GREAT BRITAIN

EFFORTS TO MAINTAIN AMERICAN CAPITULATORY RIGHTS IN PALESTINE PENDING AGREEMENT BY TREATY REGARDING THE BRITISH MANDATE

175.1/32

The Secretary of State to the Vice Consul at Jerusalem (Cobb)

WASHINGTON, December 28, 1922.

Sir: Reference is made to the Consulate’s despatches No. 859 of February 6, 1922, and No. 864 of February 11, 1922, in regard to the conclusion of a provisional arrangement between the Consulate and the Legal Secretary for the Palestine Government as to the procedure to be followed in civil and criminal cases in Palestine in which American citizens are defendants.

The procedure agreed upon for civil cases is understood to be substantially as follows:

(1) The summons shall be served on the defendant according to the regular procedure of the Palestinian Civil Courts and not through the Consulate;
(2) The defendant shall appear before the appropriate Civil Court and plead that he is an American citizen, and he shall produce the necessary proof of his citizenship;
(3) Any person claiming American citizenship shall be permitted and assisted by the Palestine authorities to obtain proof from the American Consulate as to his claim;
(4) If the Court is satisfied of the American citizenship of the defendant, it shall refer the papers to the Legal Secretary for the Palestine Government, who shall in turn submit them to the American Consulate in order that the case may be tried by the Consular Court;
(5) If the defendant does not raise the plea of jurisdiction at the first hearing of the case and a judgment is given against him, he shall not be entitled to resist execution on the ground that he is an American citizen.

For criminal cases the procedure agreed upon is understood to be substantially as follows:

(1) The summons of the accused person or, if necessary, his arrest shall be carried out in the same way as in the case of a Palestinian subject;

1 For previous correspondence concerning the British mandate for Palestine, see Foreign Relations, 1922, vol. II, pp. 268 ff.
2 Neither printed.

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(2) The accused, if an American citizen, shall raise a plea to the jurisdiction, either at the criminal investigation before the Magistrate or at the trial of the charge, and he shall produce the necessary evidence;

(3) The Court, if satisfied that the accused is an American citizen, shall refer the papers to the Legal Secretary for the Palestine Government, who will transmit them to the Consulate;

(4) Should the Consulate make application, an American citizen accused of a criminal offense and arrested shall, upon the establishment of his American citizenship, be transferred to the custody of the Consulate.

The procedure above outlined appears to have been put into effect, subject to a reopening of the discussion in the event that the Department should raise any question in regard to it. In submitting the agreement for the Department's approval the Consulate requested instructions as to whether it might ask the local authorities to hold in prison an American citizen against whom a charge had been substantiated in the Consular Court and also as to the method by which payment to the local authorities for the detention of such a prisoner might be made and charged in the accounts of the Consulate.

The Department appreciates the desirability of a definite arrangement as to the procedure to be followed in cases such as were the subject of the provisional arrangement between the Consulate and the Legal Secretary for the Palestine Government. The procedure agreed upon appears to the Department to be, on the whole, well adapted to its object, but it is believed that it is necessary or desirable to modify or supplement it in the particulars indicated below:

(1) It should be made clear that the procedure is applicable only with respect to cases in which American citizens as defendants are opposed by Palestinian or Ottoman subjects. Cases in which American citizens as defendants are opposed by persons not of Palestinian or Ottoman nationality come within the exclusive competence of the American Consular Court.

(2) In civil cases in which the defendant is generally known to be an American citizen or is in possession of documents constituting prima facie evidence of American citizenship, service of summons should be through the Consulate, as provided for in Article 17 of the Ottoman Code of Commercial Procedure, which reads, in translation, as follows (See Young's *Corps de Droit Ottoman*, Volume VII, page 158):

"If the party summoned is a foreign subject, the service of the duplicate of the summons shall be made upon him only through the intervention of the Consul or of the dragoman of the Legation upon which he depends. The said Consul or dragoman shall examine the duplicate which the bailiff shall take back."
(3) When a defendant in a civil case in a local court alleges American citizenship and has not in advance of all procedure given a written submission to the jurisdiction of the court, a representative of the American Consulate should be present at all proceedings of the court, as contemplated in the Treaty of 1830 between the United States and Turkey and in the Protocol of 1874 (See Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and other Powers, 1776–1909, Volume 2, pages 1319, 1346 [1344]).

(4) The execution of the judgment of a Palestinian court against an American citizen should in no case be effected without the assistance of the American Consulate, in accordance with the usage referred to in the following passage translated from Du Rausas’ Le Régime des Capitulations dans l’Empire Ottoman, Volume I, page 440:

“There is a third limitation upon the rule of the competence of the Ottoman jurisdictions. This limitation, which relates to the execution of judgments and orders of court, results from a principle which we have studied above, the principle of the inviolability of the domicile of the foreigner. We have seen that this principle was analyzed in the following manner: the Ottoman authorities can enter a house inhabited by a foreigner only with the authorization and assistance of the Consular authority upon which that foreigner depends. The consequence of this principle, from our present point of view, is the impossibility of the execution by the Ottoman authorities of court orders issued or judgments pronounced against foreigners, without the authorization and assistance of the foreign authority.”

(5) Defendants who are generally known to be American citizens or are in possession of documents constituting prima facie evidence of American citizenship should not be summoned to appear before local courts in criminal cases, and, except in cases of urgent necessity, they should not be arrested except at the request or with the assistance of the Consulate, as contemplated in the Treaty of 1830 and the Protocol of 1874.

(6) It should be made clear that, since local courts are entirely without jurisdiction over American citizens in criminal cases, the omission of an American defendant to plead his citizenship as a ground for exemption from the jurisdiction of the local court in a criminal case does not deprive him of any right.

You are authorized to communicate to the Legal Secretary for the Palestine Government the sense of the foregoing.

With reference to your request for instructions as to the detention of American prisoners in Palestinian jails and the method of accounting for the expenses of such detention, you are informed that, in the opinion of the Department, the question of the advisability of asking the local authorities to imprison American citizens against whom a
charge has been substantiated in the Consular Court is within the discretion of the consular officer in charge. A separate statement should be rendered for expenses of prisoners, fully itemized and supported by vouchers in the form of receipted bills. Form No. 194—Consular—copies of which are enclosed with this instruction, as should be used for itemizing board and lodging. The amount shown by this form should be included in the statement mentioned above. The total amount of the account should be carried as a separate item in the account current, under the heading “Expenses of prisons for American convicts”.

I am [etc.]                                 Charles E. Hughes

175.1/37

The Vice Consul at Jerusalem (Cobb) to the Secretary of State

No. 1104                                    Jerusalem, March 3, 1923.

[Received March 29.]

Sir: I have the honor to acknowledge the receipt of the Department’s instruction of December 28, 1922, concerning certain modifications in the provisional arrangement between this Consulate and the Legal Secretary of the Palestine Government as regards the procedure to be followed in civil and criminal cases in Palestine in which American citizens are the defendants.

The Chief Secretary of the Palestine Government has agreed to the modifications, which were outlined in the Department’s above-mentioned instruction, and has issued instructions to the Palestinian Courts that they be put into effect.

I have [etc.]                                 George C. Cobb

175.1/41; Telegram

The Vice Consul at Jerusalem (Cobb) to the Secretary of State

Jerusalem, July 20, 1923—4 p.m.

[Received July 21—4:55 a.m.]

Reference capitulations: Chief Justice Palestine Government has verbally informed me that our capitulations are not in accord with the Palestine order in council (enclosure to my despatch no. 1018, September 6, 1922) and Attorney General has verbally informed me local government cannot force him to comply with instructions of the Chief Secretary, referred to in my despatch no. 1104, March 3, 1923, though lower courts have and are continuing to do so.

* Enclosure not printed.
* Not printed.
Article 87 of the aforementioned order in council authorizes High Commissioner to amend order in council but for political reasons it appears inexpedient to local government lest other nations who have not successfully maintained their capitulations might be offended. It appears necessary that action to this end be taken through London.

Cobb

175.1/43 : Telegram

The Vice Consul at Jerusalem (Cobb) to the Secretary of State

Jerusalem, August 11, 1923—2 p.m.
[Received August 12—4:40 p.m.]

Referring to my telegram of July 18[20?), 4 p.m. Court of Appeals has handed down decision that American capitulations are not in accordance with the order in council and therefore courts should refuse to recognize Chief Secretary's instructions regarding same. Chief Secretary states that he has communicated with Colonial Office regarding amendment to the order in council. I am insisting upon maintenance of our rights, but it will be necessary that order in council be amended if local courts are to recognize our rights in regard to the trial of American citizens.

Cobb

175.1/43 : Telegram

The Secretary of State to the Vice Consul at Jerusalem (Cobb)

Washington, August 15, 1923—3 p.m.

Your August 11, 2 p.m.
You may inform High Commission that until Allied Treaty with Turkey is ratified and an agreement between the United States and Great Britain regarding recognition of British mandate in Palestine is arrived at the Department trusts that the terms of the arrangement between the British Legal Secretary and your office will be followed.

The Department is taking the matter up with London.

Hughes

867n.01/359a

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

No. 977
Washington, October 4, 1923.

Sir: The Department encloses for your information copies of communications which have passed between the American Consulate at Jerusalem and the British Legal Secretary for Palestine, and copies of correspondence between the Department and the American Consulate at Jerusalem, relating to the jurisdiction in civil and criminal
cases which the American Consular Courts in Palestine exercise by virtue of the capitulations.

You will note that an agreement was reached between the British Legal Secretary and the American Consulate to the effect that in cases in which American citizens as defendants are opposed by persons not of Palestinian or Ottoman nationality, these cases come within the exclusive competence of the American Consular Court; that in civil cases in which the defendant is generally known to be an American citizen or is in possession of documents constituting prima facie evidence of American citizenship, service of summons should be through the Consul; that when a defendant in a civil case in a local court alleges American citizenship and has not in advance of all procedure given a written submission to the jurisdiction of the court, a representative of the American Consulate should be present at all proceedings; that the execution of the judgment of a Palestinian court against an American citizen should in no case be effected without the assistance of the American Consulate; that the defendants who are generally known to be American citizens or are in possession of documents constituting prima facie evidence of American citizenship, should not be summoned to appear before local courts in criminal cases and, except in cases of urgent necessity, they should not be arrested except at the request or with the assistance of the Consulate; that since local courts are entirely without jurisdiction over American citizens in criminal cases, the omission of an American defendant to plead his citizenship as a ground for exemption from the jurisdiction of a local court in a criminal case does not deprive him of any right.

This agreement was confirmed to the Department by a despatch from the American Consulate at Jerusalem, dated March 3, 1923, in which it was stated that,

“\n\nThe Chief Secretary of the Palestine Government has agreed to the modifications, . . . (as outlined above) and has issued instructions to the Palestinian Courts that they be put into effect.”
\n\nYou will further note, however, that in a cable to the Department dated July 20, 1923, the American Consulate at Jerusalem informed the Department that the British Chief Justice of Palestine and the British Attorney General do not consider themselves bound by the instructions of the Chief British Secretary on the ground that the Palestine Order in Council, 1922, conflicts with the agreement.

The Order in Council above referred to provides in Sections 58 and 59 that:

“. . . The Civil Courts shall exercise jurisdiction over foreigners, subject to the following provisions:
"59. For the purpose of this part of the Order the expression 'foreigner' means any person who is a national or subject of a European or American State or of Japan, but shall not include:

"(i) Native inhabitants of a territory protected by or administered under a mandate granted to a European State.

"(ii) Ottoman subjects.

"(iii) Persons who have lost Ottoman nationality and have not acquired any other nationality."

It is stated in the cable referred to that whereas Article 87 of the Order in Council authorizes the High Commissioner to amend the Order it appears, for political reasons, inexpedient to the local Government to do so.

As the capitulatory rights enjoyed by Americans in Palestine remain intact in the absence of an agreement concerning the formal recognition by the United States of the British Mandate over Palestine, you are instructed to address an appropriate communication to the Foreign Office embodying the information and considerations outlined in this instruction and stating that this Government trusts that appropriate instructions will be sent to the Palestine authorities in order that any case now pending in the Palestine Courts involving American citizens may be treated in conformity with the agreement arrived at between the British Legal Secretary for Palestine and the American Consulate at Jerusalem.

You may add that in view of the recent conclusion of a Treaty of Peace between the Allied Powers and Turkey, this Government is quite prepared to take up for early consideration, in case the British Government deems the moment opportune, the correspondence with regard to the recognition by Treaty of the British mandate in Palestine. In this connection you are referred to the Department's instruction to you, No. 792 of January 31, 1923,6 and to previous correspondence on the same subject.

I am [etc.]

CHARLES E. HUGHES

867a.01/368; Telegram

The Vice Consul at Jerusalem (Cobb) to the Secretary of State

JERUSALEM, October 31, 1923—10 a.m.
[Received 7 p.m.]

Officially informed Palestine mandate definitely effective September 29th. Increasing difficulties with civil courts. Protested to local government who have again requested instructions from London.

COBB

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

No. 3180  

London, November 30, 1923.  

[Received December 15.]

Sir: Supplementing my telegram No. 536 of November 30, 5 p.m., 1923,* I have the honor to enclose two notes from the Foreign Office, dated November 29, 1923, on the subject of the difficulties which have arisen in Palestine through the issuance of an Order in Council conflicting with the agreement made by the American Vice Consul in Jerusalem with the local authorities, and with regard to the desire of the British Government to conclude an Anglo-American Treaty recognizing the British Mandate in Palestine.

I have [etc.]

Post Wheeler

[Enclosure 1]

The British Secretary of State for Foreign Affairs (Curzon) to the American Chargé (Wheeler)

No. E 11386/1899/65  

London, 29 November, 1923.

Sir: I have the honour to acknowledge the receipt of your note No. 1069 of 20th ultimo on the subject of jurisdiction over United States nationals in Palestine† and to inform you that the matter has for some time past been under the consideration of His Majesty’s Government who have been fully aware of the difficulties of the situation to which you have drawn attention. The salient facts are substantially as recorded in your note, but the situation has recently come to a head over a civil suit which was first submitted to the District Court of Jerusalem in August 1922.

2. In the course of 1922, correspondence had taken place between the United States Vice Consul in Jerusalem and the Palestine administration, as a result of which United States Capitulatory Rights with certain quite minor modifications were to be maintained in force until such time as an agreement should have been concluded between His Majesty’s Government and the United States Government on the subject of the British mandate for Palestine. By the terms of the arrangement reached with the United States Vice Consul it had been laid down in a confidential notification to the district courts of Palestine dated 8th February 1922 that in civil cases, where the defendant was an American citizen, and the court was satisfied that the latter’s national status was established, the

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*Not printed.
†The Chargé’s note was apparently based on Department’s instruction no. 977, Oct. 4, p. 222.
case should be referred by the District Court to the legal secretary of the Palestine Government for trial by a United States consular court. On the 15th August 1922 one Zaslevsky, an Ottoman subject, sued one Goldberg, an alleged American citizen, before the District Court in Jerusalem for the balance of an account. The court in accordance with the above mentioned notification refused to try the case on the grounds that the defendant being an American national was justiciable before a United States consular court.

3. Thus far, therefore, the procedure laid down by mutual agreement pending the conclusion of a treaty between the two countries in regard to the mandate was rigidly followed. Negotiations in regard to the terms of the treaty were also in progress and were so far advanced, that a speedy conclusion was anticipated.

4. The necessity of establishing the Legislature and Judicial Organisation of Palestine on a definite basis as soon as the terms of the mandate for Palestine were approved by the Council of the League of Nations, led to the framing of the Palestine Order in Council of 1922 which actually came into force on 1st September of that year. This instrument, in the prospect of an early entry into force of the terms of the mandate, on the one hand, and of the anticipated early conclusion of an agreement with the United States Government on the other, contained provisions for jurisdiction over foreigners in articles 58 and 59 to which you refer. Insofar as other foreigners previously enjoying capitulatory rights in Palestine were concerned, the request of the League of Nations that Great Britain should carry on the administration of Palestine in the spirit of the mandate, and subsequently the actual entry into force of the terms of that instrument on 29th September last, have had the effect, in accordance with article 8 of the mandate, of suspending the capitulatory privileges of all powers except the United States of America in that country for as long a period as Great Britain holds the Mandate. This suspension of the capitulations in Palestine may not be legally applicable to the United States of America until the treaty recognising the mandates is concluded, but the present situation is none the less that in the absence of such recognition the United States Government are claiming to exercise on behalf of United States nationals the privilege of withdrawing them from a jurisdiction which rests upon British principles of justice, and which has been accepted by all other powers.

5. His Majesty's Government recognize that the inclusion of nationals of American states in the category of those foreigners for whom judicial provisions were made in articles 58 and 59 of the Palestine Order in Council of 1922 was inconsistent with the assurances given to the American Vice-Consul in Jerusalem by the local administration. In these circumstances they admit that it has be-
come necessary to reconcile the juridical position arising out of the Order in Council with those assurances, and are ready to consider what steps should be taken to regularize the position. Recourse cannot be had to the expedient of modifying the terms of the Order in Council in accordance with the provisions of article 87 thereof, owing to the fact that over a year has passed since the Order in Council entered into force, with the result that the provisions of the article referred to have now lapsed. It was for this reason, and not, as suggested in the sixth paragraph of your note, on account of political considerations, that the American Consulate at Jerusalem was informed that action could not be taken. His Majesty’s Government are advised that nothing short of the enactment of fresh legislation would satisfy the request made in your note under reply, and that this would have to take the form of an amending Order in Council withdrawing United States nationals from the operation of the 1922 order until such time as an agreement shall have been concluded between the United States of America and Great Britain on the subject of the mandate. I cannot conceal from you that the publication of an amending Order in Council of this nature would at any time be a vexatious administrative measure. Its effect on the local situation would be particularly unfortunate at the present time, when the justification of His Majesty’s Government in singling out United States nationals for special treatment would not be properly understood either in Palestine or by the League of Nations when once it is realised that your government are seeking to maintain in an area under British control what they have already voluntarily surrendered in Turkey by the treaty which Mr. Grew signed on behalf of the United States of America at Lausanne on the 6th August last.\(^a\)

6. The last paragraph of your note indicates that the United States Government are quite ready to take up for early consideration the convention for the recognition of the British mandate over Palestine. Since I shall have the honour to address you a further communication on this matter I will confine myself here to pointing out that the early conclusion of this agreement which allows United States nationals to pass under the jurisdiction of the Palestine Order in Council of 1922 without further difficulty or delay would obviate the necessity for the enactment of the amending Order in Council referred to in the preceding paragraph and would therefore, as far as His Majesty’s Government are concerned, provide the most satisfactory way out of the present situation. In these circumstances His Majesty’s Government earnestly hope that the United States Government will agree that the best method of regularizing the present position is by taking immediate steps to negotiate the con-

\(^a\) Post, p. 1153.
vention referred to above. Pending the conclusion of this convention, His Majesty's Government are willing at once to instruct the High Commissioner for Palestine to request the Chief Justice to make arrangements to ensure that American citizens shall enjoy all privileges accorded to foreigners by the Palestine Order in Council, whether the American citizen concerned claims the right or not.

