GREAT BRITAIN

PROTEST BY THE BRITISH AMBASSADOR AGAINST AMERICAN ALLEGATIONS OF UNFAIR BRITISH COMPETITION FOR CONTROL OF IMPORTANT SOURCES OF PETROLEUM

841.6583/143

The British Ambassador (Geddes) to the Secretary of State

No. 292

WASHINGTON, April 20, 1921.

My Dear Mr. Secretary: I know how great is the importance which you attach to the existence of cordiality and understanding between the peoples of the United States of America and the British Empire. I therefore without hesitation venture to approach you on a matter which appears to me to be of importance in connection with the feelings of friendship existing between our respective countries.

It is I believe common knowledge that on numerous occasions articles and paragraphs have appeared in American newspapers and magazines indicating that the British Government was making determined efforts to secure for the British people control over an unduly large share of the world’s oil resources. Somewhat similar statements have been made in the Congress of the United States and assertions have not been lacking that the British Government was attempting to secure, or had already secured, a dominating position in the petroleum industry. Facts and figures adequate to support such assertions have never to my knowledge been included in the articles and speeches which contained them. After the most careful enquiries I have failed to find either in the official information at the disposal of the British Government or in unofficial information gathered from all available sources any solid foundation for the statements and assertions to which I have referred.

Realizing the risk of friction which might attend serious misapprehension on the important subject of the relations of Governments to the petroleum industry, I have followed the example of my predecessors and have attempted whenever opportunity offered to dispel misapprehension regarding the position and interests of the British Government and to assure your predecessors and the Department of State that the allegations to which I have referred are devoid of foundation in fact.

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This subject does not lose importance with the lapse of time and I am led to address you upon it now by an indication that many misapprehensions as to the facts still persist in the mind of a member of the American Government, in spite of the fact that so recently as the 13th of January of this year I formally informed the Acting Secretary of State of the United States of the British Government’s position with regard to these matters.\(^1\) I understand fully the practical difficulty of maintaining the continuity of Government knowledge at a time of change of Government personnel and this letter is written, therefore, in no spirit of criticism but from a desire to dispel misunderstanding.

I desire to direct your attention to the report appearing in the Congressional Record of April 12th, Vol. 61, No. 2., pages 81 to 90,\(^2\) of the debate which took place in the United States Senate on the 12th instant, regarding the ratification of the Treaty of April 6th, 1914, with the Republic of Colombia.\(^3\) Incorporated with the speech made on that occasion by the Senator from Massachusetts (Mr. Lodge) is the text of a letter addressed to him on March 21st, 1921, by the Secretary of the Interior, dealing largely with the petroleum question. That letter contains several statements based on misinformation and I feel it my duty to bring them to your notice with the request that you may be good enough to place the Secretary of the Interior in possession of the true facts.

After having stressed the seriousness of the oil question from the American point of view, Mr. Fall’s letter contains the following paragraphs:

“Other nations are aware of the seriousness of the situation and Great Britain learned at least one lesson from the recent war. That is to say, that the nation which controlled the oil industry controlled commerce by sea, in view of the fact that no coal burner can compete with an oil-burning ship.

“Realizing this, Great Britain, the nation, has within the last two years particularly followed a policy which she had adopted in many of her provinces many years ago; that is, of excluding Americans from or placing heavy burdens upon such Americans or other foreigners in any British oil field.”

This statement appears to me to be misleading.

In the United Kingdom itself there is no restriction whatever on the exploitation of possible oil-bearing lands by foreigners or foreign companies. A regulation (No. 30 BB) which had been introduced during the war, under the Defence of the Realm Act, restricting the participation of foreigners in British oil under-

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\(^1\) No record of this communication in Department files.


\(^3\) Foreign Relations, 1914, p. 163.
takings was aimed at preventing the indirect exercise of enemy influence. It has long since been withdrawn—a fact of which the Department of State was duly apprized.

In Canada the annual production is only about 34,000 tons, which meets but a small proportion of the Dominion's needs. The regulations, generally speaking, require simply that operating companies shall be registered or licensed in Canada, and have their principal place of business within the British Empire. It is, perhaps, worthy of note that the most active company in Canada, both in regard to imports and prospecting work, is Imperial Oil Limited, a subsidiary of the Standard Oil Company of New Jersey.

Since 1888, prospecting or mining leases in India have been granted only to British Companies, but the production of petroleum in that country is only about 1,200,000 tons per annum, a quantity which falls short of the country's requirements.

In Trinidad there is no nationality restriction in the case of private lands. The lessees of Crown lands, however, must be British subjects or British controlled companies. Exception has, however, been made in the case of a particular American Company which has been permitted to lease certain Crown lands in that Colony. Similar regulations apply [in British Guiana, British Honduras, Nigeria, Kenya Colony and Brunei. On the other hand, there are no nationality restrictions whatever] in Jamaica, Barbadoes, Sarawak, Somaliland, British Honduras, British North Borneo and Egypt, in all of which countries prospecting operations have been, or are being, carried on. These are the main facts with regard to the regulations governing the exploitation of oil lands in British territory and they appear to me entirely to disprove the assertion that the British Government have deliberately adopted a policy "of excluding Americans from or placing heavy burdens upon such Americans or other foreigners in any British oil field".

Even in the case of India, where certain restrictive regulations exist, it will be observed that those regulations have been in effect for nearly 40 years. When they were introduced, the oil situation was very different from that now prevailing and the problem was not so much to find new sources of oil as to secure markets for that already produced. There was real danger that oil-lands might be taken up by large foreign oil companies and kept unworked so that prices might be maintained.

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*Section in brackets added in accordance with note of July 27 from the British Embassy (file no. 841.6363/170).
1By note of Aug. 8 the British Embassy informed the Department that the second mention of "British Honduras" was due to a typist's error and requested its deletion (file no. 841.6363/171).
The next two paragraphs of the Secretary of the Interior’s letter are quoted as follows:—

“Within the last two years however, taught by the lessons of the war, Great Britain has deliberately pursued a policy of obtaining governmental control of all the great oil companies in which British subjects had been interested, and, going beyond this has secured practical, if not sole, control of the great ‘Royal Dutch–Shell’ and other foreign companies, particularly through what is known as the ‘Royal Dutch–Shell Group’ combine, which was effected in January 1907.

Of course, it is impossible to give exact figures, but our government, through at least two of its departments, has information satisfactory beyond question that the British Government actually controls the ‘Royal Dutch–Shell’ combine, sixty per cent of the stock of which is owned by the ‘Royal Dutch’ and forty per cent of whose stock was owned by the Shell Transport & Trading Company, Ltd.”

The meaning which I understand these paragraphs to convey is that the British Government has a direct controlling financial interest in the Royal Dutch Shell group of companies. If there were any doubt as to this being the correct interpretation to place on the Secretary’s words it is dispelled by the following dialogue which took place between the Senator from Massachusetts and the Senator from Indiana in the course of the debate:—

“Mr. Watson of Indiana: ‘The Senator says that England controls the Royal Dutch Shell group. Does he mean by that the Government of England or citizens of England?’

Mr. Lodge: ‘The Government’.

Mr. Watson of Indiana: ‘The Government itself?’

Mr. Lodge: ‘The Government has sixty per cent of the stock of the Royal Dutch and forty per cent of the Shell, I think. It may be the reverse, but it controls both. Of course, the Royal Shell is an English corporation. In the Royal Dutch the Government has the absolute control of sixty per cent; at least, that is the report in response to the enquiry of our Government.”

It is difficult to understand how, in the face of repeated denials by the British Government and by the companies concerned, as well as in the face of formal statements made by me to the Secretary of State of the United States, these errors come to be perpetuated and I would ask you to inform the Secretary of the Interior and any others who may be seeking the truth in this matter, that the British Government have no financial interest whatever, directly or indirectly, in the Royal Dutch–Shell group. The controlling interest in this group is Dutch and not British.

I now pass to what I regard as the most serious point raised at this time and I quote the following passages from the printed copy of Mr. Fall’s letter to Senator Lodge:—
“In the lower right-hand portion of this diagram you will find the interlocking British National companies which control British petroleum holdings in the Republic of Mexico.

The Mexican Eagle Oil Company (Limited), known to us as the ‘Aguida’ Company, is the principal “Cowdrey” company in Mexico.

Allow me to call your attention here to a most significant matter which has recently occurred, i.e.:

The British Government and the French Government have each repeatedly protested to the Mexican Government, from time to time, along exactly similar lines to the protests made by this Government concerning the confiscatory decrees of the Mexican Government under the Constitution of 1917, proclaimed by Carranza, and being followed by Obregon.

These protests yet stand as the official last word of Great Britain and France, as exactly similar protests yet stand as our last word to that country.

The Mexican Eagle Company (“Aguida”) has been a member of the American Association of Oil Companies and has for years cooperated with this Association in making protests against confiscatory decrees in Mexico, both from the British Government and the American Government.

Recently, within the last three months, the “Aguida” Company finally notified the American Association that it proposed to pursue its own lines and make its own terms with the Mexican Government, accepting the Mexican Government’s demands with reference to oil drilling permits, etc.

This came as a shock out of a clear sky, and I am informed that after certain protests made by the Association and by the American Companies, the Mexican Eagle (“Aguida”) Company has not, in fact, obtained titles under this confiscatory decree, upon properties belonging to others, but yet has not countermanded instructions to its agents in Mexico to obtain such titles from time to time.

Nevertheless the British protest still stands and Great Britain is ostensibly acting with the United States officially, in identical official protests against the constitution of 1917 and decrees under it.

The British “Aguida” Oil Company owned, as a matter of fact, by Great Britain herself is, however, yielding to such decrees and obtaining advantage of American companies, who are faithfully abiding by the advice and instructions of the American Government in the matter.

British oil interests are giving every assurance to Obregon and Mexican officials, of their support and friendly cooperation, seeking advantage against or over American companies, while the British Government, owning this oil company is ostensibly standing by the United States Government in its action.

I bring these matters to your attention, and am furnishing you with the diagram referred to, for the reason that it is high time that Americans should understand the situation and as patriotic Americans deal with it.”

I cannot for a moment suppose that a member of the Administration can have wished to convey to a Senator of the United States the impression that the British Government have been pursuing a
double policy with regard to the situation in Mexico, officially associating themselves, on the one hand, with the Government of the United States in protests against certain legislation in Mexico while, on the other hand, they were seeking through the medium of an industrial concern, which the Secretary of the Interior in his letter incorrectly refers to them as "owning," to take undue advantage of the situation and, by accepting the validity of the legislation in question, to secure concessions on lands already owned or operated by American companies. Mr. Fall is in error in believing that the British Government have any financial interest whatever in the Mexican Eagle Company. The British Government have no such interest. They exercise no control of any kind over the actions or policies of the Mexican Eagle Company and, whatever course may have been taken by that Company in connection with the Mexican law or with any other matter has been taken on the sole responsibility of that Company without any approval, express or implied, from the British Government. It is within the knowledge of your Department, for I had myself the honour of informing the Acting Secretary of State, that a considerable proportion of the stock of the Mexican Eagle Company formerly owned by Lord Cowdray, a private British subject, was transferred some time since to Dutch interests. Moreover, it is reported that a fair proportion of the stock of the company is owned in the United States, so that it is even doubtful now whether private British citizens collectively own a majority interest in the Company.

You will agree with me, I feel sure, that misapprehensions and allegations of this nature regarding the position and policies of His Britannic Majesty's Government in relation to the petroleum industry render international understanding less easy and must tend, I believe, to affect the judgment of American legislators in framing appropriate laws for the protection of American interests against imaginary activities of the British Government. Certainly they do grave damage to the friendly relations between our two countries and I should regard myself as negligent in the performance of my duty if I were to permit them to pass in silence when I find them printed in the official record of the proceedings of Congress over the name of a responsible member of the American Cabinet. It is, nevertheless, in the friendliest spirit that I bring them to your notice, confident in the belief that the Secretary of the Interior will welcome an official denial of alleged facts and circumstances which must have caused him much patriotic anxiety and that he will naturally desire to take the earliest opportunity to correct in the mind of Congress and of the people the unwarranted suspicions to which, I greatly fear, his letter must have already given birth.

Believe me [etc.]

A. C. Geddes
The British Ambassador (Geddes) to the Secretary of State

No. 863  MEMORANDUM

His Britannic Majesty's Ambassador presents his compliments to the Secretary of State and has the honour on instructions from his Government to inform him that a member of the staff of the United States Embassy recently called at the Foreign Office and left copies of two documents purporting to be extracts from a proclamation dated the 24th September, 1884, countersigned "Salisbury, Secretary of State for India" and extracts from an agreement dated 23rd August, 1885, between the Secretary of State for India and the Burma Oil Company also signed "Salisbury, Secretary of State for India". A request was at the same time made that the Embassy might be informed whether or not these documents were authentic. The India Office to whom copies of these papers were submitted pointed out that they appear to be those referred to in Senate document No. 272. The relevant passage is contained on page 8 of the report of the State Department under the heading "India" and runs as follows:—

"American oil companies are expressly excluded from doing business in Burma by proclamation signed by Queen Victoria and Lord Salisbury, Secretary of State for India, on September 24th, 1884, and a blanket concession of ninety nine years was given the Burma Oil Company (Limited) on August 23rd, 1885, protecting this company from all foreign competition."

The India Office further state that in their judgment the documents in question are self-evident forgeries. The late Marquess of Salisbury, whose second and last tenure of the office of Secretary of State for India ceased in April 1878, is represented as holding that office in 1884 and 1885, whereas in fact Lord Kimberley was Secretary of State for India throughout 1884 and Lord Randolph Churchill in August 1885. The wording of these two documents, copies of which are enclosed, is alone sufficient to indicate their spurious character. The India Office further point out that the message of the President of the United States under date of May 16th, 1921, covering a report by the State Department "furnishing information supplementary" to that embodied in the previous report regarding restrictions on American petroleum prospectors omitted the statement in the previous report under the head of "India" to which reference is made. The supplementary report, however, does not

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4 See letter from the Acting Secretary of State to President Wilson, May 14, 1920, Foreign Relations, 1920, vol. 1, p. 351.
5 Not printed; they are entitled Appendix XVIII and Appendix XVIII-A.
6 S. Doc. 11, 67th Cong., 1st sess.
contain any admission as to any question of the authenticity of the materials on which the previous statement was based and that statement accordingly stands uncorrected in the original message of May 17th, 1920. 8

Sir Auckland Geddes is instructed to bring this matter to Mr. Hughes' notice and to inform him of the painful impression produced on His Majesty's Government by the use in an official publication in Congress of such a statement based on documents which bore every indication of being false and the authenticity of which no attempt was apparently made to test.

Sir Auckland Geddes is further instructed to suggest for the consideration of the Secretary of State the propriety of the publication of an acknowledgment that the statement in question was erroneously made and that it has been discovered to be entirely devoid of foundation.

In conclusion, Sir Auckland Geddes has the honour to state that it would be of interest to His Majesty's Government to learn if possible the origin of these fabricated documents and of the means by which they have found their way into the archives of the State Department, and he would be most grateful if Mr. Hughes could see his way to inform him accordingly.

WASHINGTON, November 15, 1921.

845.6363/11

The Secretary of State to the British Ambassador (Geddes)

The Secretary of State presents his compliments to His Excellency, the Ambassador of Great Britain, and has the honor to acknowledge the receipt of a memorandum dated November 15, 1921, quoting a passage from page eight of Senate Document No. 272, 66th Congress, 2d Session, in which reference is made to two documents stated to be a proclamation dated September 24, 1884, and an agreement dated August 23, 1885. It is set forth that the India Office believes that the documents referred to are spurious and it is suggested that consideration might be given to the publication of an acknowledgment that the statement in question was erroneously made and entirely devoid of foundation. Inquiry is also made regarding the origin of the documents and the means by which they reached the archives of this Department.

