsement of the German banks does not cover, is covered by the guarantee of the German Government and states.
2. It is not contemplated that this credit would be the basis for an offering of securities to the American public. It would be a credit extended by a syndicate of American banks to a syndicate of German banks.
3. It is not contemplated for the two year life of the agreement that the American banks would be in the position of steadily advancing funds, but rather that such facilities would be extended and paid off as money conditions in Germany require.

The credit is only in process of negotiation to determine if it can be adjusted to our requirements. The syndicate of German banks as a whole have not yet considered this plan, it representing only the effort of the two most influential German bank members of the syndicate to find a satisfactory formula, they having agreed to place the negotiations in our hands to the extent of their ability to control the matter.

We believe that no other American bank or bankers are at present negotiating the matter and understand that one of the German banks whom we are representing is the one which heretofore negotiated with another American banking firm a plan which was placed before you. We recognize that even in the present form some publicity cannot be avoided, which might be construed as a new attitude on the part of the American Government in permitting large Russian credit. We lay the matter before you with a view to determining if in your judgment the fact that we are in this case rediscounting for the German bank makes any fundamental difference in the matter from the standpoint of American public policy.

We shall in all events be guided by your wishes and endeavor to serve the policy you lay down. We would appreciate your consideration of the matter.

Respectfully yours,

G. MURNANE
Vice-President

861.51/2056

The Secretary of State to the New York Trust Company

WASHINGTON, *July 15, 1926.*

SIRS: I beg to acknowledge the receipt of your letter of July 10, 1926, relating to a proposed arrangement for the re-discount by American banks, on the terms indicated in your letter, of certain Russian obligations. The Department greatly appreciates your careful exposition of the terms of the proposed arrangement, and your analysis of the situation presented.

It appears clearly from the information at hand that, in its essence, the proposed transaction would be Russian financing and in effect the employment of American credit for the purpose of making an advance to the Soviet regime. That regime, as you know, has repudiated Russia's obligations to the United States and to American nationals.

In the circumstances, I have to advise you that this Government would not view the proposed financing with favor at the present time.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

REFUSAL OF VISA FOR APPOINTED SOVIET MINISTER TO MEXICO TO ENTER THE UNITED STATES EN ROUTE TO HER POST

811.111Kollontay,Madame Alexandra : Telegram

The Consul General at Berlin (Coffin) to the Secretary of State

BERLIN, *October 20, 1926—5 p. m.*
[Received October 20—4:55 p. m.]

Madame Alexandra Kollontay, appointed Soviet Minister to Mexico, has requested me to ascertain whether the Department will authorize passport visa for her crossing the United States en route to Mexico. Her name no doubt is well known to the Department whose instructions are requested.

COFFIN

811.111Kollontay,Madame Alexandra : Telegram

The Secretary of State to the Consul General at Berlin (Coffin)

WASHINGTON, *November 2, 1926—5 p. m.*

Your October 20, 5 p. m. Since Madame Kollontay is inadmissible to the United States under the law, no visa or transit certificate may be issued to her.

KELLOGG

811.111Kollontay,Madame Alexandra

Press Release Issued by the Department of State, November 4, 1926

Madame Kollontai, who it is understood has been appointed Soviet Minister to Mexico, has been denied, by the Consul General at Berlin with the approval of the Department of State, a visa to enable her to enter the United States in transit to her post of duty in Mexico. The action has been taken because Madame Kollontai is deemed inadmissible into the United States under the law since, as one of the outstanding members of the Russian Communist Party, a member of the III Congress of the Communist International and a member of the Soviet Diplomatic Service, she has been actively associated with the International Communist subversive movement.

SALVADOR

TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SALVADOR, SIGNED FEBRUARY 22, 1926

711.162/–: Telegram

The Acting Secretary of State to the Minister in Salvador (Schuyler)

WASHINGTON, *September 20, 1923—6 p. m.*

26. Ascertain and cable whether it would be agreeable to the Government of Salvador to enter into negotiations with this Government for a general treaty of amity, commerce, and consular rights. If so, the text of a proposed treaty with appropriate instructions will be mailed to you. You may state that this Government is already negotiating with several European Governments treaties similar to that contemplated with Salvador.[1]

PHILLIPS

711.162/–: Telegram

The Secretary of State to the Minister in Salvador (Schuyler)

WASHINGTON, *March 26, 1924—6 p. m.*

14. Department's 26, September 20, 1923, 6 p. m. Before proceeding with the negotiation of a treaty of amity, commerce and consular rights with Salvador and with other countries, Department is awaiting action of the Senate upon similar treaty which has been signed with Germany [2] and which is still before the Committee on Foreign Relations.[3] Pending such action of Senate and further consideration by this Government in regard to the treaty proposals which it will make to other countries, Department would be glad to enter into a *modus vivendi*, effected by an exchange of notes, with Salvador mutually according unconditional most-favored-treatment with particular reference to import and export duties. Such notes might take approximately the form of the notes exchanged with Brazil on October 18, 1923.[4] Department is, however, prepared to telegraph text upon information that Salvador is disposed to proceed according

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[1] See *Foreign Relations*, 1923, vol. I, pp. 121 ff.
[2] *Ibid.*, vol. II, p. 29.
[3] See *ibid.*, 1924, vol. II, pp. 183 ff.
[4] *Ibid.*, 1923, vol. I, pp. 461–463.

to this method. Such an arrangement would benefit Salvador by assuredly preventing the imposition of penalty import duties on its coffee which is imported free under Tariff Act of 1922 [5] and upon its other products which find a market in the United States.

You are requested to take this matter up promptly with the Government of Salvador.

HUGHES

711.162/4

The Minister in Salvador (Schuyler) to the Secretary of State

No. 514 SAN SALVADOR, *April 7, 1924.*

[Received April 25.]

SIR: In reply to the Department's telegram of March 26, 6 p. m., I beg to state that I immediately took up the question of the exchange of notes regarding the most-favored-nation treatment of imports between El Salvador and the United States with the Minister for Foreign Affairs and handed him a note embodying the Department's ideas. (For text of note see enclosure).[6]

The Minister told me that he feared there would be considerable difficulty at the present time and that it would have been easier to negotiate this matter some months ago. He felt that prolonged study by the various ministries concerned would now be necessary, especially in view of the fact that the consent of the bankers interested in the recent loan [7] would have to be obtained because the proposed most-favored-nation exchange of notes would in some items lower the importation duties and consequently the customs revenues to a considerable degree. However, he promised to give the matter his promptest attention, and stated that if it were found possible to conclude the matter to the satisfaction of the Department of State, he would be glad to exchange the notes with me even if I were at the moment on leave of absence.

I have requested Mr. Taylor, who will be Chargé d'Affaires, to report immediately to the Department any reply from the Minister and to cable the Department for the text of the proposed note in case the Salvadorean government finds it possible to exchange the notes as indicated by the Department.

I have [etc.] MONTGOMERY SCHUYLER

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[5] 42 Stat. 858.

[6] Not printed.

[7] See *Foreign Relations*, 1922, vol. II, pp. 885 ff.

711.162/4

The Secretary of State to the Chargé in Salvador (Muse)

No. 125 WASHINGTON, *August 28, 1924.*

SIR: In his despatch No. 514 of April 7, 1924, Mr. Schuyler stated that he had discussed with the Minister of Foreign Affairs the proposal to enter into an exchange of notes by which this Government and the Government of Salvador would establish unconditional most-favored-nation treatment as between the two countries in commercial matters.

The Department desires that you should discuss this matter again with the appropriate officials of the Government of Salvador, indicating the importance that this Government attaches to the conclusion of a *modus vivendi* of this nature and stating that similar exchanges of notes have been entered into with Brazil, Czechoslovakia, Nicaragua and Guatemala.[8]

There is transmitted herewith a draft of a note which you are authorized to present to the Government of Salvador if the latter should accept the proposal to enter into the *modus vivendi*, and you may informally deliver a copy of the proposed note to the Minister of Foreign Affairs and inform him that you are authorized to sign it upon assurance that you will receive a reply in like terms.

I am [etc.] CHARLES E. HUGHES

[Enclosure]

Draft of Proposed Note to Salvador Establishing Unconditional Most-Favored-Nation Treatment in Commercial Matters

SIR: I have the honor to make the following statement of my understanding of the agreement reached through recent conversations held at San Salvador by representatives of the Government of the United States and the Government of the Republic of El Salvador with reference to the treatment which the United States shall accord to the commerce of El Salvador and which El Salvador shall accord to the commerce of the United States.

These conversations have disclosed a mutual understanding between the two Governments which is that, in respect to import, export and other duties and charges affecting commerce, as well as in respect to transit, warehousing and other facilities, the United States will accord to El Salvador and El Salvador will accord to the United States, its territories and possessions, unconditional most-favored-nation treatment.

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[8] For texts of notes, see *Foreign Relations*, 1923, vol. I, pp. 461–463 and 873–875; also *ibid.*, 1924, vol. II, pp. 514–517 and 290–292, respectively.

It is understood that

No higher or other duties shall be imposed on the importation into or disposition in the United States, its territories or possessions of any articles the produce or manufacture of El Salvador than are or shall be payable on like articles the produce or manufacture of any foreign country;

No higher or other duties shall be imposed on the importation into or disposition in El Salvador of any articles the produce or manufacture of the United States, its territories or possessions than are or shall be payable on like articles the produce or manufacture of any foreign country;

Similarly, no higher or other duties shall be imposed in the United States, its territories or possessions or in El Salvador on the exportation of any articles to the other, or to any territory or possession of the other, than are payable on the exportation of like articles to any foreign country;

Every concession with respect to any duty or charge affecting commerce now accorded or that may hereafter be accorded by the United States or by El Salvador, by law, proclamation, decree or commercial treaty or agreement, to the products of any third country will become immediately applicable without request and without compensation to the commerce of El Salvador and of the United States, its territories and possessions, respectively:

Provided that this understanding does not relate to

(1) The treatment which the United States accords or may hereafter accord to the commerce of Cuba or any of the territories or possessions of the United States or the Panama Canal Zone, or to the treatment which is or may hereafter be accorded to the commerce of the United States with any of its territories or possessions or to the commerce of its territories or possessions with one another.

(2) The treatment which El Salvador may accord to the commerce of Costa Rica, Guatemala, Honduras, and/or Nicaragua.

(3) Prohibitions or restrictions of a sanitary character or designed to protect human, animal or plant life or regulations for the enforcement of police or revenue laws.

The present arrangement shall become operative on the day of signature and, unless sooner terminated by mutual agreement, shall continue in force until thirty days after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse.

I shall be glad to have your confirmation of the accord thus reached.

Accept, Sir, the renewed assurance of my high consideration.

711.162/6

The Chargé in Salvador (Muse) to the Secretary of State

No. 576 SAN SALVADOR, *September 26, 1924.*
[Received October 9.]

SIR: I have the honor to refer to the Department's instruction No. 125, of August 28, 1924, directing that I endeavor to effect an exchange with the Minister of Foreign Affairs of notes, similar to a draft enclosed in the instruction, establishing unconditional most-favored-nation treatment as between the United States and Salvador in commercial matters.

I have discussed the matter with the Minister of Foreign Affairs and left with him a copy of the draft. He informed me that the matter would have to be studied by the Department of Finance before the Government could decide as to its willingness to enter into such an agreement. At this writing the Department of Finance has not yet reported the result of its examination and the matter is still in suspense.

In further conversations with the Minister of Foreign Affairs he has advanced several objections to the arrangement on the part of Salvador. In the first place, he desires to have the *modus vivendi* concluded for a definite period and desires to have extended the period which must elapse after the notification of a desire to terminate before the actual termination shall take effect. This he bases upon the fact that, whereas the United States will, upon the conclusion of the arrangement, begin to enjoy at once certain most-favored-nation privileges in the way of tariff reductions on imports into Salvador, Salvador will not at first enjoy any special privilege and will risk having the arrangement terminated one month after the first tariff reduction which may be made in her favor by the United States. He suggests concluding the *modus vivendi* for a period of two years or more, denunciable six months after notification which may be made after the termination of the period fixed.

I have informally expressed my opinion that the Department possibly would not object to changes in the wording of the notes with regard to the duration of the arrangement and the mode of termination, and that I might possibly secure the permission of the Department to proceed in this sense.

The Minister of Foreign Affairs objects very strongly to the provision of the note which excludes Cuba from consideration among the most-favored-nations as regards imports into the United States. He states that his Government is very desirous to secure equal treatment with Cuba for its large competitive export of sugar. I have, of course, pointed out that the note reciprocally excludes the commerce of Guatemala, Honduras, Nicaragua, and Costa Rica from

consideration in determining the treatment to be accorded American imports into Salvador.

The Minister of Foreign Affairs notes that Salvador has no most-favored-nation treatment at present to be gained from the United States, while the exchange of such notes would give American imports into Salvador certain special privileges now accorded by treaty to France. This treaty of 1903, amended by an exchange of notes in 1923, grants certain reductions on the imports of French perfumes, toilet articles, etc., into Salvador in exchange for special treatment accorded the Salvadorean export of coffee, cotton, and sugar into France. It appears that the principal interest of the Department of Finance in its present study of the proposal is to ascertain the extent of the possible decrease in the customs revenue of Salvador which might result in making the tariff reductions accorded to French imports applicable in like matter [*manner?*] to the imports from the United States.

I should add that my conversations hitherto have been entirely informal, and that the above-mentioned observations and suggestions of the Minister of Foreign Affairs are not to be taken as an official reply of the Salvadorean Government.

I have [etc.] BENJAMIN MUSE

711.162/6 : Telegram

The Secretary of State to the Minister in Salvador (Schuyler)

WASHINGTON, *October 20, 1924—3 p. m.*

41. Your despatch No. 576, September 26, 1924, and No. 514, April 7, 1924. In the Legation's note to the Minister of Foreign Affairs dated March 27, 1924,[9] referring to the treaty of friendship, commerce and consular rights with Germany then and now awaiting ratification, it was stated that the Department had "decided to await the action of the Senate before entering into formal treaty proposals with other nations". The Department intends to renew negotiations with El Salvador for a comprehensive treaty as soon as the German treaty is disposed of. The exchange of notes would, therefore, be a *modus vivendi* to remain in force until the treaty was concluded, and it would seem more appropriate not to set a fixed term. The Department would prefer, therefore, the provisions of the draft already submitted.

In view of the fact that the exchange of notes is not to be placed before the Senate for approval, the final clause is the essential feature of the third from the last paragraph of the draft note. That must be retained, but, provided the Government of El Salvador insists

[9] Note based on instructions in Department's telegram No. 14, Mar. 26, 1924. p. 912.

and will consent to sign promptly, you may alter the paragraph referred to so that it will read as follows:

"The present arrangement shall become operative on the day of signature and shall continue in force for two years, and thereafter until the expiration of six months after notice of its termination shall have been given by either party; but should either party be prevented by future action of its legislature from carrying out the terms of this arrangement, the obligations thereof shall thereupon lapse."

You should not yourself mention the matter, but if requested by El Salvador you may agree to make the exchange of notes effective thirty or sixty days after, instead of on date of signature. [Paraphrase.] The Department must insist upon the specific exception of Cuba as stipulated in the draft, on account of the exclusive provisions of article VIII of the Cuban reciprocity treaty.[10]

With reference to the claim of Salvador that the *modus vivendi* would bring advantages to the United States without corresponding advantages to Salvador's commerce, you may inform the Foreign Minister that the most-favored-nation treatment which the United States already accords to Salvador may be regarded under our policy as conditioned upon reciprocal treatment, and that under section 317 of the Tariff Act of 1922 the Executive is empowered to levy additional duties upon the products of nations which discriminate against the commerce of the United States. You should indicate that coffee, which is Salvador's chief export, is at present on our free list, that on most of the other exports of Salvador the United States either imposes no duties at all or only comparatively light duties and for that reason it is only fair that Salvador should accord favorable treatment to American trade and agree at least not to discriminate against it. At your discretion you may add that this Government hopes Salvador will accord the United States most-favored-nation treatment because the United States would be most reluctant to be obliged to take under consideration the imposition of duties on coffee and other Salvadorean exports.

The Department would be pleased to have the negotiations expedited.

Keep the Department fully informed. [End paraphrase.]

HUGHES

[10] Signed at Habana, Dec. 11, 1902; *Foreign Relations*, 1903, p. 375.

711.162/10

The Minister in Salvador (Schuyler) to the Secretary of State

No. 622 SAN SALVADOR, *January 2, 1925.*
[Received January 13(?).]

SIR: Referring to previous correspondence on the subject of an exchange of notes between the United States and Salvador to establish most-favored-nation treatment, I regret to have to inform you that although I have spoken on this matter with the President, with the Minister of Hacienda, and with the Minister for Foreign Affairs (with the latter not less than four or five times) I have been unable up to the present to get any tangible results. The Minister of Hacienda informed me that in his opinion Salvador would consent to give most-favored-nation customs tariff but that it would be difficult to grant rebates on the additional charges or taxes imposed as a percentage of the customs duties on importations, which run in some cases from 25 to 1 per cent. of the duties. The Minister for Foreign Affairs is, in my opinion, the chief obstacle at the present time. He does not clearly understand what is involved, and he believes that by delay without positive refusal or positive acceptance he will save himself trouble in the future and not be accused of giving away privileges without corresponding concessions.

If I do not obtain any reply within a few days, I expect to address this Government again, pointing out with a little more insistence the unfortunate results which might be caused if the United States were to find it necessary to impose a considerable duty on imports of Salvadorean coffee.

I have [etc.] MONTGOMERY SCHUYLER

711.162/9 : Telegram

The Minister in Salvador (Schuyler) to the Secretary of State

SAN SALVADOR, *January 14, 1925—1 p. m.*
[Received 10:20 p. m.]

2. Referring to most-favored-nation exchange of notes. The Minister for Foreign Affairs suggests informally as *quid pro quo* that United States shall grant Salvadorean and preferably all Central American sugar same rates as now given Cuban sugar. I have explained fully peculiar reciprocal nature of article 8 of our commercial convention with Cuba but he requests that I forward his suggestion to you.

SCHUYLER

711.162/9 : Telegram

The Secretary of State to the Minister in Salvador (Schuyler)

WASHINGTON, *January 17, 1925—4 p. m.*

2. Your 2, January 14, 1 p. m. While appreciating the motives which prompt the Government of Salvador to make the request contained in your telegram referred to, the Department is not in a position to accede to it. You are, of course, correct in pointing out that Article 8 renders the concessions of the Treaty with Cuba exclusive. If the United States should grant any other country a reduction on sugar, Cuba would be entitled to a rate less by 20 per centum than the reduced rate. Moreover, such a reduction would not be of great benefit to Salvador because the United States would have to generalize it at least to the seven countries with which it has in operation unconditional most-favored-nation agreements, including such sugar producing countries as Brazil, Czechoslovakia, Dominican Republic, Guatemala and Nicaragua.[11] Salvador already generalizes the concessions of its agreement with France to a number of other countries. The United States wishes to be placed in a position of equality with these countries.

The Department is gratified that the matter of the proposed *modus vivendi* is again under active consideration. You are requested to use every endeavor to conclude it promptly.

HUGHES

711.162/14 : Telegram

The Secretary of State to the Chargé in Salvador (Engert)

[Paraphrase]

WASHINGTON, *April 24, 1925—5 p. m.*

14. Legation's despatch number 632 dated January 21.[12] Cable report on present situation. Department is anxious to conclude an arrangement for the cessation of discrimination by Salvador. If you feel, however, that Salvador would not accept the proposed exchange of notes, but would be willing to proceed to the signature and ratification of a general treaty, the Department will consider matter of abandoning efforts to secure exchange of notes and starting treaty negotiations.