I have [etc.]  

CURZON OF KEDLESTON

[Enclosure 2]

The British Secretary of State for Foreign Affairs (Curzon) to the American Chargé (Wheeler)

No. E 11886/1899/65  
LONDON, 29 November, 1922.

Sir: With reference to the last paragraph of your note No. 1069 of the 20th ultimo  
I have the honour to state, for the information of your Government, that His Majesty's Government are most anxious to conclude the treaty for the recognition by the United States of America of the British Mandate in Palestine as soon as possible. The last correspondence which was exchanged on this subject was in October 1922 when a note, a copy of which is enclosed for your information, was addressed to Mr. Harvey.  

2. I have the honour to request that the views of the United States Government on the amendments which were introduced into the text of the treaty to meet the wishes of the State Department, may be ascertained with a view to the early conclusion of this instrument.

I have [etc.]  

CURZON OF KEDLESTON

NEGOTIATIONS TO ENSURE BY TREATY THE RIGHTS OF THE UNITED STATES IN TERRITORIES UNDER BRITISH MANDATE

B Mandates

800.01 M 31/152 : Telegram

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

WASHINGTON, March 21, 1923—5 p.m.

61. Reference your despatch No. 1748 of October 11, 1922, and to enclosed British note of September 30,  subject African mandates.

Please present to Lord Curzon a note as follows:

"With reference to Your Lordship's note of September 30, 1922, regarding the British mandates for the administration of certain

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*Ibid., pp. 304 and 330, respectively.*
former German territories in tropical Africa and the proposed treaties relative thereto, I have the honor to inform Your Lordship that my Government, animated by the desire of reaching an early agreement with the British Government in this matter, and in view of the assurances contained in paragraph 5 of your note that the British Government has not the slightest intention to discriminate against United States nationals or institutions by subjecting their operations to restrictions not equally applicable to British nationals and institutions, is disposed to accept the wording proposed by the British Government for Article 8 of the Mandate for East Africa and Article 7 of the Mandates for Togoland and the Cameroons, which is substantially similar to paragraph 1 of Article 2 of the Treaty between the United States and Japan, regarding the former German Islands North of the Equator,13 without making this acceptance subject to the insertion in the treaties of an additional article.

It is understood, however, that such acquiescence in the proposals of the British Government with regard to African Mandates in no way affects the position heretofore taken by the Government of the United States with regard to American missionary and educational institutions in territories which may come under A mandates.

My Government regrets that, with regard to the preamble of the African treaties, it is unable to concur in the proposal set forth in Paragraph 7 of Your Lordship's note. However, the Government of the United States, having in mind the position taken in Paragraph 5 of the British note of October 2,14 as to the preamble for the treaty relating to the Palestine mandate, and the desirability of making the treaties with Great Britain and the treaties with France as to the African territories identical in form and substance, is confident that the British Government will not find it impossible to adopt the text proposed in a memorandum to the British Ambassador of July 8, 1922,15 which text is substantially the same as that used in the French treaties which have been recently signed.16

I have the honor to state further that my Government is willing to proceed immediately to the signature of these proposed conventions, the full texts of which are contained in the drafts transmitted herewith.17

[Paraphrase.] You are requested to draw up texts of conventions, in which you should follow draft contained in Department's telegram of July 10,17 altered as follows:

In article 1 of the treaty you should use the words "consents to", and also add the phrase "hereinafter called the mandated territory".

For article 7 of the mandates for Togoland and Cameroons, and for article 8 of mandate for East Africa, you should employ wording suggested in British note of September 30.

13 Ibid., p. 600.
14 Ibid., p. 304.
15 Ibid., p. 322.
16 Ibid., p. 444.
17 Ante, pp. 8 ff.
The Department is much gratified that negotiations with French Government have reached satisfactory conclusion by signature on February 13 of treaties relating to African territories under French mandate. There is well-founded expectation also that in a few days an identical treaty will be signed at Brussels respecting Belgian mandate in Africa. The Department hopes that as early as possible you will proceed to signature of proposed British treaties. Requisite full powers will be supplied to you by cable.

In order to avoid possible errors in this instruction as transmitted, the Paris Embassy has been asked to forward to you copies of English text of treaties with France which you should compare with your own draft. Preamble of French treaties should be particularly noted and followed in British treaties. [End paraphrase.]

Hughes

800.01 M 31/186

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

No. 3181

LONDON, November 30, 1923.

[Received December 14.]

Sir: Supplementing my telegram No. 533, of November 30th, 1923, I have the honor to enclose copies in triplicate of Lord Curzon’s note, dated November 26th, 1923, concerning the proposed Anglo-American Treaties affecting the former German territories in Central Africa now administered by His Majesty’s Government under Mandate on behalf of the League of Nations.

I have [etc.]

Post Wheeler

[Enclosure]

The British Secretary of State for Foreign Affairs (Curzon) to the Chargé in Great Britain (Wheeler)

No. W8985/70/98

LONDON, November 26, 1923.

Sir: It was with much gratification that His Majesty’s Government learnt from Mr. Harvey’s note of the 24th March last that the United States Government were now in agreement with them as to the substantive portion of the proposed Anglo-American treaties affecting the former German territories in Central Africa now administered by His Majesty’s Government under mandate on behalf of the League of Nations.

2. The delay which has arisen in replying to that note has been caused by the difficulties found to exist in the text of the preamble

38 Vol. 1, p. 433.
39 Not printed.
40 See telegram no. 61, Mar. 21, to the Ambassador in Great Britain, p. 228.
suggested by the United States Government for the treaties in question; His Majesty's Government regret that they have not been able, after careful consideration, to overcome their objection to certain passages in this text.

3. In the first place, reference is made to the suggested preamble to benefits accruing to the United States under article 119 of the Treaty of Versailles and confirmed by the Treaty between the United States and Germany signed on August 25th, 1921. His Majesty's Government cannot admit that any benefits have accrued to the United States under a treaty which the latter have not ratified, or that, in the case of the territories now under mandate, Germany retained after the entry into force of the Treaty of Versailles any rights over or in them which she could subsequently transfer to the United States. As was stated in Mr. Harvey's memorandum of the 24th August, 1921, the renunciation made by Germany under article 119 of the Treaty of Versailles was indivisible and no part of the sovereignty over the territories affected remained to Germany thereafter.

4. Paragraph 4 of the suggested preamble states that Japan agreed, and implies that the United States did not agree, that His Britannic Majesty should exercise the mandates now in question. His Majesty's Government are unable to set their signature to a text containing either statement or implication. As is well known, the allocation of the mandates was made unanimously at a meeting of the Supreme Council at Versailles on May 7th, 1919 at which President Wilson, but no Japanese representative, was present. Japan had no part in the allocation; and though Mr. Wilson has repudiated any participation in the decision relating to the island of Yap, I am not aware that it has hitherto been claimed that he did not agree to the distribution of the other mandates.

5. His Majesty's Government have no desire to enter into controversy on these matters; it would [in] their view be of no advantage to do so. It was with the object of avoiding argument that they proposed the simple form of preamble set forth at the end of my note of the 30th September, 1922. They entertain the hope that after further consideration the United States Government will be able to accept either that text or some other which does not raise the difficulties which I have ventured to point out.

I have [etc.]

CURZON OF KEDLESTON

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C Mandates

800.01 M 31/132a: Telegram

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

WASHINGTON, July 24, 1922—2 p.m.

218. Department’s 448, August 4, 1921, 8 p.m.\(^2\)

Please present to the Foreign Office a note in the sense of the following: \(^3\)

“In my memorandum of August 24, 1921, on the subject of mandates, I included pursuant to the instructions of my Government the following suggestions regarding the draft mandates for the so-called C mandate territories other than Yap: \(^4\)

(a) That article V should be changed so as to embrace nationals of the United States and that it would be preferable, to avoid ambiguity as to educational and charitable activities of missionaries, to have in this article the same provision as in article VIII of the British B mandate for German East Africa;

(b) That it was desired that the mandates should guarantee to the United States most-favored-nation treatment in all C mandate territories, reserving however the present special treaty rights of the United States with respect to German Samoa;

(c) That there should be a provision similar to that proposed in the other forms of mandates prohibiting monopolistic concessions or the monopolizing of natural resources by the mandatory;

(d) That, as in other cases, any modification of the mandate should be subject to the assent of the United States.

In the communications which my Government has thus far received on the subject of mandates, no direct references have been made to the above points. Your Lordship set forth, however, in notes of December 22 and December 29, 1921,\(^5\) that it has never been the intention of His Majesty’s Government to deprive the United States of any of the rights and privileges to which it is entitled as a result of the common victory over Germany, and in particular that His Majesty’s Government disclaim any intention to discriminate against United States nationals and companies. In view of these cordial assurances, my Government has assumed that there would be no disposition to deny to the United States in the C mandate territories any guarantees which may be appropriate for the safeguarding of the present or prospective American interests in those territories, and in particular that no action would be taken prior to the assent of the United States to the mandates, which

\(^3\) Note addressed to the Foreign Office, July 26.
\(^4\) For texts of draft mandates, see Foreign Relations, 1921, vol. i, p. 118.
\(^5\) Ibid., vol. ii, pp. 111 and 115.
would be discriminatory or otherwise contrary to the spirit of the expected guarantees.

Nevertheless, certain circumstances and action have recently been brought to the attention of my Government, which in the absence of correspondence on the subject of C mandates since my memorandum of August 24 last, appear to my Government to justify an immediate inquiry.

The circumstances and action to which reference is made may be briefly summarized as follows:

1. In my memorandum of August 24, I stated that the Government of the United States had protested against the discriminatory tariff imposed by New Zealand in violation of the treaty concluded at Washington, December 2, 1899.\(^{27}\) Subsequently, further representations were made and the Embassy was informed some weeks ago that the matter was still under discussion with the New Zealand Government. In the meantime, however, there has been, so far as my Government is informed, no suspension or repeal of the discriminatory duties. Although the treaty rights of the United States are in this instance controlling, my Government believes that, apart from these rights, there should be, prior to the assent of the United States to the mandate, no discrimination of any kind in the mandate territory against the citizens or commerce of the United States.

2. Somewhat similar action appears to have been taken with respect to former German South West Africa. It is understood that an act to amend the tariffs of the Union of South Africa, published in the South African Official Gazette of May 30, 1921, and reported to have come into force June 7, 1921, contemplates that this mandate territory should be regarded for customs and excise purposes as a part of the Union, which, it is understood, accords certain tariff preferences to other parts of the British Empire. The result of this legislation would be discrimination against the United States. If it is the purpose of the Union of South Africa to keep legislation of this character in force, the Government of the United States feels that it must request for its goods imported into South West Africa any benefits or preferences accorded to any other similar goods.

3. The Governor General of the Australian Commonwealth on February 22, 1922, proclaimed certain amendments to the regulations under which the Treaty of Peace (Germany) Act 1919–1920, providing for the sale of enemy property and apparently applicable to such property in the mandate territory or New Guinea [sic]. The amended regulations contain the following provisions:

'\(\text{The Custodian shall not sell any property to any purchaser other than to}\)

\((a)\) a person who is an Australian soldier within the meaning of the Australian Soldiers' Repatriation Act 1917–1920, or who is a natural-born British subject;

\((b)\) a company in which the majority of the shares are held by persons who are natural-born British subjects and of which the Articles of Association contain a provision prohibiting the sale

or transfer of shares in the company to persons who are not natural-born British subjects;

(c) a company registered in any part of His Majesty's Dominions, in which the majority of the shares is held by persons who are natural-born British subjects and which is approved by the Attorney-General."

The effect of such provisions would be to discriminate against American nationals and companies who might desire to participate in the purchase of the property concerned.

4. It appears that on November 22, 1921, an official statement was made in the Australian Parliament regarding oil deposits in mandate New Guinea indicating, if the statement has been correctly transmitted to my Government, that it was at that time the purpose to reserve all such deposits for the exclusive use of the authorities administering the mandate. Previous to this, the feeling was expressed in the Australian Parliament that under class C mandates, such as that of New Guinea, the mandatory might impose whatever restriction it pleased upon both men and goods. Statements of this tenor are less disturbing if it is assumed, as my Government has been inclined to do, that the views of the Government of the United States regarding mandates and the acceptance in general of these views by His Majesty's Government had not at that time been made known to the officials of the Commonwealth. My Government has not been made aware, however, of any subsequent correction of these statements or of any further announcements of a more reassuring nature; and American interests are left in uncertainty regarding the possibility of participation in certain important branches of economic activity in New Guinea.

5. In previous correspondence, I have called Your Lordship's attention to the agreement by the Japanese Government to furnish a duplicate, not a copy, of its annual report which is to be submitted to the League of Nations on the administration of the mandate territories. A provision to this effect is incorporated in the treaty between the United States and Japan relating to the mandated islands in the Pacific north of the Equator, and His Majesty's Government has agreed to the insertion of a similar provision in the proposed treaty relating to Palestine. It is assumed accordingly that there will be no objection to following a similar procedure with regard to the reports on the administration of the C mandate territories administered by the Union of South Africa, the Commonwealth of Australia and New Zealand. Pending the conclusion of a definite agreement regarding all of the C mandates, my Government would be glad to receive duplicates of the reports submitted to the League of Nations on the administration of those territories.

It is hoped that His Majesty's Government will find it possible at an early date to convey to this Government the desired assurances on the points raised by my Government with regard to C mandates and embodied in my memorandum of August 24, and that, until an appropriate treaty is concluded relating to these territories, no action will be taken of a monopolistic character or discriminating against American nationals and companies or otherwise prejudicial to American rights and interests.”

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

[Extracts]

WASHINGTON, October 18, 1923—6 p.m.

287. (1) You are instructed to present the following note to the Foreign Office:

"I have the honor to refer to previous communications on the subject of mandates.

The matter of the so-called ‘A’ mandates has, of course, been in abeyance pending the settlement of Near Eastern questions.

As to the ‘B’ mandates, conventions were signed between the United States and France on February 13, 1923, in regard to those parts of Togoland and the Cameroons that are under French mandate, and between the United States and Belgium on April 13, 1923 in regard to the territory of Ruanda and Urundi. In relation to the British ‘B’ mandates covering portions of Togoland and the Cameroons, I am awaiting reply to my communication of March 24, 1923. I had the honor in that communication to inform your Lordship that my Government, animated by the desire to reach an early agreement with the British Government and in view of your assurances that the British Government did not have the slightest intention to discriminate against United States nationals or institutions by subjecting their operations to restrictions not equally applicable to British nationals and institutions, was disposed to accept the wording proposed by the British Government in Article 8 of the mandate for East Africa and Article 7 of the mandates for Togoland and the Cameroons, which are substantially similar to paragraph 1 of Article 2 of the treaty between the United States and Japan regarding the former German Islands north of the equator without making this acceptance subject to the insertion in the treaties of an additional article. I stated that it was to be understood, however, that this acquiescence in the proposals of the British Government with regard to African mandates would in no way affect the position heretofore taken by the Government of the United States with respect to American missionary and educational institutions in territories which might come under ‘A’ mandates.

The only point of difference between the two Governments with respect to the ‘B’ mandates appears to be in relation to the recitals of the preamble of the proposed treaty. It may again be pointed out that the preamble as proposed by my Government is substantially the same as that used in the French and Belgian conventions with respect to ‘B’ mandates, and in the treaty with Japan with respect to the former German islands in the Pacific Ocean north of the equator. I again express the hope that this wording, which

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29 Note addressed to the British Secretary of State for Foreign Affairs, Oct. 25.
30 Art. i. p. 5.
32 See telegram no. 61, Mar. 21, to the Ambassador in Great Britain, p. 228.
has been found acceptable by these three Governments, will be approved by the British Government, especially as it is not understood that there is any difference in the attitude or policy of the British Government which would require a difference in statement.

I desire at this time to refer particularly to the 'C' mandates covering the former German possessions in the Pacific Ocean south of the equator and the territory which formerly constituted German Southwest Africa. As you have been advised, a treaty was concluded between the United States and Japan in relation to the north Pacific islands for which His Majesty the Emperor of Japan is the mandatory. This treaty, signed on February 11, 1922, became effective on July 13, 1922. The general subject of the relation of the United States to mandated territories was considered in the communication which I made to your Lordship, under instructions from my Government, on August 24, 1921. In this communication I referred to the position already taken by my Government 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 could be no valid or effective disposition of these territories without the assent of the United States as one of the participants in that victory. It was assumed, in this view, and in the light of the fundamental principles recognized by the British Government as applicable to the administration of mandated territories, that there would be no disposition to discriminate against the United States or to refuse to safeguard equality of commercial opportunity.

In your communication of December 22, 1921, your Lordship stated that His Majesty's Government had never desired to deprive the United States of the fruits of victory to which it had contributed, and as they were quite willing to meet the wishes of the United States as regards the British mandates it did not seem necessary to enter into a detailed examination of the general considerations contained in the American note. And in your Lordship's communication of December 29, 1921, it was stated that His Majesty's Government emphatically disclaimed any intention on their part to discriminate against United States nationals and companies or to refuse them full equality of commercial opportunity. These notes, however, so far as the particular provisions of the mandates were concerned, dealt with 'A' and 'B' mandates and did not take up the specific proposals that had been made by this Government as to the 'C' mandates.

On July 26, 1922, I addressed a further communication to Lord Balfour inviting attention more specifically to certain matters relating to the administration of the regions in question, in which the point of view of the Government of the United States was further defined.

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46 Ibid., p. 115.
47 See telegram no. 218, July 24, 1922, to the Ambassador in Great Britain, p. 282.
The reply of His Majesty’s Government, under date of August 12, 1922, stated that the desiderata of the United States Government would receive the most careful consideration in consultation with the Governments of the Dominions concerned, and that their views would be presented in due course.

In view of the desirability of an early agreement upon these questions, I trust that it may be helpful to present the views of the United States Government in two draft forms of conventions proposed to be concluded between His Majesty’s Government and the Government of the United States for the purpose of settling definitely the relation of my Government to the regions in question. The first draft form is that which it is proposed shall be followed in the conventions concerning the territory formerly the German Protectorate of Southwest Africa, the island of Nauru and the former German island possessions in the Pacific Ocean south of the equator, other than the island of Nauru and former German Samoa. The second draft convention relates to former German Samoa.

In proposing these conventions my Government has proceeded upon the assumption that there is no difference in principle between the Government of the United States and the British Government as to the appropriate administration of mandate territories and my Government has had in mind the repeated disclaimers by your Lordship of any intention on the part of His Majesty’s Government to deprive the United States of any of the rights and privileges to which it is entitled by the common victory over Germany or to discriminate against the United States nationals and companies. In view of these cordial assurances, the Government of the United States is confident that His Majesty’s Government will have no disposition to withhold from the United States such guarantees with respect to the ‘C’ mandates as may be appropriate in order to safeguard American rights and interests in the territories and islands in question.