In the memorandum under acknowledgment, no reference is found to a note addressed to the Embassy on September 23, 1921, 9 in which,

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9 Not printed.
advertising to informal conversations between the Acting Commercial Counselor of the Embassy and officials of this Department beginning in June of this year, it was stated that the authenticity of the documents referred to seemed open to serious question and the hope was accordingly expressed that this Department might be supplied with copies of the relevant laws, ordinances or regulations which are now or have recently been in force in India, and especially in Burma, to the end that any inadequacy or inaccuracy in the statement under discussion might be speedily corrected.

In a note dated November 6, 1919, the Embassy called attention to certain remarks made in Congress which were stated to represent inaccurately the policy of Great Britain with respect to petroleum. It is evident that the Embassy had in mind a speech delivered on July 29, 1919, which, as printed in the Congressional Record of the same date, immediately precedes a report by the Director of the Bureau of Mines to the Secretary of the Interior. This report appears to have been read by the Embassy, since it was cited for the purpose of refuting a statement made in the aforementioned speech. In this report of the Bureau of Mines the statement appears that “American oil companies are expressly excluded from doing business in Burma, and a blanket concession of 99 years was given the Burma Oil Co., (Ltd.) in 1889, protecting this company from all foreign competition. (See Appendices XVIII and XVIII A.)” The differences between this statement and the statement which was included in Senate Document No. 272 consist in the addition of the words “by proclamation signed by Queen Victoria and Lord Salisbury, Secretary of State for India, on September 24, 1884”, and in the change of “1889” to “1883”, the latter date being the one given in the Appendix referred to.

When the report of May 14, 1920, later published as Senate Document No. 272, was under preparation in this Department, consideration was doubtless given to the circumstance that the Embassy had made no mention of the statement regarding India, although taking specific exception to other statements published at the same time.

After a careful consideration of the Embassy’s memorandum of November 15, 1921, and of the above mentioned circumstances, it is not yet entirely clear whether it is to be understood that the statement as originally made by the Director of the Bureau of Mines was wholly erroneous or was substantially or in part correct. Doubt on this point seems the more justified since it appears from an

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11 See letter from the Acting Secretary of State to President Wilson, May 14, 1920, ibid, 1920, vol. 1, p. 351.
official memorandum issued by the British Government that in
India "prospecting or mining leases have been, in practice, granted
only to British subjects or to companies controlled by British sub-
jects." 12

It has been felt appropriate to make these requests for further
information, since it would seem that any published statement at
this date relating merely to the accuracy of the citations or to the
authenticity of the particular documents cited would not only fail
to do full justice to the policy of the British Government, but
might even furnish an occasion for renewed inferences of a mis-
taken character.

WASHINGTON, December 10, 1921.

REFUSAL BY THE UNITED STATES TO ADMIT BRITISH CLAIMS ON
BEHALF OF THE TURKISH PETROLEUM COMPANY 13

800.6363/229: Telegram

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

LONDON, March 1, 1921—5 p.m.

[Received March 2—2 p.m.14]

160. Your telegram 1168, November 20th, 1920 15 and instruction
1040, November 23d, 1920. 16 Following note dated February 28th,
1921 received today: 16a

"1. I have the honor to acknowledge the receipt of Your Excel-
lency’s note of the 6th of December enclosing a communication dated
the 20th of November from the Secretary of State of the United
States 17 relative to the application in territories placed under man-
date of the principles of equality of treatment and opportunity and
referring more especially to the petroleum resources found in the
Near East. His Majesty’s Government are pleased to observe that
the United States Government appreciate the general policy adopted
by His Majesty’s Government in territories under military occupa-
tion. I notice, however, that Mr. Colby makes certain observations
with regard to the San Remo Petroleum Agreement 18 which appear
to indicate that the scope of that agreement is not fully understood.

2. The cooperation of British and French interests in regard to
crude production in various countries was first suggested in the early
part of the year 1919 by the French Government, when it was pro-

12 Despatch to His Majesty’s Ambassador at Washington enclosing a Memo-
Miscellaneous No. 17. Cmd. 1351.
13 For previous correspondence concerning the exploitation of petroleum in
14 Telegram in three sections.
15 Not printed.
16a Bracketed corrections supplied in text upon comparison with copy of note
later received by mail.
18 Ibid., p. 655.
posed that some arrangement should be arrived at whereby French interests might be given some participation in the production of petroleum in various regions. The proposal put forward by the French Government was carefully considered, and it was found possible to come to an agreement based on the principles of mutual cooperation and reciprocity in various countries, especially where British and French interests were already considerable and on the whole greater than those of other Allied countries. The agreement aimed at no monopoly or exclusive rights and could only become effective if its application conformed to the desires and laws of the countries concerned.

3. As regards the provisions in the agreement relating to Mesopotamia, I desire to make it plain that the whole of the oil fields to which those provisions refer are the subject of a concession granted before the war by the Turkish Government to the Turkish Petroleum Company. The position of such concessions in territories detached from Turkey is expressly safeguarded by articles 311 and 312 of the Treaty of Sèvres. The history of this concession is as follows:

Prior to the war the position in regard to the Mesopotamian oil fields was as follows:

The concessions for all the oil fields [of] the two vilayets (provinces) of Mosul and Bagdad, were bestowed by the ex-Sultan Abdul Hamid on his Civil List in 1888 and 1898 respectively, and private enterprise had long been debarred thereby from acquiring any oil rights in those particular districts. This situation was so far admitted and recognized that in 1904 the Anatolian Railway Company, nominally a Turkish company but in reality a German concern, obtained a contract from the Civil List by which the company undertook to carry out preliminary surveys of the oil fields and secured the option for their development on joint account.

4. The Civil List in 1906, considering the agreement with the Anatolian Company at an end, entered into negotiations with a British group with a view to the development of the oil fields. These negotiations, which had the full support of His Majesty's Ambassador at Constantinople, continued during the year 1907. They were suspended during the political crisis which broke out in 1908 but were resumed in 1909 with the Turkish Ministry of Finance, to which Department the Mesopotamian oil concession had been transferred from the Civil List, by firmans issued in 1908 and 1909. The general upheaval caused by the events [in] those years impeded the progress of the negotiations during the years 1910 and 1911.

5. In 1912 endeavors were made by German interests to obtain the confirmation by the Turkish Government of the arrangements concluded in 1904 between the Anatolian Railway Company and the Sultan's Civil List, and, with the apparent object of pursuing the matter and of widening the scope of their activity in oil operations in other parts of the Turkish Empire, they formed a British limited liability company called the Turkish Petroleum Company, Limited, the capital of which was partly British and partly German.

6. This development was succeeded by [a] series of negotiations entered into between the British group and members of the Turkish Petroleum Company for the amalgamation of the rival interests and
for pursuing jointly the application before the Turkish Government for the granting [of] a concession for the Mesopotamian oil concession [fields]. These negotiations, in which the British and German Governments took an active interest, terminated in the early part of 1914, when an agreement was reached for the fusion of the interests of the original Turkish Petroleum Company and of the original British group in the new Turkish Petroleum Company. This agreement was signed not only by the parties immediately interested but also on behalf of the British and German Governments respectively. The German share in this new company was fixed at 25 percent.

7. In consequence of this arrangement, His Majesty's Ambassador at Constantinople was able to make the necessary representations to the Turkish Government for the grant to the Turkish Petroleum Company of oil concessions in [the] vilayets of Mosul and Bagdad, while representations of the same nature were made simultaneously to the Porte by the German Ambassador. The negotiation between His Majesty's Government and the Turkish Government was not confined to the question of the Turkish Petroleum Company but covered a wide field and involved mutual concessions of very material importance. As a result the Turkish Government on the 28th June, 1914, through the Grand Vizier informed His Majesty's Ambassador in an official communication that the Turkish Ministry of Finance having been substituted for the Civil List in the matter of the petroleum deposits known or to be discovered in [the] vilayets of Mosul and Bagdad had consented to lease the said deposits to the Turkish Petroleum Company, the Ministry reserving the right to fix later on its share in the enterprise as well as the terms of the contract. I should add that during the war the German interests in the company were liquidated and thus came into the hands of His Majesty's Government.

8. From the facts as narrated it will be seen that the Turkish Petroleum Company's right to the lease of the oil fields in the two vilayets rests on an official undertaking given by the Turkish Government to the two Governments concerned after prolonged diplomatic negotiations. In the circumstances the oil rights in the vilayets of Bagdad and Mosul cannot be treated merely as a matter of abstract principle or without referring to the special character of the negotiations which preceded the war. Had no war supervened, and had Mesopotamia remained till now under Turkish rule the exploitation of these oil deposits would long since have begun. It can hardly be contended that His Majesty's Government should now question the validity of [an undertaking granted by the Turkish Government in return for consideration received. And I may add, since the United States] Government will presumably expect His Majesty's Government to recognize the rights acquired [by] the Standard Oil Company in Palestine from the Turkish Government, that these rights, which are based entirely on the grant of a prospecting license, are no stronger than those of the Turkish Petroleum Company, to whom the Turkish Government had definitely undertaken to transfer a valid and already existing concession.

9. In this connection I feel bound to remind you that the attitude of the United States Government in suggesting that His Majesty's Government should disregard the rights acquired by the Turkish
Petroleum Company is scarcely consistent with that adopted by
the United States Government in regard to similar United States
interests in oil properties in Mexico. For instance, in his letter of
the 25th November, 1920," to Monsieur Pesqueira, the Mexican
representative in Washington, Mr. Colby expressed particular satis-
faction at the statements made in Monsieur Pesqueira’s letter, then
under reply, to the effect that President de la Huerta and President-
elect Obreron had declared that article 27 of the new Mexican
constitution “is not and must not be interpreted as retroactive or
violative of valid property rights.”

10. It will be seen from the above facts that the acquisition by the
French Government under the San Remo Agreement of an interest
in the Mesopotamian oil fields represents the allotment to the French
Government of the former German interests in the Turkish Petroleum
Company in return for facilities by which Mesopotamian oil will
be able to reach the Mediterranean. The agreement so far as
it relates to Mesopotamia may therefore be said to be the adaptation
of pre-war arrangements to existing conditions, and in this respect
His Majesty’s Government far from acting in any selfish or monop-
olistic spirit, may reasonably claim to have sought [consulted] the
best interests of the future Arab state. Neither the rights of the
Turkish Petroleum Company nor the provisions of the San Remo
Oil Agreement will preclude the Arab state from enjoying the full
benefit of ownership or from prescribing the conditions on which
the oil fields shall be developed.

11. I have not failed to observe [the] large amount of public
attention directed to the reported resources of Mesopotamia, which,
Mr. Colby states, furnish a peculiarly critical test of the good faith
of the nations which have given their adherence to the mandate
principle. Apart from the fact that these resources are as yet en-
tirely unproved, I can discern nothing in this principle which com-
pels the mandatory power to discriminate against its own nationals,
who, after years of arduous negotiation, secured certain rights and
would but for the war have long since been actively at work, in order
to afford an equal opportunity to other groups which before the
war were not actively concerned in the petroleum resources of
Mesopotamia.

12. I have noted with interest the allusions which Mr. Colby makes
to the estimates which have been framed of the distribution of the
petroleum resources of the world. While I agree that such calcula-
tions are of subsidiary importance in this discussion, I think it
[desirable] that they should be placed in the proper perspective. It
is stated in Mr. Colby’s note that the United States possesses only
one-twelfth approximately of the world’s petroleum resources but
I may be permitted to point out that in 1912 the chief geologist of
the United States Geological Survey stated that, “the criteria on
which such estimates can be based vary in every degree of inade-
quacy in the different regions”, and he was then referring to esti-
mates dealing with the United States only and was not taking into
account the infinitely more problematical resources of countries still
partially or wholly unexplored, from a geological standpoint.

13. My object in referring to this aspect of the question in a pre-
vious note was to show that the United States controls a home pro-

duction of petroleum which, whether it is about to reach its maximum point or not, is actually and potentially vast, while in neighboring countries it possesses a predominant interest in oil-bearing regions of exceptional promise. The United States Government will doubtless agree that this statement of the existing situation admits of no dispute.

14. While the potentialities of the future are necessarily problematical, the undisputed fact remains that at present United States soil produces 70 percent and American interests in adjoining territory control a further 12 percent of the oil production of the world. It is not easy therefore to justify the United States Government's insistence that American control should now be extended to resources which may be developed in mandated territories, and that too at the expense of the subjects of another state who have obtained a valid concession from the former Government of those territories.

15. His Majesty's Government are nevertheless glad to find themselves in general agreement with the contention of the United States Government that the world's oil resources should be thrown open for development without reference to nationality. I observe, however, that by article 1 of the Act of the Philippine Legislature of the 31st of August, 1920, participation in [the] working of all "public lands containing petroleum and other mineral oils and gas" is confined to citizens or corporations of the United States or of the Philippines, and I cannot but regard this enactment as in contradiction with the general principle enunciated by the United States Government. In this connection I observe that Mr. Colby does not attempt to refute the statements contained in my note of 9th August last concerning the action taken by the United States Government to prevent the exploitation by British interests of such resources in Haiti and Costa Rica. 20

16. In your note of the 28th July 21 the attention of His Majesty's Government was called to the existence of reports to the effect that the officials charged with the administration of Tanganyika Territory have accorded privileges to British nationals that have been denied to the nationals of other countries. It is from no mere love of controversy that I recall this matter to your attention but rather from the conviction that misunderstandings between our two countries over oil questions and indeed our present correspondence are largely due to the spirit engendered by reports of precisely this nature which on dispassionate examination can frequently be found to lack any basis of truth. In the absence of particulars, which the United States Government were requested to furnish, I can only express my regret at being unable to prove positively that the reports quoted by you are based on misapprehension.

I have, et cetera. (Signed) Curzon of Kedleston."

In this connection see my telegram 159, March 1, 4 p.m. 22

Davis

20 For the comments by the Secretary of State on the statements regarding Costa Rica in the British note of Aug. 9, see telegram no. 216, Apr. 15, to the Chargé at London, vol. 1, p. 651.
22 Not printed.
The Consul General at Berlin (Coffin) to the Secretary of State

BERLIN, April 2, 1921.
[Received April 27.]

Sir: I have the honor to acknowledge receipt of the Department’s telegraphic instruction No. 548, of March 26th [28th], 6.00 P. M., with reference to the assertion contained in the reply of the British Government, dated February 28th last to the Department’s note of last November, on the subject of Mesopotamian oil fields.

Although I was convinced that no additional information could be obtained on this subject further than that already furnished to the Department, I requested the Deutsche Bank to invite Mr. F. J. Gunther, now residing in Dresden, and who is General Director of the Anatolian Railway, to come to Berlin for a further conference on the matter. Mr. Gunther represented the German interests in the negotiations which took place at Constantinople during the year 1914 between the German and British groups and the Ottoman Government. He is thoroughly familiar with all the circumstances of these negotiations.

Mr. Gunther reached Berlin on April 1st, and I went into the matter thoroughly with him. As a result of our conversation I telegraphed the Department yesterday to the effect that no concession was ever granted to the Turkish Petroleum Company, and that the British claim, as set up in the note of the British Government, dated February 28th, rests solely on the letter of the Grand Vizier, dated June 28, 1914. The Department was furnished with a copy of this letter and a report of the circumstances in my despatch of August 4, 1920.