KELLOGG

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[11] For notes exchanged with the Dominican Republic, see *Foreign Relations*, 1924, vol. I, pp. 667–670. For citations to agreements with the other countries mentioned, see *ante*, p. 914, footnote 8.

[12] Not printed; it transmitted to the Department a copy of a note addressed to the Foreign Office on basis of the Department's telegrams No. 41, Oct. 20, 1924, 3 p. m., and No. 2, Jan. 17, 1925, 4 p. m.

711.162/15 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

[Paraphrase]

SAN SALVADOR, *April 28, 1925—11 a. m.*

[Received 1:40 p. m.]

15. Department's telegram number 14, April 24, 5 p. m. After long conference with the President during which the Foreign Minister at my suggestion was present I have concluded that the Government of Salvador is not ready to accept an exchange of notes unless more tangible advantages to it become apparent than the United States has so far pointed out. The President says that France grants very substantial tariff reduction on coffee from Salvador, and that even if the United States should impose a duty on such coffee, the markets of Europe, and especially of Germany, would take the entire crop of Salvador. If, however, the United States should be willing to grant some concession with respect to Salvador's sugar, he would recommend an exchange of notes.

I recommend that the Department await Legation's report following further conference with the President and the Foreign Minister in which I have requested that the Finance Minister take part. I have received no written reply except mere acknowledgment to the notes addressed to the Foreign Office on this subject. Would it be possible for the Department to telegraph this Legation a list of the countries with which the United States has exchanged similar notes?[13]

ENGERT

711.162/16 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

[Paraphrase]

SAN SALVADOR, *May 9, 1925—3 p. m.*

[Received May 11—8:55 a. m.]

18. After further conferences with the persons mentioned in my telegram No. 15 of April 28, 11 a. m., I doubt the possibility of overcoming their opposition. Finance Minister who is evidently opposed asked me pointedly for specific instances of benefits which would result to the exports of Salvador to the United States.

So far I have purposely avoided any reference to the possible negotiation of a general treaty. However, if the Department should desire, I shall now sound the Government of Salvador informally on

[13] List transmitted in Department's telegram No. 16, Apr. 30, 1925, 8 p. m.; not printed.

the subject. Note from Salvador of July 19, 1922, might be a convenient starting point.[14]

My personal feeling is that rather than make preliminary inquiries which would probably elicit evasive replies, the most effective procedure would be to address a formal note couched in such broad terms as to render it difficult for the Government of Salvador to decline or procrastinate on trivial grounds.

ENGERT

711.162/17 : Telegram

The Secretary of State to the Chargé in Salvador (Engert)

WASHINGTON, *June 25, 1925—6 p. m.*

25. Your 30, June 15, 7 p. m.[15] You may propose opening of negotiations for the general treaty of friendship, commerce and consular rights as suggested in last paragraph of your 18, May 9, 3 p. m. In so doing it seems appropriate to refer to the Foreign Office note of July 19, 1922, and to state that the Department's treaty program was delayed pending the approval by the Senate of the treaty concluded with Germany. Such approval having now been given, Department has proposed or is about to propose the negotiation of similar general treaties to a number of Central American and South American as well as European countries. Department hopes that the negotiation of such a treaty is still agreeable to the Government of Salvador and is ready to submit draft text on receipt of a favorable response.

If proposal accepted text will be promptly mailed to you. It seems unnecessary to mention again the proposal for a *modus vivendi.*

KELLOGG

711.162/18 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *July 1, 1925—2 p. m.*

[Received 11:58 p. m.]

36. The substance of the Department's telegram number 25, June 25, 6 p. m., was embodied in a note which I read to the President and to the Minister of Foreign Affairs. Both expressed willingness to open negotiations immediately but the latter cautiously observed that fiscal and customs questions had best be dealt with in very general terms only. The President then suggested two treaties, one of friendship and one of commerce and consular rights and said he would welcome definite proposals from the United States Government which would

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[14] Note of July 19, 1922, not printed; it stated that Salvador would view with the greatest pleasure the conclusion of a treaty of friendship, commerce, and navigation with the United States. (File No. 616.11247/22).

[15] Not printed; it inquired whether the Department desired the Minister to take any further action.

be discussed in the most friendly spirit. I was entirely noncommittal in my replies but carefully avoided all reference to most-favored-nation treatment.

Could the Department cable brief summary of points it desires covered and mail proposed text as well as text of German treaty? Has a similar treaty recently been signed or discussed with any other Latin American country?

ENGERT

711.162/18 : Telegram

The Acting Secretary of State to the Chargé in Salvador (Engert)

WASHINGTON, *July 3, 1925—5 p. m.*

27. Your 36, July 1, 2 p. m. Draft text of general commercial treaty for presentation to Salvadorean Government will be mailed you as soon as possible. Department gratified at willingness of Salvador to negotiate.

Text of German treaty is being sent forward. Similar treaty signed June 24 with Hungary.[16] Legation at Panama has been instructed to present similar text to Panaman Government.[17] Department expects shortly to propose negotiations to Mexico and other Central and South American countries. Before doing so Department would like to reach signature with Salvador.

[Paraphrase.] The text which the Department will send you is that which it has prepared for negotiation, generally, with such incidental and detailed alterations as are needed to meet particular circumstances. Unconditional most-favored-nation treatment is the essential feature. The United States will insist on this principle but its statement is in general terms. The instrument may appropriately be called simply one of commerce and consular rights. The Department believes it best to present text before you discuss separate treaty of friendship. You will stand in readiness then to receive suggestions based upon the text presented, and to communicate to the Department any proposal made by Salvador for separate treaty. [End paraphrase.]

GREW

711.162/20

The Chargé in Salvador (Engert) to the Secretary of State

No. 808 SAN SALVADOR, *July 7, 1925.*

[Received July 22.]

SIR: In continuation of the Legation's telegram No. 36 of July 1, 2 p. m., and with reference to the Department's telegram No. 27 of July

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[16] *Foreign Relations*, 1925, vol. II, p. 341.

[17] See comment made by Wallace McClure, vol. I, p. 570, footnote 11.

3, 5 p. m., I have the honor to transmit herewith the original text and a translation of a Note from the Foreign Office, No. 945, dated July 6, 1925,[18] in which the Minister of Foreign Affairs confirms the readiness of the Government of El Salvador—which had already been conveyed to me verbally—of studying and discussing a Treaty of Friendship, Commerce and Consular Rights with the United States. The Note adds the suggestion that the draft of such a Treaty be submitted to the Foreign Office.

Suitable acknowledgment has been made of this communication, and the Minister of Foreign Affairs has been advised that the Legation is expecting the draft of the proposed Treaty in the near future.

I have [etc.] C. VAN H. ENGERT

711.162/20

The Secretary of State to the Chargé in Salvador (Engert)

No. 189 WASHINGTON, *August 6, 1925.*

SIR: With reference to your despatch No. 808 of July 7, 1925, and earlier correspondence concerning the negotiation of a treaty of friendship, commerce and consular rights between the United States and Salvador, there are enclosed herewith three copies of a draft of such a treaty.[19] The copy which contains confidential comments explanatory of the provisions of the draft is solely for the use of the Legation and is not to be shown to any officials of the Salvadorean Government or to others. Of the copies which do not contain the explanatory comment, you will submit one to the Salvadorean Foreign Office; the other is for your convenience when discussing the provisions of the draft with officials of the Salvadorean Government.

The following statement is designed to make clear the position of this Government concerning the general features of the treaty, and respecting the various provisions thereof.

You will observe from the Preamble and the Articles of the Treaty that this is a treaty of friendship as well as of commerce and consular rights. It touches many matters unrelated to commerce. It is designed to promote the friendly intercourse between the peoples of the United States and Salvador, through provisions advantageous to both. It may be said with entire candor that this treaty embodies no attempt whatever to obtain any peculiar favor which the United States is not itself ready to offer in return. In a word, through the present draft it is sought to lay the foundation

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[18] Not printed.

[19] Attached to the file copy of this instruction is only one copy of the draft treaty, a copy with confidential comments and text of the treaty arranged in parallel columns. This is the text of the draft treaty being printed as an enclosure to this instruction; the comments, however, have been omitted.

for a comprehensive arrangement responsive to the modern requirements of maritime States. To that end the several articles are expressed in terms which definitely set forth what is desired. It is sought by this means to avoid the danger of conflicting interpretations. The terms and phrases used are not always those which have been employed in treaties of the United States. Those here utilized will, it is hoped add to the clearness of the document.

The first six articles deal generally with the rights of the nationals of the one party residing in the territories of the other, and incidentally with the rights of their non-resident relatives. (See Article II). The attempt is made to give the Salvadorean in the United States or the American in Salvador, on an equal basis, all of those privileges which can reasonably be accorded the resident alien. In the next to the last paragraph of Article I unusual steps are taken to provide for the protection and security of his person and property, in accordance with the requirements of international law. Moreover, his property is not to be taken without due process of law, and without payment of just compensation. It is hoped that these provisions will be warmly appreciated by the Salvadorean Government. In the last paragraph of Article I is embodied a reservation made by the Senate of the United States in giving its advice and consent to the ratification of the Treaty of Friendship, Commerce and Consular Rights, signed by the United States and Germany on December 8, 1923.[20] From the point of view of this Government such a provision is necessary.

The provisions of Article III are not uncommon.

The arrangement in the first paragraph of Article IV dealing with the passing of title to lands by descent or will is also not uncommon in treaties of the United States. It enables, for example, a Salvadorean heir or devisee in Salvador to take title to American lands owned by a relative who died in the United States, and to have the privilege of disposing of those lands within a reasonable period of time when the local law (as of some State of the United States) does not permit such alien to retain title. The second paragraph of Article IV is self-explanatory.

The rights of worship contained in Article V are reasonable in their scope and are desired by the United States. Obviously, no practices contrary to public morals are to be permitted under the guise of religious activity.

Article VI is believed to be important. Should the United States become a belligerent it should enjoy the right to exact military service of neutral aliens permanently resident in its territory who have declared an intention to become American citizens and who

[20] *Foreign Relations*, 1923, vol. II, pp. 22, 29.

decline to leave the country. It is only under these conditions that service is to be exacted; and the privilege obviously would be equally beneficial to Salvador should it become a belligerent.

Article VII makes full provision for the enjoyment of the most-favored-nation clause in its unconditional form, applying it to persons, vessels and cargoes, and to articles the growth, produce or manufacture of the contracting parties. It will be seen that the most-favored-nation clause is applied to duties on imports and exports and to other charges or restrictions or prohibitions on goods imported and exported. In the last paragraph there is an important reservation with respect to the commerce between the United States and Cuba, and to the commerce of the United States with its dependencies and the Panama Canal Zone, under existing or future laws. These reservations are essential. You will recall that our arrangements with Cuba under treaty of December 11, 1902,[21] are of a peculiar nature. The special relationship, political and geographical between the United States and Cuba necessitates the reservation concerning the commerce with that country.

Article VIII requires no explanation.

Article IX concerning duties of tonnage, harbor, pilotage, lighthouse, quarantine, et cetera, provides for national treatment applied reciprocally, that is, the same conditions are to be applied to a Salvadorean vessel in American ports as are applied to American vessels, provided Salvador applies to American vessels in Salvadorean ports the same conditions that are applied to Salvadorean vessels therein.

Article X requires no comment.

The provisions of Article XI will explain themselves. You will of course observe that there is definite statement to the effect that the coasting trade of both parties is exempt from the provisions of the treaty. The addition of the last sentence is due to the possibility that one contracting party might yield coasting trade privileges of some character to foreign vessels. Hence that contingency is covered. It will be observed that the coasting trade was specifically excepted from the provisions of Article III of the treaty of December 6, 1870, between the United States and Salvador, which is no longer in force.[22]

Your attention is particularly called to the provision contained in the third paragraph of Article XXVIII under which the fifth and sixth paragraphs of Article VII and Articles IX and XI are made terminable at the end of twelve months from the date of exchange of ratifications of the Treaty and thereafter by operation of legis-

[21] *Foreign Relations*, 1903, p. 375.

[22] Malloy, *Treaties*, 1776–1909, vol. II, pp. 1551, 1552. This treaty was abrogated May 30, 1893.

lation inconsistent with them which may be enacted by the United States or Salvador. That provision, as is indicated by the explanatory comment in the margin to Article XXVIII is the consequence of a reservation made by the Senate of the United States in giving its advice and consent to the ratification of the Treaty of Friendship, Commerce and Consular Rights, signed by the United States and Germany on December 8, 1923.

Article XII concerns the right of corporations incorporated in the one country to be recognized in the other, and to enjoy access to the Courts. It should be observed, however, that the right to do business in the foreign country (for example, of an American corporation in Salvador) is conditioned upon the laws of that country. These limitations are deemed absolutely essential particularly because of the powers of the several States of the United States to regulate the matter.

In Article XIII arrangement is made for the participation by nationals of the one State in corporations incorporated in the other. The laws of the United States render it imperative that these rights be based on a reciprocal footing, and that the most-favored-nation treatment in this connection be conditioned upon reciprocity. The last paragraph of Article XIII offers a reciprocal basis for agreement within necessarily narrow limits respecting privileges of mining and minerals described. The Act of Congress of February 25, 1920, relative thereto,[23] is had in mind.

Article XIV deals with transit through the territories of the United States and of Salvador and also territorial waters with certain reservations as to the latter embracing international boundary waters and the Panama Canal. The reservation of boundary waterways of various kinds is important to the United States. It is not recalled that rights of navigation or transit therein have ever been accorded to foreign States not sovereign over contiguous territory. Rights of transit through the Panama Canal are definitely established by the Convention between the United States and Great Britain of November 18, 1901, known as the Hay-Pauncefote Treaty.[24] It is there provided that:

"The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable."

Thus it will be understood that Article XIV is not designed to impose any special restriction with respect to the Panama Canal which

[23] 41 Stat. 437.
[24] *Foreign Relations*, 1901, pp. 241, 245.

is directed against Salvador. The Article rather reserves from its operation the matter of transit through that canal. The Article contains limitations with respect to prohibited persons and articles. The conditions applied to transit are reasonable and necessary. There may be some room for the practical operation of this Article as between the United States and Salvador; and its incorporation in the treaty is deemed useful, also on account of prospective treaty negotiations between the United States and other Powers.

Articles XV–XXVI concern consular rights. These cover fully consular provisions of the most modern type which ought to be of great benefit to Salvadorean consular officers in the United States as well as to American consular officers in Salvador.

Attention is called to the last sentence of the second paragraph of Article XV providing that consular officers be entitled to the high consideration of officials with whom they come in contact. This is designed to safeguard them from discourtesy which they might otherwise encounter on the part of minor officials. The last paragraph of Article XV provides that a regular commission be signed by "the Chief Executive of the appointing State and under its great seal".

The matter of the arrest of consular officers and their criminal prosecution, as well as their service as witnesses in criminal cases, is covered fully in Article XVI; likewise, the matter of their exemption from arrest. The same Article deals with the jurisdiction of Courts over Consuls in civil matters. The several provisions are believed to be responsive to the modern situation, and wholly desirable.

The taxation of consular officers is fully dealt with in Article XVII. It will be noted that there is an exemption from taxation on consular salaries under the conditions specified. An important exemption is established in the same Article with respect to lands and buildings used for governmental purposes, and under necessary reservations.

Article XVIII in its first paragraph permits the hoisting of the flag of the country on consular offices including those "situated in the capitals of the two countries". It is hoped that this provision may commend itself to the Salvadorean authorities. The second and third paragraphs of this Article require no comment.

The provisions of Article XIX enabling consular officers to address the authorities with a view to protecting their countrymen in the enjoyment of the rights accruing by treaty or otherwise, and in order to complain of infraction of those rights are believed to serve a useful purpose. They ought to be inserted in the treaty.

Article XX makes provision for the exercise of notarial functions by consular officers. The first paragraph slightly elaborates Article X of the Consular Convention of the United States with Sweden of

June 1, 1910.[25] There are also differences in phraseology. The second paragraph needs no explanation.

Article XXI makes a definite and important provision in its first paragraph with respect to the jurisdiction of a consular officer over offences committed on merchant vessels of his country and over certain civil cases under specified conditions. This paragraph differs sharply from the familiar provisions on the same subject to be found, for example, in Article XI of the Consular Convention of the United States with Belgium of March 9, 1880, which along with Article XII of that Convention was terminated by agreement between the United States and Belgium to bring the Convention into harmony with the Act of Congress of March 4, 1915 (Seamen's Act).[26] The second paragraph is supplementary to the first. The third paragraph provides for the consular invocation of local aid for the maintenance of internal order on board of a vessel. The fourth paragraph requires no comment.

Article XXII pertains to the several problems where a countryman of the Consul dies intestate within the consular district. The first paragraph provides for the notification of the Consul of the fact of death where the decedent leaves no known heirs in the country where death occurred. In the second paragraph arrangement is made, under certain conditions, for the Consul pending the appointment of an administrator, to take charge of the property of the decedent in order to protect it. Finally, in the same paragraph, the consular officer is given the right of administration within the discretion of the agency controlling the administration provided the local laws permit. It is deemed absolutely essential in the United States that any consular right of administration be subordinated to local State laws conferring rights of administration on public officials or private individuals. The right of administration here contingently granted a Consul may, however, prove useful to such an officer. Whenever he accepts the office of administrator he should be subjected to the jurisdiction of the tribunal appointing him. The last paragraph of the Article so provides.

Article XXIII confers upon the Consul the valuable right to receipt for the distributive share accruing to a non-resident countryman, derived from estates in process of probate or from the operation of Workmen's Compensation Acts. The Consul is obliged, however, to remit funds through the agencies of his Government to the proper distributees, and to furnish the authority making distribution through him with reasonable evidence of such remission. This is a new provision calculated to promote justice for all concerned.

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[25] *Foreign Relations*, 1911, pp. 723, 726.
[26] Malloy, *Treaties*, 1776–1909, vol. I, pp. 94, 97, 98; 38 Stat. 1164.

In Article XXIV a new provision greatly desired by the Consular Service and the Public Health Service contemplates consular inspection of private vessels of any flag destined or about to clear from the ports of the United States for Salvador or from the ports of Salvador for the United States. It is earnestly hoped that the Salvadorean Government will accept this provision which will serve to facilitate the entry of vessels clearing from Salvadorean ports for American ports.

Article XXV concerns the free entry of personal and official belongings of consular officers, their families and suites when nationals of the appointing State, with limitations that are specified. The exception, however, in the last clause of the second paragraph of the Article should be noted.

Article XXVI which is based upon Article XIII of the Consular Convention with Sweden of June 1, 1910, deals with the matter of shipwreck and salvage. The provisions require no comment.

Article XXVII states definitely the scope of the territories, land, water and air, within the operation of the treaty.

Article XXVIII deals with the duration of the treaty and modes of terminating it. It is deemed wise to fix the initial period of operation at ten years in regard to all matters with respect to which the Contracting Parties have a permanent policy, and to require one year's notice of termination. As already pointed out in this instruction the provisions of the third paragraph of Article XXVIII permitting the termination of the fifth and sixth paragraphs of Article VII and Articles IX and XI at the end of one year are the counterpart of a reservation made by the Senate of the United States in giving its advice and consent to the ratification of the Treaty of Friendship, Commerce and Consular Rights, signed by the United States and Germany on December 8, 1923. It will be noted that the treaty is to take effect with respect to all of its provisions on the date of the exchange of ratifications.