Accept, etc.”

(2) The following is text of draft convention relating to British “C” mandates except Samoa. This text should accompany note:

“Whereas, by Article 119 of the Treaty of Peace signed at Versailles the 28th day of June, 1919, Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions, including therein blank; and

Whereas, by Article 22 of the same instrument it was provided that certain territories, which as a result of the war had ceased to be under the sovereignty of the States which formerly governed them, should be placed under the mandate of another power and that the terms of the mandate should be explicitly defined in each case by the Council of the League of Nations; and

Whereas, the benefits accruing to the United States under the aforesaid Article 119 of the Treaty of Versailles were confirmed by

\[\text{not printed.}\]
the treaty between the United States and Germany signed August
25, 1921, to restore friendly relations between the two nations; and

Whereas, four of the Principal Allied and Associated Powers, to
wit: The British Empire, France, Italy and Japan agreed to confer
upon His Britannic Majesty a mandate to be exercised on his behalf
by blank (hereinafter called the Mandatory) to administer the terri-
tory of blank; and

Whereas, the terms of the said mandate have been defined by the
Council of the League of Nations as follows: (Here insert terms of
Mandate); and

Whereas, the United States of America, by participating in the
war against Germany, contributed to her defeat and to the renuncia-
tion of her rights and titles over her overseas possessions, including
blank, but has not ratified the Treaty of Versailles; and

Whereas, the Government of the United States and His Britannic
Majesty desire to reach a definite understanding with regard to the
rights of the two Governments and their respective nationals in the
aforesaid former German territory of blank:

The President of the United States and His Britannic Majesty
have decided to conclude a convention to this effect and have nomi-
nated as their respective plenipotentiaries:

The President of the United States of America blank, and
His Britannic Majesty blank,

Who, after communicating to each other their respective full
powers found in good and due form, have agreed upon the follow-
ing provisions:

Article 1. Subject to the provisions of the present convention the
United States consents to the administration by blank on behalf of
His Britannic Majesty, pursuant to the aforesaid mandate, of the
former German territory of blank described in Article 1 of the
mandate,

Article 2. The United States and its nationals shall have and
enjoy the benefit of the engagements of the Mandatory defined in
Articles 3, 4 and 5 of the Mandate, notwithstanding the fact that
the United States is not a member of the League of Nations.

Article 3. The Mandatory shall insure in the territory subject to
the present mandate complete freedom of conscience and the free
exercise of all forms of worship which are consonant with public
order and morality. American missionaries of all such religions
shall be free to enter the territory and to travel and reside therein,
to acquire and possess property, to erect religious buildings and to
open schools throughout the mandated territory; it being under-
stood, however, that the Mandatory shall have the right to exercise
such control as may be necessary for the maintenance of public
order and good government and to take all measures required for
such control.

Article 4. Vested American property rights in the mandated ter-
ritory shall be respected and in no way impaired.

Article 5. The Mandatory shall secure to nationals of the United
States of America the same rights as are enjoyed in the mandated

territory by nationals of the Mandatory in respect of entry into and residence in the territory, the protection afforded to their person and property, the acquisition of property movable or immovable, and the exercise of their profession or trade.

Article 6. The Mandatory shall ensure to the nationals of the United States of America on the same footing as its own nationals freedom of transit and navigation, and complete economic, commercial and industrial equality; provided that the Mandatory shall be free to organize essential public works and services on such terms and conditions as it thinks just.

Article 7. With respect to import or export duties, other dues or charges, and prohibitions and restrictions affecting commerce, the Mandatory shall not enforce in the mandated territory any provisions of law or administrative regulations involving any discrimination in favor of the nationals or of the products and manufactures of any other member of the League of Nations or any independent state or sub-division thereof, having a separate tariff system, against the nationals or the products and manufactures of the United States. With respect to mandated territory the Mandatory shall extend equally and unconditionally to the commerce of the United States any favor or concession granted to the commerce of any member of the League of Nations other than the mandatory or of any independent state or sub-division thereof having a separate tariff system.

Article 8. Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or its nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

Concessions for the development of the natural resources of the mandated territory shall be granted by the Mandatory to nationals of the United States of America on an equal footing with its own nationals.

Article 9. A duplicate of the annual report to be made by the Mandatory under Article 6 of the mandate shall be furnished to the United States.

Article 10. Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above unless such modification shall have been assented to by the United States.

Article 11. The provisions of Article 10 of the Webster-Ashburton Treaty of 1842, of the Extradition Convention of July 12, 1889, of the Supplementary Extradition Treaty of September [December] 13, 1900, and of the Supplementary Extradition Convention of April 12, 1905 between the United States and Great Britain shall apply to the Mandated territory.
Subject to the provisions of the present Convention, other treaty provisions in force between the United States and Great Britain, which are applicable to the territories of the Mandatory, shall also apply to the mandated territory.

Article 12. The present Convention shall be ratified in accordance with the respective constitutional methods of the High Contracting Parties. The ratifications of the Convention shall be exchanged as soon as practicable. The Convention shall take effect on the date of the exchange of ratifications.

In witness whereof the respective plenipotentiaries have signed this Convention and have affixed thereto their seals.

Done in duplicate at blank, the blank day of blank, in the year of blank."

(3) Draft of Convention concerning Samoa is same as foregoing with the following substituted for Article 7:

"Article 7. The United States shall continue to enjoy in respect to its commerce and commercial vessels in ex-German Samoa privileges and conditions equal to those enjoyed by the Mandatory in all ports which may be open to the commerce of the latter.

No other or higher import or export duties or other dues or charges, prohibitions or restrictions affecting commerce shall be applied to the nationals, or to the products or manufactures of the United States, than are applied to the nationals or to the products or manufactures of the Mandatory."

(4) In preparing copies of draft conventions it will not be necessary to quote terms of mandates in text of preamble, but merely to indicate appropriately in the text that it is proposed to insert their terms in the passage in question.

(5) Please mail at once full text of note and draft conventions as delivered.

HUGHES

DECISION BY THE DEPARTMENT OF STATE TO SUPPORT THE TURKISH PETROLEUM COMPANY’S NEW CONCESSION IN IRAQ (MESOPOTAMIA) PROVIDING FOR AMERICAN PARTICIPATION AND THE OPEN DOOR 46

890g.0363 T 84/75a - Telegram

The Secretary of State to the Special Mission at Lausanne

[Paraphrase]

WASHINGTON, January 30, 1923—noon.

93. The Department considers that in view of the fact that the validity of the Turkish Petroleum Company’s claim has been reasserted, it may be desirable that you address to Lord Curzon an

46 For previous correspondence concerning petroleum exploitation in Iraq (Mesopotamia), see Foreign Relations, 1922, vol. II, pp. 333 ff.
informal note bringing again to his attention the note of November, 1921, from this Government, and making special mention of the suggestion therein that if the Turkish Petroleum Company’s claim continues to be supported its validity should be determined by some suitable arbitration. You might state further that you believe there is a clear understanding of this Government’s position. If you perceive objections to this course you should telegraph your views to the Department.

Inasmuch as this Government’s note of November, 1921, remains unpublished and has not yet been answered by the British Government, the Department considers that it may be desirable to make a written statement as suggested above. It seems important also to refute the press statements appearing in England that if arrangements could be made for a suitable American participation in the Turkish Petroleum Company, this Government would not press its views on the question of the validity of that Company’s claims. These reports are unwarranted. The views of the Department as set forth in the note of November, 1921, have been steadfastly maintained, and the Department has been informed by the American oil companies that as a condition of their participation in the Turkish Petroleum Company proper measures be taken to have that company’s claim validated by the competent authorities, or that the company obtain the grant of a new and valid concession.

Hughes

890g.6303 T 84/75 : Telegram

The Special Mission at Lausanne to the Secretary of State

LAUSANNE, February 3, 1923—4 p.m.

[Received 1:55 p.m.]

234. Department’s 93, January 30, noon. The following informal letter sent to Curzon today. If eventual publication desirable suggest that it be withheld until Curzon has opportunity to reply if he wishes to do so.

“February 1, 1923. Dear Lord Curzon. In view of your statement at the 21st meeting of the First Commission on January 23rd to the effect that the British Government after full examination of the claims of the Turkish Petroleum Company was convinced and remained convinced of the validity of the concessions given to this company for the oil fields of the Mosul and Bagdad Vilayets by the Turkish Government before the war, I believe it may be desirable to call your attention in this informal manner to the note of my Government presented by Ambassador Harvey to the British Government

on November 17th, 1921, a copy of which was delivered to you as President at the end of the 22d meeting of the First Commission on January 23rd in which the American attitude towards this question was set forth. I feel sure that my Government’s position in regard to the nonvalidity of the claim of the Turkish Petroleum Company is clearly understood from the full exposition given in the note and statement above mentioned having particular regard to the statements that the claim be determined by a suitable arbitration if it continues to be asserted. Sincerely yours, Richard Washburn Child."

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**American Mission**

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

**New York, February 6, 1923.**

[Received February 8.]

My Dear Mr. Secretary: Referring again to the proposal submitted to the American Group by the owners of the Turkish Petroleum Company, covered by Mr. Pississe’s telegram to me of December 12th, of which a copy was enclosed with my letter to you of December 13th, we were advised on January 26th by our London representative that the proposal in question had been amended, and that it could be regarded as definitely freed from any condition as to action to be taken by the State Department.

On the 31st ultimo the American Group met to determine its action with regard to this proposal, and it reached the conclusion, and so advised the Turkish Petroleum Company through its London representative, that the proposal for the 24% participation, with provision for 10% of oil to be deliverable free to Anglo-Persian Oil Company, Ltd., is impracticable as a business proposition. The American Group further expressed the feeling that some other plan acceptable to all interests concerned can be developed through a conference here, and urged that qualified representatives of the interests at present associated in the Turkish Petroleum Company should come here as soon as possible to negotiate and conclude the terms of a participation and of the working agreement.

At the moment we are awaiting definite advices regarding the suggested conference in New York.

Respectfully yours,

W. C. Teagle

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*Foreign Relations, 1921, vol. ii, p. 89.*

*See telegram no. 210, Jan. 24, 1923, from the Special Mission at Lausanne, p. 357.*

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

NEW YORK, April 17, 1923.
[Received April 18.]

My dear Mr. Secretary: For your information, I beg to advise you of recent developments in connection with the negotiations between the American Group and representatives of the present partners of the Turkish Petroleum Company, Limited, for a participation of our Group in that Company.

Mr. H. E. Nichols, one of the Directors of the Anglo-Persian Oil Company, Limited, and also Managing Director of the Turkish Petroleum Company, Limited, accompanied by an assistant, Mr. E. H. Keeling, arrived here March 26th to carry on the discussions in New York with the American Group on behalf of the Anglo-Persian and Royal Dutch interests in the Turkish Petroleum Company. These gentlemen were not directly authorized to represent the French Government interests in the Company.

The proposal which Mr. Nichols brought with him for consideration by the American Group was not acceptable to the Group. Counter-proposals were made by our Group and were under consideration by Mr. Nichols up to the time of his return to London on the 14th instant. He will advise our Group of the views of the respective partners in the Turkish Petroleum Company regarding them. Inasmuch as the negotiations are still in progress, I shall not burden you with an explanation regarding them, unless you wish to be informed.

A draft of the Open Door Formula was agreed upon with Mr. Nichols which we anticipate will be accepted by the present partners in the Turkish Petroleum Company for adoption by that Company. A copy is enclosed for your files. Should you at the present time have any criticism regarding the provisions of this draft, we shall be glad to receive it at your convenience.

The American Group’s counter-proposal is open to acceptance by the other Groups until May 21st.

Yours very truly,

W. C. Teagle

[Enclosure]

The Text of the “Open Door Formula” as Drafted April 12, 1923

The four groups interested in the Turkish Petroleum Company have agreed on the following principles:

I. The Company shall negotiate a convention with the Iraq Government as soon as possible, granting and confirming to the Com-
pany the rights to develop and operate petroleum resources within the sovereignty of that government comprised within the Vilayets of Mosul, and Bagdad, and fixing the amount of royalty payable to the government.

II. The Company will engage in the development and operation of these petroleum resources, and any other responsible interests of any nationality shall have the privilege of securing rights for the development and operation of petroleum in definite areas within the aforesaid territory for which the Company holds rights.

III. In order to establish the procedure by which such interests may obtain such rights in these areas, the following articles shall govern and shall constitute the Open Door Plan.

A. The exploitation by the Company will be limited to twenty four areas (except as to such areas as shall have once been offered at public auction as hereinafter provided and not disposed of) of eight square miles each, rectangular in shape, of which one side shall not be greater than twice that of any other side, and these twenty four areas shall be selected by the Company within two years from the date of the aforesaid convention between the Company and the Iraq Government.

B. Excluding the aforesaid twenty four areas, the Company shall offer the remaining territory in Iraq held by it for petroleum development at public auction under the following plan:

1. Four years after the date of the aforesaid convention, and annually thereafter until said remaining territory shall have been offered, the Company shall select not less than twenty four areas of eight square miles each, rectangular in shape, of which one side shall not be greater than twice that of any other side, and shall thereupon give notice of the proposed offer of said selected areas at a public auction to be held in the City of London, approximately one year from the date of said notice.

2. The said notice shall be given by the Company by publication in the Official Gazette of Iraq and in the leading petroleum trade papers in Holland, France, Great Britain and the United States.

3. Any responsible corporation, firm or individual, including any participant in the Company, shall have the privilege of designating annually from one to four areas of eight square miles each, rectangular in shape, of which one side shall not be greater than twice that of any other side, and any such designated areas shall be included by the Company in its next succeeding annual offer, provided it shall have received notice of any such designation at least one year prior to the publication of the notice of the next succeeding annual offer.

4. Any responsible corporation, firm or individual, of any nationality including any participant in the Company, may bid for the purchase of the rights offered in one or more of said areas so selected or designated, which shall be sold to the bidder who shall offer the highest cash payment and agrees to accept a lease of the
areas acquired on the Company's standard form, and files the requisite bond.

5. The Company shall not become a bidder for any part of these areas.

6. The Company shall grant to the successful bidder under lease in its standard form for the productive life of such sub-lease, the full benefit of all the rights and privileges which the Company holds or may later acquire for the territory in which the sub-leased area is located.

7. Each successful bidder shall deposit with the Company at the conclusion of the sale a certified check, payable on a gold value basis to the Company, for twenty five per cent of the amount payable by him, and the balance shall be paid in gold value on delivery of the lease to such bidder, which shall be made within thirty days after said sale.

8. Each successful bidder shall file with the Company, at the time of the delivery of the lease his or its bond with surety acceptable to said Company, in the amount of two thousand (2,000) pounds Sterling, gold value, conditioned for the faithful performance by the bidder of all the covenants and provisions of such lease, to be so kept and performed by him.

9. Each lessee shall pay to the Company the royalty due from the Company to the Iraq Government with respect to the production from said area.

10. The Company shall afford every responsible party, of any nationality desirous of bidding upon areas to be offered for lease, every reasonable opportunity to make geological surveys in Iraq, and will, upon his application, place at his disposal such geological information as it may have in respect to such areas.

C. As soon as the development warrants and the requisite rights are secured, the Company shall, with due diligence, construct and operate or cause to be constructed and operated, gathering and main pipelines which will provide a transportation system to seaboard and will operate or cause the same to be operated as a common carrier and common buyer of petroleum. At least thirty per cent of the Turkish Petroleum Company’s trunk line capacity shall be available for the transportation of its sub-lessees’ crude oil at a charge not exceeding one-sixth of a cent per barrel per mile. To the extent that the Company shall hold pipeline rights, the Company shall upon application, grant to any responsible party, licenses or permits for construction and operation of main and gathering pipelines, if such party shall have obtained and operates one or more areas under lease from the Company.

D. The Company shall have the right to own and operate a refinery or refineries within the Kingdom of Iraq and for the purpose of supplying the local markets and its own requirements in Iraq with refined petroleum products, and may engage in the marketing of the same therein, but this right shall not be exclusive, and any other operator under the Open Door Plan shall have the same right.
The President of the Standard Oil Company of New Jersey (W. C. Teagle) to the Department of State

NEW YORK, 25 October, 1923.
[Received October 31.]

Dear Sirs: With reference to the Department's letter of the 9th instant, (its file NE-890-g.6363/226) and to our reply of the 11th instant, I beg to enclose for the Department's information and files copy of the draft convention which was received with a letter from the managing director of the Turkish Petroleum Co., Limited.

We have given careful consideration to the provisions of this draft convention both as to its practical feature from an operating and business standpoint and the application of the so-called Open Door Policy of the Department. As a result of this study we have cabled Mr. H. E. Nichols, managing director of the Turkish Petroleum Co., Limited, today as per the form enclosed, and a letter has been prepared also to Mr. Nichols in comment upon the various provisions of the draft convention, of which we enclose a copy. You will observe that the comments are upon modifications proposed by the Iraq Government Minister of Finance, Sassoon Effendi.

For the Department's information we might add that Mr. E. H. Keeling, Mr. H. E. Nichols' assistant, left on the 11th instant for Bagdad to carry on discussions there with representatives of the Iraq Government, and if he used aeroplane he doubtless already has reached Bagdad.

It is proposed that the Open Door Plan in the form already submitted to the Department shall have the sanction of an agreement between the Turkish Petroleum Company, Limited, and its voting shareholders, and it is our view that article 34 of the draft convention enclosed will permit the Turkish Petroleum Co., Limited, to carry that plan into effect.

The proposed letter to Mr. Nichols will go by Saturday's steamer in order to have our comments, aside from those already transmitted by cable, available to Mr. Keeling, through Mr. Nichols, at the earliest possible moment.

In continuance of our policy in relation to the realization of the Open Door Policy of the Department with regard to Mesopotamia, we are submitting the enclosures with this covering letter in order to enable the Department to express its views with relation thereto. Should the Department have any criticism or suggestion for change

\[46\] Neither printed; Department's letter of the 9th now filed under 890g.6363 T 84/113.

\[47\] Letter not printed.
relative to the Open Door phase of the matter we shall appreciate very much receiving promptly any such expression from the Department in order that it may be communicated to Mr. Keeling.

Yours truly,

W. C. Teagle

[Enclosure 1—Telegram]

The President of the Standard Oil Company of New Jersey (W. C. Teagle) to the Managing Director of the Turkish Petroleum Company (H. E. Nichols)

NEW YORK, 25 October, 1923.

Referring to draft convention accompanying your letter September 28th 48 so far as American Group is concerned it is essential that Keeling should not agree to any modifications which would in any way detrimentally affect the complete application of the open door policy. Article 32 read in connection with article 34 apparently requires sub-lessees to be British companies. We want privilege of having American companies firms or individuals qualify to do business in Iraq on same terms and conditions as British companies. Article 34 Sassoon’s suggestion would vitiate principle of open door and is absolutely unacceptable. Suggest following phraseology for article 34: “The company shall have the right and is hereby authorized from time to time to underlet or transfer any part or parts of its rights and obligations hereunder with respect to portions of the defined area to any person firm or corporation irrespective of nationality and on such terms as it may think fit.” Add after word “abandonment” last sentence article 35 words “or forfeiture by the company.” Our comments on entire draft will be forwarded by Saturday’s mail.