There is little to add to that report, but I may say that the draft of the concession which I forwarded to the Department at the same time contained the terms which the German and British interests, represented by the Turkish Petroleum Company, intended to make the basis of their negotiations with the Sublime Porte for the oil concession. This draft, as the Department will note, is dated at London on April 3, 1914. The Deutsche Bank informs me that the draft of this concession contains every possible privilege which the two groups could think of, and that they anticipated that the negotiations which would result in the final concession to be issued would be prolonged for many months, and they never anticipated that they would be able to obtain all favors which they embodied in the draft concession.

*Not printed.
* See telegram no. 160, Mar. 1, from the Ambassador in Great Britain, supra.
Mr. Gunther informs me that the letter of June 28th from the Grand Vizier is entirely correct in that the Ottoman Government agreed, in principle, to grant a concession to the Turkish Petroleum Company. This, in fact, was agreed to, verbally, between Mr. Gunther and Mahmoud Sheffket Pasha when the latter was Grand Vizier. A short time prior to his assassination he informed Mr. Gunther that the Sublime Porte was willing to accord the concession to the German-British group, and the necessary formalities could be arranged as soon as the German-British group could reconcile their own interests. As the Department is aware, the negotiations between the British and the Germans had covered a very long period, and embraced very serious political and economical questions. They had been concluded in 1914 and, as a result of the agreement, matters were rapidly coming to a head when the war broke out. The letter of June 28th is, however, nothing more than an undertaking to issue a concession at a later date under terms and conditions to be arranged. It is entirely possible that the British-German group might have been unable to reach an agreement with the Turkish Government, and the undersigned can hardly conceive that the letter of June 28th could be held to bind the Ottoman Government to the issuance of a concession, except, possibly, under such terms and conditions as the Ottoman Government saw fit to impose, which might well have been so onerous as to preclude the possibility of a profitable working of such a commercial enterprise.

I have [etc.]

Wm. Coffin

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

[Extract]

No. 233

WASHINGTON, November 4, 1921.

Sir: Reference is made to the Embassy's telegram No. 160 of March 1, 1921, and to the Department's telegraphic instruction No. 448 of August 4, 1921, relating to economic rights in mandate territories and particularly to the claim of the Turkish Petroleum Company in Mesopotamia.

The Embassy is requested to present to the Foreign Office a note in the sense of the following, advert ing appropriately to the Embassy's communication to the Foreign Office in accordance with the Department's telegraphic instruction No. 448 of August 4, 1921:

[Here follows the text of the note; the note as presented to the Foreign Office on November 17 is printed on page 89.]

Post, p. 106.
The Embassy is requested to inform the Department by telegraph of the date of the delivery of the note to the Foreign Office and to mail promptly copies of the note to the Department. The Embassy will also mail copies of the note to the American Commission at Berlin, to the American High Commission at Constantinople, and to the Legation at Berne for their confidential information, and to the Embassies at Paris and Rome, to be presented to the French and Italian Foreign Offices.

When delivering the above note or upon the next appropriate occasion, the Embassy may state orally that this Government has noted certain published reports to the effect that the Anglo–Persian Oil Company, which is controlled by the British Government, is expected to be the chief participant in the Turkish Petroleum Company. The Embassy may make inquiry regarding the truth of these reports, and it may be stated that, if the reports are correct, it is assumed that the British Government in a matter in which not merely British nationals but the British Government itself is largely interested will wish, if the claim of the Turkish Petroleum Company is pressed, to have the question of its validity appropriately determined by the suggested arbitration.

I am [etc.]

CHARLES E. HUGHES

The Secretary of State to the President of the Standard Oil Company of New Jersey (Teagle)

WASHINGTON, November 22, 1921.

SIR: The receipt is acknowledged of a letter dated November 3, 1921, signed by yourself, as President of the Standard Oil Company of New Jersey, by E. L. Doheny, President of the Mexican Petroleum Company, Amos L. Beaty, President of the Texas Company, George S. Davison, President of the Gulf Refining Company, J. W. Van Dyke, Secretary of the Atlantic Refining Company, H. F. Sinclair, President of the Sinclair Consolidated Oil Corporation, and C. F. Meyer, Vice President of the Standard Oil Company of New York, stating that the above named American companies desire to conduct petroleum investigations in Mesopotamia and that a party of geologists and engineers representing these companies is ready to start as soon as assurance is received that permission to make such investigations will be granted. You further request such information and instructions as may be thought necessary.

This Department is not informed that any decision has been reached relative to the working of the oil fields of Mesopotamia or

* Not printed.
that any regulations have been issued providing for the granting of rights for prospecting or development. It is understood to be the position of the British Government that, during the period of military occupation, no permission is being granted to the nationals of any country to conduct geological investigations in Mesopotamia.

There are, it is well known, in the regions referred to, certain claims to rights alleged to have been granted before the war which, if recognized, would apparently result in the exclusion of American interests from petroleum development in Mesopotamia. These claims have become the subject of diplomatic correspondence and it is understood that no final action has yet been taken by the British Government or by the authorities in Mesopotamia, with reference to them.

As soon as this Department learns that permission for prospecting in Mesopotamia is being or may be granted by the authorities in that territory, you will be promptly informed.

It is helpful to know that American oil companies are prepared to take advantage promptly of the opportunities which are expected to be presented in that region; and, accordingly, your courteous and timely statement of the position and plans of your company is thoroughly appreciated.

I am [etc.]

CHARLES E. HUGHES

890g.6363 T 84/21

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

No. 749

LONDON, December 7, 1921.

[Received December 22.]

Sir: In my telegram No. 930 of November 18, 5 p.m.,* I had the honor to advise you that the Note transmitted by your Confidential Instruction No. 233 of November 4, with reference to the claim of the Turkish Petroleum Company in Mesopotamia, had been presented to the Foreign Office. The content of the last paragraph of the Instruction was stated orally as directed.

I have the honor to transmit herewith the text of the Note as delivered. Copies were mailed to the Missions at Berlin, Paris, Rome and Berne, and to the High Commission at Constantinople. I have [etc.]

For the Ambassador:

POST WHEELER
Counselor of Embassy

* Not printed.
The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Cunzon)

No. 287

London, November 17, 1921.

My Lord: I have the honour to advert to my memorandum of August 24th last, in which, in connection with the question of mandates, I stated that my Government was unable to conclude that any concession was ever granted by the Turkish Government to the Turkish Petroleum Company and would shortly take up the considerations which have been advanced by His Majesty’s Government upon this subject.

In the Memorandum referred to, the position of my Government with regard to its interest in the disposition of mandate territories was again stated and it was assumed that by reason of the relation of the United States to the victory over the Central Powers and in view of the fundamental principles which have been recognized by His Majesty’s Government, there would be no purpose in relation to any of these territories to discriminate against the United States or to refuse to safeguard equality of commercial opportunity.

The Government of the United States does not desire for its citizens any special privileges in the mandate territories, and expects, of course, that private rights actually acquired before the war will in general be respected.

It is believed, however, that in the consideration of claims to rights His Majesty’s Government would not entertain any desire to exclude American interests from participation in the development of any important resource, and will appreciate the justice of my Government’s contention that the claim of the Turkish Petroleum Company in particular, which relates to the entire petroleum resources of Mesopotamia, should not be recognized except in accordance with the principles which have been accepted by the British Government as applicable to the mandate territories and on the basis of a satisfactory determination of the character and extent of the rights of the company.

Since it has seemed from Your Lordship’s most recent communication on the subject that the views of His Majesty’s Government with regard to this claim were widely at variance with those of my Government, I was instructed to suggest in my Memorandum of August 24, 1921, that if the claim of the Turkish Petroleum Company continues to be asserted appropriate provision should be made for its determination by a suitable arbitration.

* See telegram no. 448, Aug. 4, to the Ambassador in Great Britain, p. 106.
In a note dated February 28, 1921, Your Lordship was good enough to set forth the various considerations upon which the British Government based its opinion that the Turkish Petroleum Company possesses rights in Mesopotamia. It was stated that the concessions for the oil fields in the two vilayets of Mosul and Bagdad were bestowed by the Sultan on his Civil List in 1888 and 1898 respectively, and that by firmans issued in 1908 and 1909 the concessions had been transferred from the Civil List to the Ministry of Finance. In the negotiations before the war between the British and the German Governments and between each of these Governments and the Turkish Government, the disposition of the oil fields of Mesopotamia was under discussion, and a British Company, called the Turkish Petroleum Company, was organized, representing the amalgamation of German and British interests.

I shall not undertake to review what is said upon this subject in Your Lordship’s note, as I do not find in Your Lordship’s recital any suggestion that any negotiations which had thus taken place had ripened into any agreement or concession prior to the summer of 1914. The question then comes to the effect of what was done in that year.

It appears that Said Halim Pasha, to whom Your Lordship refers as the Turkish Grand Vizier, addressed on June 28, 1914, a communication to the British Ambassador at Constantinople, a part of which has been stated by Your Lordship, and which is understood to have been identical with a communication of the same date to the German Ambassador at Constantinople. This communication, according to the information in the possession of my Government, reads in translation as follows:

“Mr. Ambassador:

“In your response to the note No. 985 which Your Excellency had the kindness to address to me under date of the 19th instant, I have the honor to inform you as follows:

“The Ministry of Finance being substituted for the Civil List with respect to petroleum resources discovered, in the vilayets of Mossoul and Bagdad, consents to lease these to the Turkish Petroleum Company, and reserves to itself the right to determine hereafter its participation, as well as the general conditions of the contract.

“It goes without saying that the Society must undertake to indemnify, in case of necessity, third persons who may be interested in the petroleum resources located in these two vilayets.

“Be pleased to accept, Mr. Ambassador, the assurance of my very high consideration.

(Signed) Said Halim.”

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90 See telegram no. 160, Mar. 1, from the Ambassador in Great Britain, p. 80.
In Your Lordship’s note of February 28, 1921, it is further set forth that during the war the German interests in the Turkish Petroleum Company came into the hands of His Majesty’s Government by liquidation, and have been allotted to the French Government in the San Remo Petroleum Agreement, which is explained as the adaptation of pre-war arrangements to existing conditions.

Your Lordship comes to the conclusion that the Turkish Petroleum Company possesses a right to the lease of the oil fields of the two vilayets of Mosul and Bagdad, resting on an official undertaking given by the Turkish Government to the British and German Governments after prolonged negotiations, and that neither the rights claimed by the Company nor the provisions of the San Remo agreement would preclude the Mesopotamian state from enjoying the full benefit of ownership or from prescribing the conditions on which the oil fields shall be developed.

Without entering into a detailed discussion of legal principles which may be applicable, the Government of the United States is of the opinion that the communication of June 28, 1914, from Said Halim Pasha, even in connection with the communications to which it is understood to have been a reply, cannot well be considered a definite and binding agreement to lease. Since both the extent of the participation of the Ministry of Finance in the operations of the company and the general conditions of the lease were, according to this communication, to be fixed at a later date by one of the parties to the alleged agreement, there would seem to be room for doubt whether, even if war had not intervened, a lease would actually have been executed. As Your Lordship observes with respect to the letter of June 28, 1914, the Ministry reserved “the right to fix later on its share in the enterprise as well as the terms of the contract.” There appears to be no reference in Your Lordship’s note to the provisions of Turkish Law applicable to the execution of a lease or to the transfer of a concession; and there is no indication, if these provisions were intended to be disregarded, that any progress had been made toward obtaining the approval of the Turkish Parliament.

The relations between the Turkish officials concerned and the Turkish Petroleum Company would appear, therefore, to have been those of negotiators of an agreement in contemplation rather than those of parties to a contract. Your Lordship makes no mention of any communications subsequent to those of June 28, 1914; but, from other information in the possession of my Government it would appear that, in later notes addressed to the Turkish Grand Vizier, the British and German Ambassadors raised certain questions with regard to one of the conditions indicated in that communication.
It is hardly necessary to observe that in dealing with the resources of mandate territories, placed under conditions of trusteeship, there should be no consideration of alleged monopolistic claims based on rights asserted to have been vested before the war, unless such rights are established by convincing proof, and it is assumed that this position would be taken by the British Government as a mandatory power, irrespective of the question whether such claims were advanced by British nationals. Hence, the immediate question is one of the proof of the alleged prior contract and an examination of the evidence thus far produced has not disclosed that any prior contract was made with the Turkish Petroleum Company.

The Government of the United States does not believe that any presumption should rest in favor of establishing in the mandate territories arrangements which were merely under diplomatic discussion before the war, but, on the contrary, is strongly of the view that such contemplated arrangements of a monopolistic character and inconsistent with the principles applicable to the mandate territories should receive no sanction.

I am instructed to express again the desire of my Government that the claim of the Turkish Petroleum Company, if it continues to be asserted, should be determined by a suitable arbitration, which, it is believed, should take place prior to any action which might involve further commitments or in any way imply recognition of the claim.

I may observe that the claim which is asserted by the Turkish Petroleum Company in Mesopotamia is regarded by my Government as in an entirely different category from the rights which are understood to be possessed by an American company in Palestine. The latter are apparently far from monopolistic and seem to have been regularly granted according to the prescribed formalities of Turkish Law by the proper authorities of the Turkish Government. Adverting further to the suggestion in the note of February 28, 1921, that the attitude of my Government with respect to the claims of the Turkish Petroleum Company in Mesopotamia is scarcely consistent with its position in regard to American rights in Mexico, it may be observed that those of the latter which have been made the subject of representations by my Government were not merely contemplated or in course of negotiation but were acquired in apparently full conformity with the local law.

In previous communications, my Government has made clear its attitude toward certain British interests in Costa Rica and has stated its policy with reference to an Act of the Philippine Legislature relating to petroleum development, which is regarded by Your Lord-

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*See telegram no. 216, Apr. 15, to the Chargé in Great Britain, vol. 1, p. 631.*
ship as in contradiction of the general principles enunciated by the Government of the United States.

Shortly after the enactment in question, the Government of the United States recommended that it should be so amended as to conform to the reciprocity provision of the United States general leasing law of February 25, 1920.\(^{32}\) At the last session of the Philippine Legislature an amending bill was passed, the object of which was to relax substantially the restrictions embodied in the original Act. Nevertheless, in the opinion of the Government of the United States, the proposed amendment did not sufficiently meet the situation; and Your Lordship was informed in my Memorandum of August 24, 1921, that it was the intention of my Government to take all appropriate steps with a view to bringing about at the next session of the Philippine Legislature a further amendment so that the Act may conform to the reciprocity provision above referred to. My Government has already taken certain of the steps which it deems appropriate, and believes that its position with regard to the natural resources of the Philippines is entirely consistent with the principles which it desires to see applied in other territories.

I have [etc.]

GEORGE HARVEY

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890g.6363 T 84/22

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

No. 816

LONDON, December 23, 1921.

[Received January 12, 1922.]

SIR: With reference to the claim of the Turkish Petroleum Company in Mesopotamia, I have the honor herewith to transmit a copy of a communication received from the Foreign Office, acknowledging the receipt of my note No. 287 of November 17, 1921, which went forward as enclosure to my despatch No. 749 of December 7th.

I have [etc.]

POST WHEELER

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)

No. E 12708/576/93

[LONDON,] December 20, 1921.

YOUR EXCELLENCY: I have the honour to state that every effort is being made to expedite a reply to your note No. 287 of the 17th ultimo relative to the Turkish Petroleum Company.

\(^{32}\) 41 Stat. 437.
2. Your Excellency however will readily understand that the matter is one which requires most careful consideration from numerous aspects and by several departments of His Majesty's Government before I shall be in a position to communicate with you further on the subject.

I have [etc.]