Article XXIX provides for the exchange of ratifications which if the treaty be signed at San Salvador would normally also take place at that capital.

Please report to the Department by telegram the date on which you submit the draft to the Salvadorean Foreign Office.

I am [etc.] FRANK B. KELLOGG

[Enclosure—Extract]

Draft of Treaty of Friendship, Commerce and Consular Rights Between the United States and Salvador [27]

ARTICLE I

[Final Paragraph]

Nothing contained in this Article shall be construed to affect existing statutes of either of the High Contracting Parties in relation to the immigration of aliens or the right of either of the High Contracting Parties to enact such statutes.

. . . . . .

ARTICLE VII

[Final Paragraph]

The stipulations of this Article do not extend to the treatment which is accorded by the United States to the commerce of Cuba under the provisions of the Commercial Convention concluded by the United States and Cuba on December 11, 1902, or any other commercial convention which hereafter may be concluded by the United States with Cuba, or to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws.

. . . . . .

ARTICLE XI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that the nationals of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade the most favored nation treatment.

. . . . . .

[27] The text of this draft is similar to the text of the treaty as signed Feb. 22, 1926, p. 940, with the exception of the few extracts here printed.

ARTICLE XIX

Consular officers, nationals of the State by which they are appointed, may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting their countrymen in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general or the consular officer stationed at the capital may apply directly to the government of the country.

. . . . . .

ARTICLE XXVI

All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the Consular Officer of the country to which the vessel belongs and within whose district the wreck may have occurred. Pending the arrival of such officer, who shall be immediately informed of the occurrence, the local authorities shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry or exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any custom house charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

711.162/27 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *August 25, 1925—11 a. m.*

[Received 6:48 p. m.]

61. Draft of the treaty of friendship, commerce and consular rights was submitted to the Foreign Office this morning.

I should appreciate it if the Department could for my confidential guidance telegraph briefly principal grounds on which most-favored-

nation treatment is desired to be used discreetly in conversation without committing the Department in any way.

ENGERT

711.162/27 : Telegram

The Acting Secretary of State to the Chargé in Salvador (Engert)

WASHINGTON, *September 5, 1925—3 p. m.*

39. Your 61 August 25, 11 a. m. Unconditional most-favored-nation clause desired chiefly on the following grounds:

(1) Section 317 of the Tariff Act of 1922 [28] contemplates equality of treatment in order to avoid the necessity of levying penalty duties. This policy has already been expressed in twelve signed treaties and *modi vivendi*, with more in negotiation. Only unconditional most-favored-nation clause would assure United States of Salvador's lowest customs rates since Salvador's discriminations against American commerce in favor of France and other countries result from reciprocity treaties. The United States accords extremely favorable treatment to Salvador's exports, coffee and most of the others being admitted free. See Department's 41 October 20, 1924, 3 p. m. In 1924 more than three and one-half million dollars worth of Salvadorian products were admitted free into the United States. Upon products valued at less than one-tenth of this amount were duties imposed. Of all imports into the United States from other countries approximately four-sevenths came in free and approximately three-sevenths were dutiable. The United States does not ask especially favorable treatment but only the removal of discriminations against its commerce. Salvador would thus gain the assurance that equality of treatment in the United States would be continued.

(2) The policy of reciprocal equality is fair and just to both parties and productive of good will in international relations, whereas discriminations bring special privileges to some at the expense of others and so tend to injure good relations. Department hopes that Salvador, particularly in view of close relations with the United States, will accept treaty clause for reciprocal equality of treatment such as obtains between the United States and not only the remainder of Central America but most of the other countries as well. Exceptions to equality of treatment are deemed admissible in special cases for such reasons as contiguity. Thus Salvador may reserve the right to favor other Central American republics and the United States reserves the right to favor Cuba.

You may if advisable base informal written communication on the foregoing.

GREW

[28] 42 Stat. 858, 944.

711.162/28 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *October 5, 1925—3 p. m.*
[Received October 6—3 : 10 p. m.]

76. Conversations with the Minister of Foreign Affairs have so far been limited to the first twelve articles of the proposed treaty. Important amendments to articles 7 and 11 suggested by him would, I know, prove unacceptable to the Department. As anticipated most-favored-nation treatment is the principal difficulty.

Your 39, September 5, 3 p. m. Has the Department already officially admitted the right of Salvador or any other Central American Republics to favor neighboring States or could it be offered as an inducement? Is article 7 intended to cover special privileges granted by Salvador to other foreigners under valid concessions or only privileges granted by treaty?

[Paraphrase.] I have hopes that the Foreign Minister will finally yield. However, the President's attitude is doubtful, and the Finance Minister is hostile. [End paraphrase.]

ENGERT

711.162/28 : Telegram

The Secretary of State to the Chargé in Salvador (Engert)

WASHINGTON, *October 22, 1925—4 p. m.*

44. Your 76, October 5, 3 p. m.

1. In exchange of notes between United States and Guatemala, August 14, 1924 (Treaty Series No. 696) according unconditional most-favored-nation treatment in customs matters exception is made of treatment which Guatemala may accord to commerce of Costa Rica, Honduras, Nicaragua or Salvador. A similar exception is made in the exchange of notes by United States and Nicaragua, June 11 and July 11, 1924 (Treaty Series No. 697). Department is willing that such a provision be added at the end of the last paragraph of Article 7 of the Treaty with Salvador exceptions being confined to Costa Rica, Guatemala, Honduras and Nicaragua.

2. The obligations which would be assumed under Article 7 embrace commercial privileges originating in domestic legislation, executive decree, regulations or otherwise as well as privileges originating in treaties. Department is in doubt as to meaning of the term "concession" as used in your telegram. If the question of the application of the provisions of Article 7 in any special situation has been raised,—(e. g., their bearing upon exceptions or other privileges under concessions of an industrial or business nature to individuals or companies), the Department would desire to be in-

formed in regard to the facts of the situation with your comments before expressing any views.

KELLOGG

816.00/574

The Chargé in Salvador (Engert) to the Secretary of State

[Extract]

No. 960 G SAN SALVADOR, *January 19, 1926.*

[Received February 23(?).]

SIR: In continuation of the Legation's despatch No. 913G of November 20, 1925,[29] I have the honor to transmit herewith a report on the general conditions prevailing in El Salvador for the period from November 16, 1925, to January 15, 1926.

. . . . . .

I have [etc.] C. VAN H. ENGERT

[Enclosure—Extract]

Report on General Conditions Prevailing in Salvador From November 16, 1925 to January 15, 1926

During the two months under review the negotiations for a Treaty of Friendship, Commerce and Consular Rights with the Government of El Salvador have been steadily progressing and are now practically concluded.

In the latter part of November it looked for a while as if an entirely new element were to be injected into the negotiations by the request of the Minister of Foreign Affairs that there be inserted in the Treaty a provision similar to Article 18 of a treaty between Germany and Mexico of December 5, 1882,[30] which limits diplomatic intervention to specific cases. It appears that Article 6 of an Executive Decree of April 13, 1908, which was approved by the Salvadorean National Assembly on May 7, 1908, provides that every general treaty concluded between Salvador and another country must contain such a clause. This Decree was obviously issued for the benefit of the treaty which was then being negotiated with Germany, for on the following day, April 14, 1908, the treaty was signed,[31] but by an exchange of notes, also dated April 14, 1908, it was agreed that Article 18 of the Treaty between Mexico and Germany of 1882 would be adhered to.

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[29] Not printed.

[30] Treaty of friendship, commerce and navigation between Germany and Mexico, signed at Mexico, Dec. 5, 1882; ratifications exchanged at Mexico, July 26, 1883: *British and Foreign State Papers*, vol. LXXIII, pp. 709, 714.

[31] Treaty between Germany and Salvador granting reciprocal most-favored-nation treatment in matters of commerce, etc., signed at San Salvador, Apr. 14, 1908; ratifications exchanged at Guatemala, Apr. 8, 1909; *British and Foreign State Papers*, vol. CI, p. 940.

The Legation discouraged from the beginning any attempt to have such a clause included in the proposed treaty with the United States and upon receipt of the Department's telegram No. 53 of December 3, 6 p. m.,[32] I told the President frankly that the Department would not accept it and that we therefore need not discuss it any further. Shortly thereafter the Minister of Foreign Affairs informed me orally that his Government would not insist upon that point, especially as the Decree of April 13, 1908, was no longer in force.

A number of minor amendments to various articles were also suggested by the Salvadorean Government, some of which the Department accepted. The most important of these were:

(*a*) An addition to the last paragraph of Article 7 exempting from the operation of that Article any treatment El Salvador might accord to one or more of the Central American States, so long as such treatment is not also accorded to any other country;

(*b*) The insertion of a clause in the first paragraph of Article 26 to the effect that salvaged merchandise shall not be exempt from payment of usual warehouse charges for storage and expenses; and

(*c*) Alterations in Article 19 so as to permit consular officers not nationals of the appointing state to address the authorities of the country where they are stationed for the purpose of protecting the interests of the nationals of the state by which they are appointed.

816.00/576

The Chargé in Salvador (Engert) to the Secretary of State

No. 986G SAN SALVADOR, *February 20, 1926.*

[Received March 13.]

SIR: In continuation of the Legation's despatch No. 960G of January 19, 1926, I have the honor to transmit herewith a report on the general conditions prevailing in El Salvador for the month from January 16 to February 15, 1926.

I have [etc.] C. VAN H. ENGERT

[Enclosure—Extract]

Report on General Conditions Prevailing in Salvador From January 16 to February 15, 1926

The negotiations for a Treaty of Friendship, Commerce and Consular Rights with the Republic of El Salvador were concluded as soon as the questions regarding Article 11 and Article 13 were satisfactorily disposed of. As regards the former, the Salvadorean Government was

[32] Not printed.

much gratified to find that the Government of the United States is willing to make an exception in favor of Central American coasting trade. The Legation does not believe that such trade will be of any importance for many years to come as it is practically non-existent today. The Salvadorean Government was also grateful for the Department's interpretation of the last paragraph of Article 13 which had given it much concern from the time the Treaty was first submitted to it. It evidently suspected that we intended to read something into that clause which did not appear on the surface, especially as it referred to petroleum and the Salvadorean Government knew that the United States had since the World War shown much interest in the oil resources of foreign countries.

Complete agreement has now been reached on all articles and the Treaty is at present in the hands of the printers as the Minister of Foreign Affairs expressed a preference for signing the document in printed form. The Department's instructions regarding the "Alternat" and Spanish text will be strictly observed.

Unless there should be unforeseen delay in the printing office, the Treaty will be signed on Washington's Birthday, the date suggested by the Minister of Foreign Affairs.

816.00/577

The Chargé in Salvador (Engert) to the Secretary of State

[Extract]

No. 1020G SAN SALVADOR, *April 4, 1926.*
[Received April 16.]

SIR: In continuation of the Legation's despatch No. 986G of February 20, 1926, I have the honor to transmit herewith a report on the general conditions prevailing in El Salvador for the period from February 16, 1926 to March 31, 1926.

. . . . . .

I have [etc.] C. VAN H. ENGERT

[Enclosure—Extract]

Report on General Conditions Prevailing in Salvador From February 16 to March 31, 1926

The Treaty of Friendship, Commerce and Consular Rights which the Legation had been negotiating with the Salvadorean Government since August 1925 was signed at the Foreign Office on February 22, 1926.[33] The Minister of Foreign Affairs, Dr. Arrieta Rossi, was much gratified at the receipt of Secretary Kellogg's cordial reply to his telegram of February 23 expressing pleasure that

[33] *Post*, p. 940.

the Treaty had been concluded.[35] Whatever hostility there may have been to the Treaty, and particularly to the most-favored-nation clause, has greatly subsided and has given way to a feeling of confidence that it will ultimately benefit Salvador as much as it benefits the United States. The Legation has always emphasized the feature of absolute mutual equality of treatment maintained throughout the Treaty, and that Salvador—one of the smallest countries in the world—would therefore receive at the hands of the United States precisely the same treatment as one of the great World Powers. This feature—which was at first not thoroughly understood even by the President—later served as the most powerful inducement in getting the Treaty accepted because it flattered the *amour propre* of the officials in the government.

816.00/578

The Chargé in Salvador (Engert) to the Secretary of State

No. 1046G SAN SALVADOR, *May 7, 1926.*
[Received May 28(?).]

SIR: In continuation of the Legation's despatch No. 1020G of April 4, 1925, I have the honor to transmit herewith a report on the general conditions prevailing in El Salvador for the month of April 1926.

I have [etc.] C. VAN H. ENGERT

[Enclosure—Extract]

Report on General Conditions Prevailing in Salvador During the Month of April 1926

It was found toward the end of March that a considerable amount of opposition had developed in the National Assembly—not so much perhaps to the Treaty itself as to any attempt on the part of the Executive to have it promptly ratified—and that further discussion of the Treaty by incompetent deputies would only make matters worse. It therefore came as a relief when the Assembly decided to refer the Treaty to the Supreme Court for a report on the judicial and other technical questions involved. The Legation understands that the conclusions of the Supreme Court are on the whole favorable, but that it will suggest certain minor modifications. I have pointed out both to the President and to the Minister of Foreign Affairs that the discussion of any amendments, however slight, would mean interminable delay as they would of course have to be referred to the Department. I further intimated that I doubted seriously whether the United States would find it possible to accept any further modifications of the text as we had already made many alterations at

[35] Neither telegram printed. The Secretary's telegram was dated February 24.

the request of the Salvadorean Government and it might not prove feasible to introduce changes not contemplated in similar treaties with other countries. I have been promised that every effort would be made to have the Treaty accepted as signed.

As soon as the Supreme Court has rendered its report the Treaty will once more be referred to the Committee on Foreign Relations.

711.162/74 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *May 24, 1926—1 p. m.*

[Received 4:25 p. m.]

68. Speaker of the National Assembly has just informed me that the Deputies are opposed to ratification of the treaty before the United States Senate ratifies it. As the Assembly adjourns in one week till February prompt action necessary.

ENGERT

711.162/74 : Telegram

The Secretary of State to the Chargé in Salvador (Engert)

WASHINGTON, *May 29, 1926.*

50. Your 68, May 24, 1 p. m. Senate ratified treaty yesterday.

KELLOGG

711.162/76 : Telegram

The Chargé in Salvador (Engert) to the Secretary of State

SAN SALVADOR, *May 31, 1926—noon.*

[Received June 1—9:25 a. m.]

72. National Assembly ratified the treaty this morning. Department's 49, May 27, 2 p. m.[36] and 50, May 29th, served to induce the President to prolong session one day. Assembly adjourned immediately afterwards.[37]

ENGERT

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[36] Not printed; it informed the Legation that the Senate Committee on Foreign Relations had favorably reported the treaty.

[37] By Legislative decree of May 31, 1926, the National Assembly of Salvador approved the treaty, subject to six amendments (see *Diario Oficial*, July 16, 1926). In view of these modifications the United States did not proceed with the exchange of the ratifications. After further negotiations, the treaty was again submitted to the National Assembly of Salvador which by Legislative decree of June 30, 1927, approved it subject to two amendments (see *Diario Oficial*, July 23, 1927). In instruction No. 65, Dec. 18, 1929 (not printed), the Secretary of State authorized the Chargé in Salvador to effect the exchange of ratifications and to include in the protocol of exchange the declaration which appears in paragraph 2 of the protocol of exchange, following article XXIX of the treaty, *infra*. (File No. 711.162/111a.) Ratifications were exchanged at San Salvador Sept. 5, 1930.

Treaty Series No. 827

Treaty Between the United States of America and the Republic of Salvador, Signed at San Salvador, February 22, 1926 [38]

Preamble

The United States of America and the Republic of Salvador, desirous of strengthening the bond of peace which happily prevails between them, by arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of the peoples thereof, have resolved to conclude a Treaty of Friendship, Commerce and Consular Rights and for that purpose have appointed as their Plenipotentiaries:

The President of the United States of America,

Mr. Cornelius Van H. Engert, Chargé d'Affaires ad interim of the United States of America in Salvador, and

The President of the Republic of Salvador,

Dr. Reyes Arrieta Rossi, Minister of Foreign Affairs of the Republic of Salvador.

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

Article I

The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the state of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals.

[38] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, May 28, 1926; ratified by the President, July 1, 1926; ratified by Salvador, Sept. 5, 1930; ratifications exchanged at San Salvador, Sept. 5, 1930; proclaimed by the President, Sept. 8, 1930.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to the immigration of aliens or the right of either of the High Contracting Parties to enact such statutes.

Article II

With respect to that form of protection granted by National, State or Provincial laws establishing civil liability for injuries or for death, and giving to relatives or heirs or dependents of an injured party a right of action or a pecuniary benefit, such relatives or heirs or dependents of the injured party, himself a national of either of the High Contracting Parties and within any of the territories of the other, shall regardless of their alienage or residence outside of the territory where the injury occurred, enjoy the same rights and privileges as are or may be granted to nationals, and under like conditions.

Article III

The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto appertaining of the nationals of each of the High Contracting Parties in the territories of the other, used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers, or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances and regulations for nationals.

Article IV

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws

of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

Article V

The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they may also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained for the purpose, subject to the reasonable mortuary and sanitary laws and regulations of the place of burial.

Article VI

In the event of war between either High Contracting Party and a third State, such Party may draft for compulsory military service nationals of the other having a permanent residence within its territories and who have formally, according to its laws, declared an intention to adopt its nationality by naturalization, unless such individuals depart from the territories of said belligerent Party within sixty days after a declaration of war.

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation. Nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose, on such terms as it may see fit, prohibitions or restrictions of a sanitary character designed to protect human, animal, or plant life, or regulations for the enforcement of police or revenue laws.

Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce, or manufacture of any other foreign country.

Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other High Contracting Party than are imposed on goods exported to any other foreign country.

Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party.

All articles which are or may be legally imported from foreign countries into ports of the United States or are or may be legally exported therefrom in vessels of the United States may likewise be imported into those ports or exported therefrom in Salvadorean vessels, without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in vessels of the United States; and, reciprocally, all articles which are or may be legally imported from foreign countries into the ports of Salvador or are or may be legally exported therefrom in Salvadorean vessels may likewise be imported into these ports or exported therefrom in vessels of the United States without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in Salvadorean vessels.

In the same manner there shall be perfect reciprocal equality in relation to the flags of the two countries with regard to bounties,

drawbacks, and other privileges of this nature of whatever denomination which may be be allowed in the territories of each of the High Contracting Parties, on goods imported or exported in national vessels so that such bounties, drawbacks and other privileges shall also and in like manner be allowed on goods imported or exported in vessels of the other country.

With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State, whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege or immunity which shall hereafter be granted the nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals and vessels.

The stipulations of this Article do not extend to the treatment which is accorded by the United States to the commerce of Cuba under the provisions of the Commercial Convention concluded by the United States and Cuba on December 11, 1902, or any other commercial convention which hereafter may be concluded by the United States with Cuba, or to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws, or to the treatment which Salvador accords or may hereafter accord to the commerce of Costa Rica, Guatemala, Honduras, Nicaragua, and/or Panama, so long as any special treatment accorded to the commerce of those countries or any of them by Salvador is not accorded to any other country.