Teagle

[Enclosure 2]

Draft Convention of September 1923 between the Government of Iraq and the Turkish Petroleum Company Limited

This Convention made the ...... day of ......... 1923 between the Government of Iraq (Hereinafter called “the Government”) of the one part and The Turkish Petroleum Company Limited a Company incorporated under the Laws of England whose registered Office is situate at 28, Great Winchester Street in the City of London (hereinafter called “the Company”) of the other part.

It is hereby agreed and declared by and between the Government and the Company in manner following:

(1) The Government hereby grants to the Company on the terms hereinafter mentioned the exclusive right to explore, prospect, drill

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48 Letter not printed.
for, extract and render suitable for trade petroleum and petroleum products, naphtha, natural gases, tar, asphaltite, ozokerite and other bituminous minerals and the right to carry away and sell the same and the derivatives and products thereof. (Sassoon thinks that the Iraq Government will probably desire to exclude from the Concession the bitumen of Hit, the bituminous coal of Salahiyah and the other similar substances which, although chemically akin to Oil, are not actually oil and have been worked separately by the inhabitants for centuries past.)

(2) The period of this Convention shall be 99 years from the date hereof. At the expiration of the said period the Government shall have the right, on giving two years’ previous notice in writing of its intention so to do, to purchase from the Company at a price equal to the replacement value at that date less depreciation, which price shall be agreed or failing agreement settled by arbitration in manner hereinafter mentioned, all the plant buildings stores and property of the Company of every sort in the area hereinafter mentioned but if the Government shall not exercise such right then this Convention shall be continued for a further period of 99 years and so on. (Sassoon (1) considers 99 years much too long and suggests 30 years, with an extension when the pipe-line has been built, (2) thinks it unreasonable that at the end of the term the concession should be renewed if the Government don’t buy the plant, and holds that the plant should revert to the Government free of charge.)

(3) The area to which this Convention relates (hereinafter called “the defined area”) shall be that shewn on the attached map and shaded blue, except that at . . . being Holy Places none of the operations mentioned in Article 1 hereof shall be carried on.

Note. Shading to include the Vilayet of Basra as well as the Vilayets of Mosul and Baghdad. (Sassoon thinks that as the Basrah Vilayet formed no part of the original area to which the promise to the T. P. C. referred it should be removed from the concession and form the subject of separate negotiations.)

(4) The Company shall within six calendar months from the date of this Convention commence a detailed geological survey of the defined area. Copies of reports and maps rendered to the Company by its employees in respect of such survey shall be forwarded to the Government. (Sassoon proposes lapse of the concession if the first sentence is not complied with, and a penalty of £20 per day if the reports and maps are not submitted within three months after the Government has called for them.)

(5) The Company shall within three years from the date of this Convention start drilling operations working continuously with a minimum of three rigs and in the event of this provision not being
complied with this Convention shall become entirely null and void on the date on which the said term of three years expires. (Sassoon proposes an increase in the number of rigs from three to five, and that lapse of the concession under this article (which he is willing should not take place until the Company has been given three months’ notice to comply) shall carry with it forfeiture of the Company’s property in Iraq).

(6) In every calendar year subsequent to the term of three years hereinbefore mentioned the Company and its successors underlessees and assigns together shall drill at the rate of not less than 10,000 ft. per annum in an efficient and workmanlike manner provided always that any excess drilling over 10,000 ft. in any year shall be credited to the amount of drilling required under this article in subsequent years and provided also that the obligation to drill shall cease when the defined area has been fully tested. (Sassoon wants the figure 10,000 increased, and suggests that as, but for the Turkish Government’s promise covering the whole of both Vilayets, the Government would have liked to divide the concession, the figure 10,000 ft. (or whatever the figure is) should be split between Bagdad and Mosul, so as to make the company liable to drill 5,000 ft. (or more) in each Vilayet. But he suggests that the drilling obligation in each year should cease when production in that year reaches a certain figure. He also wants a penalty stated in this article.)

(7) Subject to the due fulfilment of article 30 hereof the Company shall maintain in good working order all borings so long as they are productive and shall not do or permit to be done any unnecessary damage to the surface of the lands in or upon which the said borings are situate.

(8) The Company shall cause to be made and kept at its registered office correct and intelligible plans and operations and shall once a year at its own cost furnish to the Government such number as may be desired not exceeding six of true copies of such plans. The Company shall also render to the Government once a year a report on its operations containing such information as may be reasonably required by the Government. Such plans and information shall be treated as confidential by the Government. (Sassoon proposes a penalty of £20 per day failing submission of plans etc. after 3 months’ notice from Government.)

(9) The Company shall take all practical measures to prevent the injurious access of water to the oil-bearing formations and of noxious waste products into the water of Iraq, and if any well be abandoned shall plug it immediately upon the casing being withdrawn.
(10) In consideration of the privileges herein conceded the Company shall pay to the Government yearly within three months after the end of each calendar year the sum of four shillings per ton of the crude petroleum won from the defined area and saved in field storage tanks or reservoirs by the Company during the preceding calendar year, but for the purpose of this provision the Company shall be entitled to deduct from the gross quantity so won and saved:—

(a) all water and foreign substances;
(b) all crude petroleum distributed under Art. 17 hereof;
(c) all petroleum used for the usual and customary purposes of carrying on the works of the Company [and for domestic consumption in the houses and offices of agents and workmen for the time being employed in and about the borings and premises of the Company;]
(d) the first 1000 tons of petroleum extracted from each well or boring.]

The Company shall avoid as far as possible all waste of petroleum. (Sassoon considers that the royalty should be on a sliding scale, so as to be commensurate with the Company’s profits. He also asks for the omission of the part in brackets.)

(11) The Company shall measure all crude petroleum won and saved and the duly authorised representatives of the Government shall have the right to be present at such measuring.

(12) Any duly authorised representative of the Government shall have the right to examine and test the appliances used for measuring as aforesaid, and if upon such examination or testing any such appliance shall be found to be out of order, the Government may require that the same be put in order by and at the expense of the Company, and if such requisition be not complied with in a reasonable time the Government may cause the said appliance to be put in order, and may recover the expense of so doing from the Company, and if upon such examination as aforesaid any error shall be discovered in any such appliance, such error shall, if the Government so decide, after hearing the Company’s explanation, be considered to have existed for three calendar months previous to the discovery thereof, or from the last occasion of examining the same, in case such occasion shall be within such period of three calendar months, and the royalty shall be adjusted accordingly. (Sassoon suggests that the three months be increased to six in view of the difficulties of travelling.)

(13) The Company shall keep full and correct accounts of all crude petroleum measured as aforesaid and of all amounts of petro-
leum distributed to local inhabitants under Art. 17 hereof or used within the defined area under clause (c) of article 10 hereof and the duly authorised representatives of the Government shall have access at all reasonable times to the books of the Company containing such accounts and shall be at liberty to make extracts therefrom and the Company shall at its own expense within three calendar months after the end of each year deliver to the Government an abstract of such accounts for such year and a statement of the amount of royalty due to the Government for such year. Such accounts shall be treated as confidential by the Government, with the exception of such figures therein as it thinks it necessary to publish to the Iraq Parliament.

(14) If the royalties or any part thereof shown by such accounts to be due, or awarded by arbitration, for any year shall be unpaid for the space of three calendar months after the end of such year, or after the award of the arbitrator, whichever be later, the Government shall have the right to prohibit all export of petroleum and other products by the Company until the sum in question is paid. And if payment is not made within three months after the expiration of the aforesaid three months the Government shall have the right to terminate the Concession, and to take without payment all the property of the Company within Iraq, including the oil collected in the storage tanks and elsewhere. In the event of a dispute arising regarding the amount of royalties to be paid by the Company and this dispute being referred to arbitration, the above penalties shall not take effect, provided the Company pay into Court the amount of royalties in dispute.

(15) The Company shall if it produces sufficient petroleum in the defined area provide such refinery or refineries as may be necessary for providing the petroleum required for consumption within such area and shall quote the Government and inhabitants of Iraq specially favourable terms for petroleum and products thereof for consumption in Iraq produced within the defined area.

(It is proposed that the Company shall address a letter to the Government undertaking to supply oil for local consumption at cost plus 10%. Sassoon wishes the Company to bind itself (1) to erect a refinery as soon as the annual production amounts to say 50,000 tons; (2) not to export until the whole local demand has been met; (3) to quote slightly better terms to the Government than to individuals. Penalty under (1) to be £50 per day if work not begun within a year after said production reached, and concession to lapse, subject to three months' notice to Company, if work not begun within two years.)

(16) Any duly authorised representative of the Government shall have the right to any reasonable extent and at all reasonable times to inspect all operations carried on by the Company. The Company shall on request place at the disposal of such representative a proper
person to explain such operations and to afford such information as such representative may reasonably require. (Sassoon wants the Company to contribute say £100 per month to the cost of the inspection.)

(17) The Company shall furnish to the inhabitants of any locality within the defined area free of cost an amount of oil equivalent to that which they have been hitherto accustomed to take free of cost from such locality. Such amount shall be fixed by agreement between the Company and the Government.

(18) On the occasion of a state of emergency the Company shall use its utmost endeavour to increase the supply of petroleum and products thereof for the Government to the extent the Government shall require.

(19) Subject to any general regulations and international conventions which may from time to time be in force the Company may erect and use telegraphic telephonic and radio apparatus and connect the same with the nearest convenient point of the Government systems, provided that where such apparatus is not entirely on the Company’s premises the Company shall obtain the Government’s approval (which shall not be unreasonably withheld) to the plans for the same and provided also that without the previous sanction of the Government such apparatus shall not be used for messages not concerned with the Company’s business.

(20) The Company may dig sink drive build construct erect lay and operate such pits shafts wells trenches excavations dams drains watercourses factories plants tanks reservoirs refineries pumping stations offices houses buildings wharves and other terminal facilities vessels railways roads ferries bridges tank and other trucks tramways pipe-lines and other erections installations and things of any kind movable or immovable whether of the nature hereinbefore mentioned or not as it may think necessary in connection with its operations hereunder, provided that where the same are not entirely on the Company’s premises the Company shall obtain the Government’s approval (which shall not be unreasonably withheld) to the plans for the same. The Company shall be entitled to use all canals, rivers waterways water power and ports in Iraq on payment of the charges, if any, ordinarily imposed for their like use by other industrial undertakings.

(21) The Company may occupy such lands as may be necessary for the purposes of its business, upon the following terms:—

(a) Non-cultivable lands belonging to the Government and not required by them for a reasonable purpose will be granted to the Company free of cost for the period of this Convention.

(b) Cultivable lands belonging to the Government and not required by them for a reasonable purpose will be granted to the
Company for the period of this Convention at a rent to be agreed between the Government and the Company or in default of agreement to be fixed by arbitration in manner hereinafter mentioned.

(c) Lands owned by private persons shall be acquired by agreement between the Company and the person concerned, and shall be registered in the name of the Company or of its nominee pending the enactment of legislation permitting a foreign company to hold lands in Iraq. The Company shall acquire the whole rights of such persons so as to give the Company a clear title to the land, whether it be *maulk* or *tapu* hold. For the purpose of this article the Government will regard the undertaking of the Company as being a work of public utility and, in the event of the Company being unable to come to agreement as to price with the persons concerned, the Government will acquire the land for the Company according to the Law for the time being in force, at the expense in all things of the Company.

(Sassoon thinks the Company’s occupation of land on these terms should be restricted to the defined area.)

(22) The Company shall be entitled to carry pipe telegraph and telephone lines over under and along any lands, roads, railways or canals where such lands roads railways or canals belong to the Government without paying any compensation, and where they belong to private persons or companies on paying such compensations as may be agreed or failing agreement fixed by arbitration in manner hereinafter mentioned but without any obligation on the part of the Company to purchase the lands over under or along which such lines pass. Where such lines are not entirely over under or along the Company’s premises the Company shall obtain the Government’s approval (which shall not be unreasonably withheld) to the plans for the same. The Company shall repair all damage done to such roads railways and canals by the construction of such lines and furthermore the Company shall give to the said owner one calendar month’s notice in writing of its intention to carry any such lines over, under or along any cultivated lands, roads, railways or canals.

(23) Nothing in this Convention shall limit the right of the Government to make and maintain throughout the defined area such roads tramways railways telegraph and telephone lines as shall be expedient and to obtain from the said defined area such stone earth and other materials as may be requisite for making or maintaining the said works and to pass at all times over and along such works; provided always that the powers reserved under this article shall be exercised in such a manner as not to interfere with the rights of the Company under this Convention.

(24) The Government or any person authorized by it in that behalf shall have full liberty to search for and get any substances
other than those the subject of this convention in upon or under the lands comprised within the defined area provided always that the rights hereby reserved shall be exercised in such a manner as not to interfere with the rights of the Company under this Convention and provided also that fair compensation shall be paid by the Government or the person so authorized, as the case may be, for all loss or damage which the Company may sustain in consequence of the exercise of the said reserved rights. In any concession which it grants for such reserved rights the Government will bind the concessionaire to pay such compensation to the Company.

(25) The Company may appropriate for any purpose connected with its business the water within the Kingdom of Iraq and may collect the same for the purposes of the Company’s business but so as not to prejudice reasonable navigation or to deprive any lands, houses, or watering places for cattle of a reasonable supply of water.

(26) The Company may take away upon payment of the usual charges if any from lands or forests the property of the Government any surface soil timber clay ballast lime or building stone and similar non-metallic materials that may be necessary for its operations within the defined area.

(27) No other or higher taxes impositions duties fees or charges whether government or municipal shall be imposed upon the Company or upon its property or privileges or employees than those ordinarily imposed upon the property or privileges or employees of other industrial undertakings, nor shall any taxes impositions duties fees or charges whether government or municipal be imposed upon the underground works or underground property of the company or upon the substances granted by this convention before their removal.

(28) The Company shall be entitled to import into the Kingdom of Iraq free of all duties and fees of every sort all materials machinery plant stores and equipment (except provisions and other articles required for the personal use of its employees) which it may require in connection with its operations and to export the same before or after use and all products the subjects of this convention free of all duties and fees of every sort, provided it complies with the usual customs regulations.

(29) The employees of the Company shall so far as possible be subjects of the Government but managers engineers chemists drillers foremen mechanics and other skilled workmen clerks and domestic servants may be brought from elsewhere. The entry of all foreign personnel into Iraq shall be subject to the immigration laws for the time being in force.
(30) The Government bind themselves to take all reasonable measures to secure the carrying out of the objects of this agreement to protect the safety of the property of the Company and of its employees and agents.

(31) The Government shall not during the currency of this convention enter into grant or confirm any agreement licence or concession which may unreasonably prejudice or conflict with the rights of the Company hereunder.

(32) The Company shall be and remain a British Company registered in Great Britain and having its principal place of business within His Majesty’s dominions and the Chairman shall at all times be a British subject. The memorandum and Articles of Association of the Company shall be revised to embody such provisions of this Convention as the Government may require.

(33) The Company shall be at liberty to form under the English Companies Acts one or more subsidiary companies for the working of this Convention should it deem this to be necessary. Any such subsidiary Company shall in respect of the area in which it operates enjoy all the rights and privileges granted to the Company hereunder and assume all the engagements and responsibilities herein expressed. (Sassoon thinks his Government will demand that the working company shall be registered in Iraq because of the special juridical privileges enjoyed there by companies registered in England. He even suggests that failure to form such a company should result in forfeiture of the concession.)

(34) The Company shall have the right from time to time to underlet or transfer any part or parts of its rights and obligations hereunder with respect to portions of the defined area on such terms as it may think fit. (Sassoon wants each transfer to be subject to the approval of the Iraq Government, but is willing that it should be laid down that this approval shall not be unreasonably withheld and shall not be subjected to conditions not contained in the concession.)

(35) The Company shall have the right to abandon permanently such of its own and its subsidiary companies’ rights under this convention as are not at the time outstanding in any transferee other than a subsidiary company upon giving three months’ notice in writing of its intentions so to do and this convention shall in respect of such rights absolutely determine on the date fixed for such determination in such notice, and the Company shall thereupon be entitled, but not obliged, to remove free of all taxes and duties all its plant buildings stores material and property of every sort provided that for a period of 3 months from the receipt of such notice the Government may purchase the same at a price equal to the replacement
value at that date less depreciation, which price shall be agreed or failing agreement settled by arbitration in manner hereinafter mentioned. After such abandonment the Government shall take the place of the Company in relation to the Company’s transferee other than subsidiary companies. (Sassoon thinks that when the Company gives notice of abandonment it should give its reasons; that the Government should then have the right to refer the adequacy of the reasons to arbitration; and that if the arbitration finds the reasons inadequate the Company’s property shall be forfeited.)

(36) No failure or omission by the Company to carry out or perform any of the stipulations, covenants or conditions of this Convention shall give rise to any claim or be deemed a breach of this Convention to the extent that the same arise from any of the following causes viz:—the act of God, the act of the Government of Iraq, restraint or restriction of princes, governments, peoples or authorities embargoes prohibitions insurrections pirates wars strikes or combinations or [of] workmen epidemics floods accidents caused by inundations or working stoppages or obstructions of railways transportation facilities or pipe-lines accidents to or breakdown of steamers lighters or other vessels or to machinery or plant eruptions landslips earthquakes fire all dangers or accidents of the seas lakes canals or rivers and the navigation or loading of steamers lighters or other vessels of whatever nature even when due to the negligence default or error in judgment of the pilot, master mariners or other servants of the ship owners or the stevedores or any other persons or any cause of force majeure or event not within the control of the company of whatever description whether similar to the causes hereinbefore enumerated or not; and if for any of the causes aforesaid the performance of any of the obligations or the exercise of any of the rights under this convention is delayed the period of such delay, together with such period as may be necessary for the restoration of any damage done during such period of delay, shall be added to the periods fixed by this convention. If as a result of any arbitration the Arbitrator or Arbitrators should find that there has been any breach by either party hereto of any provision of this Convention, or any failure by either party to fulfill its obligations hereunder, the Arbitrator or Arbitrators may except as hereinbefore otherwise provided award damages against the party in default.

(37) If any dispute shall arise between the Government and the Company concerning the interpretation of any of the articles of this Agreement, the same shall be referred to the arbitration of two persons, one of whom shall be chosen by each party, and of a referee who shall be chosen by the arbitrators before proceeding to arbitration. The decision of the arbitrators or in the case of a difference
of opinion between the arbitrators the decision of the referee shall be final. Such arbitration shall be held in Baghdad or London as may be agreed by the parties and in default of such agreement the place of arbitration shall be Baghdad.