CURZON OF KEDLESTON

RESTRICTIONS UPON THE ACTIVITIES OF THE STANDARD OIL COMPANY IN PALESTINE

867n.6363/2

The Vice President of the Standard Oil Company of New York (L. I. Thomas) to the Secretary of State

NEW YORK, August 12, 1921.
[Received August 13.]

Sir: I have the honor to refer to my visit at the Department on August 4th, 1921 when, in the course of a conversation with Mr. Fletcher [superscript 34] and Mr. Millspaugh, I put forward the suggestion that representation should be made by the American Ambassador in London to the British Foreign Office so that my Company might be permitted to make a geological survey of their petroleum concessions in the Palestine. Our party have now been detained at Jerusalem for two years, and notwithstanding repeated protests, both through the State Department and by direct representation to the Foreign Office, the British Government have refused to permit any prospecting or research work, claiming we must await the outcome on the question of the Mandate or Protectorate.

It seems clear that to simply make a geological examination of the land does not in itself confer or confirm any rights which we claim. However, if this opinion is not shared by H.M. Government the Standard Oil Company of New York agree that if their research parties are permitted to move about the country for the purpose indicated they will not consider it as conferring any right or confirming any of their claims; furthermore, they will undertake not to sink any wells until such permission has been granted. It should be borne in mind that the rainy season in Palestine commences about December 1st and unless these parties are permitted to promptly go about their business a delay until next Spring is inevitable. What we are seeking to accomplish is to obtain some idea as to whether

[superscript 34] For previous correspondence concerning exploitation of petroleum in Palestine, see Foreign Relations, 1920, vol. II, pp. 649 ff.

[superscript 35] Henry P. Fletcher, Under Secretary of State.

[superscript 36] Arthur C. Millspaugh, attached to the office of the Foreign Trade Adviser, Department of State.
these concessions should be developed, and this, of course, cannot be determined until a thorough geological study has been made.

Asking that you will kindly give this matter your usual prompt attention and advise us what action has been taken,

I have [etc.]

L. I. THOMAS

800.3563/296a: Telegram

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

WASHINGTON, August 22, 1921—noon.

492. L. I. Thomas, Vice President Standard Oil Company of New York, will arrive in London about August 29 and will discuss with you restraints imposed upon his company in Palestine. See Embassy despatch No. 1782, November 24, 1919, No. 3340, August 28, 1920, enclosures, and Embassy telegram No. 3322, October 30, 1919, 6 P.M., and 159 and 160, March 1, 1921.46

You may after discussing the matter with Mr. Thomas make oral representations to the Foreign Office, requesting that representatives of the company be permitted to travel in Palestine so as to enable them to make a geological examination of the areas covered by their rights. Conditions of war, referred to by the Foreign Office in 1919,37 no longer prevail in Palestine, and it is understood that travel is now permitted. It is believed that the granting at this time of such permission could not be construed as inconsistent with the principles which have been accepted by the British Government with respect to the development of the economic resources of mandated regions. The suggested examination could apparently in no way compromise the future authorities of the country, since it is understood that the investigations would not be conducted with a view to acquiring new claims or strengthening old ones. If the above opinion is not shared by the Foreign Office, it should be pointed out that the company is understood to be willing to discuss any reasonable preliminary arrangement designed to preserve the legal status quo.

If in the course of your conversations the Foreign Office refers to Mesopotamia, you may say that this Government perceives no objection in principle to geologists travelling freely in Mesopotamia, provided geologists of any nationality are given the same opportunity throughout the entire region, and provided that the legal status quo is preserved until the permanent Government is established. See Department's 448, August 4, 1921,38 section 6 (B). Furthermore,

46 None printed except Embassy's telegram no. 160, Mar. 1, p. 80.
38 Post, p. 106.
this Government assumes that public announcement will be made if or when it is decided to permit geological examinations either in Palestine or Mesopotamia.

Please urge the Foreign Office to hasten its reply. The rainy season begins about December 1 and undue delay would force postponement until next spring, increasing the expense and inconvenience already caused the company by the restraints in Palestine.

Hughes

890.639/299: Telegram

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

London, September 10, 1921—11 a.m.
[Received September 10—9:58 a.m.]

742. Your 492, August 22nd, 12 a.m. After discussion with Thomas upon his arrival on 2d instant and oral representation to the Foreign Office on the 5th as well as conversations between Thomas and Sir John Cadman, Thomas accompanied by Wright had an interview with Colonial Office yesterday.

The latter were clearly maneuvering for position and after inquiring whether Socony and the Government desire or are willing that equal privileges of exploration be accorded other nationals as well (to which an affirmative reply was given) shifted the discussion to Mesopotamia and to mandates in general, inquiring as to how we might define a "monopoly" and also whether arbitration of such an alleged monopoly as the Turkish Petroleum claim should take place without consulting the Mesopotamian Government. We replied that any discussion of that phase of the situation prior to submission thereof to the Department and before receiving the reply of the British Government to your recent memorandum on the question of mandates would be premature.

Upon reiteration of the request that the company's representative be permitted to continue exploration in Palestine we were informed that a definitive reply could only be given to a formal request to that effect, which, in view of the nature of your instructions I hesitate to make without specific directions. It seems clear that the point upon which the British Government may base refusal or at least postponement of decision will be their alleged disinclination to create a precedent in the matter of recognizing rights or concessions acquired before the war.

Harvey

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29 Chief technical adviser to the Anglo-Persian Oil Co.; former Director of the British Petroleum Executive.
30 J. Butler Wright, Counselor of Embassy at London.
44 Standard Oil Company of New York.
809.6363/299: Telegram

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

WASHINGTON, September 13, 1921—2 p.m.

538. Your 742 September 10, 11 A.M.

After consulting with Thomas, you may make formally the request indicated in Department's 492 of August 22, 1921, without implying in any way that the company waives any of its rights or that the position of this Government relative to economic opportunity in mandate territory has been or will be modified. Point out carefully that this Government would not object if privileges with respect to travel or geological examination similar to those accorded nationals of this country should also be accorded other nationals. The Department feels that objections in detail may be removed by conference between the appropriate authorities and the company's representatives.

HUGHES

867n.6363/7: Telegram

The Consul at Jerusalem (Southard) to the Secretary of State

JERUSALEM, October 20, 1921—2 p.m.

[Received 3:52 p.m.]

Referring to Department's instruction of August 29, on matter of Standard Oil Co. Permission for prospecting has been referred from London to Jerusalem for recommendation. This Government has permitted meetings informally to discuss it and assure me that it is being now returned to London with favorable recommendation.

SOUTHARD

867n.6363/9

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

No. 596

LONDON, October 28, 1921.

[Received November 10.]

SIR: Referring to my telegram No. 862, of October 27, 2 [5] p.m., 42 in reference to the representatives of the Standard Oil Company in Jerusalem, and their desire to continue geological examinations, I have the honor to transmit herewith copies of the full text of the Note referred to, together with a copy of my Note to the Foreign Office, No. 189 of September 15.

I have [etc.]

For the Ambassador:

POST WHEELER
Counselor of Embassy

41 Not printed.

115367—36—vol. II—7
The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon)

No. 189

The American Ambassador presents his compliments to His Majesty's Secretary of State for Foreign Affairs and has the honour to refer to conversations held in March and April, 1920, between Sir John Tilley, of the Foreign Office, and Mr. Wright, Counselor of this Embassy; to a conversation between Sir John Tilley, Mr. L. I. Thomas, of the Standard Oil Company of New York, and Mr. Wright on March 29, 1920; and to a conference at the Colonial Office on the 9th instant, kindly arranged by Mr. Lindsay of the Foreign Office, at which were present Mr. Shuckburgh and Major Young of that office, Mr. Thomas and Mr. Wright; all relative to the desire of the Standard Oil Company of New York that representatives of that Company now in Jerusalem be permitted to continue geological examinations of the areas covered by their rights or concessions in Palestine, which examinations were commenced by the Company prior to the outbreak of the war in 1914.

In accordance with telegraphic instructions just received from his Government, Mr. Harvey now has the honour to reiterate this request, and in so doing desires to state that it is the opinion of his Government that the granting at this time of such permission could not be construed as inconsistent with the principles which have been accepted by the British Government regarding the development of the economic resources of mandated regions. Furthermore, the exploration and examination desired could apparently in no way compromise the future authorities of the countries concerned, since it is to be clearly understood that the investigations which it is desired to undertake would not be conducted with a view to acquiring new claims or to strengthening old ones.

In this connection Mr. Harvey is happy to improve this opportunity to confirm the statement made by Mr. Thomas and Mr. Wright during the aforementioned conversation, to the effect that there would be no objection on the part of the Government of the United States if privileges with respect to travel or to such geological examination in Palestine, similar to those accorded to nationals of the United States, should also be accorded to nationals of other countries.

Accordingly, Mr. Thomas, who is in London for a short time only but who will be compelled to leave within a few days on account of urgent business, holds himself in entire readiness to cooperate with the authorities of His Majesty's Government and with the Embassy to such ends, and adds to the request of the Department of State his earnest hope that an early decision may be reached by His Majesty's

44 The Colonial Office.
Government, in view of the fact that the rainy season in Palestine commences about December 1st, and that delay which might compel postponement of operations until next spring would increase the inconvenience and expense already incurred by the Company.

LONDON, September 15, 1921.

[Enclosure 2]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)

No. E 11576/264/88 [LONDON,] 26 October, 1921.

YOUR EXCELLENCY: In your note No. 189 of the 15th. ultimo, you enquired whether the representatives of the Standard Oil Company in Jerusalem might be permitted to continue the geological examination, already begun before the war, of certain areas covered by rights or concessions in Palestine acquired by that Company.

2. In reply I have the honour to state that informal permission will be accorded to the representatives of the Standard Oil Company by the Palestine Government, to conduct researches within the limits of the areas over which the Company is known to claim concessionary rights with the object of discovering whether oil in payable quantities exists in these areas, on the strict understanding that such permission is granted without prejudice to the question of the validity of the Standard Oil Company’s claims, that no permission can be granted for the exploitation of these areas until the Treaty of Peace with Turkey enters into force and until the terms of the Mandate for Palestine are finally settled, and on the condition that the Company will undertake to furnish a full and complete report of the result of their investigations as required by the Palestine Government and that they will comply with any instructions which may be given by the Palestine Government.

3. I would wish to make it quite clear to Your Excellency, that while the question of the validity of the Standard Oil Company’s claims to the areas in Palestine remains unaffected, the fact of their existence has been a determining factor with His Majesty’s Government and the Palestine Government in acceding to the request of the Company, and that no precedent is thereby established for the treatment of any future applications of a like nature.

4. I shall be glad to learn from you whether the Standard Oil Company agree to undertake operations in the Palestine areas on the terms set forth above, as well as the names of the persons to whom the work of investigation is to be entrusted by the Company, in order that the Palestine Government may be informed.

I have [etc.]

(For the Secretary of State)

LANCELOT OLIPHANT
Mr. H. E. Cole, of the Standard Oil Company of New York, to the Secretary of State

New York, November 17, 1921.
[Received November 21.]

Subject: Palestine Geological Examinations

Sir: We beg to acknowledge with thanks receipt of your letter of October 28th, TA-367N.6363/8, containing a paraphrase of a telegram received from the American Embassy in London on the above subject.

While we shall reply categorically to the restrictions and limitations with which the Palestine and/or British Government has qualified its acquiescence in the geological examinations of our claims, we are loath to believe that our Government has recognized the present Administrators of Palestine, whether known as the Palestine or as the British Government, as having the authority to prescribe terms and conditions under which our investigation may be conducted, regardless of the fact that all of our claims were actually obtained previous to the World War, from the Turkish Government.

1. We agree that our geological researches shall be confined to limits and areas over which concessionary rights were granted to our Company by the Turkish Government.

2. We agree that researches for the present are to be for the purpose of discovering whether Petroleum in payable quantities exists in such areas, and that they are to be conducted on the understanding that the permission of the Palestine and/or British Government is accorded without prejudice as to whether the Company's claims are valid.

3. While we fully understand that the permission now proposed is for research and geological examination only, and we will strictly so observe it, yet we are not willing to agree as a condition of this permit or otherwise that the development of our claims shall be delayed until the coming into force of the Treaty of Peace with Turkey, and the final settlement of the terms of the Palestine Mandate.

We have not understood that our Government recognizes any right in the British Government to interfere with or delay the development of claims legally obtained from the Turkish Government prior to the War, and would desire to be informed if there has been any change in the attitude of our Government in this respect before agreeing to a delay in the development of our claims, the termination of which delay is so indefinite and so greatly in the discretion of the British Government.

4. We are unable to accept the condition that we are to undertake to supply a full and complete report embodying a result of the invest-

*45 Not printed.
tigations as may be required by the present Government of Palestine, and that our Company will comply with any instructions which may be given by the Government of Palestine. This might be a recognition of a right, which we deny, in the present British or Palestine Government to modify in any way the terms of our claims. However, we do agree to comply with the terms and conditions of the claims as originally granted by the Turkish Government, and with the Turkish mining laws in force at the time the claims were acquired by us.

It is understood that none of our agreements are to imply that our Company in any way waives any of its rights, or the rights which we understand our Government claims for us and other concessionaires in mandate territories.

One of our Directors, Mr. L. I. Thomas, is now in Constantinople but will be in London in the near future. We have sent him a copy of your letter under reply, together with copy of this communication, and have asked him to place himself in touch with the American Embassy for the purpose of such discussion of the matter in London as may be necessary.

While Mr. A. G. Dana is our representative in Jerusalem in particular charge of our geological party, we would prefer to confine all of the important discussions incident to the investigation of our claims to those to be conducted by Mr. Thomas in London, except, of course, minor details which would naturally have to be adjusted on the ground.

We have [etc.]                              H. E. Cole

867n.6363/8 : Telegram

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

WASHINGTON, November 26, 1921—6 p.m.

661. Your telegram 862 October 27, 5 P.M. and despatch No. 596.47

Socony attitude toward British conditions stated in letter to Department of November 17, 1921. After you consult Thomas to whom copy of letter has been sent and in continuance of direct discussions with the Colonial Office, if Foreign Office consents as it has previously, you may state that it is the opinion of the Department that the question of the date when permission for development work can or will be granted does not seem at this time to require discussion. The requested examinations could apparently be made without prejudice to any such question. In view of your note to

46 Not printed.
the Foreign Office of September 15, 1921, pursuant to the Department's instruction of September 13, 1921, and since the examinations are to be without prejudice to the question of the validity of the company's claims, the Department perceives no reason for the conditions which call for a report of the investigations to the Palestine authorities and for compliance with any instructions which may be given by such authorities.

The Department hopes that the accommodating spirit already shown by the British Government in this matter will lead without delay to such a specific interpretation or modification of the conditions as to make them acceptable to the Company and free from controversial features.

You may at your discretion and if deemed advisable address the Foreign Office formally along the above lines, carefully avoiding any statements which might be construed as a recognition or a denial of the British claim to a right to fix the conditions referred to.

HUGHES

867a.6363/17

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

No. 724  

London, December 1, 1921.

[Received December 12.]

Sm: With reference to the Department's telegram No. 661 of November 26, 6 p.m., concerning the desire of the Standard Oil Company of New York to make a geological examination of areas covered by the Company's petroleum rights in Palestine, I have the honor to transmit herewith a copy of a Note sent to the Foreign Office on this date.

I have [etc.]

For the Ambassador:

POST WHEELER
Counselor of Embassy

[Enclosure]

The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon)

No. 308  

London, December 1, 1921.

My Lord: In your note to me of October 26 (No. E 11576/264/88)48 replying to my request that representatives of the Standard Oil Company of New York be permitted to continue geological exami-

nations of the areas covered by their rights or concessions in Palestine, which examinations were commenced by the Company prior to the outbreak of the war in 1914, in stating the conditions under which such informal permission will be accorded, Your Lordship observes that no permission can be granted, for the exploitation of those areas until the Treaty of Peace with Turkey enters into force and until the terms of the Mandate for Palestine are finally settled.