Article VIII

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 IX

No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories of either

country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels. Such equality of treatment shall apply reciprocally to the vessels of the two countries respectively from whatever place they may arrive and whatever may be their place of destination.

ARTICLE X

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the party whose flag is flown.

ARTICLE XI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that the vessels of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade the most favored nation treatment, excepting that special treatment with respect to the coasting trade of Salvador may be granted by Salvador on condition of reciprocity to vessels of Costa Rica, Guatemala, Honduras, Nicaragua, and/or Panama, so long as such special treatment is not accorded to vessels of any other country.

ARTICLE XII

Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they

pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of such corporations and associations of either High Contracting Party so recognized by the other to establish themselves within its territories, establish branch offices and fulfill their functions therein shall depend upon, and be governed solely by, the consent of such Party as expressed in its National, State, or Provincial laws. If such consent be given on the condition of reciprocity, the condition shall be deemed to relate to the provisions of the laws, National, State, or Provincial, under which the foreign corporation or association desiring to exercise such rights is organized.

Article XIII

The nationals of either High Contracting Party shall enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no condition less favorable than those which have been or may hereafter be imposed upon the nationals of the most favored nation. The rights of any of such corporations or associations as may be organized or controlled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, National, State or Provincial, which are in force or may hereafter be established within the territories of the Party wherein they propose to engage in business.

The nationals of either High Contracting Party shall, moreover, enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain of the other.

ARTICLE XIV

There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from or going through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law. Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, and shall be given national treatment as regards charges, facilities, and all other matters.

Goods in transit must be entered at the proper custom house, but they shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

ARTICLE XV

Each of the High Contracting Parties agrees to receive from the other, consular officers in those of its ports, places and cities, where it may be convenient and which are open to consular representatives of any foreign country.

Consular officers of each of the High Contracting Parties shall after entering upon their duties, enjoy reciprocally in the territories of the other all the rights, privileges, exemptions and immunities which are enjoyed by officers of the same grade of the most favored nation. As official agents such officers shall be entitled to the high consideration of all officials, national or local, with whom they have official intercourse in the state which receives them.

The Governments of each of the High Contracting Parties shall furnish free of charge the necessary exequatur of such consular officers of the other as present a regular commission signed by the chief executive of the appointing state and under its great seal; and they shall issue to a subordinate or substitute consular officer duly appointed by an accepted superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function. On the exhibition of an exequatur, or other document issued in lieu thereof to such subordinate, such consular officer shall be permitted to enter upon his duties and to enjoy the rights, privileges and immunities granted by this Treaty.

ARTICLE XVI

Consular officers, nationals of the state by which they are appointed, shall be exempt from arrest except when charged with the commission of offenses locally designated as crimes other than misdemeanors and subjecting the individual guilty thereof to punishment. Such officers shall be exempt from military billetings, and from service of any military or naval, administrative or police character whatsoever.

In criminal cases the attendance at the trial by a consular officer as a witness may be demanded by the prosecution or defence. The demand shall be made with all possible regard for the consular dignity and the duties of the office; and there shall be compliance on the part of the consular officer.

Consular officers shall be subject to the jurisdiction of the courts in the state which receives them in civil cases, subject to the proviso, however, that when the officer is a national of the state which appoints him and is engaged in no private occupation for gain, his testimony shall be taken orally or in writing at his residence or office and with due regard for his convenience. The officer should, however, voluntarily give his testimony at the trial whenever it is possible to do so without serious interference with his official duties.

ARTICLE XVII

Consular officers, including employees in a consulate, nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services.

Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

ARTICLE XVIII

Consular officers may place over the outer door of their respective offices the arms of their State with an appropriate inscription designating the official office. Such officers may also hoist the flag of their country on their offices including those situated in the capitals of the two countries. They may likewise hoist such flag over any boat or vessel employed in the exercise of the consular function.

The consular offices and archives shall at all times be inviolable. They shall under no circumstances be subjected to invasion by any authorities of any character within the country where such offices are located. Nor shall the authorities under any pretext make any examination or seizure of papers or other property deposited within a consular office. Consular offices shall not be used as places of asylum. No consular officers shall be required to produce official archives in court or testify as to their contents.

Upon the death, incapacity, or absence of a consular officer having no subordinate consular officer at his post, secretaries or chancellors, whose official character may have previously been made known to the government of the State where the consular function was exercised, may temporarily exercise the consular function of the deceased or incapacitated or absent consular officer; and while so acting shall enjoy all the rights, prerogatives and immunities granted to the incumbent.

ARTICLE XIX

Consular officers of either High Contracting Party may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting the nationals of the State by which they are appointed in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general or the consular officer stationed at the capital may apply directly to the government of the country.

ARTICLE XX

Consular officers may, in pursuance of the laws of their own country, take, at any appropriate place within their respective districts, the depositions of any occupants of vessels of their own country, or of any national of, or of any person having permanent residence within the territories of, their own country. Such officers may draw up, attest, certify and authenticate unilateral acts, deeds, and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party. They may draw up, attest, certify and authenticate

written instruments of any kind purporting to express or embody the conveyance or encumbrance of property of any kind within the territory of the State by which such officers are appointed, and unilateral acts, deeds, testamentary dispositions and contracts relating to property situated, or business to be transacted within, the territories of the State by which they are appointed, embracing unilateral acts, deeds, testamentary dispositions or agreements executed solely by nationals of the State within which such officers exercise their functions.

Instruments and documents thus executed and copies and translations thereof, when duly authenticated under his official seal by the consular officer shall be received as evidence in the territories of the High Contracting Parties as original documents or authenticated copies, as the case may be, and shall have the same force and effect as if drawn by and executed before a notary or other public officer duly authorized in the country by which the consular officer was appointed; provided, always that such documents shall have been drawn and executed in conformity to the laws and regulations of the country where they are designed to take effect.

Article XXI

A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit.

When an act committed on board of a private vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of that State, subjecting the person guilty thereof to punishment as a criminal, the consular officer shall not exercise jurisdiction except in so far as he is permitted to do so by the local law.

A consular officer may freely invoke the assistance of the local police authorities in any matter pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

A consular officer may appear with the officers and crews of vessels under the flag of his country before the judicial authorities of the State to which he is appointed to render assistance as an interpreter or agent.

ARTICLE XXII

In case of the death of a national of either High Contracting Party in the territory of the other without having in the territory of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the State of which the deceased was a national of the fact of his death, in order that necessary information may be forwarded to the parties interested.

In case of the death of a national of either of the High Contracting Parties without will or testament, in the territory of the other High Contracting Party, the consular officer of the State of which the deceased was a national and within whose district the deceased made his home at the time of death, shall, so far as the laws of the country permit and pending the appointment of an administrator and until letters of administration have been granted, be deemed qualified to take charge of the property left by the decedent for the preservation and protection of the same. Such consular officer shall have the right to be appointed as administrator within the discretion of a tribunal or other agency controlling the administration of estates provided the laws of the place where the estate is administered so permit.

Whenever a consular officer accepts the office of administrator of the estate of a deceased countryman, he subjects himself as such to the jurisdiction of the tribunal or other agency making the appointment for all necessary purposes to the same extent as a national of the country where he was appointed.

ARTICLE XXIII

A consular officer of either High Contracting Party may in behalf of his non-resident countrymen receipt for their distributive shares derived from estates in process of probate or accruing under the provisions of so-called Workmen's Compensation Laws or other like statutes provided he remit any funds so received through the appropriate agencies of his Government to the proper distributees, and provided further that he furnish to the authority or agency making distribution through him reasonable evidence of such remission.

ARTICLE XXIV

A consular officer of either High Contracting Party shall have the right to inspect within the ports of the other High Contracting Party within his consular district, the private vessels of any flag destined or about to clear for ports of the country appointing him in order to observe the sanitary conditions and measures taken on board such vessels, and to be enabled thereby to execute intelligently bills of

health and other documents required by the laws of his country, and to inform his Government concerning the extent to which its sanitary regulations have been observed at ports of departure by vessels destined to its ports, with a view to facilitating entry of such vessels therein.

ARTICLE XXV

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 law of either of the High Contracting Parties, may be brought into its territories.

It is understood, however, that this privilege shall not be extended to consular officers who are engaged in any private occupation for gain in the countries to which they are accredited, save with respect to governmental supplies.

ARTICLE XXVI

All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred. Pending the arrival of such officer, who shall be immediately informed of the occurrence, the local authorities shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry or exportation of the merchandise saved. It is understood that such merchandise, although not exempt from the usual warehouse charges for storage and expenses, is not to be subjected to any custom house charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

ARTICLE XXVII

Subject to any limitation or exception hereinabove set forth, or hereafter to be agreed upon, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land, water, and air over which the Parties respectively claim and exercise dominion as sovereign thereof, except the Panama Canal Zone.

ARTICLE XXVIII

Except as provided in the third paragraph of this Article the present Treaty shall remain in full force for the term of ten years from the date of the exchange of ratifications, on which date it shall begin to take effect in all of its provisions.

If within one year before the expiration of the aforesaid period of ten years neither High Contracting Party notifies to the other an intention of modifying by change or omission, any of the provisions of any of the articles in this Treaty or of terminating it upon the expiration of the aforesaid period, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the Treaty.

The fifth and sixth paragraphs of Article VII and Articles IX and XI shall remain in force for twelve months from the date of exchange of ratifications, and if not then terminated on ninety days previous notice shall remain in force until either of the High Contracting Parties shall enact legislation inconsistent therewith when the same shall automatically lapse at the end of sixty days from such enactment, and on such lapse each High Contracting Party shall enjoy all the rights which it would have possessed had such paragraphs or articles not been embraced in the Treaty.

ARTICLE XXIX

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at San Salvador as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same and have affixed their seals thereto.

DONE in duplicate, in the English and Spanish languages at San Salvador, this twenty-second day of February, nineteen hundred and twenty-six.

[SEAL] C. VAN H. ENGERT
[SEAL] R. ARRIETA ROSSI

Treaty Series No. 827

Protocol of Exchange [39]

The undersigned Plenipotentiaries met this day for the purpose of exchanging the ratifications of the Treaty of Friendship, Commerce and Consular Rights between the United States of America and the Republic of El Salvador, signed at San Salvador on February 22, 1926.

Before proceeding to the exchange, the Chargé d'Affaires ad interim of the United States of America, being duly authorized thereto by his Government, hereby declares that it is the understanding of the Government of the United States of America that the rights of commerce and navigation accorded in respect of vessels by Article VII of the said treaty apply to merchant vessels and to none others, and that the authority granted in the second sentence of Article XX to the consular officers of either country in the other to draw up, attest, certify and authenticate unilateral acts, deeds and testamentary dispositions of their countrymen and also contracts to which a countryman is a party is solely in order that such instruments may be effective in the territory of the State by which such consular officers have been appointed.

These understandings being in accordance with the modifications in the form of the treaty set forth in Legislative Decree of June 30, 1927, of the National Legislative Assembly of El Salvador,[40] the ex-

[39] This protocol of exchange was signed in English and Spanish by the plenipotentiaries of the United States and Salvador at the time of the exchange of ratifications of the treaty of friendship, commerce and consular rights.

[40] Reading in part in translation:

"The National Legislative Assembly of the Republic of Salvador,

. . . . . .

"DECREES:

"Sole Article. The Legislative decree of May 31, 1926 hitherto referred to is reconsidered; and the Treaty alluded to is ratified in the form in which it was signed by the High Contracting Parties, with the following modifications only:

"(*a*) The first paragraph of Article VII, the clause which says: 'The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation', is approved thus: 'The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their merchant vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation'; and

"(*b*) The first paragraph of Article XX, in the part which says: 'Such officers may draw up, attest, certify and authenticate unilateral acts, deeds, and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party', is approved thus: 'Such officers may draw up, attest, certify and authenticate unilateral acts, deeds, and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party, to the end that they have effect in the territory of the State which has appointed said officers.'"

Diario Oficial, July 23, 1927 (file No. 711.162/102).

change of ratifications of the said treaty took place in the usual manner.

In witness whereof, the respective Plenipotentiaries have signed the present Protocol of Exchange and have affixed thereto their seals.

Done at San Salvador this fifth day of September, one thousand nine hundred and thirty.

[SEAL] W. W. SCHOTT
[SEAL] J. MARTÍNEZ SUÁREZ

SPAIN

CONVENTION BETWEEN THE UNITED STATES AND SPAIN FOR THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS, SIGNED FEBRUARY 10, 1926[1]

711.529/14

The Ambassador in Spain (Moore) to the Secretary of State

No. 370 MADRID, *July 12, 1924.*

[Received July 28.]

SIR: In confirmation of my cipher telegram No. 35 of July 11th, 5 p. m., and in pursuance of the Department's instruction No. 61 of February 15, 1924,[2] relative to a proposed Convention with Spain to aid in the prevention of the smuggling of intoxicating liquors into the United States, I have the honor to transmit herewith a copy and translation of a Note from the Foreign Office, No. 67 of July 8, 1924, enclosing a draft of Convention [2] and stating that the Spanish Government accepts in principle the terms of the proposed Convention as set forth in the text forwarded with the instruction under acknowledgment.[3]

An objection, however, is raised by the Spanish Government to the provisions of Article 1 of the proposed Convention, which establishes that "the Authorities of either of the High Contracting Parties may, within a distance of twelve geographical miles from its coasts, board the private vessels of the other" in order to institute the appropriate search.

It is proposed that Article 1 be changed to read as follows: "The High Contracting Parties declare that it is their firm intention to uphold the principle that the proper limits of their respective territorial waters continue to be those determined by the legislation of the two countries." For the extent of jurisdiction over territorial waters claimed by Spain for all purposes except that of neutrality, the Department is referred to this Embassy's despatch No. 271 of March 4, 1924.[4]

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[1] For correspondence concerning proposal by the United States to other powers to sanction by treaty the right to search foreign ships within 12 miles from shore for the prevention of liquor smuggling, see *Foreign Relations*, 1923, vol. I, pp. 133 ff.

[2] Neither printed.

[3] The text here referred to was a confirmation copy of that transmitted to the Ambassador in Spain in telegram No. 27, June 9, 1923, 4 p. m., *Foreign Relations*, 1923, vol. I, p. 150.

[4] *Ibid.*, p. 225.

With the exception of an additional clause and an unimportant modification of paragraph 2 of the Article relating to the settlement of claims arising under the Convention, the proposed text thereof is identical to that of the Convention between the United States and Great Britain of January 23, 1924,[5] which the Spanish Government states it would be willing to accept in general terms. The additional clause proposed by the Spanish Government reads as follows: "Nevertheless, ships will not be held responsible for acts committed or attempted by a person or persons aboard said ships exclusively and in contravention of the laws obtaining in the premises."

The above mentioned minor modification of paragraph 2 of Article 4 of the British Convention (Article 6, Spanish draft) is: "On the other hand, that is to say, when the aforementioned persons do not succeed in reaching agreement, the claim shall be referred to an arbiter in accordance with the provisions of the special Arbitration Convention concluded between Spain and the United States April 20, 1908,[6] prorogued for five years on March 8, 1919,[7] and ratified October 14th of that year."

In communicating the foregoing to the Department, pursuant to the request of the Foreign Office, I venture to renew the suggestion made in my telegram No. 35 of yesterday's date that I be furnished as soon as practicable with a draft of Convention agreeable to the Department.

I have [etc.] ALEXANDER P. MOORE

711.529/19

Memorandum by the Under Secretary of State (Grew)

[WASHINGTON,] *December 5, 1924.*

LIQUOR TREATY AND COMMERCIAL TREATY

At my request the Spanish Ambassador called today and with reference to our conversation of November 20[8] I informed him that this Government was now prepared to conclude a liquor treaty with Spain and that as already stated to him we felt that the final conclusion of such a treaty should be simultaneous with an exchange of notes providing for unconditional most-favored-nation treatment of exports and imports of indefinite duration yet subject to termination on a reasonably short notice and give both parties the benefit of any commercial advantages thereafter given to third States. I said to the Ambassador that the draft of a proposed liquor treaty submitted

[5] *Ibid.*, 1924, vol. I, p. 158.
[6] *Ibid.*, 1908, p. 721.
[7] *Ibid.*, 1919, vol. II, p. 807.
[8] Memorandum of conversation not printed.

by the Spanish Government to our Ambassador in Madrid on July 8, 1924,[8a] was not wholly satisfactory to us and that we desired to propose certain changes in that draft, notably in Article 1 and Article 6 and by the elimination of the proposed additional clause under Article 3. I explained to the Ambassador the nature of these counter proposals and said that as they were contained textually in the liquor treaty which we had concluded with Italy[9] I felt I could not do better than to hand to him the text of our treaty with Italy. I said that we should be willing to adopt that text exactly as it stands for the conclusion of a treaty with Spain. I then handed to the Ambassador our note of December 5[10] proposing an unconditional most-favored-nation agreement and said if this proposal should commend itself to the Spanish Government it would simply be necessary for that Government to send us a note accepting the terms of our proposal which we would acknowledge in due course and the agreement would thereupon go into effect on the termination of the present agreement on May 5, 1925. I said to the Ambassador that while the negotiations for unconditional most-favored-nation treatment had hitherto taken place in Madrid we were making these proposals through him instead of through Mr. Moore in view of the fact that he had taken up with us the question of a liquor treaty and the further fact that we desired to associate the two subjects.

The Ambassador said that he would cable our proposals to his Government immediately. J. C. G[REW]

711.529/23

The Spanish Ambassador (Riaño) to the Secretary of State

[Translation[11]]

No. 74–18 WASHINGTON, *October 16, 1925.*

MR. SECRETARY: In compliance with instructions received from my Government, I have the honor to forward herewith to Your Excellency the full powers which His Majesty, the King, my August Sovereign, has deigned to grant me to proceed with the signing of a convention with the United States to permit the carrying of alcoholic beverages on Spanish vessels bound for ports of this Republic, its territories and possessions, or bound for other foreign ports in transit through its territorial waters while carrying a cargo of that kind.

I also forward herewith to Your Excellency a copy of the basis for the conclusion of the said convention[8a] drawn up in accordance with

[8a] Not printed.
[9] *Foreign Relations*, 1924, vol. I, p. 185.
[10] *Ibid.*, vol. II, p. 691.
[11] File translation revised.

the proposition of the Royal Minister of State in Madrid and the changes therein made by the Department of State of the United States.

When the powers and text above referred to shall have been examined and found to be in due form, I shall be pleased if Your Excellency will let me know that they are acceptable and appoint the day and hour when the convention is to be signed.

Accept [etc.] JUAN RIAÑO

711.529/23

The Secretary of State to the Spanish Ambassador (Riaño)

WASHINGTON, *December 1, 1925.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note (No. 74–18) of October 16, 1925, and its enclosures, being your full powers to sign a convention with the United States to aid in the prevention of the smuggling of intoxicating liquors into the United States, which would allow Spanish vessels to carry such liquors into the territorial waters of the United States, its territories and possessions as sea stores or as cargo in transit to other countries, and a tentative draft of the Spanish text of the proposed convention.

Your Government will readily understand how important it is to the United States that in all essential particulars uniformity shall be maintained in the conventions relating to this matter to which the Government of the United States becomes a party. While it has been noted that the text of the draft submitted by you presents a number of variations from the texts of the similar conventions now in force between the United States and other countries, I am glad to be able to inform you that with few exceptions these variations present no difficulties to the acceptance of that draft by this Government.

The points to which I desire to invite the consideration of your Government are as follows:

(1) The second sentence of Article V of the draft submitted by you is translated as follows:

"It will be understood that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions."