(38) All notices required to be given hereunder to the Government shall be deemed to be duly given if sent by registered post to the . . . . . . . and all notices required to be given hereunder to the Company shall be deemed to be duly given if sent by registered post to the office in Baghdad for the time being of the Company, and every such notice whether given to the Government or the Company shall be deemed to be received one day after the date of posting.

In Witness etc.

New Articles. Sassoon wants
1. an article binding the Company to show due diligence in maintaining production.
2. an article reserving the right of the Government and its subjects to subscribe up to 20% of the total capital of the Company.
3. an article allowing the Government to nominate a director.

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

Washington, November 8, 1923.

My Dear Mr. Teagle: I have received your letter of October 25th enclosing, for the Department's information, a copy of the draft concession submitted to you by the Managing Director of the Turkish Petroleum Company, together with a copy of your letter to Mr. Nichols, relating to the negotiations of the American group of oil companies with regard to Mesopotamia. You state that you are submitting this information in order to enable the Department to express its views with relation thereto and that should the Department have any criticism or suggestion for change relative to the Open Door phase of the matter you would appreciate receiving an expression of the Department's opinion.

During the course of the negotiations between the American Group and the European interests controlling the Turkish Petroleum Company, with regard to American participation in the development of the Mesopotamian oil fields, the Department has endeavored to support the American Group in every proper way. It has refrained, however, from giving any opinion either as to the commercial aspects
of the problem or as to the technical business questions involved, believing that such matters lay without its proper scope and that decisions as to the desirability from a commercial point of view of accepting the terms proposed must be made by the American Group in accordance with their best business judgment.

The Department, however, is glad to take this opportunity of expressing, in reply to the request of the American Group, its opinion as to the extent to which the proposals to the American Group and the terms of the draft concession are in accord with the general principles which, in its view, are applicable to the matter in hand.

The Department notes with satisfaction that it is proposed that the development of the Mesopotamian oil field is to be undertaken under the terms of a new concession properly granted by the appropriate authorities and not under the terms of the alleged concession of 1914 to the Turkish Petroleum Company, the validity of which this Department has consistently contested. It also understands that the Turkish Petroleum Company, which is to seek the new concession, is to be reorganized so as to provide for substantially equal participation by British, Dutch, French and American interests (the American Group to include those companies which have expressed an interest in this project), and that this reorganized company will establish a system of subleases under which companies other than the Turkish Petroleum Company will be given the opportunity to develop all but a small portion of the territory subject to the proposed concession, so that while these other interests may not be in the first instance beneficiaries of the proposed concession they may, as lessees of the concessionnaire, enjoy substantially equal rights in the development of Mesopotamian oil resources. In this connection I desire to say further that the Department has observed the statement in the telegram of October 25th to Mr. Nichols (a copy of which was enclosed with your letter under acknowledgment) that a possible interpretation of certain articles of the proposed concession might require that sublessees be British companies. The Department notes with approval the stand taken in the above-mentioned telegram that American interests should have full opportunity to qualify as sublessees on an equal footing with other companies, and, in view of the basis on which it is understood that negotiations have proceeded and are to proceed, assumes that such opportunity will also be afforded to other sublessees regardless of nationality.

No comment however has apparently been made by the American Group with regard to the provision in Article 23 of the proposed concession for the formation of subsidiary companies under the English Companies Acts. While this would appear to be largely
a question of business organization for the consideration of the group, the Department would regret any action tending to impair the international character of the enterprise which might result from the restrictive character of the phrase “under the English Companies Acts” in the Article in question.

The Department has noted the statement in the letter to Mr. Nichols that careful consideration should be given to the question of making specific reference in the draft concession to the plan of subleasing. While the Department appreciates that in a commercial convention of the character contemplated it might not be practicable to include the plan which the Companies have agreed upon in this respect, it is felt that it would be desirable for the American and foreign companies concerned to express, in the concession itself, their intention to accord appropriate recognition to the principle of equality of commercial opportunity.

While the proposed concession would appear to be in technical form an exclusive concession for the benefit of the Turkish Petroleum Company, nevertheless in view of the fact that this Company is to be reorganized so as to provide for the participation of the representative oil interests of four countries and the fact that only a small portion of the area of Mesopotamia is to be reserved for the Company itself, the balance to be made available for development by sublessees of the Company, regardless of nationality or affiliation, under fair and equitable conditions, it is the Department’s opinion that satisfactory recognition is under the circumstances accorded the principle that the territory in question is not to be exploited for the exclusive advantage of any one nation, and that American interests are not to be subject to injurious discrimination.

If, therefore, the American Group is representative of all the American oil companies desiring to participate (which the Department understands to be the case), if it is satisfied with the terms of its participation and if it desires to proceed with the matter on the basis you have outlined, this Department offers no objection to the adoption of a plan which if realized would be calculated to be of advantage to American economic interests, and which takes into account the principle for which this Government has stood in relation to the development of the natural resources of Mesopotamia.

On the basis of the principles outlined above, the Department will be prepared to give appropriate Diplomatic support to the American interests concerned and requests that you bring this letter to the attention of the participating American companies.

I am [etc.]

CHARLES E. HUGHES
The President of the Standard Oil Company of New Jersey (W. C. Teagle) to the Secretary of State

New York, December 10, 1923.
[Received December 11.]

My Dear Mr. Secretary: With reference to my letter to the Department of October 25, 1923, with which was enclosed a copy of my proposed letter to Mr. H. E. Nichols of the same date, and also referring to my letter to the Department of the 9th ultimo, all with reference to the draft convention now under discussion between the Iraq Government and the Turkish Petroleum Company, Limited, I am now in receipt of a copy of the draft convention in its present form, called “draft of November 1923”, which brings the draft up to November 16, 1923. It should be added that all of the modifications in this November draft have been communicated to Mr. Keeling, at Bagdad, but they have not been accepted by the Iraq Government. I enclose a copy of the November draft.

After receipt of the Department’s letter of the 8th ultimo in comment upon my letter of the 25th October, we communicated the Department’s comment relative to Article 33 to Mr. Nichols, with the result that we are now advised by Mr. Nichols by telegraph that, at our request, the words “under English Companies Acts” have been omitted from Article 33. This frees the Turkish Petroleum Company, Limited, from the stated obligation to organize its subsidiaries under British law.

Referring to the phraseology of Article 34, Mr. Nichols tentatively accepted the phraseology which we proposed in our letter of October 25th, addressed to him. He, however, urged that the amendment was not required in order to insure that transferees of portions of the defined area would not necessarily have to be of British nationality. We are now in receipt of a telegram from Mr. Nichols stating that Mr. Keeling maintains that the general prospects of reaching a favorable agreement with the Iraq Government are most seriously prejudiced unless the principal amendment to Article 34 is withdrawn. The amendment to which Mr. Nichols refers is the one stated in our letter to him of October 25th, under Article 34, in the phrase, “to any person, firm, or corporation, irrespective of nationality”. We are further advised by the Anglo Persian Oil Co., Limited, which is Mr. Nichols in this instance, that it accepts the legal view that under Article 34, with this amendment deleted, the Turkish Petroleum Company would be permitted to make transfers to persons, firms or corporations of any nation-

59 Not printed.
ality, and he also points out the improbability of eventual dispute regarding nationality, since the Iraq Government would thereby prejudice its own nationals, is [if?] transferees must be of British nationality. Finally, Mr. Nichols strongly urges acceptance of this view, as otherwise an impasse in Iraq seems inevitable. We are asked to telegraph promptly our views.

It is under this Article 34 that the operation of the Open Door Plan is possible, and we are therefore writing the Department in respect to the phraseology of Article 34 in order that we may have the benefit of, and be guided by, the views of the Department.

We beg to point out that under Article 32 the Turkish Petroleum Co., Limited, agrees to be, and remain, a British company; that under Article 34, even eliminating the clause regarding nationality, it is provided that the Turkish Petroleum Co., Limited, shall have the right to underlet or transfer any part or parts of its rights and obligations with respect to portions of the defined area on such terms as it may think fit, and that, therefore, if that company does not assign its obligation to be and remain a British company, it would seem to follow that the transferee would not have to be a British company.

If, therefore, it accords with the Department's views, we are disposed to advise Mr. Nichols that the clause in question above quoted may be omitted.

Inasmuch as we are asked for telegraphic advice, we shall appreciate having as prompt consideration of this matter at the hands of the Department as possible.

Respectfully yours,

W. C. TEAGLE

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890g.6363 T 84/124: Telegram

The Consul at Bagdad (Randolph) to the Secretary of State

BAGDAD, December 15, 1923—noon.

[Received December 16—5:25 a.m.]

In reply to Department's telegram December 13, 6 p.m. Petrolei negotiations were progressing, agreement reached on all except a few [un]important matters when the fall of the old Cabinet November 16th necessitated commencing negotiations from the beginning with new Cabinet which has formed committee of three (Ministers Justice, Interior, and Works) to negotiate with Keeling and first meeting will be held tomorrow.

RANDOLPH

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*Not printed.*
The Secretary of State to the President of the Standard Oil Company of New Jersey (W. C. Teagle)

WASHINGTON, December 18, 1923.

Sir: I have received your letter of December 10, 1923, transmitting a copy of the draft concession (as of November 18, 1923) now under discussion between the Turkish Petroleum Company and the Iraq Government and I have given careful consideration to the question which you have raised.

Your letter does not indicate the ground for possible objection on the part of the Iraq Government to the amendment suggested by the American Group to Article 34 and it is not entirely clear to the Department why this amendment should occasion serious difficulty in the pending negotiations in Mesopotamia.

The Department would not desire to insist upon any particular phraseology provided the substantial principles for which it has stood are fully safeguarded; namely that the oil resources of Mesopotamia should not be monopolized and that American interests should not be subjected to injurious discrimination. This principle under the circumstances could not be given practical application if the Turkish Petroleum Company did not have the authority to sublease oil lands without implied or actual restrictions as to the nationality of the lessees or, if having that authority, it did not exercise it.

In the opinion of the Department therefore it is highly important that every precaution be taken against future misunderstanding as to the authority and purpose of the Turkish Petroleum Company to carry out the subleasing plan along the lines heretofore discussed between the American group and representatives of the Turkish Petroleum Company and communicated by you to the Department. The inability or failure of the Company to put the proposed system into operation would materially alter the understanding on which the Department’s recent correspondence with the American group has been based. It is suggested therefore that the American group should obtain assurances and should satisfy itself that, in case the proposed amendment to Article 34 is not included, the operation of the subleasing system will not be defeated by any provisions of British or Iraq law or by any collateral understanding between the Turkish Petroleum Company and the Iraq Government.

I am [etc.]

CHARLES E. HUGHES

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*Not printed.*
The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Secretary of State

NEW YORK, December 19, 1923.

[Received December 21.]

My Dear Mr. Secretary: In Mr. Teagle's absence, this will acknowledge the receipt of your favor of the 18th instant, file NE 890g.6363 T 84/123, with reference to Article 34 of the draft convention (as of November 16, 1923) now under discussion between the Turkish Petroleum Company and the Iraq Government.

We beg to thank the Department for its helpful consideration of the matter of our suggested amendment to Article 34 relative to nationality, and the Turkish Petroleum Company's request that it be deleted.

For the Department's information, we beg to enclose a copy of the cablegram which we are sending to Mr. H. E. Nichols today, as Managing Director of the Turkish Petroleum Company, which we trust takes note of your views and suggestions. I read the cablegram to Mr. Dulles over the telephone for his criticism before sending it.

Respectfully yours,

GUY WELLMAN

[Enclosure—Telegram]

The President of the Standard Oil Company of New Jersey (W. C. Teagle) to the Managing Director of the Turkish Petroleum Company (H. E. Nichols)

NEW YORK, December 19, 1923—5:10 p.m.

Referring to your telegrams 8th, 13th and 14th relative to Article 34 of Draft of Convention of November 16th, 1923, we accept your urgent request that our amendment Article 34 relative nationality be omitted but in view of our relation to open door policy of State Department and resultant necessity to fully protect same we accept on four conditions namely

First, that operation of subleasing system will not be defeated by provisions of British or Iraq Government law or by any collateral understanding

Second, that amendment has not been submitted to Iraq Government and withdrawn

Third, that Turkish Petroleum Company agrees to carry out Open Door plan and that Iraq Government shall understand during negotiation that Article 34 without our amendment enables Turkish
Petroleum Company to make transfers to persons, firms or corporations irrespective of nationality.

Fourth, that your Foreign Office and Turkish Petroleum Company now give to American Group their respective assurances that foregoing conditions shall obtain.

W. C. Teagle

DISCRIMINATION IN INDIA AGAINST AMERICAN OIL COMPANIES

811.6363/94

The British Ambassador (Geddes) to the Secretary of State

No. 216

His Britannic Majesty’s Ambassador presents his compliments to the Secretary of State and has the honour to invite his attention to a report which appears to have been submitted on the 12th February, 1923, by the Federal Trade Commission to the Senate of the United States in response to Senate Resolution 311, Sixty-Seventh Congress, Second session. Although the reply of the Federal Trade Commission to this Resolution has formed the subject of newspaper comment on several occasions in the intervening month, it was not until two days ago that the British Embassy succeeded in obtaining multigraph copies of the report. It deals with foreign ownership in the American petroleum industry and “outlines the situation with respect to discrimination of foreign governments against citizens of this country in the acquisition and development of petroleum producing properties in foreign lands”.

Sir Auckland Geddes has not yet had an opportunity of having the report examined in detail so far as it relates to the laws, regulations and practices governing the extraction of petroleum in the countries of the British Empire, but he cannot refrain from an immediate expression of his great astonishment at finding that the Federal Trade Commission has based upon certain spurious and fraudulent documents the erroneous suggestion that American nationals are, or have been, denied privileges granted to other aliens in connection with the development of the oil-fields of Burma.

The documents in question purport to contain extracts from a proclamation dated the 24th September, 1884, countersigned “Salisbury, Secretary of State for India” and 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”.

Considerable correspondence has already taken place between the Department of State and the British Embassy concerning them. They were originally referred to in Senate Document No. 272, 66th Congress, 2nd Session, embodying a report to the Senate by the President of the United States, dated May 17th, 1920, on petroleum restrictions in foreign countries. Shortly after the presentation of that report, the Department of State had reason to doubt their genuineness. The American Embassy in London made enquiry regarding them and Mr. Hughes, in his Note of September 23rd, 1921, to His Majesty’s Ambassador stated that “it seems clear that their authenticity is open to serious question”. In a Memorandum, No. 863, handed to the Secretary of State on November 15th, 1921, Sir Auckland Geddes stated that, in the judgment of the British India Office, the documents in question were self-evident forgeries. He pointed out that the late Marquess of Salisbury was not, in fact, Secretary of State for India in 1884 and 1885, and that the wording of the documents was alone sufficient to indicate their spurious character. He also gave the Secretary of State an opportunity to repudiate them and invited him to disclose to His Majesty’s Government the source from which these fabricated documents had been obtained. Mr. Hughes, in his reply dated the 10th December, 1921, adopted neither of these courses, but explained at length the circumstances in which the Department of State had been misled into placing credence in the documents, and added that further authentic official information regarding the oil laws in force with regard to Burma was desirable before any definite steps were taken to correct any public misapprehension arising from the reliance placed on the documents in Senate document No. 272, “since 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 mistaken character”.

His Majesty’s Ambassador had the honour again to address the Secretary of State on the subject of these forged documents and in his Memorandum, No. 380, dated 18th May, 1922, handed by him personally to Mr. Hughes on the 25th of that month, he informed the Secretary of State that the regulations governing the exploitation of oil in India and Burma were being collected for communication to the United States Government, but that, in the opinion of His Majesty’s Government, the request advanced by the former for the communication of these regulations should not be allowed any longer

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44 Not printed.
46 Ibid., p. 78.
to delay the repudiation of documents which “by their form and phraseology are clearly the fabrication of an ignorant forger”. The Secretary of State, on June 10th, 1922,\(^1\) while indicating his entire willingness to accept the statement of the British Government and to make announcement to the effect that the documents referred to were spurious, pointed out that the significance of the documents lay merely in the support they gave to the statement that American oil companies are expressly excluded from doing business in Burma.

Although the United States Government did not publicly repudiate the documents, whose true character as forgeries had been shown and accepted by Mr. Hughes, His Majesty’s Ambassador was surely justified in believing that after their false and fraudulent nature had been so clearly and repeatedly pointed out to the United States Government they would not again be used in any way, least of all as a basis for any statement whatever relating to British oil policies made by a responsible agency of the American Administration.

It is to be noted, moreover, that this second unfortunate reliance by responsible American officials upon these fraudulent documents goes even farther, apparently, in the inferences drawn from them than did Senate document No. 272. The Federal Trade Commission has used them, and, notwithstanding their impossible and illiterate wording, has even quoted them as if they were authentic, in sole evidence of inequality of treatment as between American nationals and the nationals of other non-British countries.

In the circumstances, His Majesty’s Ambassador feels confident that the Secretary of State will now desire publicly to repudiate them as known forgeries.

WASHINGTON, March 15, 1923.

811.6363/94

The Secretary of State to the British Ambassador (Geddes)

MEMORANDUM

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 March 15, 1923, in which the Ambassador refers to the report, under date of February 12, 1923, submitted by the Federal Trade Commission to the Senate of the United States in response to Senate Resolution 311, 67th Congress, 2nd Session, and to the use in that report of certain documents which purport to contain extracts from a proclamation dated September 24,

\(^1\) Foreign Relations, 1922, vol. ii, p. 357.
1884, and from an agreement dated August 28, 1885, between the Secretary of State for India and the Burma Oil Company, in relation to the development of the oil fields of Burma. The Ambassador directs attention to the previous correspondence between the British Embassy and the Department of State concerning these documents; and to the fact that they had been denounced by the British Government as spurious. The Ambassador affirms his confidence that the Secretary of State will now desire to repudiate the documents as known forgeries.

The Secretary of State begs leave to inform the British Ambassador, confirming what he has already stated to the Ambassador orally, that the Department of State had no part in the preparation of the report of the Federal Trade Commission to which reference is made in the British memorandum and was not aware prior to the receipt of the memorandum that it contained references to the documents which the British Government had stated to be spurious. Upon receipt of the British Ambassador's memorandum the Secretary of State took up the matter with the Federal Trade Commission, with the result that all reference to the documents in question has been deleted from the Commission's report and will not appear in the report as published. The printing of the report, it may be added, has not yet been completed, and the “multigraph copies” to which the Ambassador's memorandum refers, were copies not of the report proper but of a condensed statement.

The Secretary of State has taken note of the statement of the British Ambassador that he feels confident that the Secretary of State will now desire publicly to repudiate the documents as known forgeries. In reply, the Secretary of State begs to say that he has addressed an identical communication to the Department of the Interior, to the Department of Commerce and to the Federal Trade Commission, the agencies of the Government of the United States which deal with matters to which the documents in question may be deemed to be most pertinent, advising them respectively that the documents in question have been denounced by the British Government as spurious and that this statement as to their character is accepted by the Government of the United States. The Secretary of State is making public the text of these communications, a copy of which is enclosed with this memorandum.