It is the opinion of my Government that the question of the date when permission for development work can or will be granted does not seem at this time to require discussion. The requested examinations could, apparently, be made without prejudice to any such question.

In view of my note to Your Lordship of September 15, 1921, (No. 189),* sent you pursuant to my Government's instructions, and since the examinations are to be without prejudice to the question of the validity of the Company's claims, my Government perceives no reason for the conditions which call for a report of the investigations to the Palestine Authorities and for compliance with any instructions which it is [may be?] given by such Authorities. My Government hopes that the accommodating spirit already shown by the British Government in this matter will lead without delay to such a specific interpretation of [or] modification of the conditions as to make them acceptable to the Company and free from controversial features.

I have [etc.]

GEORGE HARVEY

887a.6393/23

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

No. 824

LONDON, December 30, 1921.

[Received January 12, 1922.]

Sir: Referring to the Embassy's telegram No. 978, of December 15, 4 p.m.,* and its despatch No. 724, of December 1, regarding the desire of the Standard Oil Company to continue geological examinations in certain areas of Palestine, I have the honor to transmit here-with copies (in triplicate) of a further note received from the Foreign Office upon this subject, dated December 28, 1921. This Note, as will be noted in paragraph four, was sent without waiting

* Ante, p. 98.
* Not printed.
for the results of the further enquiries addressed to the Palestine Government, reference to which is made in the telegram above mentioned.

I have [etc.]

POST WHEELER

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)


Your Excellency: With reference to my note of the 12th December, relative to the desire of the Standard Oil Company to resume their geological examination of certain areas in Palestine, I have the honour to inform Your Excellency that I have consulted further with the department of His Majesty's Government immediately concerned with the administration of Palestine, and I now desire to explain that it is far from the wishes of the Palestine Government to accompany the permission which has been granted to the Standard Oil Company with unacceptable conditions. The misapprehension which appears to have arisen on this point may, however, be due to the fact that the nature of the conditions mentioned in my note of the 26th October last was not expressed in sufficiently clear and unambiguous terms, and I would, therefore, offer the following additional observations on the subject.

2. The Government of Palestine is not at present in a financial position to create a Geological Survey Department competent, within a reasonable period of time, to carry out a thorough survey of the country, and all the information which at present exists in various books and publications is of a very fragmentary and unsatisfactory nature. The Palestine Government therefore proposes to lay down in a Mining Law for Palestine, which will be passed as soon as the mandate for Palestine is issued, as a condition, precedent to the grant of any mineral concession, that applicants for such concessions should bind themselves to present to the Government for its confidential information, a full and complete report of the geological results of their investigations. It is proposed to appoint a Geological Adviser to the Government of Palestine, who will assemble and put in order the information already existing, and collate with it all reports sent in by persons operating mineral concessions. In the present case, the

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*Not printed.
*Ante, p. 99.
Standard Oil Company has been simply asked to collaborate and to give its co-operation in this scheme, which is to be of general application, and in view of the explanations given, I permit myself to hope that the request of the Palestine Government will not be considered unreasonable and that the Company will be prepared to furnish a report of the nature desired.

3. With regard to the second condition, i.e. that the Company will comply with any instructions which may be given by the Palestine Government, the instructions contemplated by the Palestine Government are prompted, not by a desire to hamper the Company’s activities, but solely by considerations of public safety. In the present state of political feeling in Palestine, circumstances might conceivably arise in which the Palestine Government would find itself compelled to restrict the movements of the Company’s representatives in areas where their personal safety could not be guaranteed without prejudicing the general scheme for the public security of the country. It is hoped, however, that no such circumstances will arise, but it would not be possible to deprive the local authorities of the means of dealing with a contingency which cannot be regarded as an impossible one. There is, however, no doubt that the Palestine Government will do its utmost to impose no unreasonable restrictions on the movements of the Company’s representatives.

4. In conclusion, I wish to observe that His Majesty’s Government, with the object of avoiding all possible delay in this matter, and of showing their desire to meet as far as possible the wishes of the Company, have given the above explanations without waiting for the results of the further enquiries addressed to His Majesty’s High Commissioner in Palestine on the receipt of your note No. 308 of December 12th [1st]. Although His Majesty’s Government are confident that Sir H. Samuel will concur generally in these explanations, it is possible that the Government of Palestine may have something to add of minor importance, from the point of view of local circumstances.

5. I shall be glad to learn that in the light of these assurances the Company will now see its way readily to comply with the justifiable and by no means onerous conditions which the Palestine Government has found it necessary to lay down.

I have [etc.]

[For the Secretary of State]

LANCELOT OLIPHANT

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*Ante*, p. 102.
NEGOTIATIONS TO ENSURE THE RECOGNITION OF THE RIGHTS OF THE UNITED STATES IN TERRITORIES UNDER MANDATE

800.01 M 31/60 : Telegram

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

LONDON, August 2, 1921—6 p.m.

[Received 9:31 p.m.]

634. My 570 July 9, 12 noon. I received last evening the following note from Lord Curzon dated August 1st:

['"']My dear Ambassador: You will remember that I twice mentioned to you the subject of the Asiatic mandates and have sought to obtain from you a statement of the criticisms or objections which your Government is understood to desire to raise. The matter is one of some urgency since the Council of the League of Nations has pressed us to give them an answer before the meeting of the Assembly at the beginning of September. On the other hand your Government having formally placed on record its protest may be assumed to have already formulated its objections."'

Harvey

800.01 M 31/60 : Telegram

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

WASHINGTON, August 4, 1921—8 p.m.

448. Your 634, August 2, 6 p.m.

You may state to the Foreign Secretary that this Government welcomes his suggestion that there should be a discussion of the question of mandates and you may communicate to him the following views of this Government. Before proceeding to the consideration of the precise terms of draft mandates, it is thought best to restate the general principles which are deemed to be involved.

1. This Government adheres to the position already stated that the right to dispose of the overseas possessions of Germany was acquired only through the victory of the Allied and Associated Powers, and that there can be no valid or effective disposition of these territories without the assent of the United States as one of the participants in that victory.

2. This position of the United States is not opposed, but is confirmed, by the Treaty of Versailles, by which Germany renounces

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54 For texts of draft mandates, see vol. I, pp. 96 ff.
55 Not printed.
56 See vol. I, pp. 87 ff.
57 On Aug. 7 somewhat similar instructions were sent to the representatives in France, Italy, and Japan; see telegram no. 377 to the Ambassador in France, vol. I, p. 922.
58 A memorandum embodying these views was handed to the British Foreign Secretary under date of Aug. 24.
in favor of the Principal Allied and Associated Powers, of which the United States was designated to be one, all her rights and titles over her overseas possessions. It may further be observed that in providing, as stated in Article 440, for the coming into force of that treaty when it had been ratified by Germany and three of the Principal Allied and Associated Powers, it was manifestly not the intention that on such ratification by three Powers there should still remain in Germany any undivided share of title or sovereignty in the overseas possessions described. It would seem to be clear that the renunciation set forth in Article 119 of the treaty was not intended to be divisible.

In the light of all the pertinent considerations, this Government perceives no possible basis for a claim that the other Principal Allied and Associated Powers would be entitled to exclude the United States from full participation, and the United States does not understand that any such claim is made.

3. The right of the United States in the territories in question could not be made the subject of such disposition as is proposed without its assent, and under its constitutional system the giving of this assent is not exclusively within the authority of the President. It is thought, however, that there would be no difficulty in negotiating an appropriate treaty if the terms of the mandates were defined in the line of the following suggestions. It is not the intention of this Government to raise objection to allocation or terms of mandates for the purpose of seeking additional territory or for any other purpose than to safeguard the interests of the United States and the fair and equal opportunities which it is believed the United States should enjoy in common with the other Powers.

4. With respect to mandated territories, other than those which were formerly possessions of Germany, while it is true that the United States did not declare war against Turkey, still the opportunity of the Allied Powers to secure the allocation of mandates and the administration of territories formerly under Turkish rule was made possible only through the victory over Germany, and the United States assumes that by reason of its relation to that victory and of the fundamental principles recognized by the British Government as applicable to the administration of mandated territories, there would be no disposition in relation to any of these territories to discriminate against the United States or to refuse to safeguard equality of commercial opportunity.

5. With this understanding, and without attempting to restate the general principles governing mandates which have been the subject of previous correspondence between the two Governments, this Government desires to submit the following special observations as to the forms of mandates which have been proposed:

Draft A mandates

(a) Capitulatory Rights. In the draft for Syria and Lebanon there is a provision in Article 5 not found in the mandates for Mesopotamia and Palestine, to the effect that foreign consular
tribunals shall continue to perform their duties until the described new legal organization is set up. It is desired that there should be a similar provision in the mandate for Mesopotamia, and that in the mandate for Palestine it should be provided that capitulatory rights shall be continued until adequate courts are established. Provision should also be made in all A mandates for the revival of capitulatory rights in the event of the termination of the mandate regime.

(b) Provisions against Discrimination. The limitation of protection in Articles 11 and 14 of mandates for Syria and Lebanon and Mesopotamia, and of Articles 18 and 21 of mandate for Palestine to States that are members of the League of Nations should be removed and the protection extended so as to embrace the United States. This could be effected by referring to any State mentioned in the annex to the covenant of the League of Nations. The reference to incorporated companies in Article 11 of the mandate for Mesopotamia and in Article 18 of the mandate for Palestine is too narrow and should be broadened to embrace societies and associations (see Article 11 of mandate for Syria and Lebanon).

It is desired that there should also be provision against discrimination in concessions. British B Mandate for East Africa,\(^{62}\) Article 7 provides as follows:

"Concessions for the development of natural resources of the territory shall be granted by the mandatory without distinction on grounds of nationality between the nationals of all states members of the League of Nations but on such conditions as will maintain intact the authority of the local government."

Similar provision should be inserted in A mandates and broadened to embrace the United States.

There should also be appropriate provision against the granting of monopolistic concessions or the monopolizing of natural resources by the mandatory itself.

(c) Missionaries. In mandate for Syria and Lebanon protection is accorded provided activities are confined "to the domain of religion." It would appear as if the intention were to restrict, if not to eliminate, educational and charitable missionaries. (See Franco-British Convention, Article 9, signed at Paris, December 23, 1920.)\(^{63}\) It is desired that present and future activities, both religious and educational, of our missionaries should be fully protected, and it is suggested that provision similar to Article 8 of the British B mandate for German East Africa be incorporated in all A mandates.

(d) It will be understood that the consent of the United States shall be necessary to any modification of a mandate after it has been agreed to.

Draft B mandates

(a) The provisions of Article 6 of the British and French mandates for the Cameroons and Togoland\(^{64}\) and of the Belgian mandate for German East Africa,\(^{65}\) and of Article 7 of the British mandate for German East Africa are not extended to the nationals

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\(^{62}\) Vol. I, p. 121.
\(^{64}\) Vol. I, pp. 109 and 125, respectively.
\(^{65}\) Vol. I, p. 133.
of the United States. This should be corrected, and it might be sufficient to substitute "nationals of States mentioned in the annex to the covenant of the League of Nations" for "nationals of States members of the League of Nations" in each of these articles.

In the third paragraph of the same article in each mandate it should also be provided that monopolistic concessions should not be granted by the mandatory, nor should natural resources of the mandated territory be monopolized by the mandatory itself.

(b) Article 8 of the British mandate for East Africa is acceptable and its provisions should be substituted for those of the corresponding article numbered 7 in the other B mandates.

(c) Article 10 of the British mandate for East Africa contains a clause "provided always that the measures adopted to that end do not infringe the provisions of this mandate", which might well be added to the corresponding article 9 of the other B mandates.

(d) The consent of the United States will be necessary to modify the mandate terms.

Draft C mandates *6 except for Yap

(a) Article 5 should be changed so as to embrace nationals of United States, and to avoid ambiguity as to educational and charitable activities of missionaries it would be preferable to have the same provision as in Article 8 of the British B mandate for German East Africa.

(b) All C mandates treat mandated territory for administration and legislation as integral portion of territory of mandatory. This, unless qualified, would permit discrimination. It is desired that the mandatories respectively should guarantee to United States most favored nation treatment in all C mandate territories, reserving, however, the present special treaty rights of the United States as to German Samoa under Article 3 of the treaty concluded at Washington, December 2, 1899. This Government has already protested against the discriminatory tariff imposed by New Zealand in violation of this treaty (see Department's telegram of November 17, 1920). Despatch on this point will go by next pouch.

(c) There should be provision similar to that proposed in the other forms of mandates prohibiting monopolistic concessions by the mandatory or the monopolizing of natural resources by the mandatory itself.

(d) As in other cases modification of mandate will be subject to assent of United States.

The Island of Yap, because of its special characteristics and availability for communication purposes, should be treated specially, and negotiations to this end are in progress. It is not desired to include Yap in the present representations as to terms of mandates.

6. In connection with the question of A mandates, the following additional points should be noted:

(a) In the note of His Majesty's Government of February 28, 1921, relating to the application of the principle of equality of

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* Not printed.
* See pp. 263 ff.
*7 See telegram no. 160, Mar. 1, from the Ambassador in Great Britain, p. 80.
treatment to former Turkish territories, it was observed that by Article I of the Philippine Petroleum Act approved August 31, 1920, participation in the working of public lands in the Philippine Islands containing petroleum is confined to citizens or corporations of the United States or of the Philippines. This enactment was mentioned as inconsistent with the general principles announced by this Government.

To avoid misapprehension upon this point, it should be stated to the Foreign Secretary that shortly after the enactment in question the Government of the United States recommended that it should be so amended as to conform to the reciprocity provision of the United States general leasing law of February 25, 1920. At the last session of the Philippine Legislature an amending bill was passed the object of which was to relax substantially the restrictions embodied in the original Act. Nevertheless, in the opinion of the Government of the United States, the proposed amendment did not sufficiently meet the situation, and it is the intention of this Government to take all appropriate steps with a view to bringing about at the next session of the Philippine Legislature in October a further amendment so that it may conform to the reciprocity provision above described.

(6) In the same note of His Majesty's Government reference is made to a concession said to have been granted before the war by the Turkish Government to the Turkish Petroleum Company. This Government has already pointed out in its note of November 20, 1920, that such information as it then had indicated that prior to the war the Turkish Petroleum Company possessed in Mesopotamia no rights to petroleum concessions or to the exploitation of oil. The information possessed at present by this Government confirms this view. This Government is unable to conclude that any concession was ever granted by the Turkish Government to the Turkish Petroleum Company, and this Government will shortly take up the considerations advanced by His Majesty's Government upon this subject. It is desired that if the claim of the Turkish Petroleum Company continues to be asserted appropriate provision be made for the determination of this claim by a suitable arbitration.

Hughes

800.01 M 31/87

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

No. 811

LONDON, December 23, 1921.
[Received January 12, 1922.]

Sir: With reference to previous correspondence on the question of Mandates, I have the honor herewith to transmit copies of a Note just received from Lord Curzon. This is in reply to a

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"41 Stat. 437.
"See Instruction no. 229, Nov. 4, to the Ambassador in Great Britain, p. 86.
Memorandum which was based upon the Department's telegram No. 448 of August 4, 8 p.m., and which I handed to him on August 24th last.

I have [etc.]

For the Ambassador:
POST WHEELER
Counselor of Embassy

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)


Your Excellency: The memorandum of the 24th August, 1921, containing the views of the Government of the United States concerning the mandates for certain territories which, under the terms of the Treaties of Peace, ceased to be under the sovereignty of the enemy Powers, has received the fullest consideration of the British Government in concert with the Governments of the Allied Powers to whom those views were also communicated.