It is the desire of this Government that the provision that liquors shall be kept under seal while the vessel carrying them is within the territorial waters of the United States and shall not be unladen within the United States shall be expressed in a form which will make clear that these requirements are conditions which must be complied with by Spanish vessels in order that effect may be given to the immunity from penalty or forfeiture provided by the article. This Government therefore proposes to substitute the word "provided" for the words "It will be understood" in the English text of the proposed convention at the beginning of the sentence quoted and to join the sentence to the

preceding sentence as a part thereof. I should be glad to be informed whether the force which this Government desires the provision shall have is given by the expression "Se entendera" which is used in the Spanish draft, and if it is not, of the change which should be made in order that the Spanish text will have that force.

(2) It is suggested that in Article VI, line 15, the expression within the parentheses, viz.—(articulo 70 y 74 excepcion hecha de los 53 y 54), should be the Spanish equivalent of the provision "special regard being had for Articles 70 and 74 but excepting Articles 53 and 54." If the Spanish text in its present form does not convey this meaning it would be desirable to have the necessary change made therein.

(3) This Government considers it to be important that the fact that awards are not to bear interest should be expressly stated in the convention. It asks therefore that the words "without interest" be inserted in the fourth sentence of the second paragraph of Article VI. As the insertion of these words in the English text at the place which seems to be most appropriate,—namely,—between the words "the final award" and the phrase "save as hereafter specified", without other change in the text might give rise to some uncertainty of meaning, it is suggested that the words "and without deduction" also be inserted so that the sentence will read "The sums of money which may be awarded by the Tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction save as hereafter specified."

(4) It is suggested that the first paragraph of Article VII be revised as follows: that a period be placed after the word "legislaciones" and that in place of the remainder of the paragraph the following be substituted: "It shall come into force on the day of the exchange of ratifications, which shall take place at Washington as soon as possible, and shall remain in force for one year."

A copy of the English translation of the draft submitted by you, amended in accordance with the foregoing suggestions, is enclosed.[13] If the draft as so amended is acceptable to your Government, I shall be pleased on being informed thereof and of the amendments required in the Spanish text as a consequence of such acceptance, to make the necessary arrangements for the preparation and signing of the convention.

I beg to return herewith your full powers which have been examined and found to be in good and due form.

Accept [etc.] FRANK B. KELLOGG

711.529/24

The Spanish Ambassador (Riaño) to the Secretary of State

[Translation]

No. 63-05 WASHINGTON, *January 20, 1926.*

MR. SECRETARY: Referring to Your Excellency's note of December 1 last (711.529/23) in which various changes in the reading of the

[13] Not printed.

draft of the convention for the transportation of alcoholic beverages on Spanish vessels bound for the United States or in transit across its territorial waters, I have the honor to inform Your Excellency that upon my transmitting the contents of the said note and its accompaniments to the Government of His Catholic Majesty, the Minister of State has sent me instructions by cable to say to the Government of the United States that that of His Catholic Majesty accepts the changes as proposed by Your Excellency and authorizes me to sign the said convention.

The Minister of State, however, suggests at the same time the expediency of putting in place of the words "se entenderá" (it will be understood) in Article V the words "y siempre que" (and provided), as it is agreeing better with your Government's wishes striking out the period after the word "Panama" and substituting "may remain" for "will remain". In case the Government of the United States should accept the change in the aforesaid Article V as indicated the said Article would stand reading as follows:

"No penalty or forfeiture under the laws of the United States shall be applicable to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors when they are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board Spanish vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions."

I shall thank Your Excellency kindly to let me know if you find it expedient that you agree with the above stated proposal and if so, let me know the day and hour which you find it convenient to set for the signature of the convention.

I avail myself [etc.] JUAN RIAÑO

711.529/24

The Secretary of State to the Spanish Ambassador (Riaño)

WASHINGTON, *February 8, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 63-05 of January 20, 1926, informing me that you have been instructed by your Government to say that His Majesty accepts the changes in the text of the Convention to Aid in the Prevention of Smuggling of Intoxicating Liquors into the United States suggested in my note of December 1, 1925, and authorizes you to sign the Convention.

An accord having thus been reached on the Spanish and English texts of the Convention, the instruments have been put in form for signature and I shall be happy to sign the Convention with you on Wednesday, February 10, 1926, at twelve o'clock noon, if that day and hour suit your convenience.

Accept [etc.] FRANK B. KELLOGG

Treaty Series No. 749

Convention Between the United States of America and Spain, Signed at Washington, February 10, 1926[14]

The President of the United States of America and His Catholic Majesty the King of Spain being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages have decided to conclude a Convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America; the Honorable Frank B. Kellogg, Secretary of State of the United States; and

His Catholic Majesty the King of Spain; Don Juan Riaño y Gayangos, His Ambassador Extraordinary and Plenipotentiary at Washington, Knight Grand Cross of the Royal and Distinguished Order of Charles III, Grand Cross of Isabel the Catholic, Grand Cross of the Military Merit, Grand Cross of the Naval Merit, Grand Star of Honor of the Spanish Red Cross, Gold Medal of the San Payo Bridge, Grand Cross of the Order of Cambodge, Danebrog of Denmark and Saint Olaf of Norway, Commander of the Legion of Honor of France, Knight of Leopold of Belgium, of the Conception of Villaviciosa of Portugal, His Gentleman of the Chamber, etc., etc., etc.;

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

ARTICLE I

The High Contracting Parties respectively retain their rights, without prejudice by reason of this agreement, with respect to the extent of their territorial jurisdiction.

ARTICLE II

His Majesty, the King of Spain, agrees that he will raise no objection to the boarding of Spanish merchant vessels outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the pur-

[14] In English and Spanish; Spanish text not printed.

pose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such inquiries and examination show a reasonable ground for suspicion, a search of the vessel, which shall have given ground for such suspicion, may be initiated.

ARTICLE III

If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with the pertinent provisions of law.

ARTICLE IV

The boarding referred to in Article II of this Convention shall not be made at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of the first of the said vessels and not the speed of the vessel boarded, which shall determine the distance from the coast within which the action referred to in Article II may be taken.

ARTICLE V

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors when they are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board Spanish vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE VI

Any claim preferred in behalf of a Spanish vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by

Article II of this Treaty or on the ground that it has not been given the benefit of Article V shall be referred for the joint consideration of two persons one of whom shall be nominated by each of the High Contracting Parties and whose decision shall be given effect, if made in common accord.

Otherwise, that is to say when the said persons shall fail to agree, the claim shall be referred to the Permanent Court of Arbitration at The Hague created by the Convention for the Pacific Settlement of International Disputes, signed at The Hague, October 18, 1907. The Arbitral Tribunal shall be constituted in accordance with Articles 87 and 59 (Chapters 4 and 3 of that Convention). The proceedings shall be regulated by the provisions in the said Chapters 3 and 4 (special regard being had to Articles 70 and 74 but excepting articles 53 and 54) which the Tribunal may consider to be applicable and to be consistent with the provisions of this agreement. The sums of money which may be awarded by the Tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction save as hereafter specified. Each Government shall bear its own expenses. The expenses of the Tribunal shall be defrayed by a ratable deduction of the amount of the sums awarded by it, at a rate of five per cent on such sums, or at such lower rate as may be agreed upon between the two Governments; the deficiency, if any, shall be defrayed in equal moieties by the two Governments.

Article VII

This Convention shall be ratified by both parties in accordance with their respective constitutional methods. It shall come into force on the day of the exchange of ratifications, which shall take place at Washington as soon as possible and shall remain in force for one year.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the Convention. If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the Convention shall lapse at the end of said period. If no notice is given on either side of the desire to propose modifications, the Convention shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the Convention that they may deem expedient and in case they fail to arrive at an agreement regarding these before the end of the term, the Convention will cease and determine at the end of said period.

ARTICLE VIII

In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present Convention the said Convention shall automatically lapse, and, on such lapse or whenever this Convention shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this Treaty not been concluded.

In witness whereof the respective Plenipotentiaries have signed the present Convention in duplicate, in the English and Spanish languages, and have thereunto affixed their seals.

Done at the city of Washington this tenth day of February, one thousand nine hundred and twenty-six.

[SEAL] FRANK B. KELLOGG
[SEAL] JUAN RIAÑO Y GAYANGOS

711.529/26

The Spanish Chargé (Amoedo) to the Secretary of State

[Translation]

No. 67–19 WASHINGTON, *August 27, 1926.*

MR. SECRETARY: Referring to previous notes of this Embassy of His Majesty and to those from the State Department dealing with the Convention between Spain and the United States concerning alcoholic beverages and this Convention having been signed by the parties concerned and ratified by the Senate of the United States [15] in order that the Spanish vessels which may call at the ports of the United States may have no trouble in the matter with the customs authorities and the prohibition officers and in particular in the ports of New York, San Juan, Porto Rico, Galveston, Texas, Houston, Texas, New Orleans, Louisiana, and Mobile, Alabama, where vessels most often call, I beg your Excellency kindly to issue appropriate instructions to the authorities at those ports in the sense that effect may be given to the said Convention.

I avail myself [etc.] MARIANO AMOEDO

711.529/26

The Secretary of State to the Spanish Chargé (Amoedo)

WASHINGTON, *September 9, 1926.*

SIR: I beg to acknowledge the receipt of your note of August 27, 1926, in which, referring to the Convention signed between the United States and Spain on February 10, 1926, to aid in preventing the

[15] Ratification advised by the Senate, Mar. 3, 1926; ratified by the President, Mar. 30, 1926.

smuggling of alcoholic liquors into the United States, and to the fact that advice and consent to the ratification of this Convention has been given by the Senate of the United States, you request that appropriate instructions be issued to the customs authorities and prohibition officers in the Ports of the United States and Porto Rico, in order that Spanish vessels may call at these Ports in conformity with the terms of the Convention.

It is proper to point out that by its provisions, the Convention mentioned will not go into effect until the day on which the exchange of ratifications shall take place, and that while the Convention has been ratified by the President, by and with the advice and consent of the Senate, no advice has reached the Department of State of the ratification of the Convention by the Government of Spain. The exchange of ratifications has not, therefore, taken place, and the Convention is, consequently not in force. The Government of the United States is prepared to effect the exchange of ratifications at any time, and the Department hopes that it may soon learn that the Government of Spain is also ready. Upon the receipt of such advice, the Secretary of State will be happy to fix a day for the exchange, and when the exchange shall have been effected, the Government of the United States will not fail to fulfill promptly all the requirements imposed upon it by the Convention.[16]

Accept [etc.] FRANK B. KELLOGG

[16] The exchange of ratifications took place at Washington, Nov. 17, 1926, and the convention was proclaimed by the President on the same day.

SWITZERLAND

PROPOSED TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND SWITZERLAND

711.542/9

Memorandum by Mr. Prentiss B. Gilbert of the Division of Western European Affairs

[WASHINGTON,] *July 15, 1925.*

The commercial relationships of the United States with Switzerland are governed by the Convention of 1850,[1] proclaimed November 9, 1855, minus the operation of the "full and unlimited guarantee of the fullest most-favored-nation treatment" which was claimed by Switzerland thereunder and granted for a short period which ceased to be in effect on March 23, 1900.[2] Reference: Confidential despatch American Legation at Berne, No. 1156, September 11, 1923.[3]

Telegram to Legation Berne, September 29, 1923,[3] Department is prepared to negotiate with the Swiss Government a general treaty of amity, commerce and consular rights. Legation is instructed to inquire whether the negotiation of such a treaty would be agreeable to the Swiss Government, etc., etc.

Telegram from Mr. Grew, October 9, 1923,[3] stating that the Federal Council had examined question of negotiations and was quite in accord with our proposal.

Telegram to American Legation Berne, February [*November*] 27, 1923,[3] text of treaty will be mailed about December 1.

Telegram from Mr. Grew, March 11, 1924,[3] stating that before leaving Switzerland he would be glad, if possible, to inform Motta[4] when we shall carry out our intentions with regard to the negotiation of a treaty.

Telegram to American Legation, Berne, March 14, 1924,[3] stating that before proceeding with negotiation, the Department must await action of Senate on German treaty.[5]

P[RENTISS] B. G[ILBERT]

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[1] Miller, *Treaties*, vol. 5, p. 845.
[2] See *Foreign Relations*, 1899, pp. 740 ff.
[3] Not printed.
[4] Dr. Giuseppe Motta, Chief of the Swiss Political Department.
[5] Treaty of friendship, commerce and consular rights, signed Dec. 8, 1923; *Foreign Relations*, 1923, vol. II, p. 29.

711.542/4A : Telegram

The Secretary of State to the Chargé in Switzerland (Atcherson)

[Paraphrase]

WASHINGTON, *July 23, 1926—4 p. m.*

83. Reference previous correspondence.[7] This Government would be pleased to enter at this time into negotiation of a treaty of friendship, commerce and consular rights with Switzerland. The Department wishes to be informed whether the Swiss Government now favors entering into negotiations to supersede the treaty of 1850 as it did in October 1923. If the Swiss Government should be favorable to beginning negotiations at an early date, the draft of a treaty and instructions will be sent to you immediately.

The principle of the draft in regard to commercial provisions will be unconditional most-favored-nation treatment.

The draft also will include provisions in regard to rights of nationals of each country in the other; protection of property; and rights and immunities of consuls. The draft proposed will be in all essentials like the treaty between the United States and Hungary, signed June 24, 1925,[8] which in turn is similar to the treaty of December 8, 1923, with Germany, certain provisions relating to shipping being omitted as inapplicable to countries having no seacoast.

KELLOGG

711.542/10 : Telegram

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

BERNE, *November 4, 1926—noon.*

[Received November 4—11:04 a. m.]

119. Department's mail instruction No. 518, September 29.[9] Presented draft treaty to Motta November 2. He states that it must be carefully studied by various branches of Government and that it will be at least a month before he is in a position to discuss it.[10]

GIBSON

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[7] None printed.

[8] *Foreign Relations*, 1925, vol. II, p. 341.

[9] Not printed.

[10] Further negotiations failed to lead to the conclusion of a treaty.

TERMINATION OF REPRESENTATION OF SWISS INTERESTS IN EGYPT BY AMERICAN DIPLOMATIC AND CONSULAR OFFICERS[11]

704.5483/18

The Minister in Egypt (Howell) to the Secretary of State

No. 745 CAIRO, *January 18, 1926.*

[Received February 6.]

SIR: I have the honor to refer to the Department's instruction to this Legation No. 176, of September 10, 1924,[12] regarding Swiss interests in Egypt as applied especially to citizens of the German-Swiss cantons, and, apropos of same, to herewith enclose a copy of an *Aide Memoire* this day received from The Residency bearing upon the same subject matter. The Residency expressed the hope that it might have the comments of the Legation upon this question at as early a date as practicable.

Should the Department deem an answer to this proposition of such importance as to reply by cable same doubtless would be duly appreciated by His Britannic Majesty's principal representative in Egypt.

I have [etc.] J. MORTON HOWELL

[Enclosure]

The British Residency in Egypt to the American Legation

AIDE-MÉMOIRE

His Majesty's Government have been approached by the Swiss Government in connection with the following matter.

2. For some years past the Legation and the Consulates of the United States of America have extended their protection to some fifty Swiss subjects who were formerly registered at the German Consulates in this country.

3. In the year 1924 the Government of the United States, who it is understood do not permit their representatives abroad to exercise jurisdiction over persons other than their own nationals, expressed to the Swiss Government a desire to be discharged from their obligations towards the Swiss subjects in question. In view of the fact, however, that negotiations were pending between the Swiss and Egyptian Governments with a view to the establishment of Swiss representation in Egypt, the Government of the United States authorised their representatives in Egypt to continue to protect these persons until such time as their interests could be safeguarded by the representatives of the Confederation.

4. This consent was based on the assumption that the negotiations above referred to would be speedily concluded. Important diver-

[11] For previous correspondence concerning American consular protection to Swiss interests in Egypt, see *Foreign Relations*, 1924, vol. II, pp. 705 ff.

[12] *Ibid.*, p. 706.

gences of opinion between the two Governments have, however, since come to light, and it is therefore unlikely that Swiss representation will be established in Egypt in the near future. Under the circumstances the Swiss Government fear that the United States Government will feel constrained to reconsider their attitude towards these Swiss subjects and they have accordingly enquired whether His Majesty's Government would be willing to assume their protection.

5. His Majesty's Government are disposed favourably to consider this suggestion, but before taking any steps in the matter the Residency would be glad to receive the observations of the Legation of the United States on the subject.

CAIRO, *15 January, 1925 [1926]*.

704.5483/18 : Telegram

The Secretary of State to the Minister in Egypt (Howell)

WASHINGTON, *February 12, 1926—4 p. m.*

2. Your written despatch 745, January 18. You may inform British High Commissioner that if requested by the Swiss Government the Department would be pleased to instruct its representatives in Egypt to relinquish the representation of such Swiss interests in that country as are at present under their protection.

KELLOGG

704.5483/22

The Secretary of State to the Chargé in Egypt (Johnson)

No. 276 WASHINGTON, *July 7, 1926.*

SIR: Referring to the Legation's despatch No. 745 of January 18, 1926, in the matter of the representation of Swiss interests in Egypt, the Department encloses for your information and guidance a copy of a despatch, No. 883 of June 5, 1926,[13] received from the Legation at Berne enclosing a copy and translation of a note received from the Federal Political Bureau setting forth the steps taken by the Swiss Government with a view to relieving American officials in Egypt of the representation of such Swiss interests as are now under their protection.

It is desired that the Legation inform the three consular offices in Egypt of the action taken by the Swiss Government and report whether any Swiss property is in the possession of your mission or of the consulates in Egypt. It should be added that any corre-

[13] Despatch No. 883 not printed.

spondence or documents relating to Swiss interests which form a part of the Legation's or Consulates' official records or archives, are not considered as Swiss property.

I am [etc.]

For the Secretary of State:
JOSEPH C. GREW

[Enclosure—Translation]

The Swiss Federal Political Department to the American Legation

By note No. 38, of October 9, 1924,[14] the Legation of the United States of America was good enough to inform the Federal Political Department that the diplomatic and consular representatives of the United States in Egypt would be authorized to continue to take care of the interests of the Swiss citizens who find themselves under their protection since 1914, until the time, which then appeared to be near, when these interests could be protected by the agents of the Confederation. In taking cognizance, by note of October 27, 1924, of this kind notification, the Department promised to inform the Legation, at the proper time, of the result of the conferences between the Governments of Switzerland and Egypt with a view to organizing an official representation of Switzerland and Egypt.

In conformity with this promise, the Political Department has the honor to notify the Legation of the United States that the negotiations which have taken place between Switzerland and Egypt with a view to determining the legal status of the citizens of one of the two States within the territory of the other have ended in no agreement, so that the Government of the Confederation has no intention, for the moment, of sending diplomatic and consular representatives to Egypt, and finds itself obliged temporarily to leave its citizens in Egypt under the protection of friendly powers enjoying, in the Kingdom of Egypt, the rights of capitulation.

As it is impossible to estimate the duration of this temporary *modus vivendi*, the Swiss Government has taken steps with a view to relieving, in conformity with the request of the American Government, the diplomatic and consular representatives of the United States in Egypt of the protection of the Swiss registered with them. The latter will be invited to register, at their choice, with the diplomatic and consular representatives of Great Britain and Italy in Egypt.