As the British Ambassador in his memorandum has deemed it appropriate to review the correspondence between the Department of State and the British Embassy concerning these documents, the Secretary of State feels that he should refer to the steps taken and to the attitude of this Government which this correspondence makes clear. It is understood that the documents in question were first
described in a report of the Bureau of Mines to the Secretary of the Interior in May, 1919. This report has not been published but reference was made to it in a speech in the Senate of the United States in July, 1919. In a note dated November 6, 1919, the British Embassy called attention to these remarks, which were stated to represent inaccurately the policy of Great Britain with respect to petroleum, but while it would appear from the Embassy’s note that the Embassy had had access to the report of the Bureau of Mines, no reference was made to the statement in that report regarding Burma although specific exception was taken to other statements.

The report which was printed subsequently in Senate Document No. 272, 66th Congress, 2nd Session, of May 17, 1920, was, it is believed, the first published statement wherein there was specific reference to the documents in question. This report was published in May, 1920. The question of the authenticity of these documents appears to have been raised for the first time in the summer of 1921.

In a note addressed to the British Ambassador by the Secretary of State on September 23, 1921, it was stated that the American Embassy in London had been instructed some weeks before to make inquiry regarding these documents and that, although the Secretary of State was not in possession of definite information, it seemed clear that their authenticity was open to serious question. The Secretary of State then requested the British Ambassador to supply him “with an exact transcript of the laws, ordinances or regulations which are now or have recently been in force in India and especially in Burma bearing on the question of participation by aliens in petroleum development, to the end that any inadequacy or inaccuracy which may be found in the statements under discussion may be speedily corrected.” The Secretary of State furthermore pointed out in this note that, in a memorandum on the petroleum situation published by the British Government in 1921, of which a copy was transmitted to the Secretary of State by the British Embassy on July 27, 1921, the statement was made in relation to India that “prospecting or mining leases have been, in practice, granted only to British subjects or to companies controlled by British subjects.”

The British Ambassador replied in a memorandum of November 15, 1921, and, referring to the inquiry made in London on behalf of the American Embassy with respect to the authenticity of the documents in question, said that the India Office, to which the matter had been referred, had stated that in their judgment the documents in question were self-evident forgeries. The British Ambassador then

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*Not printed.*
said that he had been instructed to bring the matter to the notice of the Secretary of State and to suggest the propriety of the publication of an acknowledgment that the statement in Senate Document No. 272, 66th Congress, 2nd Session, relating to the documents in question, was erroneously made and that “it had been discovered to be entirely devoid of foundation.”

The Secretary of State, replying in a memorandum of December 10, 1921, reviewed the circumstances, and pointed out that it was “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”. It appeared that doubt upon this point seemed to be the more justified because of what was stated in the official memorandum by the British Government quoted above with respect to prospecting or mining leases in India. The Secretary of State concluded with the following statement: “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 mistaken character.”

The British Ambassador made reply to this in a memorandum dated May 18, 1922, saying that His Majesty’s Government had informed him “that the regulations governing the exploitation of oil in India and Burma are being collected for communication to the United States Government in compliance with their request.” The Ambassador added, however, that His Majesty’s Government did not consider that the request advanced by the United States Government for the communication of these regulations should be allowed any longer to delay the repudiation of the documents contained in Senate Document No. 272, 66th Congress, 2nd Session, to which reference had been made in the prior correspondence.

In reply the Secretary of State, in a memorandum of June 10, 1922, assured the British Ambassador of his entire willingness to issue a statement for the purpose of correcting any misapprehension which might have arisen from reference to documents which the British Government declared not to be genuine. The Secretary of State said, however, that it was to be noted “that the significance of the documents, to which reference was made, lay merely in the support of the statement that American oil companies were expressly excluded from doing business in Burma.” It was stated that it was the understanding of the Secretary of State that this was still the
fact; that if this was a misunderstanding and it was "the intention of the British Government, in desiring the correction, to call attention to the fact that no exclusion of American nationals or companies in India was intended, it would be particularly gratifying to the Secretary of State to be able to state that the regulations in practice in India have been, or that they may be so modified as to accord to American nationals and companies the same opportunity and treatment as those enjoyed by British nationals and companies." The memorandum concluded as follows: "The Secretary of State, while entirely willing to accept the statement of the British Government, and to make announcement to the effect that the documents above referred to are spurious, would not be able to make such an announcement with the implication that no exclusion of American nationals or companies in India is intended, unless the British Government is prepared to give an assurance to that effect; otherwise the repudiation of the documents must be accompanied with a statement, according to the information of the Secretary of State, that in fact American oil companies are excluded from doing business in Burma."

The Secretary of State begs leave to point out that no further statement on the subject was received from the British Ambassador until the presentation of the Ambassador's memorandum of March 15, 1923. The Secretary of State feels that he should also call attention to the fact that although the British Ambassador notified him in his memorandum of May 18, 1922, that the regulations governing the exploitation of oil in India and Burma were being collected for communication to the United States Government, the Secretary of State has not yet received this information.

It is hardly necessary to add that the Secretary of State does not wish that the repudiated documents be used in any way by this Government. As already stated, as soon as the fact of their inclusion in the report of the Federal Trade Commission was brought to his attention the Secretary of State at once took steps to have them deleted from that report. While he had hoped before this to receive copies of the actual regulations for India so that their substance could be appropriately set forth in the contemplated statement on the subject, the Secretary of State has decided not to wait longer for this information but to communicate with the other departments of government as above stated and to make public announcement accordingly. However, in the absence of the information sought from the British Government, the Secretary of State feels obliged in making these communications and this announcement to say that while repudiating the citations in question, he believes the con-
clusions as to the British practice in India, as stated in the second paragraph above quoted from Senate Document No. 272, 66th Congress, 2nd Session, to be substantially correct.

CHARLES E. HUGHES

WASHINGTON, March 24, 1923.

WITHDRAWAL OF BRITISH OPPOSITION TO THE GRANTING OF PORTUGUESE CONCESSIONS TO AMERICAN COMPANIES FOR LANDING SUBMARINE CABLES IN THE AZORES

§ 11.7353b W 52/50

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

No. 799

WASHINGTON, February 3, 1923.

Sir: The Department received the Embassy’s despatch No. 1839 of November 17, 1922, with which was transmitted a copy of the Embassy’s note to the Foreign Office, dated October 18, 1922, and of the reply of the Foreign Office, dated November 14, 1922, in regard to the opposition of British cable companies and His Majesty’s Government to the applications of American cable companies for concessions to land and operate cables in the Azores.

The Foreign Office observes in the second paragraph of its note that the license to land at Miami Beach the cable extending to Barbados was granted only after the Western Telegraph Company had surrendered valuable rights in Brazil, in accordance with an arrangement by which All America Cables, Incorporated, was to abandon similar rights in Colombia, Ecuador and Peru, and states that the exclusive rights of All America Cables, Incorporated, in Colombia have not yet been waived with the effectiveness on which the United States insisted that the Western Telegraph Company waive its rights in the Argentine and Uruguay. The Foreign Office observes further that the Miami transaction should have been complete in itself; that the granting of the license for the Miami-Barbados cable can scarcely be regarded as giving American cable companies a claim to further consideration on the part of His Majesty’s Government; and that in the circumstances His Majesty’s Government would be failing in their duty if they encouraged any further diversion of traffic from the lines of the Western Telegraph Company to American cable companies.

In telegram No. 264 of June 29, 6 p.m., 1922, the Embassy reported that the Foreign Office had stated that it was fully cogni-

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* For previous correspondence, see Foreign Relations, 1922, vol. II, pp. 359 ff.
* Ibid., p. 379.
* Ibid., p. 360.
zant of the activities of the British Minister at Lisbon in opposition to the applications of American cable companies for concessions to land and operate cables at the Azores, which British companies alleged would subject them to harmful competition. The Embassy was further informed at that time that the attitude of the British Government regarding the matter would likely be maintained as long as the United States withheld a license for the Miami–Barbados cable. To this the Department replied by its telegram No. 192 of July 1, 1 p.m.,64 that it perceived no relation between the efforts of American cable companies to obtain landing privileges in the Azores and the application of the Western Union Telegraph Company to land and operate a cable at Miami. In telegram No. 270 of July 3, 6 p.m.,65 the Embassy reported further statements by the Foreign Office indicating that the attitude of the United States toward the Miami–Barbados cable was a large factor in determining the attitude of the British Government towards applications of American cable companies for concessions at the Azores. In a telegram No. 210, of July 17, 4 p.m.,66 to the Embassy the Department stated the policy which the United States was observing in withholding a license for the Miami–Barbados cable and explained the delay in granting the license. In the Embassy’s No. 301 of July 18, 6 p.m.,67 it was stated that the British Postal authorities were not inclined to go out of their way to assist in promoting competition with the British cable companies between Europe and South America so long as the United States withheld permission for the operation of the Miami–Barbados cable. The Foreign Office note of August 18,68 a copy of which was transmitted with the Embassy’s No. 1681 of August 19,69 dealt almost entirely with the subject of the delay on the part of the United States Government in granting the license for the Miami–Barbados cable. In view of the prominence which the British authorities gave to the matter of the Miami–Barbados cable in its discussion of the applications of American companies for concessions in the Azores, as indicated by the foregoing digest of correspondence, it is surprising that they should now deem it pertinent to make the observation that the Miami transaction should be regarded as complete in itself and without bearing on the attitude of His Majesty’s Government toward concessions in the Azores. However, the Government of the United States concurs in the view that the two matters are separate and distinct. The Department so expressed itself on sev-

65 Ibid., p. 362.
66 Ibid., p. 363.
67 Ibid., p. 373.
68 Ibid., p. 369.
eral occasions in the course of the discussion between the two Governments. The United States perceives no reason for having burdened the correspondence regarding the applications for concessions in the Azores with this irrelevant matter. It is noted, however, that notwithstanding the intimation in the Foreign Office note that the Miami-Barbados incident was irrelevant to the applications of American companies for concessions at the Azores, a question is raised in the note of November 14 as to the waiver by All America Cables, Incorporated, of exclusive rights which that company possessed in Colombia, the surrender of which was required by the plan of mutual waiver of exclusive privileges by All America Cables, Incorporated, and the Western Telegraph Company, described in the Department's note No. 746 of December 6, 1922.66

Inasmuch as the Foreign Office now seems to regard the Miami-Barbados incident and the proceedings relating to it to be irrelevant to applications for concessions at the Azores, no useful purpose would seem to be served by raising or discussing any question regarding the position of All America Cables, Incorporated, in Colombia. However, since the Foreign Office has seen fit to raise the question, it is deemed desirable to discuss it to avert misunderstanding of omission to do so.

On January 30, 1922, the Board of Directors of All America Cables, Incorporated, adopted a resolution, which reads as follows:

"Whereas, the All America Cables, Incorporated, enjoys or claims certain preferential or exclusive rights of entry, connection or operation of submarine cables in Colombia, Ecuador, and Peru; Whereas, the Western Telegraph Company, Limited, enjoys or claims certain preferential or exclusive rights of entry, connection, or operation of submarine cables in the Argentine Republic, Brazil and Uruguay; Whereas, it has been arranged that the All America Cables, Incorporated, and the Western Telegraph Company, Limited, shall renounce all such preferential or exclusive rights; Now therefore, be it resolved that the All America Cables, Incorporated, agrees to renounce, waive, relinquish and surrender, in favor of American and British cable companies only, any preferential or exclusive rights of entry, connection, or operation of submarine cables now enjoyed or claimed by it in Colombia, Ecuador and Peru, or elsewhere in South America. However, the All America Cables, Incorporated, does not give up its rights of entry, connection or operation of submarine cables, but gives up only the preferential or exclusive features of such rights in favor of American and British companies. Provided, that this renunciation, waiver, relinquishment, and surrender shall become effective upon the presentation to the Department of State of the United States, in behalf of Western Telegraph Company, Limited, of the corresponding resolution, renouncing, waiving and surrendering any exclusive rights of a similar character which

66 Ibid., p. 383.
it enjoys or claims in the Argentine Republic, Brazil and Uruguay, or elsewhere in South America, and upon the acquiescence in the renunciation, waiver, relinquishment and surrender of the All America Cables, Incorporated, by the Governments of Colombia, Ecuador and Peru, and the acquiescence in the renunciation, waiver, relinquishment and surrender of the Western Telegraph Company, Limited, of the Governments of the Argentine Republic, Brazil and Uruguay.

"AND BE IT FURTHER RESOLVED, that a copy of this resolution shall be transmitted to the Department of State at Washington and to the Governments of Colombia, Ecuador and Peru."

This resolution which was similar to one adopted by the Board of Directors of the Western Telegraph Company was duly presented to the Government of Colombia with a petition that the Government consent to the waiver which All America Cables, Incorporated, undertook to make by its resolution of January 30. It will be noted that by their terms the waivers were to become effective upon acquiescence of all the Governments concerned. On March 3, 1922, a resolution was issued by the Ministry of Government of Colombia, a translation of which reads as follows:

"Ministry of Government—Section 2—National Telephones and Telegraphs—Bogota, March 3, 1922 . . .\(^{71}\) Be It Resolved: The Government of Colombia finds no legal impediment to the renunciation by the All America Cables, Incorporated, which is the subject of the resolution of the 30th of last January, of the company mentioned, and consequently, the latter may make the renunciation referred to in the petition, in favor of American and British cable companies; it being thoroughly understood that, according to the contract in force, Article I of which is copied above, the latter terminates the 25th day of August, 1924. It is hereby ordered that the above be communicated to the interested party and that notice thereof be given to His Excellency the Minister of the United States of America, as is requested. (signed) The Minister, V. M. Salazar."

The Government of the United States considers that this action on the part of the Colombian Government constituted acquiescence, within the terms of the resolution of the Board of Directors of All America Cables and the Western Telegraph Company, in the action of All America Cables, Incorporated, in waiving its exclusive privileges in Colombia. The Government of the United States has no doubt that the exclusive privileges of All America Cables, Incorporated, in Colombia, Ecuador and Peru, have been as effectively waived in favor of American and British cable companies as the exclusive privileges asserted by the Western Telegraph Company in the Argentine Republic, Brazil and Uruguay have been waived. The action of the United States in granting a license to the Western

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\(^{71}\) Omission indicated in original instruction.
Union Telegraph Company for its Miami-Barbados cable was predicated on the effective waiver by both companies in favor of American and British cable companies of their exclusive rights in South America and on the acquiescence in those waivers by the Governments concerned. The action of the Colombian Government with respect to the waiver of All America Cables, Incorporated, was taken on March 3, 1922, and although more than five months elapsed before all the Governments concerned had acquiesced, no question was raised by any of the interested parties as to the efficacy of the waiver of All America Cables, Incorporated. The note of the Foreign Office of November 14 is the first intimation which has come to the attention of the United States that the efficacy of the action of All America Cables, Incorporated, to surrender its exclusive privileges in Colombia, Ecuador or Peru was questioned in any quarter. The attitude of the Government of the United States with respect to the waiver by the Western Telegraph Company of its exclusive rights in the Argentine Republic was fully explained in the Department’s No. 746 of December 6, 1922, to the Embassy and need not be discussed here. The United States did not at any time after the presentation of the waiver by a representative of the Western Telegraph Company to the Uruguayan Government raise any question as to the effectiveness of the waiver of the Western Telegraph Company in Uruguay. The United States is surprised that any question should be raised by the Foreign Office as to the sufficiency of the action of All America Cables and considers that the intimation in the note of the Foreign Office that the United States was more insistent that the waivers of the Western Telegraph Company be effective than it was that the waivers of All America Cables be effective is unwarranted.

With respect to the observations of the Foreign Office that the granting of a license for the Miami-Barbados cable gives American companies no claim to consideration on the part of His Majesty’s Government, and that His Majesty’s Government would fail in their duty if it encouraged any further diversion of traffic from the lines of the Western Telegraph Company to American companies, it may be answered that neither the United States nor the American companies have asked favors of His Majesty’s Government in this matter, but have merely urged that it abandon its unwarranted opposition to the legitimate efforts of the American companies to obtain the desired concessions from the Portuguese Government.

Although it is intimated in the second paragraph of the note of the Foreign Office that the action of the Government of the United States in granting a license for the Miami-Barbados cable has no bearing on the attitude of the British Government toward the applica
tions of American cable companies for concessions in the Azores, reference is made in the third paragraph of the note to the seventh paragraph of the note of the Foreign Office of August 18 and the view is taken that since the United States obtained in the adjustment of the Miami-Barbados incident a recognition of the principle to which it adhered, it would be equitable that the United States accept the views of His Majesty’s Government as a condition to the withdrawal of the opposition of His Majesty’s Government to applications of American companies for concessions at the Azores.

The seventh paragraph of the note of August 18 was, it is believed, sufficiently answered by the Department’s No. 746 of December 6, 1922. As stated by the Foreign Office in the second paragraph of its note of November 14, the Miami-Barbados affair was a transaction in itself entirely separate from the efforts of American cable companies to obtain concessions at the Azores, and there would seem to be no occasion for joining the two subjects in the correspondence between the two Governments. When it is considered that the principle which the Foreign Office states was recognized in the Miami-Barbados transaction was applied by the United States to the granting of a license for the landing and operation of cables in the territory of the United States over which the United States has exclusive jurisdiction, and that the subject of this correspondence is the attitude of His Majesty’s Government toward applications for concessions to land and operate cables in Portuguese territory, the irrelevancy of the Miami-Barbados incident in any discussion of the projects at the Azores will be obvious.

In the fourth paragraph of its note the Foreign Office proposes, apparently for the purpose of effectuating the suggestion made in the third paragraph, namely, that since the United States obtained the recognition of the principle for which it was contending in the Miami-Barbados matter, it would be equitable that the United States accept the views of His Majesty’s Government concerning the Azores projects, that the American and British cable companies be permitted to enter into an arrangement without administrative restrictions in accordance with which the cable of the Western Telegraph Company should be recognized as the normal route for unordered traffic from Europe to South America, and messages ordered to be sent over American cables would be forwarded that way. The United States does not concur in the view of the Foreign Office that it would be equitable to place American companies and British companies in unequal positions in the Azores which the proposal of the Foreign Office seems to entail. The United States does not see its way to participate in any arrangement which contemplates that the Portuguese Government is to grant to British companies concessions
which contain no restrictions as to traffic which they are to be permitted to carry, and to American companies concessions which contain restrictions as to traffic in which they are to be permitted to participate. The United States would be unwilling to enter into such an arrangement because obviously the United States and His Majesty's Government are not in a position to make an agreement as to the character of concessions which the Portuguese Government is to grant for the landing and operation of cables in Portuguese territory and for the further reason that the proposed arrangement would place American companies in a less advantageous position than British companies would occupy.