The Government of the United States claims the right to take part in the disposition of these territories and raises, in this connection, various points in regard to the consequences of the non-ratification by the United States of the Treaty of Versailles and of their non-participation in the war with Turkey.

In furtherance of the general principles governing the mandates, as set out in the previous correspondence between the two Governments, the Government of the United States now submits for the consideration of His Majesty's Government certain modifications which it considers should be made in the texts of the British mandates.

His Majesty's Government have the honour to state that they have never desired to deprive the United States of the fruits of a victory to which it contributed so generously.

They are quite willing to meet the wishes of the United States as regards the British mandates, and it does not, therefore, seem necessary to enter into a detailed consideration of the general considerations contained in the American note.

The co-operation of the United States in the making of peace was a necessary corollary of their co-operation in the war and in the victory. The Treaty of Versailles was the outcome of the co-operation. It was entered into by the Allied Powers upon the assumption that it represented the common views of all those who had taken part in its preparation after their combined effort to achieve the
victory. It was upon the faith of this assumption that the Allied Powers undertook obligations not only towards Germany, but also towards each other, and from which it is now impossible for them to escape.

The decision of one of the Allied and Associated Powers not to ratify the treaty does not modify the obligations which that treaty imposed upon those who have ratified it, nor release them from the pledges it contains; nor can they now enter into new engagements which would be inconsistent with its terms.

What is said above is pre-eminently true with regard to the overseas territories which formerly belonged to Germany. By the Treaty of Versailles Germany renounced all her sovereignty over them; that renunciation was intended, as pointed out in the American note, to be indivisible; no part of that sovereignty remains to Germany to-day. But Germany parted with her sovereignty upon the terms laid down in the treaty. Among the conditions so laid down was the assurance that these territories would in future be administered by mandatories on behalf of, and subject to, the general control of the League of Nations. By that engagement the Allied Powers are bound to stand; they are pledged not only to Germany but to their own peoples to recognise and to accept the special rôle and function of the League of Nations in connection with the mandates over these territories; they can consent to no arrangement with any Power which is inconsistent with the pledges they have given.

In these circumstances His Majesty’s Government put forward the following suggestions as calculated to meet the American proposals concerning the British mandates in Central Africa. As regards the mandates for territories in the Middle East, the position of such territories being still legally undefined, His Majesty’s Government will make them the subject of a later note: 13a—

1. The Government of the United States proposes that the words “citizens [nationals] of States mentioned in the annex to the Covenant of the League of Nations” should be substituted for the words “nationals of States members of the League of Nations” in article 6 of the mandates for Togoland and the Cameroons, and in article 7 of the British mandate for East Africa, in order that citizens of the United States may be covered by the provision.

In the first place this alteration would exclude from the provision States which, though not mentioned in the annex of the Covenant, have become members of the League since the date of the Treaty of Peace.

Secondly, it must be remembered that the aim of the mandatory system is to make the mandatory Power permanently responsible

13a See British note of Dec. 29, p. 115.
for the fulfilment of certain duties to those States which have adhered to the Covenant of the League of Nations. His Majesty’s Government find it difficult, therefore, to accept a proposal that the terms of the mandate should refer to any other States, whether by name or by collective definition.

It appears to His Majesty’s Government that the best way to meet the wish expressed in the American note would be for the British Government to give to the Government of the United States a guarantee that citizens of the United States shall enjoy in all respects in the mandated territory the same rights and privileges as citizens of States members of the League of Nations, it being understood that they will be subject to the same conditions. This undertaking might be embodied in an exchange of notes.

The Government of the United States further expresses the wish that paragraph 3 of the same article shall stipulate that the mandatory will not grant monopolistic concessions, and that the natural resources of the mandated territory shall not be monopolised by the mandatory itself.

His Majesty’s Government have no intention of granting concessions having the character of a general monopoly in the territories in question, nor of reserving such concessions to itself. It is necessary, however, in the interest of the mandated territory, that the mandatory should provide the territory with the fiscal resources which seem best suited to the local requirements and, for this purpose, should preserve the right to create monopolies for purely fiscal purposes. Similarly, it is necessary that the Administration should have the right to exploit, as it considers best, those of the natural resources which can be employed in the public interest, as, for example, water power, which could be utilised for the electrification of a railway or for lighting purposes.

The above considerations could be met by the insertion of the following new paragraph after paragraph 3 of article 6:

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of a mandatory to create monopolies of a fiscal character or, in certain cases, to carry out the development of natural resources either directly by the State or by a controlled agency, provided that no monopoly of the natural resources for the benefit of the mandatory shall result therefrom.

2. The Government of the United States asks that article 8 of the British mandate for Tanganyika should be substituted for article 7 of the other African mandates.

*Numbered 6 in the draft mandates for Togoland and the Cameroons, and numbered 7 in the draft mandate for East Africa.*
The object of the Administration at Washington is apparently to ensure as a right to American missionaries the freedom to exercise their vocation in Togoland and the Cameroons, which the British Government have given them hitherto in practice. This object can be achieved without making any change in the text of the mandate. His Majesty's Government are prepared to give to the Government of the United States a similar guarantee as to equality of treatment, as is suggested above, as regards article 6.

His Majesty’s Government are further prepared to declare that, in the mandated territories, missionaries shall have the right to acquire and possess property, to erect buildings for religious purposes, and to open schools, adding as a condition the words, “in conformity with the local law.”

The text of article 7 would, consequently, read as follows:—

“Subject to the provisions of any local law for the maintenance of public order and public morals, the mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling, to acquire and possess property, to erect buildings for religious purposes, and to open schools, provided that they conform to the local law.”

3. The Government of the United States asks for the addition to paragraph 2 of article 9 of the mandate for Togoland and the Cameroons of the words, “provided always that the measures adopted to that end do not infringe the provisions of this mandate,” which occur in article 10 of the British mandate for Tanganyika.

His Majesty’s Government have no objection to this addition.

4. Finally, the Government of the United States expresses the wish that the consent of the United States shall be obtained before any alteration is made in the text of the mandates.

It would be difficult to insert in the mandate itself a provision of this nature as between the League of Nations and a Power which is not a member of the League. There is, however, nothing to prevent the mandatory giving a separate undertaking to this effect.

In these circumstances the best method of satisfying the desire of the United States would appear to be that His Majesty’s Government, as mandatory, should give the American Government an undertaking that they will not propose nor accept any modifications in the terms of the mandates without previous consultation with the Government of the United States.

His Majesty’s Government venture to hope that the Government of the United States will share the view that the wishes of the
United States can be satisfied by means of an exchange of notes between the two Governments, without delaying the issue of mandates which it is undesirable further to postpone.

I have [etc.]

CURZON OF KEDLESTON

367a.01/215

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

No. 831

LONDON, December 30, 1921. [Received January 12, 1922.]

SIR: With reference to my despatch No. 811 of the 23rd instant, I have the honor to transmit herewith copies of a further note just received from the Foreign Office on the question of Mandates.

I have [etc.]

POST WHEELER

[Enclosure]

The British Under Secretary of State for Foreign Affairs (Crowe) to the American Ambassador (Harvey)

No. E 14259/37/88 [LONDON,] December 29, 1921.

YOUR EXCELLENCY: In my note of December 22nd.²⁵ I explained the suggestions put forward by His Majesty’s Government to meet the American proposals, concerning the British mandates in Africa, contained in Your Excellency’s memorandum of August 24th, 1921, and reserved for the subject of a later note a reply to the proposals in that memorandum relating to the territories under mandate in the Middle East their position still being legally undefined.

2. The position with regard to these territories has not materially changed. A state of peace with Turkey does not yet exist, and the Council of the League has not yet formally approved the provisions of the draft mandates. The consequent delay and uncertainty causes His Majesty’s Government considerable anxiety in Palestine. In these circumstances the peculiar religious and racial problems in that country and the particular conditions which attach to His Majesty’s Government’s acceptance of the mandate as set out in the draft provisions are daily rendering more onerous the task which His Majesty’s Government have assumed. For these reasons His Majesty’s Government intend to invite the Council of the League of Nations at the forthcoming session on January 10th, formally to express their approval of the terms of the mandate for Palestine as drafted in spite of the dependence of the final legalisation of the

²⁵ Ante, p. 111.
status of the mandatory upon the entry into force of a treaty of peace with Turkey. It is with this object in view, and in the confident hope that your Government will find it possible forthwith to withdraw any objection that they may still entertain to the provisions of the mandate for Palestine that I now have the honour to furnish you with the following observations upon paragraphs 4 and 5 of your note of August 24th. In so far as they concern those provisions.

3. Paragraph 4. His Majesty’s Government have no desire to challenge the statement of the United States Government that the victory over Turkey was bound up with the victory of the Allied and Associated Powers over Germany to which the United States so generously contributed. In particular, His Majesty’s Government emphatically disclaim any intention on their part to discriminate against United States nationals and companies or refuse them full equality of commercial opportunity. His Majesty’s Government have already explained in the case of the African mandates why they find it difficult to provide in the articles of the mandates, which deal with these questions, for reference to any States, other than those of the League of Nations, whether by name or by collective definition, but they repeat the assurance given in my note of December 22nd. to embody an undertaking with regard to the equal treatment of United States citizens and companies in an exchange of notes between our two Governments.

Paragraph 5. (a) The difference in this respect between the mandate for Palestine on the one hand, and the mandate for Syria on the other, is due, not to any difference of policy but to the fact that whereas in Syria which was taken over at the time of the armistice, the native administration was found to be exercising its functions, the complete collapse of the Turkish administration in Palestine had compelled His Majesty’s Government to set up courts which in themselves provided, for the time being, such safeguards as are referred to in article 9 of the Palestine mandate. No foreign tribunals exercise functions in Palestine at present and there is therefore no question of their continuing to perform their duties. In that country adequate courts have already been established, and under the constitutional proposals that are now under consideration for Palestine, His Majesty’s Government have inserted a provision in virtue of which foreign nationals, including of course citizens of the United States, shall have the right to be tried by a court with a majority of British judges, except in trivial cases where this provision would lead to administrative inconvenience: in these cases foreign nationals will have the special right to appeal to a court composed with a
majority of British judges. For the rest, His Majesty’s Government are prepared to recommend to the League of Nations the extension of the provisions of article 28 of the mandate for Palestine so as to ensure that in the event of the termination of the mandatory régime suitable arrangements are made to safeguard the rights secured by article 6 [99] of the mandate.

(b) I have already dealt above with the question of possible discrimination against United States nationals and the undertakings which His Majesty’s Government are prepared to give. The wording of article 18 of the mandate for Palestine was very carefully considered, and I wish especially to point out that the explanation of the difference between the wording of the Syrian mandate and that of the Palestine mandate is to be found in the difference between French and British law: in the latter the word “company” embraces all bodies which would properly be entitled to the protection of the article in question. His Majesty’s Government feel sure that the United States Government, in the light of this explanation, will rest satisfied with the present wording of this article.

His Majesty’s Government regret that they cannot see their way to adopt the suggested introduction into the Palestine mandate of the provision of article 7 of the “B” mandate for East Africa on the subject of concessions quoted in your memorandum of August 21st [24th]. The suggestion appears to His Majesty’s Government to overlook the peculiar conditions existing in Palestine and especially the great difference in the natures of the tasks assumed in that country and undertaken by them in East Africa. So far as Palestine is concerned, article 11 of the mandate expressly provides that the administration may arrange with the Jewish agency, mentioned in article 4, to develop any of the natural resources of the country in so far as these matters are not directly undertaken by the administration. The reason for this is that, in order that the policy of establishing in Palestine a national home for the Jewish people should be successfully carried out, it is impracticable to guarantee that equal facilities for developing the natural resources of the country should be granted to persons or bodies who may be actuated by other motives. The general spirit of the Palestine mandate in the view of His Majesty’s Government, seems to render unnecessary the insertion of an especial provision preventing the mandatory from developing the natural resources of the country for his own benefit.

(c) His Majesty’s Government are well aware of the great benefits which all the countries of the Near and Middle East have received from the unremitting and self-sacrificing efforts of Ameri-
can missionaries and educationalists. They have therefore carefully considered the proposal of the United States Government that safeguards for missionary enterprises in the Palestine mandate should be expanded to render them equivalent to those accorded by article 8 of the British "B" mandate for German East Africa. His Majesty's Government would however point out that the intention of article 9 of the Franco-British convention of December 23rd, 1920, was, so far as His Majesty's Government was concerned, in no way to restrict the extension of missionary enterprise in Palestine. The particular article in question was designed by the French Government to satisfy religious opinion in France regarding the future of the large French ecclesiastical and educational interests already established in Palestine and Mesopotamia.

For the rest, His Majesty's Government feel convinced that the religious and educational activities of the nationals of the United States are adequately safeguarded by the provisions of article 16 of the mandate for Palestine. This article is in fact identical in substance with article 8 of the British mandate for German East Africa. Should, however, the United States Government still desire some further guarantee, His Majesty's Government would be prepared to make a declaration in suitable terms regarding the rights of United States missionaries as suggested in paragraph 2 of my note of December 22nd. regarding the African mandates.

(d) I have already dealt in paragraph 4 of my note of 22nd. December with the suggestion of your Government that the consent of the United States Government should be obtained as to any modification of a mandate once agreed upon and I can only repeat in this note the same offer with regard to the modification of the "A" mandates.

4. I reserve to myself a still further memorandum to Your Excellency regarding the mandate for Mesopotamia. The position of His Majesty's Government in that country is peculiar. The course of events since the grant of the mandate, and in particular the coronation of King Feisal and the appointment of the Arab cabinet for that country, make it necessary for His Majesty's Government carefully to consider the manner in which they can best fulfil the obligations undertaken by them in the draft mandate. They are therefore forced to examine very carefully what, if any, modification of, or addition to, those obligations they are in a position to assume. I hope however to be in a position at an early date to give you the fullest assurance on this matter.

I have [etc.]

EYRE A. CROWE

711.678/114 : Telegram

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

LONDON, January 24, 1921—6 p.m.
[Received 9:05 p.m.]

72. In note dated the 19th instant, Foreign Office after referring to its note transmitted in my mail despatch 3985, December 30, 1920, concerning jurisdiction over foreigners of the courts in Palestine states as follows:

"His Majesty's High Commissioner for Palestine has now reported that the United States Consul has requested that a certain United States citizen convicted for forgery by the Jaffa court and sentenced to imprisonment should be handed over to him for trial and the conviction quashed. The United States citizen in question was convicted by court composed of a British president and two Palestine judges because at the time there was no indication that the individual concerned was a foreign citizen. Sir H. Samuel reports that the rehearing on appeal is postponed pending negotiations for same [instructions from me?] and that the accused is on bail. If and when the rehearing takes place the court will be composed with a majority of British judges. In these circumstances and having regard to the arguments advanced in my note under reference I venture to express the hope that the United States Government will see no objection to the case of this United States citizen being reheard by a court composed as Sir H. Samuel suggests."

Davis

711.673/114 : Telegram

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

WASHINGTON, February 1, 1921—6 p.m.