The Department would be grateful to the Legation of the United States to be kind enough to bring the above to the attention of its

[14] Not printed; see Department's instruction No. 60, Sept. 10, 1924, *Foreign Relations*, 1924, vol. II, p. 707.

Government and to convey on behalf of the Federal Council the sentiments of its keen gratitude for the service which the Government of the United States so obligingly rendered in efficiently protecting, for twelve years, a certain number of Swiss established in Egypt.

The Department avails itself of this opportunity to renew to the Legation the assurance of its high consideration.

BERNE, *June 3, 1926.*

704.5483/23 : Telegram

The Acting Secretary of State to the Minister in Egypt (Howell)

WASHINGTON, *August 20, 1926—6 p. m.*

18. (1) Report briefly by telegraph action taken on Department's written instruction 276 of July 7.

(2) Have you arranged with British Residency for formal transfer of Swiss interests?

HARRISON

704.5483/24 : Telegram

The Chargé in Egypt (Johnson) to the Secretary of State

ALEXANDRIA, *August 21, 1926—9 a. m.*

[Received August 21—6:20 a. m.]

29. Your August 20, 6 p. m.; 276, July 7th. Instructions literally followed; information also circularized to registered Swiss. Residency expressed satisfaction August 10th. See also action of Egyptian Foreign Office reported in Legation's 860, August 3.[15]

JOHNSON

704.5483/29

The Minister in Egypt (Howell) to the Secretary of State

No. 907 CAIRO, *November 2, 1926.*

[Received November 29.]

SIR: I have the honor to refer to the Department's Instruction No. 287, of September 28, 1926,[16] requesting the Legation to report as to

[15] Not printed; it transmitted an official communiqué of the Egyptian Ministry of Foreign Affairs, published in the *Egyptian Gazette*, August 3, as follows:

"Up to 1915, Swiss citizens in Egypt were under the protection of the French and German Consulates. When the German Consulates were closed in that year, and German interests in Egypt were entrusted to the representatives of the United States, the latter had to extend their protection to those Swiss citizens who desired it. This temporary system has now come to an end, for the Swiss Government recently came to an agreement with both the Italian and British Governments giving the Swiss citizens in Egypt the right to choose either British or Italian protection according to their desires, and the Egyptian Government has approved the new arrangements. The protection by France of Swiss citizens in this country also remains unchanged."

[16] Not printed.

the exact date on which services on behalf of the Swiss Government by this Legation and the various consulates may be considered officially to have ceased.

In reply thereto I would state that the Legation has this day received letters from the consulates at Alexandria and Port Said, respectively, stating that Swiss nationals ceased to receive protection on August 31, 1926, and that the Cairo Consulate in its reply, dated November 1, 1926, stated that the letter from the Legation, dated August 5th, enclosing a copy of the Department's instruction No. 276, dated July 7, 1926, was received at the Consulate on August 7th. This instruction was immediately put into effect and the protection of Swiss interests in the Cairo Consular District, therefore, ceased on August 7, 1926.

Protection of Swiss interests by the Legation ceased on August 5, 1926.

I have [etc.] J. MORTON HOWELL

TURKEY

EFFORTS BY THE DEPARTMENT OF STATE TO OBTAIN RATIFICATION OF THE GENERAL TREATY BETWEEN THE UNITED STATES AND TURKEY, SIGNED AT LAUSANNE, AUGUST 6, 1923[1]

711.672/387 : Telegram

The American Men's and Women's Clubs of Constantinople to the Secretary of State[2]

PERA, *January 14, 1926.*

[Received 1:55 p. m.]

At a meeting today of American residents representing all phases of American educational missions, philanthropical, financial, and commercial interests in Turkey voted unanimously to express to you their earnest desire for prompt ratification Lausanne Treaty. They feel that their intimate personal knowledge of conditions in Turkey entitles their recommendations to more than ordinary consideration.

AMERICAN MEN'S AND WOMEN'S CLUBS
OF CONSTANTINOPLE
Per CHAIRMAN, COMMITTEE

711.672/397a : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *February 24, 1926—4 p. m.*

12. The Department has been informed that a canvass of the Senate indicates that at present there are not sufficient votes to secure ratification of the Turkish treaty; also, that there will be a very large Democratic vote against the treaty and possibly some Republican opposition. The plan of those in charge of the treaty in the Senate is to remain patient in the hope that they will eventually secure enough votes in favor of ratification. Any additional representations on the part of Americans in Turkey indicating the importance of ratification to American interests might be helpful at this stage. The above is for your discreet use and information.

KELLOGG

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[1] For previous correspondence concerning efforts to obtain the ratification of the treaties signed at Lausanne, see *Foreign Relations*, 1924, vol. II, pp. 709 ff., also telegram No. 30, Mar. 14, 1925, to the High Commissioner in Turkey, *post*, p. 992. For text of the general treaty, see *ibid.*, 1923, vol. II, p. 1153.

[2] On Jan. 18, 1926, the Secretary of State mailed a copy of this telegram to Senator William E. Borah, Chairman of the Senate Committee on Foreign Relations.

711.672/413a : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *March 27, 1926—3 p. m.*

18. Injunction of secrecy on Treaty of General Relations with Turkey was removed on motion of Senator Borah and full text of this Treaty, Turkish letters and declarations and minutes of the meeting of August 6, 1923 were published in *Congressional Record* of March 25th.[3] Proposed resolution of ratification contains the following reservations:

"First, that there shall be added to Article III of said Treaty the following: 'Nothing herein contained shall be construed to affect existing statutes of either country in relation to the immigration of aliens or the right of either country to enact such statutes.'

Second, that the second paragraph of Article IX and Article XIV shall remain in force for twelve months from the date of exchange of ratifications, and if not then terminated on ninety days' previous notice shall remain in force until Legislation inconsistent therewith shall be enacted by either of the High Contracting Parties when the same shall automatically lapse at the end of sixty days from such enactment, and on such lapse each High Contracting Party shall enjoy all the rights which it would have possessed had such paragraph or article not been embraced in the treaty."

These reservations are similar to those attached to the German Commercial Treaty,[4] see Treaty Series 725.

It seems likely that the Turkish Treaty will be taken up by the Senate shortly.

KELLOGG

711.672/445a : Telegram

The Acting Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *April 20, 1926—8 p. m.*

26. In an address delivered today in New York at a luncheon of the Associated Press, the Secretary of State made the following reference to the Turkish Treaty:

"Our Treaty with Turkey has recently been the subject of much comment. I do not propose, and indeed it would not be fitting at the present time for me to discuss this Treaty in detail. The criticism which has been directed against this Treaty has been negative, advocating rejection but proposing no alternative course of action. This Government cannot conduct its foreign policy with negatives. We must deal with each situation as it arises in a constructive way with a

[3] *Congressional Record*, vol. 67, pt. 6, pp. 6165, 6250–6256 (bound edition).

[4] See Senate resolution of Feb. 10, 1925, appended as a bracketed note to treaty between the United States and Germany, signed Dec. 8, 1923, regarding friendship, commerce, and consular rights, *Foreign Relations*, 1923, vol. II, p. 45.

view to the development of friendly relations between this and other countries. Thus, in considering our relations with Turkey and in our negotiations with the Turkish Government we have at no time departed from a traditional, a typical American policy. We have endeavored to afford proper protection to all legitimate American activities in Turkey; we have never thought of sacrificing one category of duties or one group of activities to some other category or group. We are aware of all the sufferings of some minority races in Turkey in the past years; we have not forgotten those actions and we do not by this treaty in any way condone them. We have not, however, approached our study of present day Turkey from the point of view of stultifying pessimism. On the contrary, we have noted with sympathy and approval definite signs of progress in that country. I do not believe that radical changes can be effected over night but enough has been done in Turkey recently to justify us in taking a positive and constructive attitude. We cannot of course aid these minorities or different races or American interests in Turkey by simply refusing to do anything. We will have more influence in behalf of American interests and those things dear to American opinion if we pursue the policy of this Treaty than if we remain entirely aloof. In elaborating upon our relations with Turkey we have constantly been aware of certain limits placed upon our action by traditional American policies sanctioned by emphatic expression of American public opinion. With respect to minorities in Turkey, for instance, in justice to our people and in justice to the minorities themselves, I have steadfastly refused to talk as though we were willing to make commitments which we had reason to believe this or any administration would never be authorized to carry out. It has been the policy during the entire history of this country not to guarantee the interests of foreign minorities in independent foreign states, but I may say generally that our ability to be helpful in any respect will be jeopardized if we have no treaty relations."

GREW

711.672/458a : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *May 8, 1926—1 p. m.*

31. Although Senator Borah does not feel certain he can secure ratification, nevertheless he is anxious to have the treaty brought up in the Senate and a vote taken before that body adjourns early in June. In considering the various possibilities involved in the treaty situation, the Department believes it would be very helpful to have your views on the subject. Please telegraph promptly your views on the following points:

1. The effect upon American interests in Turkey and upon the Turkish Government of (*a*) failure to ratify treaty within the next six weeks and (*b*) postponement of action on the treaty until next December when Congress reconvenes.

2. The possibility of renewing the *modus vivendi* now in force, and, if desirable, of extending its scope.[5]

3. The effect of the recent signs of a Greek-Italian *rapprochement* upon official circles at Angora. Is this effect of such a nature that if the treaty is rejected or further postponed Turkey will hesitate to take an intransigent attitude toward American interests? Is there likely to be a continuation of this effect?

4. Any additional aspects of the present situation in Turkey, whether domestic or international, which might affect American-Turkish relations were the treaty to be rejected or further postponed.

KELLOGG

711.672/464 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Paraphrase]

STAMBOUL (CONSTANTINOPLE), *May 15, 1926—2 p. m.*

[Received May 16—6:34 a. m.]

35. Department's telegram number 31, May 8, 1 p. m. I feel that this Mission and every American activity interested in Turkey have submitted all information possible to show that ratification of the American-Turkish treaty is necessary for the protection and expansion of every American interest in Turkey. However, the treaty should not be brought up for consideration and a vote taken before adjournment unless it is felt that consent to ratification can be secured. A postponement of action on the treaty until next session is preferable, but such a course would only be the lesser of two evils. In view of their lack of knowledge of our legislative procedure . . . the Turks would regard a vote without immediate ratification to be a virtual rejection of the treaty.

In presenting my views to the Department I desire to make a final appeal for the ratification of the treaty. Such a course is indispensable for the regularization of our position in Turkey as far as the status of this Mission and the vital protection of American interests are concerned.

1. In reply to 1 (*a*), I desire to state that American interests would have no protection by virtue of a treaty or of diplomatic representation. I think the Government of Turkey would take the position that it was justified in retaliating against American interests since the Government of the United States had not been appreciative in a general way of Turkey's friendly and sympathetic attitude towards this Mission and American interests generally. Recent attacks on

[5] See notes exchanged February 18, 1926, pp. 999–1000.

Turkey such as the one by Bishop Manning[6] would intensify this retaliation. Turkey is unable to understand why the Government of the United States cannot prevent these attacks. Consequently, she believes the Government of the United States and the Senate are responsible for them. It is conceivable that Turkey might object to the continuance of this Mission, in which case the good will existing between this Mission and the Government of Turkey, and thus between the two Governments, would be sacrificed, and the restoration thereof made difficult and long-drawn-out.

In reply to 1 (*b*), I desire to state that the effect of a postponement of action upon American interests in Turkey and upon the Government of Turkey would be similar to the effects that would result from a rejection of the treaty, but it would be less, and the present *status quo* under which neither the Senate of the United States nor the Assembly of Turkey has taken definitive steps against the treaty would not be disturbed. I fear that the already long delay in ratification and the continuous and extensive campaign against ratification will cause the Turkish Government to overlook the very recent publicity in favor of ratification and to view postponement of action in the same light as definite rejection. Possibly the Turkish Assembly, when it meets next October, will bring up the treaty and reject it without waiting for further action by the United States.

2. I invite the attention of the Department to paragraph 4 of note from Foreign Office, dated January 25, transmitted in despatch No. 1784, dated February 1.[7] There is no reason to believe that Turkey would renew or extend the *modus vivendi*. In fact there are signs that Turkey would not consider renewing it. There is little likelihood that the scope of the *modus vivendi* could be enlarged. Should the United States approach the Turkish Government under these circumstances for a renewal of the *modus vivendi*, an excellent opportunity would present itself to Turkey to manifest an ill will openly against this Mission, American interests, and the Government of the United States.

3. Nervousness and alarm over the supposed designs of Italy and the reported Greco-Italian *rapprochement* were once discernible in official circles at Angora. At the present time, however, this attitude has completely changed, and the encouraging progress of the Mosul negotiations and the conclusion of Persian, Russian, and Syrian treaties have placed Turkey in a stronger international position than it has occupied for some time. Should the Mosul question be successfully solved, the attitude of Italy or Greece will be of minor importance to Turkey. I am of the opinion that an external

[6] Rt. Rev. William T. Manning, Protestant Episcopal Bishop of New York.
[7] Neither printed.

threat against Turkey would have no material effect upon Turkey's attitude toward American interests. If Turkey thought she could get material assistance from the United States to meet a warm Italian *rapprochement*, her attitude toward American interests would be less intransigent. My belief is that Turkey does not think she can get such assistance from the United States.

4. The domestic situation of Turkey appears to be good, if not better, than at any time since the new regime came into power. Efforts to balance the budget and the application of new taxes disturb the financial and economic situation. The new taxes have removed [*given rise to?*] an unusual amount of criticism, but, if past experience means anything, it is likely that after the first outburst the public will accept the new tax measures with the usual indifference. I believe the Turks have given up hope of interesting American capital in Turkey. In the interior, security and order are better than in many years. The crop outlook is as good as, if not better than, last season. Turkey's international relations appear to be improving at the present time. Turkey's negotiations with Great Britain over the Mosul question and with Greece over exchange of populations are proceeding favorably. Although it is a grave mistake to predict future political situations in Turkey and the Near East, my opinion is that the present and future domestic and international situations of Turkey are such that the rejection of the Lausanne Treaty or the postponement of action thereon would be a grave mistake. The many possibilities involved, as I have endeavored to point out in this telegram, seem to put grave responsibility upon all concerned for the Government of the United States to provide protection for American interests in Turkey which is due them; and no fervent or sentimental interests should be allowed to prevent this protection being extended without delay.

BRISTOL

711.672/465a

The Under Secretary of State (Grew) to Senator Charles Curtis

WASHINGTON, *May 20, 1926.*

DEAR SENATOR CURTIS: In accordance with your request, I am sending you enclosed a statement of the outstanding reasons why we believe the Treaty with Turkey should be ratified. I have endeavored to make it as brief as possible without sacrificing a clear presentation of the situation.

If you desire to have this statement mimeographed and will send me a telephone message as to how many copies you wish, I can have them struck off and sent to you immediately.

Sincerely yours,

JOSEPH C. GREW

[Enclosure]

A Statement of the Outstanding Reasons Why the Treaty With Turkey Should Be Ratified

1. Our old treaties with Turkey do us no good now. They cannot be effectively invoked to protect our interests in Turkey at the present time. They are incomplete and out of date. Every American working in Turkey knows this and has said so.

2. There is no use talking about retaining the Capitulations unless we are willing to go to war with Turkey to enforce them. Their abolition has been recognized by all the other countries which have concluded treaties with the present Government of Turkey, including all of the great Powers except the United States.[8]

3. All the Americans in Turkey, representing religious, philanthropic, educational and business interests, want the new treaty ratified. They see no reason why the work to which they and their predecessors have given many years of effort should be lightly thrown overboard by the failure of ratification.

4. The rejection of the treaty will not help the Greeks and Armenians in Turkey. On the contrary, it will simply mean that American influence in Turkey will be reduced to zero and any opportunity to exert moral support in behalf of the Minorities will be entirely lost.

5. It is impossible, except by going to war, to detach from Turkey any territory for an Armenian home and we are under no obligations, legal or moral, to do so. The Treaty of Sevres was never ratified and we were not even a signatory.[9] President Harding, according to the American Committee opposed to the Lausanne Treaty, said no more than "What may be done (for the Armenian cause) will be done." The Committee has never given out the full text of the letter.[10]

6. Our new Treaty with Turkey gives to Americans and their interests in Turkey exactly as favorable treatment as is accorded to any other foreigners the Governments of which have concluded treaties with the present Turkish Government. Twenty-seven Powers have concluded such treaties.

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[8] See letter of May 5, 1924, from the Secretary of State to Senator Lodge, *Foreign Relations*, 1924, vol. II, p. 715.

[9] For text of treaty signed Aug. 10, 1920, see *British and Foreign State Papers*, vol. CXIII, p. 652.

[10] For full text of the letter referred to, see letter of Nov. 10, 1922, from President Harding's secretary to the chairman of the American Committee for Independence of Armenia, *post*, p. 991. The extract from the letter which the American Committee Opposed to the Lausanne Treaty printed in its publication entitled *The Lausanne Treaty: Turkey and Armenia* (n. p., 1926), p. 118, reads, in full: ". . . Everything which may be done will be done in seeking to protect the Armenian people and preserve to them the rights which the Sevres Treaty undertook (Wilson award) to bestow." For the Wilson award, see *Foreign Relations*, 1920, vol. III, p. 790.

7. Opinions regarding modern Turkey may differ but this has nothing to do with ratification of the Treaty. If there was no ethical impropriety in our having formal treaty and diplomatic relations with the Governments of Abdul-Hamid and of the Young Turks, why should this impropriety be considered to exist now? Certainly, the Turkey of Mustapha Kemal Pasha is not worse than the Turkey of Abdul-Hamid and of the Young Turks. Even Mr. Morgenthau as late as April 5, 1917 urged that diplomatic relations with Turkey should not be severed.[11]

711.672/490a : Telegram

The Acting Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *June 24, 1926—6 p. m.*

43. No action will be taken by the Senate upon the American-Turkish treaty before adjournment. The Department has drafted the following instructions in order that you may meet the situation which will be created when Turkey finds out that the Senate has adjourned without taking action on the treaty. If you believe that these instructions should be supplemented or modified in any way, immediately telegraph Department stating your reasons. If these instructions as drafted meet with your approval, they will become effective the day following the adjournment of Congress. The Department will inform you regarding the date of adjournment as soon as it has been set, and also the date in December when the treaty will be taken up. The Department's instructions are as follows:

You should go immediately to Angora and confer with Ismet Pasha[12] and Tewfik Rouchdi Bey.[13] You will say to them that Congress adjourned on . . . . . without being able to consider the American-Turkish treaty. Before the Senate adjourned, however, it agreed that the American-Turkish treaty should be taken up as unfinished business on December . . . You should lay special emphasis upon the definite and fixed character of this date, pointing out to them that, for the first time, a place on the calendar has been given to this treaty. You will explain that the Department of State believes that the treaty stands a very much better chance of being ratified in December than now since public opinion is growing stronger in favor of the treaty and of the friendliest relations with

[11] Henry Morgenthau, retired as Ambassador to Turkey in July 1916; see telegram No. 3495, Apr. 6, 1917, to the Ambassador in Turkey, *Foreign Relations*, 1917, supp. 2, vol. I, p. 11.

[12] Turkish Premier.

[13] Turkish Minister for Foreign Affairs.

Turkey. You will emphasize the Department's natural desire to have the treaty considered only at a time when its chances of receiving the advice and consent of the Senate are greatest. You will add that the Administration will do all in its power to further ratification.