His Majesty's Government is aware that the Government of the United States favors the widest possible development of international cable facilities, the employment of the most modern, approved equipment, and the establishment of as low rates as can be maintained consistently with efficient service and just and reasonable return on the capital invested. The United States supports and encourages American cable companies in extending their systems and providing the best possible facilities and service. It is represented in the Foreign Office note that lines of the Western Telegraph Company afford a more direct and shorter route of traffic from Europe to South America than could be provided over American cables, and that the proposal made would not prejudice the interests of American companies. If for these reasons the lines of the Western Telegraph Company are to be regarded as the normal route from Europe to South America, it would seem that the Western Telegraph Company would enjoy a natural advantage over any American company in competing for traffic from Europe to South America. The Western Telegraph Company would, therefore, have no reason to fear competition by American companies unless the latter afforded better service or lower rates than the British companies maintained. The Government of the United States considers that if American cable companies are able to establish a more efficient service or better rates than their British competitors maintain, they, and those who employ cables in the transaction of their business, are entitled to the benefits of their enterprise, and should not be deprived of them by artificial restrictions such as His Majesty's Government proposes to place on American companies. Acquiescence in a proposal for restrictions on American cable companies, placing them in a position less advantageous than British companies occupy, would be inconsistent with the practice of the United States to encourage the development of communication facilities and the maintenance of the most efficient service possible.
For reasons which are obvious from the foregoing, the Government of the United States is not prepared to acquiesce in the proposal of the Foreign Office.

It is noted that Lord Curzon has deemed it proper to inform the Portuguese Government that since the Government of the United States is not party to the International Telegraphic Convention and has not granted to other Powers the benefits contemplated by that Convention, the United States is not in a position to claim the benefits of it. American cable companies operating in the Azores are obliged to comply with the regulations carrying out the provisions of the Convention and it would seem are therefore entitled to the benefits of it. His Majesty's Government is not, therefore, in a position to maintain that the International Telegraph Convention cannot properly be invoked.

American cable companies have for some time been endeavoring to obtain from the Portuguese Government concessions authorizing them to land and operate cables in the Azores. The American companies are not seeking privileges which exclude British companies or which in any way interfere with the exercise by British cable companies of privileges similar to those sought by American companies. British cable companies have brought pressure to bear on the Portuguese authorities in opposition to the applications of American companies for concessions. A concession in favor of one of the American companies was submitted to the Portuguese Parliament where a condition was inserted requiring that all messages transiting the Azores for South America should be sent via the Cape Verde Islands. The other American company seeking a concession at the Azores has not yet been able to obtain favorable administrative action on its application. His Majesty’s Government has been supporting the British cable companies in their opposition to the American companies and has endeavored to justify its action on the ground that the United States Government withheld licenses for the Miami-Barbados cable which connects at Barbados with the cable of the Western Telegraph Company extending to Brazil, and on the further ground that the entry of American cable companies in the Azores would subject British companies to harmful competition. The United States carefully and fully explained to His Majesty’s Government its position regarding the Miami-Barbados cable. Now that the license has been granted, the Foreign Office intimates that that matter had no bearing on the attitude of His Majesty’s Government toward concessions at the Azores. The Foreign Office emphasizes that the cable of the Western Telegraph Company is the normal route for traffic from Europe to South America, and that an arrangement whereby all unordered messages are to be sent over that route would be of no practical disadvantage to Ameri-
can companies. The Foreign Office represents that the interests of American cable companies would not be prejudiced by an arrangement whereby they would be permitted to carry ordered messages and would be excluded from unordered traffic, while British cable companies were permitted to carry ordered and unordered messages. If the interests of American cable companies would not be impaired under such an unequal arrangement, it is difficult to perceive that the interests of the British cable companies would be injured under an arrangement which placed both American and British companies on an equal basis and permitted both American and English companies to participate in ordered and unordered traffic. It would seem on the reasoning of the Foreign Office that British companies would have no occasion to fear harmful competition of American companies. It follows that the reasons which His Majesty’s Government assigned for supporting British cable companies in their opposition to American companies in the Azores, no longer exist. In the circumstances, the Government of the United States is unable to escape the conviction that action by His Majesty’s Government continuing to support the British cable companies in their opposition to American companies in the Azores and in endeavoring to cause the Portuguese Government to withhold from the American companies facilities similar to those granted to British companies entailing discrimination against American companies, would constitute unwarranted and improper interference in affairs of American companies in the Azores.

You will please communicate with the Foreign Office in accordance with the foregoing, expressing the hope that on reconsideration His Majesty’s Government will deem it proper to withdraw its opposition to the applications of American companies for concessions in the Azores, and to inform the Portuguese Government accordingly.

I am [etc.]

CHARLES E. HUGHES

811.7353b W 52/67 : Telegram

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

[Paraphrase]

WASHINGTON, February 17, 1923—6 p.m.

37. Department has received report from our Legation at Lisbon "that the contract of the Western Union regarding cable landing in the Azores is expected to be issued from the Senate Monday, February 19, and to be sent back to the Chamber in order to have the amendment deleted. Final approval is expected as soon as this is

*Telegram no. 8, Feb. 16; not printed.*
done. The Legation believes it will be extremely helpful to have British pressure withdrawn. Recently this pressure has been renewed with greater intensity.

PHILLIPS

811.7353b W 52/68 : Telegram

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

[Paraphrase]

LONDON, February 20, 1923—9 a.m.

[Received 9:30 a.m.]

53. Department’s telegram 37 of February 17. Late yesterday afternoon I had a conversation with Curzon. Toward the close of the interview I told him that a matter was still pending between our countries which I thought should be got out of the way at once. I said that in fact the situation had become acute and therefore the need of a settlement was pressing. I referred to the landing concessions in the Azores which were desired by American interests. He replied, as I expected, that the matter had not come to his attention since an unfinished conversation between us. What was the situation now? I outlined it in brief and also said that my Government had just sent me a concise but comprehensive statement which I would submit tomorrow morning for his consideration. My reference was to Department’s instruction 799 of February 3.

He said that was very good. He retained a fair understanding of the matter in his memory, he thought, but would like to have me recite the salient points to refresh his recollection. (My purpose was admirably served by this hackneyed but always charming method of trapping incautious novices as it helped to bring matters quickly to a head.)

I replied that my understanding of the situation was as follows: American cable companies wished to land cables on the Azores and had tried without success to obtain the necessary permission from various Portuguese Governments. The existing Portuguese Government is willing to grant these concessions in order to obtain revenues and additional facilities but is unable to do so on account of the opposition which the British Government is offering in the interest of Sir John Pender’s Company which insisted that it retain monopolistic privileges.

Curzon declared instantly that certainly the exclusive rights of the British Government should be conserved, in spite of America’s open-door theories. What were these British rights? Was I informed? I was happily able to tell him that whatever monopolis-
tic rights had originally existed expired in 1908. If he still had any doubts on that point he could consult Sir John himself.

(Yesterday morning, incidentally, I saw a letter to that effect signed by Sir John.)

I continued that consequently the situation in brief is this: Great Britain, a friendly power, keeps Portugal, a neutral power, from carrying out her wishes in granting equal telegraph facilities to America, another friendly power, because Great Britain desires to keep a monopoly which in law she no longer possesses, and to bring about this result Great Britain makes use of the financial obligations which Portugal, her friend and ally, is under to her in order to keep America from exercising her just and natural prerogative. Thus Portugal is placed by Great Britain in a state of vassalage, and America, Britain’s friend, is again placed in a state of doubt and suspicion such as she was in before the statement on the debt.

I added that my understanding might of course be inconclusive but if not I could not see how the British attitude could be regarded either as wise or defensible.

In reply Curzon said that his memory was somewhat hazy, as he had remarked; but, nevertheless, on account of my insistence that the subject be disposed of before the end of the present session of the Portuguese Parliament, he would promptly attend to the matter.

Harvey

821.73/34

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

No. 140

Bogotá, March 19, 1923.

[Received April 11.]

Sir: I have the honor to refer to my predecessor’s despatch No. 865 of March 13, 1922, to the Department’s cable message of February 6, 5 p.m. of the same year, relative to the concurrence of the Colombian Government in a resolution adopted by the Board of Directors of the All America Cables, Incorporated, on January 30, 1922, whereby it renounces certain preferential rights held in Colombia and other countries in favor of American and British cable companies. On March 13, last, the British Minister called on me and left a memorandum, copy of which is enclosed herewith, intimating that the Colombian Government had not yet acquiesced in the waiver of the All America Cables, but would so acquiesce when such waiver was presented to it.

75 Not printed; see the Minister’s telegram no. 15, Mar. 11, 1922, Foreign Relations, 1922, vol. 1, p. 525.

76 Ibid., p. 521, footnote 42.

77 Not printed.
Upon reviewing the past correspondence on this subject, I found that a petition had been presented to the Colombian Government by the Banco Mercantil Americano de Colombia, accompanied by a copy of the resolution of the Board of Directors above referred to, and the acquiescence of the Government to the waiver contained therein, requested. On March 9, 1922, the Colombian Minister of Government (Interior) addressed a communication, copy of which was enclosed in despatch No. 865 above mentioned, to this Legation stating that in response to the petition of the representative of the All America Cables, his Ministry had issued a resolution, in part as follows:

"Ministry of Government—Section 2—National Telephones and telegraphs—Bogota, March 3, 1922 . . . 76 Be it resolved:—The Government of Colombia finds no legal impediment to the renunciation by the All America Cables, Incorporated, which is the subject of the resolution of the 30th of last January, of the Company mentioned, and consequently, the latter may make the renunciation referred to in the petition, in favor of American and British Cable Companies; it being thoroughly understood that, according to the contract in force, Article I of which is copied above, the latter terminates the 25th day of August, 1924. It is hereby ordered that the above communication [be communicated] to the interested party and that notice thereof be given to His Excellency the Minister of the United States of America, as is requested. (Signed) The Minister, V. M. Salazar"

Copies of notes exchanged between myself and the British Minister in the premises are enclosed herewith 77 and from statements made by the latter, it would appear that the Colombian Government does not consider that the action taken by it amounts to a concurrence in the renunciation of rights made by the American Company.

In the circumstances I have concluded to acquaint the Department with the facts that it may, if it sees fit, suggest to the Cable Company that, in order to avoid further delay or correspondence, it might be well for it to file with the Colombian Government a formal waiver of its preferential or exclusive rights.

SAMUEL H. PILES

811.7353b W 52/77: Telegram

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

WASHINGTON, March 27, 1923—3 p.m.

68. Lisbon Legation reports 78 that on March 21 the British Minister to Portugal made a strong protest to the Prime Minister against

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76 Omission indicated on original despatch.
77 Not printed.
78 Telegram no. 12, Mar. 22, 1923; not printed.
the granting of cable concessions to the American companies. Try to secure an early answer to our last note to the British Government. Hughes

811.7333b W 52/101

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

No. 2273

London, April 20, 1923. [Received April 30.]

Sir: With reference to my telegram No. 117, of April 19, 5 p.m., 1923, I have the honor to forward herewith copy, in triplicate, of the Foreign Office Note No. A 2051/319/45, of April 18, 1923, relative to the Azores cable situation.

I have [etc.]

For the Ambassador:

POST WHEELER

[Enclosure]

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

No. A 2051/319/45

London, April 18, 1923.

YOUR EXCELLENCY: On receipt of Your Excellency’s note No. 593 of the 20th February last, I requested His Majesty’s Minister at Bogotá to report on the present position of the waiver by the All-America Cables Company of their exclusive rights in Colombia. Lord Herbert Hervey replied on the 16th ultimo that the Colombian Government did not consider that they had received formal notice of renunciation by the cable company and that his United States colleague was informing your government in order that action might be taken by the company. In thus confirming the statement contained in my note of November 14th last to which you took exception, I have the honour to make the following further observations respecting the points mentioned in your note under reply and that of December 21st last in regard to which there is still some disagreement between our two Governments.

2. I may perhaps be excused for not understanding the practice of the United States Government in connection with the issue of landing licenses (as suggested in paragraph 5 of your note of

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\[9\] Not printed.

\[10\] See instruction no. 799, Feb. 3, 1923, to the Ambassador in Great Britain, p. 271.


\[12\] See instruction no. 746, Dec. 6, 1922, ibid., p. 383.
December 21st) seeing that Mr. Norman Davis, when Under-Secretary of State, in giving evidence before the Interstate Commerce Committee on December 15th, 1920 (S. 4301, page 6)\(^8\) said that the authority of the President to control the landing of a cable “has never been specifically passed upon and determined by the court of last resort”. The Committee, after hearing the evidence of Mr. Norman Davis and others, reported a bill which was introduced in the House of Representatives by Mr. J. Stanley Webster on May 18th 1921. Mr. Webster said, in part, referring to the attempt made by the United States Government in the Federal Court for the southern district of New York to restrain the Western Union Company from landing their cable at Miami, “Judge Hand of that Court seems to have held that there is no authority vested in the President of the United States to control the matter of cable landings especially where the case is one involving an American company which has complied with the provisions of the so-called post roads Act of July 24th, 1866. The case was appealed to the circuit court of appeals for the second circuit and the opinion of Judge Hand was affirmed. The United States has appealed the case to the Supreme Court where it has been fully presented and is now under submission for final decision.” (Congressional Record May 20th[18th], 1921, p. 1592 [1541]).\(^9\) Consequently, with reference to the last sentence of the same paragraph of your note, the practice of the United States Government, so far as any judicial decisions show, seems also to have been based on a misunderstanding. The remainder of the debate on the occasion to which I have referred, showed that the United States Government urgently desired the passage of the bill lest the Supreme Court should confirm Judge Hand’s decision (Congressional Record May 20th[18th], 1921, pp. 1545[1539] et seq.) and that one of the chief objections to the Miami landing was that it would enable a British company to “get into the United States” (Record pp. 1554 and 1555 [1550]).

3. The statement in paragraph 6 of your note of December 21st that the cable from Brazil to Barbados was not laid until after the landing at Miami had been opposed by the United States Government is possibly somewhat misleading. The contention of the Western Union Company, subsequently upheld in the Courts as stated above, was that the State Department had no authority to oppose the land-


\(^9\) In this and later references to the Congressional Record, the paging given in the British note is that of the unbound copies. The corresponding page numbers in the bound volumes are here inserted in brackets.
ing; even if it had such authority, the date on which its opposition was officially manifested remained in dispute (see S. 4301). The facts with regard to the cable itself are that the section to Maranham was laid prior to July 1920: the remaining section was on board the "Colonia", which laid the Barbados-Miami Cable, and therefore could not be laid till after the "Colonia" reached Barbados from Miami. None the less the Western Company had long been committed to the expenditure on the cable (see pages 107, 311, 312 of S. 4301), and, I venture to think, my original proposition holds good, namely that the Company were faced with the loss of an investment of three million dollars made in good faith and in reliance upon the existing law of the United States.

4. I have again referred at some length to the essential points of the Miami incident because the statements contained in your two notes required a careful re-examination of the facts upon which His Majesty's Government based their impression of the attitude of the United States towards a British cable company. I greatly regret that nothing transpires which would justify any modification in the proposals contained in my note of November 14th last.

5. I observe, however, that your government consider "that if American cable companies are able to establish a more efficient service at better rates than their British competitors maintain, they, and those who employ cables in the transaction of their business, are entitled to the benefit of their enterprise, and should not be deprived of them by artificial restrictions, such as His Majesty's Government propose to place on American companies". This statement seems to be based on a misunderstanding, seeing that no proposal is being made to restrict the normal control by the Portuguese Telegraph Administration of the routing of unordered telegrams originating in, or in transit through, its territory.

6. In this connection I would remind you that the Newfoundland Government has recently concluded an agreement with one of the United States companies competing with the British Imperial cables for trans-Atlantic traffic, whereby all the unordered traffic from Newfoundland for Great Britain and places beyond, including the continent of Europe, is to be handed over to that company for fifteen years. I presume the United States Government are aware of this transaction and I should be glad to learn in what way it differs in their opinion from the arrangements at the Azores to which they object, except that at the Azores the unordered traffic would be sent by British cables and at Newfoundland by a United States cable.

7. In order that there may be no further misunderstanding with regard to the attitude of His Majesty's Government, I take this op-
portunity to repeat that they are quite willing to leave the matter to the discretion of the Portuguese Government after free negotiation between the British and United States companies, if the United States Government is prepared to adopt that course.

I have [etc.] Curzon of Kedleston

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The Italian Embassy to the Department of State

MEMORANDUM

The Italian Minister for Foreign Affairs has given instructions to the Ambassador of Italy at London to come to an understanding with the United States Ambassador for a joint action to be taken for the purpose of inducing the British Government to desist from exercising pressure upon the Portuguese Government against the latter granting the landing at the Azores of the American Western Union cable.

WASHINGTON, April 26, 1923.

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

LONDON, April 28, 1923—3 p.m. [Received 4 p.m.]

185. My 117, April 18 [19], 5 p.m. Western Union officials puzzled as to meaning of Foreign Office note. They desire to know whether British Government will actually seek to conclude [exclude] all South American traffic from Western Union cables when landed at Azores or ordered South American traffic only or will not seek to exclude any South American traffic from the Western Union cable. They believe this should be determined without delay.

Mr. Goddard sought to learn attitude of Sir John Pender on those points on the 25th instant but could get no definite reply.

With regard to the statement in note that British Government willing to leave the matter in the hands of Portugal after companies have come to an agreement Pender informed Goddard that there was no use at present of considering terms; that in the course of the next month or so something might develop which might form the basis of an agreement.

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85 Not printed.
Western Union officials here believe that the purpose of the note was to confuse the situation and delay matters until the adjournment of the Parliament at Lisbon which will probably take place on the 31st of May.

Harvey

811.7353b W 52/103: Telegram

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

London, May 4, 1923—10 a.m.
[Received 7:50 p.m.]

145. My 125, April 25, 11 a.m.\(^\text{**56**}\) Wednesday afternoon the Italian Ambassador informed Lord Curzon that the Government at Rome considered that the British opposition to the landing of the Western Union cable was without justification. Lord Curzon stated that he did not see why Italy took up the American contention in this case; that he did not see that Italy was interested. Della Toretta explained that the Italian cable was to connect with the Western Union line at the Azores. The Foreign Minister then pointed out the alleged disadvantage to Italy from the commercial point of view of having South American messages from the peninsula routed via the United States.

Lord Curzon stated that he would forward to the Italian Embassy here a memorandum stating the position of the British Government and he requested that Rome take no further steps pending receipt of this memorandum. This memorandum will be shown to me.

At the Italian Embassy it is believed that Lord Curzon is playing for time until the Parliament at Lisbon adjourns.

Wheeler

811.7353b W 52/104: Telegram

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

London, May 4, 1923—11 a.m.
[Received 6:45 p.m.]