73. Your 72nd, January 24, 6 P.M.

In connection with circumstances indicated in Foreign Office note of 19th instant [January 19], Department has carefully considered Earl Curzon's note of 29th ultimo [December 29, 1920]. Reserving for later consideration Earl Curzon's observation concerning status of capitulations after coming into force of Treaty of Peace with Turkey, Department is constrained to adhere to position stated in

*For previous correspondence concerning capitulatory rights in Palestine, see Foreign Relations, 1920, vol. II, pp. 670 ff.
*See telegram no. 72, Jan. 24, from the Ambassador in Great Britain, supra.
its 1214, 6 P.M., December 8 [9], last. Right to maintain consular courts in Palestine, as part of American judicial system, is secured to this Government by treaties and usages and is sanctioned by Acts of Congress. While expressing no doubt of ability and fairness of tribunals established by British authorities in Palestine, Department would not feel justified in waiving right of American citizens to be tried by duly established American courts.

In communicating substance of foregoing to British Government express Department's regret at inability to accede to that Government's wishes.

Colby

711.673/118

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

No. 4287

London, March 4, 1921. [Received March 22.]

Sir: With reference to my telegram No. 176, March 4, 1 p.m., and previous correspondence in regard to the jurisdiction of the Palestine Courts over foreigners, I have the honor to transmit here-with copies of a Note No. E.2340/1647/88 dated March 2nd, 1921, which I have received from the Foreign Office in this connection.

The Foreign Office state that the British High Commissioner for Palestine has been instructed to hand over to the American Consul for trial the American citizen who was recently convicted on a charge of forgery by the Jaffa Court.

I have [etc.]

John W. Davis

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Davis)


Your Excellency: I have the honour to refer to the note which Your Excellency was so good as to address to me on the 3rd. February with regard to the jurisdiction of the Palestine Courts over foreigners.

2. His Majesty's Government appreciate, while regretting the legal reasons and somewhat technical considerations which prompt the United States Government to press their representations for the

*Not printed.
*See telegram no. 73, Feb. 1, to the Ambassador in Great Britain, p. 119.
recognition of United States Consular jurisdiction in Palestine, pending the entry into force of the Treaty of Peace with Turkey and the mandate for Palestine, upon which date, as already pointed out in my note of December 29th., the extra-territorial rights enjoyed by foreigners in Palestine will definitely cease to exist. While therefore His Majesty’s Government are naturally reluctant to over-ride the decision of the Jaffa Court, and thus not only to run the risk of adversely affecting the authority and prestige of the responsible British authorities in Palestine but also to render more difficult the heavy task which they have accepted, with, as they hoped, the cordial good-will of the United States Government, they are prepared in deference to the United States Government’s representations and as a mark of their friendly sentiments to accede to the United States Government’s wishes in this matter, pending the coming into force of the Treaty of Peace.

3. Instructions are accordingly being sent to His Majesty’s High Commissioner for Palestine that the United States citizen who was recently convicted on a charge of forgery by the Jaffa Court should be handed over to United States Consul for trial.

I have [etc.]

(For the Secretary of State)

LANCELOT OLIPHANT

711.673/118

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

No. 1290

WASHINGTON, April 11, 1921.

Sm: The Department acknowledges the receipt of Mr. Davis’ despatch No. 4287 of March 4, 1921, transmitting copies of a note from the British Foreign Office conceeding recognition of American consular jurisdiction in Palestine, pending the coming into force of the Treaty of Peace with Turkey. It is noted that the Foreign Office observes that upon the coming into force of the Treaty and the Mandate for Palestine, the extra-territorial rights enjoyed by foreigners in Palestine will definitely cease to exist.

In expressing the gratification of this Government at the action taken by His Majesty’s Government in this matter, you will take occasion to refer to the statement in the Department’s telegram of February 1, 1921, that the question of the status of the capitulations after the coming into force of the Treaty of Peace with Turkey was reserved for later consideration, and you will indicate that the Government of the United States is not at present disposed to concur in the view of His Majesty’s Gov-
ernment that the régime of the capitulations in Palestine will be terminated as a matter of course when the Treaty and the Mandate become effective.

I am [etc.]

For the Secretary of State

HENRY P. FLETCHER

The Consul at Jerusalem (Southard) to the Secretary of State

No. 706

JERUSALEM, August 17, 1921.

[Received September 16.]

Sir: I have the honor to state that on or about August 3, 1921, the Palestine police arrested at the town of Ludd, Palestine, an American citizen named Abraham Chaikin. Mr. Chaikin was charged with carrying a revolver contrary to local law and was tried and sentenced by the District Governor at Ramleh to imprisonment for thirty days.

In accordance with standing instructions this Consulate demanded—a week later when informed of the occurrence—that Mr. Chaikin be turned over to it for trial in the American Consular Court in accordance with the Capitulations. The Civil Secretary of the Palestine government informed this Consulate verbally that there were two reasons why he thought Mr. Chaikin was not subject to American Consular Court jurisdiction. The first reason was that the accused had been apprehended in a military zone by military police, and the second reason was that the accused had been tried and sentenced without claiming American citizenship or American protection.

After some verbal discussion extending over a few days, and upon the insistence of the undersigned the Civil Secretary abandoned his first reason and waived the second upon a promise that this Consulate would secure a legal ruling on the two questions from the Department of State. The accused has therefore been ordered turned into the custody of this Consulate, and he will be tried in this Consular Court and a full report of the result of such trial made to the Department. The trial will probably be held within the next two weeks.

In the meantime the Department's ruling or opinion upon the two points raised by the Civil Secretary of the Palestine Government—the first having to do with the exercise of Capitulatory rights in favor of an American citizen arrested in a military zone by military police, and the second having to do with the exercise of Capitulatory rights in favor of an American citizen who has been arrested by the Palestine police and has submitted to trial in a Palestine court without asserting his citizenship or claiming Consular protection—is respectfully requested.

I have [etc.]

ADISON E. SOUTHER
The Secretary of State to the Consul at Jerusalem (Southard)

WASHINGTON, January 17, 1922.

Sir: In reply to the questions asked in your despatch No. 706 of August 17, 1921, relative to the arrest and imprisonment by the Palestine Government of Abraham Chaikin, an American citizen, you are informed that the Department is not prepared to accept the view of the Civil Secretary of the Palestine Government that Mr. Chaikin was not subject to American consular jurisdiction because he was apprehended in a military zone by military police and because he was tried and sentenced without claiming exemption as an American citizen.

This Government, under existing treaties and usages, has the right to maintain courts of justice separate from the local administration for the exclusive cognizance of alleged offenses by American citizens in Palestine, and it cannot admit that that right yields to the right which may be asserted by the military authorities to apprehend persons in a military zone. . . .

In regard to the effect of the failure of an American citizen to claim exemption from the military jurisdiction, it may be observed that since the jurisdictional immunity of American citizens in Palestine is derived from rights accorded to the Government of the United States it cannot, in the opinion of the Department, be relinquished at the will of an individual citizen.

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

REFUSAL BY THE DEPARTMENT OF STATE TO QUESTION THE RIGHT OF THE BRITISH GOVERNMENT TO EXCLUDE CERTAIN AMERICAN CITIZENS FROM THE BRITISH ISLES

WASHINGTON, December 15, 1920.

Sir: On Wednesday last the British Embassy in Washington refused visas for passports regularly issued by the United States Government to four distinguished American citizens chosen by the unofficial, but representative, American Commission on Conditions in Ireland to visit England and Ireland to ascertain the facts with respect to present conditions in Ireland.
It is our opinion that this refusal to admit to England and Ireland Americans seeking to serve the ends of truth and peace by an unobtrusive ascertainment of facts constitutes a violation of the right of free communication between the liberty-loving people of two democracies. Moreover, it is an instance of the kind of governmental suppression of truth and free speech that may result in serious danger to the friendly relations of Great Britain and the United States, because its effect is to foster misunderstandings between peoples whose continued friendship depends upon mutual knowledge and comprehension of the problems confronting each other.

The Government of the United States has placed no obstacles in the way of British and other foreign missions, commissions, and committees, official and unofficial, coming into this country for all kinds of purposes. While we were still neutral with reference to the great war, British missions were permitted to visit all parts of the United States to conduct active propaganda and investigate American industrial, economic and social conditions. Great Britain now denies to American citizens what the United States has fully granted to British citizens.

It is therefore our opinion that this refusal of visas for passports regularly issued to American citizens by the Government of the United States calls for a protest to the British Government by the Government of the United States together with a request for an explanation of the British Government’s reasons for pursuing such a course.

Consequently, we wish to urge you to transmit a formal protest to the British Government accompanied by a request that the British Government explain publicly why it refuses the right of travel in the British Isles to representative American citizens seeking to ascertain the truth as to a situation which, if permitted to continue, may seriously affect the friendly relations of the American and the English peoples.

Respectfully,

G. W. Norris
T. J. Walsh
Joseph Irwin France
Robert M. La Follette
Jos. E. Ransdell
David I. Walsh
Asle J. Gronna
Geo. E. Chamberlain
Duncan U. Fletcher
Jno. K. Shields
The Acting Secretary of State to Senator G. W. Norris

WASHINGTON, January 11, 1921.

Sir: I have the honor to acknowledge the receipt of the letter of December 15, 1920, signed by yourself and other Senators, with regard to the refusal of the British Embassy at Washington to visa passports of certain American citizens who, you explain desire to proceed abroad as an "American Commission on conditions in Ireland to visit England and Ireland to ascertain the facts with respect to present conditions in Ireland." The opinion is expressed in the letter under acknowledgment that the refusal to admit these persons to England and Ireland "constitutes a violation of the right of free communication between the liberty-loving people of two democracies." The opinion is further expressed that the refusal of these visas "calls for a protest to the British Government by the Government of the United States together with a request for an explanation of the British Government's reasons for pursuing such a course." Attention is called to the visit of British Commissions to this country while it was neutral during the war.

I am not entirely clear what British commissions you have in mind in referring to commissions which visited this country while it was a neutral. Representatives of several countries came here to purchase supplies. Their mission was evidently very different from that of the persons who desire to investigate conditions in Ireland.

In commenting on the questions raised by your communication, it may not be amiss to invite attention to an excerpt from a report of Secretary of State Foster to President Harrison under date of January 7, 1893, which was prompted by a Senate Resolution intended to obtain information respecting the subject of immigration, when in that year there was pending before Congress a bill for the suspension of immigration for the period of one year. In that report Secretary Foster said:

"The national power of self-preservation is peculiarly applicable to the exclusion of foreigners. Said Mr. Justice Gray in Nishimura Ekiu vs. United States (142 U. S. 659):

'It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.'

"In 1852, Mr. Everett, then Secretary of State, said that—

"'This Government could never give up the right of excluding foreigners whose presence they might deem a source of danger to the United States.' (Mr. Everett, Secretary of State, to Mr. Mann, December 13, 1852; 2 Wharton's Digest, sec. 296.)

"[The same to the other Senators signatory to the letter of Dec. 15, 1920, supra.

26 A. Dudley Mann, special agent (diplomatic) of the United States in Switzerland, 1850–53.
“And Mr. Justice Field, in delivering the opinion of the court in the Chinese Exclusion Case (130 U. S. 609), stated the doctrine thus:

"The power of exclusion of foreigners being an incident of sovereignty belonging to the Government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the Government, the interest of the country requires it, can not be granted away or restrained on behalf of anyone. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They can not be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract."

"The subjection of conventional agreements to the power of self-preservation must be implied, for it can not be presumed that when governments contract with each other they will fail to take notice of the existence of so inherent a right of sovereignty and attempt to grant away that which, by the very nature of things, is incapable of being granted."

The exclusion of foreigners is a matter of domestic concern. In harmony with the general principles enunciated in the above quoted extract from Secretary of State Foster’s report, Congress has extensively restricted the admission of aliens into this country by providing for the exclusion of numerous classes of persons. And by the Act of August 8, 1918, Congress authorized the Executive to supplement existing statutory restrictions by further restrictions and prohibitions if he should feel that the public safety should so require. At present Congress has under consideration proposed legislation involving measures bordering on a total exclusion of a numerous class of aliens from this country for an extended period of time.

By calling attention to the fundamental principles in respect to the sovereign right of a nation to deal with the exclusion of foreigners in any manner which, in its judgment, the national interests may require, I do not mean to imply that arbitrary measures of exclusion directed in a discriminatory manner against a particular nation might not warrant appropriate diplomatic representations. But I beg to point out that the exercise of a sovereign right to exclude aliens can not furnish grounds for a diplomatic protest based on a claim of violation of legal rights.

I feel certain that the refusal of the visas which you find very objectionable in no way involves an unfriendly or discriminatory attitude against the Government of the United States, and I do not feel that the Department can properly question either the right or the judgment of the British Government to refuse admission in

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"53 Act of May 22, 1918 (40 Stat. 559); proclamation dated Aug. 8, 1918 (40 Stat. 1829).
the present case. The Government of the United States has never acquiesced in the right of any other nation to question its action in such matters.

I have [etc.]

NORMAN H. DAVIS

BRITISH REJECTION OF THE PROPOSAL TO EXEMPT AMERICAN COASTWISE SHIPPING FROM THE PANAMA CANAL TOLLS

8111.8123/91

The Ambassador in Great Britain (Harvey) to President Harding

LONDON, September 19, 1921.

Dear Mr. President: I fear there is no escape from the conclusion that nothing can be accomplished in the immediate future with respect to an adjustment of the Panama Canal Tolls matter that would be acceptable to both countries. This is what has happened:

I took up the subject with Lord Curzon at what seemed to be the most opportune moment. ... I prefaced my statement by saying that I had no proposition to submit and was merely groping for a solution and would greatly appreciate his assistance. With that object in view, I should like to speak to him with the utmost frankness regarding the situation in the United States in a wholly personal and unofficial way. He responded most cordially to the effect that our relations had become such that he should feel hurt if I did not approach every subject in that spirit. Thereupon, I laid the situation before him, pointing out that the whole matter was that of the interpretation of a treaty, regarding which our most prominent international lawyers differed. Mr. Root holding one view and Senator Knox and Mr. Sutherland the opposite. Mr. Hughes, to my knowledge, had never expressed an opinion upon the subject. Personally, in the contest in the Senate in 1913 I had upheld the contention of President Wilson and Mr. Root but recently, as the result of careful study, I had been greatly impressed by the arguments of Senator Knox. For the immediate purpose I did not consider it necessary to consider the merits of the case from a technical viewpoint, but I had all of the documents bearing upon the matter and should be ready to do so at any time. The immediate problem was, to my mind, purely practical. The Republican Plat-

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85 Received in the State Department from the White House on Oct. 11.
86 Signed Nov. 18, 1901, between the United States and Great Britain, John Hay and Lord Pauncefote being plenipotentiaries; for text, see Foreign Relations, 1901, pp. 243–246.
form, in response to public demand, had committed the party in power to exemption of American coastwise traffic from tolls, the President during his campaign had specifically approved this principle, and a Bill sponsored by Senators Knox and Borah, designed to fulfill this pledge, was pending in Congress. It would have passed and become a law already, but for the reluctant consent of those Senators to let me undertake to resolve the matter through diplomatic negotiation.

This, I remarked, was how it then stood. I had no plan when I left America, but had given the subject a great deal of thought and had a tentative suggestion to put before him for his consideration, which might or might not prove acceptable, but might tend, at least, to a development from which a solution might be evolved. I had not submitted it to my Government, because it was simply the result of groping, and I felt the need of his greater experience in putting it into concrete form if he should feel that it might in any way prove to be feasible. In other words, I should like him to regard the attempt as a little enterprise of our own until we could determine whether it possessed the elements of practicability. If we could reach an understanding along the line which I had in mind, or along any line which might suggest itself to him, I thought that we could reasonably assume that we were rendering a real service in eliminating at least one of the causes of irritation between our two countries. He responded that nothing could be more gratifying to him than to co-operate in such an endeavour.