If you think that offensive-defensive tactics would serve any useful purpose, you may say to Ismet Pasha and to Tewfik Rouchdi Bey that since the Grand National Assembly adjourned on June 10 without taking any action on the American-Turkish treaty and will not reconvene until November, that fact embarrassed the Department at the last moment in urging immediate action on the treaty to the Senate, especially in view of the large number of important domestic measures pending in the Senate, most of which have received no action because of lack of time. If you so desire, you may also add that the fact that the Allied Treaty of Lausanne was ratified on August 23, 1923, seventeen days after it was signed,[14] while the Assembly failed to take affirmative action on the American-Turkish treaty over a period of almost 3 years, and the fact that the Assembly has adjourned, have given rise to a situation which the Department was obliged to take into consideration and one which has not been conducive to a rapid development of normal relations between the two countries, which this Government so earnestly desires to see established as quickly as possible. You will state emphatically, however, that despite this situation, the Government of the United States wishes to approach the problem of the relations between the two Nations in a constructive and positive manner, and it would sincerely regret any change in the friendly character of the relations which have existed since you have been the representative of the President of the United States in Turkey. You should say that it has always been your feeling that the Government of Turkey held similar views in this regard and that the recent sending of a Turkish consul general to New York has confirmed this opinion.

You should emphasize in appropriate terms the fact that Turkey has an interest from the economic standpoint in maintaining cordial relations with this country. For example, you should point out that should our fig and tobacco markets be open to the products of Turkey on less favorable terms than at the present time, the economic consequences in Turkey could not fail to be other than unfortunate. If you should think it wise, you may refer more directly to the powers given to the President to impose additional duties or to forbid importation under sections 316 and 317 of the Tariff Act of 1922[15] to enable the Government of the United States to meet discrimination against American products. You should not convey the impression that a threat is being made, but, rather, that you are exploring the future in order to bring out frankly and objectively every latent possibility. The foregoing is sent to you by way of preface to the principal result which it is hoped you will be able to achieve through your interview with Ismet Pasha and Tewfik Rouchdi Bey, that is, the renewal for an additional period of 6 months from August 20, 1926, of the *modus vivendi* of February 18, 1926.[16] If it were not

[14] The treaty was signed July 24, 1923; League of Nations Treaty Series, vol. XXVIII.

[15] 42 Stat. 858, 943, 944.

[16] *Post*, pp. 999–1000.

for the Turkish law of December 12, 1925, which seemingly provides that the maximum duration of provisional commercial agreements shall be for 6 months, the Department would prefer to have the agreement renewed for a period of 8 months, for under the most favorable circumstances the American-Turkish treaty can hardly enter into force prior to April 1927. The Department realizes fully the delicacy of this negotiation and therefore does not wish to impede you by giving you too precise instructions as to how to introduce this subject into your conversations at Angora. It would be best for you to make it clear when you discuss the matter of renewing the *modus vivendi* that you are doing so in your personal capacity and not acting under instructions from your Government. You might say that the renewal in your opinion seems to be clearly in the interest of both countries and that you should like to make recommendations to your Government in that sense. Article I of the law of December 12, 1925, appears specifically to authorize the Council of Ministers to renew provisional commercial agreements, at least once. (See Law 691, page 49, volume IV, part 2. Turkish legislation published by Rizzo.) Without doubt you will be able to make good use of this provision of the law.

If, during the conversations at Angora, the question of the attitude of the Government of the United States towards the abolition of the capitulations should come up, you will say that this question as a practical matter has not arisen during the past few years.

The following is for your information and guidance. At the present time the Department does not desire to consider the matter of resuming diplomatic and consular relations with Turkey and appointing an ambassador. We fear that if Turkey should propose to appoint an ambassador to the United States, we should be obliged to do the same, which procedure might affect adversely the ratification of the treaty, because certain Senators now state that they can see no reason why we should not resume diplomatic relations immediately and proceed under the old treaty which they claim is still in effect. Although it is not likely that Turkey will propose such resumption, you should keep in mind the possibility of this embarrassing situation. The United States desires to avoid any overtures from Turkey which would bring up the matter of resuming diplomatic and consular relations.

GREW

711.672/491 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Paraphrase]

CONSTANTINOPLE, *June 26, 1926—1 p. m.*

[Received 3:40 p. m.]

59. Your telegram number 43 dated June 24, 6 p. m. I have made preparations to carry out Department's instructions immediately upon receipt of telegram notifying me that Congress has adjourned and

naming date in December when ratification may be considered. My understanding is that Department's instructions cover any situation which may arise from a further postponement by the Senate of this matter. Also, that the Department, considering its experience with the present Turkish Government in former negotiations, will expect me to use my own discretion in carrying out these instructions, with the end in view of maintaining the *status quo* and adhering to *modus vivendi* of February 18, 1926.

In furtherance of a policy which has comprehended fully the possibility of the existing emergency, I have endeavored in recent months through informal contacts to prepare Turkish official opinion for a delay in action on the treaty. Semiofficial press comments and casual statements of high Government officials have encouraged me to think that the Turkish Government has responded with some measure of understanding.

As for renewing the commercial *modus vivendi*, I am of the opinion that there is slight possibility of obtaining any enlargement on its scope. If the opportunity should present itself during the course of the negotiations for a renewal of the *modus vivendi*, I shall broach the subject of renewing the same for a longer term than that provided for by law.

BRISTOL

711.672/491 : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *July 3, 1926—1 p. m.*

46. Department's telegram number 43 of June 24, 6 p. m., and your telegram number 59 of June 26, 1 p. m.

(1) Congress will adjourn on Saturday, July 3, and will reconvene on Monday, December 6. On July 2 the Senate, by unanimous consent, agreed to take up the American-Turkish treaty in January 1927, on the first day of the session following the holidays.

(2) Your conception of the general nature of the Department's instructions contained in its telegram number 43, as stated by you in paragraph 1 of your telegram number 59, is correct. It is the feeling of the Department, however, that it would be wiser to take up the renewal of the *modus vivendi* with Turkey now rather than in August, inasmuch as any unfavorable reaction which may result by reason of the postponing of action on the treaty will presumably be fully crystallized by that time.

(3) Except with regard to the term of renewal of the *modus vivendi*, the Department does not desire any modification of its provisions or

enlargement of its scope. For reasons set forth in Department's telegram number 43, a renewal for a term of 8 months, or better still for 9 months, would be preferable to a renewal for 6 months. However, this is a small point which you can bring up at Angora if you think it wise.

(4) The Department is pleased to learn of the efforts which you have made to prepare Turkish officials for the further postponement of action on the treaty. It is confident that if there is any possibility of the *modus vivendi* being renewed, it will be as a result of your conversations at Angora.[17]

KELLOGG

711.672/527 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

CONSTANTINOPLE, *December 23, 1926—5 p. m.*

[Received 10:05 p. m.]

108. Following is quoted textually from statement regarding Lausanne Treaty made to Angora press by Minister for Foreign Affairs and given considerable publicity in today's Constantinople papers:

"The treaty concluded at Lausanne between the United States of America and Turkey is in complete harmony with modern Turkey's policy of establishing or renewing relations on a new basis with all of the civilized nations of the world. As you are aware, a state of hostility never having existed between Turkey and the United States, there is no question awaiting solution between these two countries other than that of placing existing relations on a treaty basis.

The position of the United States in the economic and political world and the friendly attitude maintained towards us even during the most difficult days of the Nationalist movement are known to all of you; consequently there can exist no doubt regarding the advantages to be derived from consolidating relations with the United States, on the one hand, which is one of the great countries of the civilized world and which pursues a pacific policy, and, on the other hand, our country which represents an important factor of activity and power in the Near East, which plays an important part in extending modern civilization in Asia and the keynote of whose policy is a desire for peace. Therefore, for the reasons summarized above, I consider myself as justified in expecting that the treaty, which has been submitted to the Grand National Assembly for approval and which is actually under examination by the Foreign Relations Committee [of] that body, will be ratified with eagerness."

BRISTOL

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[17] The *modus vivendi* was renewed on July 20, 1926, by an exchange of notes, for a further period of 6 months dating from Aug. 20, 1926. See despatch No. 2008 of July 30, 1926, from the High Commissioner in Turkey, p. 1000.

711.672/532a

The Secretary of State to Senator William E. Borah

WASHINGTON, *December 29, 1926.*

MY DEAR SENATOR: I have noted in the *Congressional Record* of December 22 [18] a resolution submitted by Senator King (S. Res. 306) and referred to the Committee on Foreign Relations. This resolution is in certain respects similar to the resolution introduced by Senator King on June 3, 1924 (*Congressional Record* of June 3, 1924, pages 10292 ff) [19] concerning which my predecessor addressed a letter to Senator Lodge under date of June 7, 1924. I enclose a copy of this letter for your convenient reference.[20] At the risk of some repetition, however, I venture to set forth as of possible use to the Committee on Foreign Relations brief comments on each of the questions raised by Senator King in his latest resolution:

(A) What reasons led to the abandonment of the conditions laid down by the Secretary of State, October 30, 1922, as conditions precedent to the negotiation of a treaty with Turkey and to the disregard of the assurances contained in the statement of President Harding under date of November 8, 1922.

I enclose herewith a copy of a press statement of October 31, 1922 containing the *Aide Memoire* communicated to the British, French and Italian Governments under date of October 30, 1922.[21] This *Aide Memoire* was intended as a notice to the Governments to which it was addressed that the United States, while neither at war with Turkey nor a party to the Armistice of 1918 with Turkey, was nevertheless interested in the peace settlement about to be negotiated at Lausanne. The *Aide Memoire* specifically defined the scope of this American interest under seven points. These points were not considered as conditions precedent to the negotiation of a Treaty between the United States and Turkey since informal conversations between the American and Turkish Delegations to ascertain whether the bases upon which to conclude a treaty could be found did not begin until May 16, 1923 [22] and full powers to conclude such a treaty were not given by the United States until May 29, 1923.[23] As a matter of fact, however, substantial guarantees were obtained from the Turkish Government with respect to these seven points as will be disclosed by a careful study of the American-Turkish Treaty of August 6, 1923 and the Allied-Turkish Treaty of July 24, 1923.

[18] Vol. LXVIII, pt. 1, p. 910 (bound edition).
[19] Vol. LXV, pt. 10, p. 10292 (bound edition).
[20] *Foreign Relations*, 1924, vol. II, p. 721.
[21] Press statement not printed; but see telegram No. 344, Oct. 27, 1922, to the Ambassador in France, *ibid.*, 1923, vol. II, p. 884.
[22] See telegram No. 340, May 17, 1923, from the Special Mission at Lausanne, *ibid.*, p. 1061.
[23] See telegram No. 155, May 31, 1923, to the Special Mission at Lausanne, *ibid.*, p. 1072.

I am also enclosing a copy of the complete text of a letter of the President's Secretary to Mr. James W. Gerard under date of November 10, 1922. The concluding sentence of this letter is quoted by Senator King in the third paragraph of the preamble of his resolution and it is apparently referred to in the body of the resolution as "the statement of President Harding" and again as "the position taken by President Harding". The position taken by the American Delegation at Lausanne with respect to the Armenian question is accurately set forth in the letter of the President's Secretary if the full text of this letter is taken into consideration.

(B) What, if any, action was taken by the State Department in procuring, preserving, or protecting the Chester oil concessions.

No action was taken by the Department of State to procure, protect or preserve the Chester Concession granted on April 9, 1923.[24]

The negotiations for the Chester Concession were carried on with the appropriate Turkish authorities at Angora by Major K. E. Clayton-Kennedy, a Canadian, and by Mr. A. T. Chester. These negotiations began about the middle of September, 1922. On April 9, 1923 the Concession was voted by the Grand National Assembly. It is the understanding of the Department that on December 18, 1923 the Chester Concession was annulled by the Turkish Ministry of Public Works for failure on the part of the Ottoman-American Development Company to carry out its provisions.

(C) What agreement, connection, or understanding existed or exists between said Chester group and the Standard Oil Co. or any of its subsidiaries, and what agreement or understanding, if any, existed or exists between the State Department and the Standard Oil Co., and what correspondence passed between them which in any manner related to the Lausanne treaty or Turkey, or oil lands or oil concessions in Mosul or Armenia or any territory claimed by Turkey.

The Department of State is not aware that any agreement, connection, or understanding existed or exists between the Chester group and the Standard Oil Company or any of its subsidiaries. No agreement or understanding existed or exists between the Department of State and the Standard Oil Company or any of its subsidiaries with respect to the Chester Concession.

It may be added, as of possible interest in this connection, that, in the course of the protracted exchange of views with respect to economic rights in mandated territories which took place between the American and British Governments in 1920–23, the question of the alleged prior rights of the Turkish Petroleum Company (a British limited liability company established in 1912) received specific treatment.

[24] See *ibid.*, 1922, vol. II, pp. 966 ff.; and *ibid.*, 1923, vol. II, pp. 1198 ff.

The Department of State maintained the view that no such rights existed and that the principle of the Open Door should be applied, i. e., in this connection, that there should be equality of opportunity in the matter of the granting of concessions for the development and exploitation of the natural resources of mandated territories. The correspondence exchanged on this subject between the two Governments has already been published, i. e. in a "White Paper" issued by the British Government (Cmd. 1226, miscellaneous No. 10, 1921) and in Senate Document No. 97, 68th Congress (First Session), pages 47–57. Appropriate reference to the views expressed in this correspondence was made by the American Delegation during the Lausanne Conference.

(D) What action, if any, was taken by the State Department in organizing or reorganizing the Ottoman Development Co. or any other company to take over and hold any rights obtained under any concession or otherwise, or what action was taken by said department in the control of the stock or the selection of any officers of said company.

No action was taken by the Department in organizing or reorganizing the Ottoman-American Development Company or any subsidiary or successor of that company, or in selecting the officers of the company or in deciding as to the control of the stock.

(E) What instructions, if any, were given by the State Department to the representatives of the United States at the Lausanne conference in connection with said Chester oil concessions or said Ottoman Development Co., and what correspondence was had between the State Department and said representatives concerning said oil concessions.

During the first part of the Lausanne Conference no communications passed between the Department of State and the American Delegation concerning the Chester Concession.

During the second part of the Conference, some five or six telegrams were exchanged between Washington and Lausanne solely to give information concerning the confusion in the Company's affairs which was becoming evident at the time. The Delegation reported four informal conversations with the French plenipotentiary concerning the French claim to prior rights to a concession for the construction of the Samsoun–Sivas railroad and of the port of Samsoun which formed part of the Chester Concession. These conversations were of an inconclusive character.

(F) Whether it is a fact that the American representatives at the Lausanne Conference supported the Allies in the Lausanne conference prior to the ratification of the Chester concession, April 10, 1923, or thereafter supported the position of the Turkish representatives as against the Allies in favor of the abrogation of capitulations and the abandonment of the conditions announced by the Secretary of State as essential terms of any treaty with Turkey.

The Allies had agreed in principle to the abrogation of the Capitulations during the first part of the Lausanne Conference (November 20, 1922–February 4, 1923). An article to this effect is to be found in the Allied draft of the Treaty dated January 31, 1923 at least two months prior to the granting of the Chester concession.

The attitude of the American Delegation towards the Allies and the Turks underwent no change throughout the entire conference. This attitude was the same between April 23, 1923 and August 6, 1923 as between November 20, 1922 and February 4, 1923.

(G) Whether it is a fact that a number of the members of the American delegation were formerly connected with certain oil interests, or were appointed on the American delegation at the instance of certain oil interests, and who since have resumed their connections with said interests, and also whether some of the members of the American delegation at Lausanne were the representatives of certain oil and tobacco interests.

No member of the American Delegation at Lausanne was connected directly or indirectly as a representative or otherwise with any oil or tobacco interest before the Conference, during the Conference or subsequent to the Conference. Of the fourteen persons who participated in the work of the American Delegation during both parts of the Conference ten are still in the employ of the United States Government, three of the remaining four have since left Government employ and are engaged in literary or journalistic work. The fourth had been in the Government service, as interpreter and Consul, and was employed temporarily by the Department of State during the first part of the Conference. At present he is the representative in Turkey of an American exporting and importing concern.

(H) What causes led to the abandonment by American representatives at the Lausanne conference of the position theretofore taken by the State Department and by President Harding, and what reasons led to the signing by the American representatives of the Lausanne treaty.

I have already dealt with Senator King's interpretation of the *Aide Memoire* of October 30, 1922 and of the letter of the President's Secretary to Mr. Gerard of November 10, 1922.

The United States negotiated and signed a Treaty with Turkey at Lausanne on August 6, 1923 in order that American activities in Turkey might not be placed in a less advantageous position than the activities of the nationals of the countries which had concluded a Treaty with Turkey on July 24, 1923.

(I) What discussions ensued at the Lausanne conference concerning the Chester concessions or the Ottoman Development Co., and what notes or other communications were exchanged between the State De-

partment and the representatives of the United States at said conference or between the representatives of the United States and the representatives of the Turkish Government concerning said concession; also what conversations occurred between the representatives of the Turkish Government and the United States respecting said treaty, and particularly with reference to said Chester concessions or any other concessions with respect to oil or railroads within Turkish territory.

No communications, oral or written, passed between the American and Turkish Delegations at Lausanne concerning the Chester Concession.

During the second part of the conference there were on four occasions, as previously stated, informal conversations between the American and French Delegations as to the French claim of prior rights to a part of the Chester Concession.

The principle of the Open Door and the point of view of the United States with respect to the alleged concession of the Turkish Petroleum Company were brought to the attention of both the British and Turkish Delegations.

(J) Whether it is a fact that the principal proponent and advocate of the Lausanne treaty is the Standard Oil Co., and whether it has sought or seeks concessions from Turkey for the exploitation of oil in the Provinces allotted to Armenia by the arbitration of the President of the United States.

The Standard Oil Company is no more entitled to be considered the principal advocate of the American-Turkish Treaty than is the American Board of Commissioners for the Foreign Missions or the Near East Colleges or any other American or group of Americans engaged in activity of one sort or another in Turkey.

The Department of State has no knowledge of any attempt on the part of the Standard Oil Company to secure from the Turkish Government a concession for the exploitation of oil in any territory under Turkish control.

(K) Whether it is a fact that Kemal Pasha has recently directed that all the residents of Turkey and those having business or other connections with Turkey shall urge the Senate of the United States to ratify the Lausanne treaty.

The Department of State knows of no effort on the part of the President of the Turkish Republic to influence the Senate of the United States directly or indirectly concerning the American-Turkish Treaty.

If there is any additional information desired by you or by the Committee on Foreign Relations, I shall be happy to endeavor to meet your wishes.

I am [etc.] FRANK B. KELLOGG

[Enclosure]

The Secretary to President Harding (Christian) to the Chairman of the American Committee for Independence of Armenia (Gerard)

WASHINGTON, *November 10, 1922.*

MY DEAR MR. GERARD: The President asks me to acknowledge your letter of November 8th. He is of the opinion that in the exercise of American influence in behalf of the protection of racial and religious minorities that the United States will be doing everything that it can do becomingly in the protection of the Armenians. The President does not agree that this government is responsible for the Armenian situation and he does not understand that it is practical for this country to dictate the settlement of the Near Eastern situation. However, everything which may be done consistently will be done in seeking to protect the Armenian people and preserve to them the rights which the treaty of Sevres undertook to bestow.

Yours sincerely,

[GEORGE B. CHRISTIAN, Jr.]

711.672/532 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

CONSTANTINOPLE, *December 31, 1926—noon.*

[Received 3:55 p. m.]

111. Shukri Kaya Bey, president of the Foreign Relations Committee, has made the following declaration to the representative of the Anatolian News Agency:

"The Foreign Relations Committee commenced the examination of the treaty concluded at Lausanne between Turkey and the United States. The statements made and information given by the Foreign Minister has made a favorable impression on the committee. As a matter of fact this treaty simply confirms within the principles in force in the civilized world the relations actually existing today in conformity with international agreement between the United States, on one hand, which is one of the great democracies of the world and which displays partisanship for peace and security and the Turkish Republic, on the other hand, which successfully follows the aim of becoming a factor for peace and order in the East.

I believe that the immediate ratification of this treaty is to our benefit as well as that of the United States and that our committee will, without delay, approve and present this treaty to the Assembly."

BRISTOL

AGREEMENTS BETWEEN THE UNITED STATES AND TURKEY ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS, SIGNED FEBRUARY 18 AND JULY 20, 1926

711.672/358b : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *March 14, 1925—7 p. m.*

30. The Senate yesterday, in Executive Session, decided to recommit the Turkish Treaty to the Foreign Relations Committee.[25] Following appears in the Press this morning:

"With early adjournment of the Senate in prospect, President Coolidge communicated to Chairman Borah, of the Foreign Relations Committee, his desire for early ratification of the Turkish Treaty, but a canvass of the situation in the Senate convinced Mr. Borah that the necessary two-thirds majority for ratification could not be had. Consequently, he moved to send the convention back to his committee."

[Paraphrase]

The above analysis of the present situation is confirmed by Senator Borah's statements to the Department. Senate will adjourn shortly.

In the near future the Department will send you additional instructions and in the meantime it desires you to telegraph your views on the following:

(1) Turkey's reaction to news that there has been a further delay in ratification.

(2) Your opinion as to proper course to take to meet situation in Turkey for the next few months.

KELLOGG

711.672/359 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Paraphrase]

CONSTANTINOPLE, *March 17, 1925—3 p. m.*

[Received March 19—7:11 p. m.]

33. Yesterday Nusret Bey[26] informed me that Turkey would apply most-favored-nation treatment at customs to American merchandise and that the necessary orders had been issued. He said that

[25] For text of treaty signed Aug. 6, 1923, see *Foreign Relations*, 1923, vol. II, p. 1153. For correspondence concerning efforts to obtain the ratification of the treaty, see *ante*, pp. 974 ff.

[26] Director of the Political Section, Turkish Ministry of Foreign Affairs.

Turkey would withdraw such treatment if ratification of treaties were delayed. I have not informed him regarding contents of Department's number 30 of March 14.

BRISTOL

667.113/1 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

CONSTANTINOPLE, *January 5, 1926—6 p. m.*

[Received 8:23 p. m.]

1. My 33, March 17, 3 p. m.[27] Turkish tariff law July 28, 1920, modified effective January 2nd, provides that coefficients of increase of 5 and 9 on duties specific 1916 import tariff as stipulated by commercial convention Lausanne,[28] section 1, article 2, are raised to 8 and 12 on merchandise imported into Turkey from countries which have no commercial treaty. Law is retroactive on goods withdrawn from customs between December 20 and January 2, seriously affecting American imports in general, especially leather, sheetings, automobile products, mineral oil. This situation has created considerable confusion and embarrassment among importers of American goods who are already affected by this law because of lack of previous notice. Have today made representations Foreign Office and called attention to provisions section 317 (*a*) to 317 (*e*), Tariff 1922.[29] Mood asks copy this telegram be sent Klein.

BRISTOL

667.113/1 : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *January 9, 1926—12 midnight.*

1. Your 1, January 5, 6 p. m. Your action in making representations is fully approved. Keep Department informed of developments by telegraph.

KELLOGG

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[27] *Supra.*

[28] For text of convention signed at Lausanne July 24, 1923, see League of Nations Treaty Series, vol. XXVIII, p. 171.

[29] 42 Stat. 858, 944.

667.113/4 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

CONSTANTINOPLE, *January 19, 1926—5 p. m.*

[Received 9:43 p. m.]

4. Department's 1, January 9. I am informed by Minister of Foreign Affairs that law published January 2nd was not intended to apply to the United States, inasmuch as an understanding had been reached between the two Governments at Lausanne and subsequent. Following are the more important points being made in reply to my note of January 5th, which I should receive in a few days.

1. Pending ratifications of commercial treaties convention already concluded Turkish Government extends benefits of Lausanne treaties (Allied) to American merchandise.[30]

2. However, since the law requires conclusion of provisional commercial agreements pending arrival at treaty understanding, Turkish Government declares itself ready and invites the American Government to make such an arrangement.

3. Inasmuch as the duration of the provisional arrangement is limited by law to 6 months, the Turkish Government expresses the hope the ratification of treaties will not be unduly delayed. In the case of the United States the Minister for Foreign Affairs explains it would simply represent a written confirmation of the *modus vivendi* already existing. In order to be authorized to take up this question with the Turkish Government instructions in the premises are requested.

BRISTOL

611.6731/61 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

CONSTANTINOPLE, *February 4, 1926—4 p. m.*

[Received 7 p. m.]

8. My telegrams 4, January 19, 5 p. m. and 6, January 26, 3 p. m.[31] The law recently published January 2, 1926, provides that the maximum multiple of tariff will be applied February 20. If by that time we have not concluded *modus vivendi* providing that minimum multiples shall be applied to American merchandise for a period of 6 months, it will be very difficult if not impossible to

[30] The texts of the agreements signed at Lausanne July 24, 1923, were printed in League of Nations Treaty Series, vol. XXVIII, pp. 11–223; and Great Britain, Cmd. 1929, Treaty Series No. 16 (1923): *Treaty of Peace With Turkey, and Other Instruments Signed at Lausanne on July 24, 1923*, etc.

[31] Latter not printed.

arrange in any other way for exemption. In the meantime this uncertainty is interfering with American business. Minister for Foreign Affairs has informed delegate, Angora, that he hoped *modus vivendi* would be arranged without delay. Meanwhile I have replied in appropriate way, without making commitments, to Turkish note recently received extending favored-nation treatment to American merchandise pending arrangement payments for 6 months. Under these circumstances I consider immediate action necessary. I suggest that I be authorized to take up at once the arrangement of a *modus vivendi* in very simple terms for a period of 6 months, pending the ratification of the treaty whereby we agree with Turkey to observe the provisions of articles 11, 12 and 13 of the treaty signed at Lausanne August 6, 1923. The simpler and shorter such agreement is, the less formal it will be and much easier to arrange. For the Department's information, Belgian Minister has just concluded such an arrangement whereby Turkey accords benefits of Lausanne convention in exchange for favored-nation treatment. Please instruct.

BRISTOL

667.113/4 : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *February 5, 1926—6 p. m.*

9. Your 4, January 19, 5 p. m. While the Department is prepared to adopt the suggestion of the Minister for Foreign Affairs with respect to an exchange of communications confirming the understanding already existing as to extension of mutual most-favored-nation treatment in commercial matters, it would appear preferable to effect an agreement of more detailed character and containing definite provisions for its termination.

If the requirement of Turkish law for "provisional commercial agreements" would be satisfied by an exchange of notes such as that of the United States with Greece of December 9, 1924, Treaty Series No. 706,[32] using the Greek note as a basis and inserting in the fourth line from the bottom of the second paragraph, after "decree or commercial treaty or agreement, to" the words "the products of", you may propose to the Turkish authorities a similar exchange of notes subject to the final revision by the Department.

In making this proposal you may point out that similar agreements have been concluded between this country and nine other countries, those in Europe being Greece, Czechoslovakia, Finland, Poland and Esthonia.

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[32] See American Minister's note No. 74, Dec. 9, 1924, and footnote, *Foreign Relations*, 1924, vol. II, p. 279.

Should the Turkish Government raise objection to the special treatment accorded by this agreement to the commerce of Cuba or any of the dependencies of the United States [33] or the Panama Canal Zone, you may state that this Government is willing to include in the exchange of notes provision that similar treatment may be accorded by Turkey to those territories mentioned in the last paragraph of Article 11 of the Treaty of August 6, 1923 avoiding however reference to that article of the Treaty.

Your 8, February 4, 4 p. m. will be answered separately.

KELLOGG

611.6731/61 : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *February 5, 1926—7 p. m.*

10. Your No. 8. Department does not consider it advisable to conclude an arrangement whereby the United States would be obligated to observe specific stipulations of an unratified treaty. The exchange of notes proposed in Department's No. 9 would accomplish the same purpose and would have the advantage of being in conformity with similar agreements concluded with other countries with which the United States has no effective commercial treaties. This arrangement would be much less likely to impede consideration of the treaty by the Senate or to occasion criticism.

KELLOGG

611.6731/62 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Paraphrase]

CONSTANTINOPLE, *February 8, 1926—7 p. m.*

[Received 10:40 p. m.]

10. Department's telegrams numbered 9 and 10 of February 5. I fear that procedure proposed by Department would entail long-drawn-out negotiations. Such negotiations would give appearance of treaty discussions, would involve publicity and in consequence would produce an erroneous, if not dangerous, impression.

Further, our accord with Greece combines the essentials of a commercial treaty, whereas the arrangement which Turkey invites us to make is intended solely for the purpose of making available the

[33] The phrase used in the exchange of notes with the Greek Government was "territories or possessions" of the United States.

benefits of a convention already concluded, pending the ratification of that treaty of which it is a part. An arrangement of this kind would amount to a continuation of our oral understanding made more formal by being confirmed in writing.

Because of the existence of a feeling of uncertainty over the eventual ratification of the Turkish-American treaty, I am exceedingly apprehensive that proposals for a detailed exposition of the present tariff accord would be interpreted by the Turkish Government as an attempt to negotiate a convention in substitution for that concluded at Lausanne. Because of the delay in ratification, such an impression would be most natural and especially so since provisional arrangements of a most simple nature are being negotiated by other countries not parties to the Lausanne treaties.

I distinctly understand that the Foreign Minister wants only a simple statement which will regularize his position with respect to the law recently passed and with the Ministry of Finance. I recommend the following as the basis of a note to meet the requirements of the Foreign Minister—such a note will fittingly safeguard American interests, and the arrangement can be made with a minimum of difficulty and delay:

"Confirming verbal understanding now in force, the United States extends to Turkey on a basis of full reciprocity for a period of 6 months, to be renewed in case of urgent necessity, treatment in respect to customs duties and taxes in general as favorable as that at present accorded or which for the period stated shall be accorded any third country."

Because of the short time remaining before delay provided by law expires and the necessity for an immediate expression of intention on the part of the United States, I shall proceed to Angora on February 12. Pending receipt of further instructions, which are urgently requested, I shall not make any commitments.

BRISTOL

611.6731/64 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

ANGORA, *February 14, 1926—9 p. m.*

[Received February 15—10:28 a. m.]

Department's 11, February 8 [*10*], 7 p. m.[34] At conference today Minister of Foreign Affairs presented draft combining following principal points in modification of the note proposed by me in conformity with the Department's order:

[34] Not printed.

"Subject to the ratification of the Turkish-American treaties the Government of the United States consents for a period of 6 months dating from February 20, 1926 to accord to agricultural and industrial products originating in or coming from Turkey imported into the United States for consumption, transit or reexportation, most-favored-nation treatment; exception being made in case of Cuba, to Canal Zone, and dependencies. In return Turkey grants to similar products of the United States that treatment provided by the commercial convention signed at Lausanne July 24, 1924 [*1923*]."

Minister urges the adoption of this form corresponding to that of arrangements already concluded with several other Governments in order to avoid establishing embarrassing precedent. I consider his argument reasonable and request instructions to American Delegation, Angora, which will enable me to conclude arrangement before February 20 when delay provided by law expires.

BRISTOL

611.6731/64 : Telegram

The Secretary of State to the High Commissioner in Turkey (Bristol)

WASHINGTON, *February 16, 1926—9 p. m.*

Your February 14, 9 p. m. Department approves proposed text with the following modification:

Substitute for the phrase "Subject to the ratification of the Turkish-American treaties", the following "in order to define the commercial regime which will be applicable to the commerce between the United States and Turkey, the Government of the United States consents, et cetera, et cetera." If there should be objection to that proposal Department suggests that you substitute for "Subject to" the word "pending".

For your information. The phrase "subject to" is open to various constructions and might conceivably be interpreted to mean that in the event of the failure of the ratification of the Treaty, back duties at the high rate specified in Turkish law might be claimed on American products previously imported into Turkey. This of course is quite inadmissible.

You may effect this understanding either by an exchange of notes or by a "proces verbal" or "declaration" to be signed by you and Turkish representatives.

KELLOGG

611.6731/70

The High Commissioner in Turkey (Bristol) to the Secretary of State

No. 1803 CONSTANTINOPLE, *March 1, 1926.*
[Received March 20.]

SIR: Referring to my telegram from Angora of February 18th [36] and earlier correspondence regarding a provisional commercial agreement with Turkey, I have the honor to transmit herewith copies of notes exchanged on February 18th between the Turkish Minister for Foreign Affairs and myself according to which the American Government shall receive in respect of customs tariffs the benefits of the Lausanne Commercial Convention of July 24, 1923 in exchange for favored nation treatment.

. . . . . .

I have [etc.] MARK L. BRISTOL

[Enclosure 1]

The American High Commissioner (Bristol) to the Turkish Minister for Foreign Affairs (Tewfik Rouchdi)

ANGORA, *February 17 [18?], 1926.*

YOUR EXCELLENCY: I have the honor to inform Your Excellency that pending the ratification of the Treaties between Turkey and the United States of America, signed at Lausanne August 6, 1923, my Government consents, in order to define the regime which will be applicable to the commerce between the United States and Turkey for six months, dating from February 20, 1926, to extend to agricultural and industrial products originating in or proceeding from Turkey, and imported into the United States for consumption, transit, or reexportation, that treatment accorded the most favored nation. The provisions of this agreement do not apply to the treatment which is accorded by the United States of America to the commerce of its dependencies, Cuba, or the Panama Canal Zone.

It is understood that the application of this provisional agreement is subject to the application, in Turkey, to agricultural and industrial products originating in or proceeding from the United States, of that treatment provided for by the Commercial Convention signed at Lausanne July 24, 1923, in regard to the products of the States signatories thereof. The provisions of the present agreement do not apply to the commerce between Turkey and the countries detached from the Ottoman Empire following the war of 1914, nor to the frontier traffic with a state contiguous to Turkey.

Accept [etc.] MARK L. BRISTOL

[36] Not printed.

[Enclosure 2—Translation [37]]

The Turkish Minister for Foreign Affairs (Tewfik Rouchdi) to the American High Commissioner (Bristol)

No. 54642/3 ANGORA, *February 18, 1926.*

Mr. REPRESENTATIVE: I have the honor to inform you that pending the ratification of the Treaty between Turkey and the United States of America, signed at Lausanne August 6, 1923, my Government consents, in order to define a regime which will be applicable to the commerce between Turkey and the United States for 6 months, dating from February 20, 1926, to extend to agricultural and industrial products originating in or proceeding from the United States, and imported into Turkey for consumption, transit, or reexportation, that treatment accorded the most favored nation. The provisions of the present agreement do not apply to the commerce between Turkey and the countries detached from the Ottoman Empire following the war of 1914, nor to the frontier traffic with a State contiguous to Turkey.

It is understood that the application of this provisional agreement is subject to the application, in the United States of America, to agricultural and industrial products originating in or proceeding from Turkey, of that treatment accorded the most favored nation. The provisions of the present agreement do not apply to the treatment which is accorded by the United States of America to the commerce of its dependencies, Cuba, or the Panama Canal Zone.

Accept [etc.] DR. ROUCHDI

611.6731/83

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Extract]

No. 2008 CONSTANTINOPLE, *July 30, 1926.*

[Received August 23.]

SIR: Referring to my telegram of July 20, 5 P. M.,[38] I have the honor to enclose herewith copies of the notes exchanged on July 20, 1926,[39] between Tewfik Rouchdi Bey, Minister of Foreign Affairs, and myself, providing for an extension of six months, dating from August 20, 1926, of the Commercial *Modus Vivendi* concluded between the Minister and myself on February 19 [*18*], last.

. . . . . .

I have [etc.] MARK L. BRISTOL

[37] Supplied by the editor.
[38] Not printed.
[39] Not printed; they were substantially the same as those exchanged on Feb. 18, 1926.

PARTICIPATION OF THE HIGH COMMISSIONER IN TURKEY IN COLLECTIVE NOTE REQUESTING EXEMPTION OF DIPLOMATIC AND CONSULAR OFFICERS FROM CONSUMPTION AND OTHER SPECIAL TAXES

701.0667/4 : Telegram

The High Commissioner in Turkey (Bristol) to the Secretary of State

[Paraphrase]

CONSTANTINOPLE, *June 22, 1926—3 p. m.*

[Received 8:15 p. m.]

55. Diplomatic body has requested me to join in signing collective note to the Turkish Government requesting that diplomatic and consular officers be exempted from the payment of consumption and other special taxes recently enacted. The note is based essentially on international usage and courtesy. I recommend that I be permitted to join body in making these recommendations.

BRISTOL

701.0667/4 : Telegram

The Acting Secretary of State to the High Commissioner in Turkey (Bristol)

[Paraphrase]

WASHINGTON, *June 25, 1926—5 p. m.*

44. Your telegram No. 55 dated June 22, 3 p. m. Your recommendation to join your colleagues in signing a collective note to the Turkish Government requesting that diplomatic and consular officers be exempted from the payment of consumption and other special taxes recently enacted is approved by the Department.

The Department presumes that in making a recommendation in this sense you have given due consideration to the difference between your status and that of your colleagues in Turkey and that you think a collective note is the best means of protecting American interests in this case.

GREW

701.0667/5

The High Commissioner in Turkey (Bristol) to the Secretary of State

No. 1973 CONSTANTINOPLE, *July 7, 1926.*

[Received July 29.]

SIR: I have the honor to state that in accordance with the authorization contained in the Department's telegraphic instruction No. 44, June 25, 5 P. M., I signed today at the Swedish Legation the col-

lective note of June 22, 1926, which will be presented to the Turkish Government by Mr. Souritch, Russian Ambassador at Angora and Dean of the Diplomatic body, requesting exemption for diplomatic and consular officers from the operation of consumption and other special tax laws recently enacted by the National Assembly and transmitted textually to the Department with the High Commission's despatches Nos. 1887 and 1891, respectively of May 4, last.[40]

With reference to Paragraph 2 of the Department's telegram No. 44, marked "Confidential", I signed the note in conjunction with my colleagues taking fully into consideration the difference in my status vis-à-vis my colleagues and believing that the collective note would carry more weight with the Turkish authorities in this instance than any other course which I might have adopted.

There are enclosed herewith copies of the original French and in [*an*] English translation of the collective note under reference.[40]

I have [etc.] MARK L. BRISTOL

701.0667/8

The Chargé in Turkey (Crosby) to the Secretary of State

[Extract]

No. 2035 CONSTANTINOPLE, *August 18, 1926.*

[Received September 3.]

SIR: . . . Referring to the Department's telegram No. 44 of June 25 regarding the exemption of Diplomatic and Consular officers from the payment of consumption taxes, I have the honor to report that the Foreign Office has recommended favorably to the Council of Ministers the action requested by the Diplomatic Corps. As late as August 9th the Foreign Office had received no reply to its recommendations.

I have [etc.] SHELDON LEAVITT CROSBY

[40] Not printed.

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