Thereupon I outlined my tentative suggestion. Recalling that the chief contention of the British Government had been that exemption of tolls upon our coastwise traffic would result in unfair discrimination against Canada, I wondered whether, if the Treaty were so modified, or amended, as to put Canada upon the same basis as the United States with respect to its coastwise traffic, the British objection might not be overcome. I pointed out that from the American point of view this would be a distinct concession, for which Canada should be grateful to both countries, thus inculcating a spirit of helpfulness which would surely tend to enhance friendliness all around. I noted further that in the event of the passage of the Bill, which would surely transpire when it came to a vote, Canada would be deprived of a privilege which, ultimately, might prove of great value. I noted, further, that such an arrangement would not change in the least the basis of equality of toll charges on foreign trade as between the two countries. That was, for example, to say that the charges upon cargos from New York and Liverpool consigned to Japanese, Chinese and other Pacific ports would continue to be identical as at present. I am-
plified the argument in minor respects, but these constituted the major points.

Lord Curzon manifested the keenest interest and promised his sympathetic consideration, while he should familiarize himself with the conditions which were not fresh in his mind. There the matter was left. At the expiration of ten days or two weeks Lord Curzon brought up the subject, saying that it was most disagreeable to him to have to inform me that he feared nothing could be done about the matter. He had talked over the suggestion with the members of the Imperial Conference most informally, and Mr. Meighen had said promptly that Canada's devotion to the Empire was such that she would not accept any differentiation in her favor as against the United Kingdom or the other Dominions. Consequently, the Conference had agreed unanimously that no proposal, or even suggestion, tending to relieve the situation could be entertained. I tried patiently to explain that no such differentiation was involved, inasmuch as Canada was the only portion of the Empire engaged in purely coastwise traffic, but the attempt was futile.

Needless to say, the passage of the Bill on the eve of the Conference would be most unfortunate. Could it not be averted without impairing in any degree our rights, upon the ground that the Government is not in a position at the present time to sacrifice two or three million dollars a year, which it derives from the Panama Tolls? It would not be advantageous to have it announced that action is postponed further because of the effect it might have upon the Conference, since doing that might give rise to harmful discussion. The ideal thing to my mind, would be to induce Borah to let the business rest and slip by without publicity.

With best regards [etc.]

GEORGE HARVEY

500.4 4/1907

Memorandum by the Secretary of State of a Conversation with the British Ambassador (Geddes), September 20, 1921

[Extract]

The Ambassador said that he had been instructed by his Government to say that they were satisfied with the proposed agenda save that they desired to add the subject of the Panama Canal tolls.

77 Rt. Hon. Arthur Meighen, Canadian Prime Minister and Secretary of State for External Affairs.
80 For the Conference on the Limitation of Armament, Washington, 1921–1922.
The Secretary said that he did not think it advisable that this subject should be brought into the Conference; that in his opinion it was a matter to be dealt with diplomatically between the Governments of Great Britain and the United States.

The Ambassador said that it was the view of his Government that it was a question not alone between Great Britain and the United States but affecting other governments and so would appropriately be brought into the Conference.

President Harding to the Secretary of State

WASHINGTON, September 29, 1921.

My Dear Mr. Secretary: I have your note of this morning respecting the Panama Canal tolls question and your inquiry for the letter to which Ambassador Harvey has made reference in telegraphic communication. The letter has not yet reached this office. I will be glad to place it at your disposal as soon as it comes.

For your information, in discussing this question with the British Ambassador, I think it is well to say that it has been intended all along to make any modification of the present arrangement the subject of diplomatic discussion with Great Britain. The pending measure in Congress will likely receive the sanction of the Senate, because it has been maneuvered into a parliamentary situation which makes it impossible to avoid a vote on October 10th. I am very sure the matter will go no further than to receive a favorable vote in the Senate. I feel quite strongly that this may well be left as a matter for negotiation between Great Britain and the United States and has no place as an international problem before the Conference on the Limitation of Armament. At any rate, you may well postpone further discussion on the ground that you are awaiting additional information from the Executive.

Very truly yours,

Warren G. Harding

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11 Not printed.
12 Ante, p. 127.
Memorandum by the Secretary of State of a Conversation with the British Ambassador (Geddes), October 17, 1921

[Extract]

2. Panama Canal Tolls

The Ambassador referred to the vote in the Senate and said that he had been instructed by his government to say that the British Government could not recede from its position.

The Secretary said that the Ambassador would note that the action thus far had only been taken by the Senate and not by Congress. The Secretary added that he considered the question one to be handled in the course of diplomatic negotiations.

The Ambassador said that his Government desired to have it made clear that it was not representing simply its own interests but also the interests of other nations in making its claim.

The Secretary said that inasmuch as the Ambassador had referred to that phase of the matter, he felt that he ought to say that this Government could not recognize any right or claim save as it was based upon treaty; that, in the absence of treaty, it was apparent that no nation would have the slightest basis for contending for free passage through a canal which the United States had built; that hence the question turned simply on the construction of a treaty; that the United States had its treaty with Great Britain \(^{22a}\) and the question arose under that treaty; that there was also a treaty with Panama \(^{22b}\) which incorporated provisions of the treaty with Great Britain; that so far as Great Britain was concerned the question arose solely by virtue of the treaty with Great Britain, and the United States could not recognize that any other government, not having a treaty covering the question, had the slightest right to make any claim, and therefore that this Government could not admit that Great Britain had any standing to make a claim on behalf of any other Power. The Secretary added that of course he understood that there might be motives and interests which would lead Great Britain to advance a contention under a treaty but it was still its contention and its contention alone, and it could not be regarded by this Government as one that should be advanced in a representative capacity.

\(^{22a}\) Signed Nov. 18, 1901; Foreign Relations, 1901, p. 243.

\(^{22b}\) Signed Nov. 18, 1903; ibid., 1904, p. 543.
The Ambassador said that evidently his Government had been led to bring the matter up by reason of the suggestion of the American Ambassador at London; that a basis might be found for agreement by allowing certain privileges to Canada; that it was apparently in response to this suggestion that he had been instructed to say that Great Britain could not recede from the position already taken.

TERMINATION, EXCEPT AS TO ARTICLE VI, OF THE TREATY OF OCTOBER 2, 1886, BETWEEN THE UNITED STATES AND THE KING OF TONGA

711.0021/44e

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

WASHINGTON, May 29, 1915.

Sir: Referring to the Department’s instruction of this day’s date, directing you to give notice to the Secretary of State for Foreign Affairs, pursuant to the provision of the Act of Congress of March 4, 1915, of the intention of the Government of the United States to abrogate the Treaty of June 3, 1892, with Great Britain, you are now instructed to inform the Secretary of State for Foreign Affairs that the considerations which made that notice necessary apply equally to Article 10 of the Treaty of October 2, 1886, between the United States and the King of Tonga; and, as the protectorate over the Tonga Islands proclaimed by the Government of Great Britain on May 19 [1897], 1900, was subsequently accepted by the United States, you will, pursuant to the provisions of the Act of March 4, 1915, as set forth in the Department’s instruction of May 29 above mentioned, give notice to the Secretary of State for Foreign Affairs of the intention of the Government of the United States to abrogate Article 10 of the Treaty of October 2, 1886, between the United States and the King of Tonga, in accordance with the stipulations of the Treaty requiring one year’s notice, such abrogation to take effect on July 1, 1916.

Article 10 of the Treaty of October 2, 1886, with the King of Tonga reads as follows:

"Should any member of the ship’s company desert from a vessel of war or merchant vessel of either of the High Contracting Parties, while such vessel is within the territorial jurisdiction of the other, the local authorities shall render all lawful assistance for the appre-

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*For text of treaty, see Malloy, Treaties, vol. II, p. 1781.
*Foreign Relations, 1915, p. 3.
*38 Stat. 1184.
*For text of treaty, see Malloy, Treaties, vol. I, p. 762.
hension of such deserter, on application to that effect made by the Consul of the High Contracting Party concerned, or if there be no Consul, then by the master of the vessel."

I am [etc.]

W. J. BRYAN

711.4121/14

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

No. 2005

LONDON [undated].
[Received September 3, 1915.]

Sir: With reference to the Department's unnumbered instruction of May 29, 1915, respecting Article 10 of the Treaty of October 2nd, 1886 between the United States and Tonga which the Government of the United States desire should be abrogated, I have the honor to enclose herewith a copy of a Note I have just received from the Foreign Office,\(^n\) enquiring whether since no provision exists for the termination of separate Articles of the Treaty, except Article VI, but only for the termination of the Treaty as a whole, the United States Government desire to give notice of denunciation of the Treaty of October 2nd 1886.

I have [etc.]

WALTER HINES PAGE

711.4121/14

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


Sir: The Department has received your undated despatch No. 2005, relative to Article 10 of the Treaty of October 2, 1886, between the United States and Tonga which the Government of the United States desires to abrogate.

It appears to the Department that the British Government has not exactly understood the purpose of this Government as expressed in the communication addressed to them by you regarding the abrogation of this treaty.

It has been previously pointed out to His Majesty's Government that the application of the fundamental principles of the Act of Congress to alien seamen within the territorial jurisdiction of the United States involves an abrogation of such treaty provisions with foreign governments as are inconsistent therewith, and that the Act makes it mandatory on the President, within ninety days after the passage thereof, to give notice to the several governments, respectively, that "so much as hereinbefore described of all such treaties and conventions between the United States and foreign

\(^n\) Not printed.
Governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions,” the period thus established terminating on July first next.

It will be perceived that it was the intention of Congress that certain provisions of the Act intended to better the condition of seamen should take effect with respect to vessels of foreign nations something over a year after the approval of the Act, a period being accordingly provided within which this Government could take up with these nations the matter of eliminating treaty provisions in conflict with the Act.

The Government of the United States, therefore, pursuant to the provisions of the Act, gave notice of its intention to eliminate Article X of the Treaty of October 2, 1886, between the United States and the Kingdom of Tonga, and confidently expected that a satisfactory arrangement could be made with the proper authorities so that the treaty relations between the two Governments would not be disturbed on July first, when the Act is to become effective as regards all American and all foreign vessels.

Inasmuch as treaties are contracts between governments, they can only be varied in whole or in part by mutual agreement or special consent. It is the hope, however, of the President that such an agreement can easily be reached as will leave unaffected all parts of the treaties with foreign governments not inconsistent with the humanitarian and progressive provisions of the Act.

While recognizing that denunciation of a portion of a treaty may not, according to international practice, be made, the President nevertheless, using the discretion which he deems is granted to him to interpret the Act in the sense contemplated by Congress, desires you to propose for the consideration of the proper authorities an arrangement which will effect the purpose of the Act by the mere omission of Article X of the Treaty of October 2, 1886, between the United States and the Kingdom of Tonga.

It may be observed in this relation that doubtless the general observations made in the communications previously laid before the Foreign Office by you regarding the purposes of the Act of March 4, 1915, will make clear to the British Government the wise and humane purpose towards which the legislation is directed. That Congress did not contemplate the least infringement of the rights of foreign governments respecting the control of their merchant marine while in the ports of the United States, in a manner inimical to those Governments, is evident from the reports of the various committees to which the bill was referred before passage. It is likewise clearly shown by Section 16 of the Act that the intent of Congress was not to disturb the great and valuable treaties now existing between the
Government of the United States and other nations, negotiated from
time to time with much care and with much patience, but by appro-
priate legislation to correct and regulate the long existing and vary-
ing methods of procedure in matters affecting seamen. That such
methods of procedure and standards of conduct toward seamen
generally have not been advanced as they should have been, coinci-
dent with the improved treatment of other classes of labor, is believed
to be so well established as to need no comment, and the President
feels, therefore, that when all the facts and circumstances attendant
upon the passage of the Act are fully considered by the other govern-
ments whose treaties may be affected in parts, no serious difficulties
will be found to delay or to prevent an agreement for the mere
abrogation or omission of the respective articles found to be inco-
sistent with the provisions of the Act.

The President, although deeply anxious that an agreement be
reached with foreign governments on this subject, is not concerned,
as to the particular method by which it may be consummated,
whether by signed protocols of conferences or by mutual exchange of
notes, as is a common practice in the conduct of many diplomatic
affairs of this character. The latter course seems preferable because
more easily effected. It will be necessary to refer to the Senate
of the United States for its advice and consent such an agreement
by an exchange of notes, and this method of procedure will be regular
and effective because of the authority already granted to the Presi-
dent by Section 18 of the Act to abrogate the portions of the treaties
inconsistent therewith. Hence it will be perceived that the intent of
Congress may be fully realized by informal agreements between the
Government of the United States and other powers, and that in this
way the various important treaties now subsisting may remain in
full force and effect with the exception of certain articles relating to
seamen.

Please communicate with Foreign Office in the sense of the
foregoing.

I am [etc.]

ROBERT LANSING

711.4121/26

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

No. 4037 LONDON, January 10, 1921.
[Received January 28.]

Sir: Pursuant to the Department’s instruction No. 1075 of Decem-
ber 20, 1920, (File No. 711.4121/24), I have the honor to transmit
herewith a copy of the Note of July 28, 1919, by which the British

*Not printed.
Government on behalf of the King of Tonga gave notice of denunciation of the Treaty of Amity, Commerce and Navigation, concluded on October 2, 1886, between the United States and the King of Tonga.

I have [etc.]

John W. Davis

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Davis)

No. 107441/345T

[LONDON,] July 28, 1919.

Your Excellency: I have the honour to advert to Your Excellency’s Note of May 28th. last (No. 370) and previous correspondence respecting the desire of the United States Government to abrogate Article 10 of the Treaty of Commerce of October 2nd. 1886 between the United States and Tonga. His Majesty’s Government regret the delay which has occurred in answering your predecessor’s Note on the subject, and which has been largely due to circumstances caused by the war and difficulties of communication with Tonga.

I have now the honour to state that, inasmuch as the Treaty in question makes provision only under Article 14 for its entire abrogation (save in respect of Article 6), it is deemed that the desire of the United States Government will best be met by giving notice of denunciation in accordance with the terms of that Article. His Majesty’s Government, on behalf of His Majesty the King of Tonga, by the present note therefore give notice of denunciation of the Treaty of October 2nd. 1886 as provided for in Article 14 and I shall be glad if Your Excellency will be good enough so to inform the United States Government.

I have [etc.]

(For Earl Curzon of Kedleston)

G. S. Spicer

711.4121/26

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

No. 1196

WASHINGTON, February 18, 1921.

Sir: The receipt is acknowledged of your note No. 4087 dated January 10, 1921, and the enclosure therewith of a note of July 28, 1919, from the Foreign Office by which His Majesty’s Government gave notice in behalf of the King of Tonga of the denunciation, except as to Article VI of the Treaty concluded on October 2, 1886, between the King of Tonga and the United States.

You are requested if the Embassy has not made acknowledgment of the note from the Foreign Office to make such acknowledgment in the following form:
"In due course I communicated to my Government the notice given in behalf of the King of Tonga by His Majesty's Government in your note of July 28, 1919, of the denunciation of the Treaty of Amity, Commerce and Navigation, concluded on October 2, 1886, between the King of Tonga and the United States, that notice being given under Article XIV of the Treaty which provides for its termination one year after such notice, save and except as to Article VI, which is terminable only by mutual consent.

"By direction of my Government I have the honor to acknowledge the receipt of the notice given by His Majesty's Government. It is the understanding of my Government that the provisions of Article VI of the Treaty continue in force under the exception which is made concerning them in Article XIV."

If an acknowledgment of the note of the Foreign Office previously has been made by the Embassy, you are requested to transmit a copy of that acknowledgment to the Department, otherwise you are requested to transmit to the Department a copy of the acknowledgment which the Embassy makes in pursuance of this instruction.

I am [etc.]

For the Secretary of State:

Alvey A. Adee