146. My 135, April 28, 3 p.m. In view of the fact that the Portuguese Parliament will probably adjourn on the 31st instant and of the inconsistency between paragraphs 5 and 7 of the Foreign Office note of April 18th the Western Union officials here are strongly of the opinion that the Foreign Office should be asked categorically whether it was intended to indicate in the note above cited that opposition will no longer be offered by the British Government to the landing of the cable at the Azores.

Wheeler

\(^{**56**}\) Not printed.
The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, May 5, 1923—6 p.m.

13. Your despatch 140, March 19, 1923. By telegram February 6, 5 p.m., 1922,87 Department informed Legation of plan of mutual surrender of exclusive privileges in South America by All America Cables and Western Telegraph Company. In that telegram resolution of waiver adopted by All America was quoted and Legation was informed that Western Telegraph had adopted corresponding resolution. These resolutions were to be presented by local representatives of companies to governments concerned, with petitions that governments indicate their acquiescence in waivers. It is understood that this was done by representative of All America in Colombia.

On March 9, 1922, Minister of Government addressed note to Legation 88 quoting a resolution issued by Ministry in response to petition of All America Cables. American Minister acknowledged note as informing him of concurrence of Government of Colombia in petition of company to acquiesce in waiver.

By Department’s telegram of August 25, 6 p.m.89 Legation was informed that President had signed license authorizing Western Union Company to land cable at Miami; that granting of license was conditioned on waivers by both cable companies of exclusive privileges in South America; and that license was granted after satisfactory expressions had been obtained from all governments concerned regarding waivers of cable companies, which were in terms effective upon acquiescence by governments. Legation was directed to convey to Colombian Government expression of appreciation of sympathetic consideration accorded in the matter by Government of Colombia.

In these circumstances the Government of the United States has regarded the action of All America Cables in presenting waiver and petitioning for acquiescence as sufficient on part of company and has regarded resolution of Ministry of Government as indicating acquiescence of Colombian Government rendering waiver effective.

Please communicate with Colombian Foreign Office in accordance with foregoing emphasizing that resolution of waiver required only acquiescence and not formal agreement by Colombian Government and expressing the hope that inasmuch as All America Cables peti-
tioned the Government to acquiesce in company's waiver and Colombian Government in resolution of March 3 declared that company might make renunciation and American Minister in his note of March 13 to Minister of Government referred to the action taken by Colombian Government as concurrence in company's waiver and subsequently conveyed to Colombian Government expression of appreciation of sympathetic consideration given matter by Colombian Government and since the United States has acted up to this time on the understanding that Colombian Government had acquiesced, All America Cables may be regarded by Government of Colombia as having waived its exclusive rights in Colombia. Telegram result.

[Paraphrase.] Department is astonished that any question should be raised on effectiveness of waiver of All America Cables in Colombia and thinks it unfortunate that this has occurred. Alleged incompleteness of waiver is being used by British Government against United States Government in discussions on opposition of British Government to applications of American cable companies for concessions to land cables in the Azores. Take no further action without consulting the Department. [End paraphrase.]

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Hughes

811.7353b W 52/111: Telegram

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

LONDON, May 10, 1923—5 p.m.

[Received 7:20 p.m.]

167. The Italian Embassy has not as yet received the promised note from Curzon in reply to its representations in the matter of the Azores cable situation.

I learn that on May 14, a cable from Mussolini instructed the Embassy to renew its representations with all possible energy.

Wheeler

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811.7353b W 52/101: Telegram

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

WASHINGTON, May 17, 1923—11 a.m.

111. Reference Embassy's despatch No. 2273, April 20th. Please make answer to Lord Curzon's note of April 18th in the sense of the following:

(1) The views of the Government of the United States in regard to the waiver of the All America Cables Company of its exclusive

* Not printed.
privileges in Colombia are set forth at length in the Department's instruction No. 799 of February 3, 1923. It may, however, be stated in review that All America Cables, Incorporated, adopted a resolution similar to one adopted by the Western Telegraph Company, Limited, by the terms of which the waiver of exclusive privileges was to become effective upon acquiescence of all governments concerned. Formal acceptance of the waiver was not required. The resolution of the company was duly presented to the Government of Colombia by a representative of the company with a petition that the Government of Colombia acquiesce in the waiver. On March 9, 1922, the Colombian Minister of Government addressed a note to the American Legation at Bogota,\(^{81}\) quoting a resolution issued by the Ministry in response to the petition of the company. This resolution was quoted in translation in the Department's No. 799 of February 3rd. The American Minister acknowledged the note of the Minister of Government, expressing appreciation of the concurrence of the Government of Colombia in the petition of the company that the Government of Colombia acquiesced in the waiver. When the President signed a license authorizing the Western Union Telegraph Company to land a cable at Miami, Florida, the American Legation at Bogota was directed to inform the Government of Colombia that the President had issued the license; that the granting of the license was conditioned on waivers by both cable companies of exclusive privileges in South America and that the license was granted after satisfactory expressions had been obtained from all governments concerned regarding the waivers of the cable companies which were, in terms, effective upon acquiescence by the governments concerned. The Legation was directed further to convey to the Colombian Government an expression of appreciation of the sympathetic consideration which had been accorded the matter by the Government of Colombia.

In these circumstances the Government of the United States felt warranted in regarding the action of All America Cables, in presenting a waiver and petitioning for acquiescence, as sufficient on the part of the company and considers that the resolution of the Ministry of Government indicated acquiescence by the Government of Colombia. In this connection it may be observed that His Majesty's Government, according to the views expressed in its note of August 18, 1922,\(^{82}\) apparently understood at that time that the Government of the United States withheld the license for the landing of the cable at Miami, after the requirements of the resolutions

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\(^{81}\) See telegram no. 15, Mar. 11, 1922, from the Minister in Colombia, Foreign Relations, 1922, vol. 3, p. 525.

\(^{82}\) Ibid., vol. ii, p. 373.
of the All America Cables Company and the Western Telegraph Company had been fully met by all the governments concerned.

(2) Respecting the comments of Lord Curzon with respect to the proceedings in the District Court for the Southern District of New York and in the Circuit Court of Appeals, it is true that in the lower Courts, decisions were rendered in favor of the Western Union Telegraph Company as he states, but an appeal was taken by the Government of the United States from these decisions to the Supreme Court of the United States. It is also true that no decision was rendered by the Supreme Court, the final authority to determine such questions. However, it should be added that the Supreme Court of the United States entered an order reversing the decree of the Circuit Court of Appeals in accordance with stipulations filed by the parties to the litigation and remanded the case to the District Court of the United States for the Southern District of New York with directions to enter a decree dismissing the bill without prejudice. *(United States vs. Western Union Telegraph Company, 260 United States Supreme Court Reports. Page . . . ; U. S. Supreme Court Journal, October 23, 1922.)* By this action the decisions of the lower courts were rendered of no effect. In fact the Court proceedings stopped short of final action, the practice followed by the United States in controlling the landing of cables in the territory of the United States in effect being confirmed by the Congress and all further controversy on this point being rendered futile.

(3) The United States perceives no occasion for regarding the statement contained in the sixth paragraph of the Embassy’s note to the Foreign Office of December 21, 1922, that the cable from Brazil to Barbados was not laid until after the landing at Miami had been opposed by the United States as being misleading, which it appears from the third paragraph of his note Lord Curzon thought it might possibly be. The reasons for the statements to which Lord Curzon refers were fully set forth in the paragraph of the Embassy’s note mentioned, and it is clear from the information contained therein that the Western Telegraph Company, Limited, was charged with notice that cables could not be landed in the United States without a license issued by the President, notwithstanding the contention of the Western Union Telegraph Company that the executive branch of the Government had no authority to oppose the landing. The United States has not questioned the good faith of the Western Telegraph Company, Limited. It cannot, however, be claimed that either the Western Telegraph Company or the Western Union Company had the right under law to land a cable in the United States. On the contrary, the historic practice
of the United States in that regard was well known and it had never been decided finally the other way.

(4) As to the fourth paragraph of Lord Curzon’s note, this Government does not find it necessary to repeat what has already been said.

(5) This Government is gratified to learn that His Majesty’s Government is making no proposal to restrict the normal control by Portugal of the routing of unordered telegrams originating in, or in transit through, Portuguese territory. This Government would be lacking in candor if it failed to express the surprise and concern with which it has viewed the opposition of His Majesty’s Government to the endeavors of American cable companies to secure from the Portuguese Government cable landing rights at the Azores. If this Government is correct in understanding that the British Government will no longer seek to interfere with the freedom of contract of the Portuguese Government and that it is entirely willing to leave the normal control of traffic to the Portuguese Government, this Government would be glad to receive a statement from His Majesty’s Government to that effect.

(6) There would appear to be no analogy between the contract entered into by the Government of Newfoundland and the Commercial Cable Company and the state of affairs which obtains at the Azores. The subject of this correspondence is the action of His Majesty’s Government in seeking to interpose its influence against the legitimate efforts of American cable companies to obtain concessions in the Azores and the opposition of His Majesty’s Government to the granting of concessions in the Azores except on terms approved by British cable companies and His Majesty’s Government and with conditions restricting the traffic which American cable companies may carry. To this interference with and opposition to transactions between the Portuguese Government and American cable companies, there is nothing to correspond in the relations between the Government of Newfoundland and the Commercial Cable Company, and it is this interference and opposition exerted by His Majesty’s Government outside its jurisdiction which this Government has deeply regretted as being entirely without warrant.

(7) This Government has examined the contents of Lord Curzon’s note with the greatest care and confesses its inability to find points pertinent to the particular issues involved. This Government is loath to infer from the statement in the seventh paragraph of the note under reference that the British Government would be disposed to continue to interfere with the freedom of action of the Portuguese Government in this relation, or that it is intended by the reference to negotiations between the American and British companies to
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imply that American cable companies may not, themselves, seek permission to land their cables in the territory of another friendly Power, in which it is understood British cable companies enjoy no contractual rights of a privileged or exclusive character, or that it is the purpose of His Majesty’s Government to impose a limitation on the character of the traffic that may be carried by the American companies as compared with British companies through enforced agreement of American cable companies with British cable companies. This Government fails to comprehend on what grounds the influence of His Majesty’s Government can be exerted against the American cable companies and earnestly hopes that His Majesty’s Government will refrain from further opposition to American enterprise at the Azores.

Mail to Legation at Lisbon copy of your note to the Foreign Office.

HUGHES

S11.7363b W 52/114 : Telegram

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

LONDON, May 24, 1923—5 p.m.

[Received 7:50 p.m.]

181. I had a conversation with Sperling on the 22nd. He had not seen the Embassy’s note based on your 111, May 17, 11 a.m. which was delivered on the 19th. He stated that the opposition of the British Government to the Western Union application “was still in force and would continue to be in use.” While it was clear from his conversation that underlying this attitude was a belief that unfriendliness was shown by the United States in the Miami incident in the passage of a retroactive act prohibiting the landing after license therefor had been granted by the War Department, he stated that the legal principle for which the British Government was contending was that the companies concerned should enjoy entire freedom of the right to contract. The free negotiation referred to in the last paragraph of the Foreign Office note of April 18th would appear to mean that the United States will assure the Western Union that a landing license in the United States will be granted whatever arrangement the company comes to with the Western relative to the passage of South American traffic through the Azores.

Kerr 63 is consulting with Mr. Goddard this afternoon as to the advisability raising the case in Parliament next week, which he believes could not make the opposition in Lisbon stronger and would probably considerably embarrass that opposition.

63 Frederick Kerr, agent of the Western Union Telegraph Co.
Mr. Kerr considers that the chances are good for the granting of the Portuguese license in spite of the British opposition but he is greatly worried by the news that it is likely to continue.

Wheeler

The Secretary of State to the Italian Ambassador (Caetani)

Washington, June 9, 1923.

My Dear Mr. Ambassador: I beg to acknowledge the receipt of your letter of May 28 with which, in reference to our previous conversations on the subject, you were good enough to enclose a copy of the Gazzetta Ufficiale of the Kingdom of Italy containing the text of the contract between the Royal Italian Government and the Italian Submarine Telegraph Cable Company, which has been formed for the purpose of furnishing direct cable communication between Italy and North America. You express the hope that this Government will see its way to furnish the necessary facilities for the successful realization of this enterprise.

In reply I take pleasure in informing you that it is my intention to recommend to the President the issuance of a license in response to the application heretofore made by the Western Union Telegraph Company granting to that Company permission to land a cable in the United States to extend from Rockaway Beach, Long Island, to the Azores where it will connect with the proposed cable to be laid by the Italian Company, the license to contain the following condition:

“That the Licensee does not enjoy and shall not acquire in the Azores, or in any European country connected with the Azores by cable, any right of entry, connection, or operation of cables which by reason of any concession, contract, understanding or working arrangement to which the Licensee is a party is denied to any American company; and that the Licensee is not associated and shall not associate with any foreign company or concern which enjoys in the Azores or in any European country connected with the Azores by cable, any concession, or which is a party to any contract, understanding, or working arrangement, by reason of which any American company is denied privileges or rights similar to those enjoyed by the foreign company or concern affecting traffic between the United States and the Azores, or between the United States and any European country connected with the Azores by cable, provided that this condition shall not be deemed to forbid the association of the Licensee with the Italian Submarine Telegraph Cable Company which enjoys certain privileges respecting unordered traffic by virtue of Article 28 of the contract between the company and the Italian Gov-

*Not printed.*
ernment, signed at Rome on February 5, 1923, so long as an American cable company, able and willing to furnish the same or similar facilities for the transmission of traffic by cable between the United States and Italy, either directly or via the Azores, shall not be denied equal opportunity with respect to unordered traffic by virtue of the said article or otherwise."

Permit me to add for your information that the terms of the foregoing condition have been communicated to the Western Union Telegraph Company.

I am [etc.]

CHARLES E. HUGHES

Memorandum by the Secretary of State of a Conversation with the Italian Ambassador (Coastani), June 14, 1923

[Extract]

American License for Connecting Cable. The Ambassador referred to the communication from the Department as to the terms of the proposed license to the American Company and its reference in the proposed condition with respect to the association with the Italian Company. The Ambassador said that he was drafting a reply but before he submitted it to his Government he would like to ask the Secretary confidentially about it. His Government, of course, anticipated that before any action would be taken under the conditions in the license that the two governments would exchange views, but that his government had put it rather strongly that the condition should not be acted upon by the American Government without the consent of the Italian Government. The Ambassador understood that that was an impossible qualification but he had phrased a suggestion in his letter and would like to know whether the Secretary was disposed to favor it. The Secretary then looked at the draft letter which provided in substance that the American Government would not proceed to act upon the condition until the "two governments had first fully discussed all possible means of reaching an agreement." The Secretary said he did not object to the general purpose in view but he thought the language rather broad. The Secretary suggested that negotiations which were to involve a full discussion of "all possible means" might mean an indefinite discussion, without any provision for terminal facilities. No one could tell when all possible means had been exhausted. The Secretary said that of course the American Government, while entirely willing to take the matter up in a proper way with the Italian Government, could not foreclose its authority to terminate the discussion and act upon the condition if it saw fit. The Secretary suggested that the phrase be "until the two governments had endeavored
to reach an agreement." The Ambassador said that would be satisfactory.

811.7365 W 52/27

The Italian Ambassador (Caetani) to the Secretary of State

WASHINGTON, June 21, 1923.

My Dear Mr. Secretary: I beg to acknowledge the receipt of your letter of June 9th, with which, in replying to my letter of May 28th,** you have been good enough to inform me that it is your intention to recommend to the President the issuance of a license in response to the application heretofore made by the Western Union Telegraph Company, granting to that Company permission to land a cable in the United States, to extend from Rockaway Beach, Long Island, to the Azores, where it will connect with the proposed cable to be laid by the "Compagnia Italiana dei Cavi Telegrafici Sottomarini". Such a license should contain, besides the usual formula excluding any monopolistic possibility, a further provision reading as follows:

"provided that this condition shall not be deemed to forbid the association of the Licensee with the Italian Submarine Telegraph Cable Company which enjoys certain privileges respecting unordered traffic by virtue of Article 28 of the contract between the Company and the Italian Government, signed at Rome on February 5, 1923, so long as an American cable company, able and willing to furnish the same or similar facilities for the transmission of traffic by cable between the United States and Italy, either directly or via the Azores, shall not be denied equal opportunity with respect to unordered traffic by virtue of the said article or otherwise."

I did not fail to communicate your reply to my Government and I am now authorized to say that the Italian Government, as well as the Italian interests concerned in this enterprise, are willing to agree to the addition of the above quoted clause on the understanding that the scope of such a provision is to safeguard a point of principle, well knowing that the American Government will always actually deal in this respect with its usual sense of loyalty and equity towards Italy.

My Government feels confident that any practical enforcement of the above mentioned provision will not be enacted without the two Governments having first earnestly endeavored to come to a friendly agreement on the matter.

I would be glad to be put in a position to assure the Royal Government on this point.

Accept [etc.]

Caetani

** Not printed.
The Chargé in Great Britain (Wheeler) to the Secretary of State

LONDON, June 26, 1923—4 p.m.
[Received June 27—6:29 a.m.]

250. Today the Western Union and the Italian cable made a formal offer of an agreement to Sir John Pender along the following lines:

1. Unordered traffic originating in all European countries to be served by the Fiumicino-Ázores Cable destined for South America and transiting the Azores to be delivered to Western Telegraph Company for transmission to destination.

2. After the completion of the Italian cable from the Azores to South America traffic originating in the European countries mentioned to be delivered to Western Telegraph Company whenever the Italian-South American cable is interrupted. This agreement to be binding for ten years from the date when the Italian-South American cable is open for the reception of traffic.

In consideration of above Sir John Pender is (1) to cease all opposition to the ratification of the original provisional contract between the Western Union and the Portuguese Government for a landing license at the Azores and to do everything possible to secure the withdrawal of the amendment by the deputies, (2) to request the Foreign Office immediately to instruct the British Minister at Lisbon to notify the Portuguese Government that Great Britain no longer has any objection to the ratification of the original provisional contract, (3) to promise that he will refrain from opposing the issuance by the Portuguese Government to the Italian company of a license to land the Italian-South American cable at Cape Verde Islands.

The Western Union representatives trust that no objection to the above proposals will be entertained by the Department.

Wheeler

The Secretary of State to the Italian Ambassador (Caetani)

WASHINGTON, June 27, 1923.

EXCELLENCY: I have the honor to acknowledge the receipt of your Excellency’s note of June 21, 1923, in which you inform me that the condition quoted in my note to you of June 9, 1923, which it is proposed to include in the license to be issued to the Western Union Telegraph Company, authorizing the company to land a cable in the United States extending to the Azores where it will connect with...
the cable of the Italian Submarine Telegraph Cable Company, is agreeable to your Government and to the Italian interests concerned in the enterprise. You state that your Government is confident that practical enforcement of the condition mentioned will not be undertaken without the two Governments first earnestly endeavoring to come to a friendly agreement in regard to the matter.

I am gratified that the proposed condition is agreeable to your Government and to the Italian interests concerned, and assure you that, before taking action to carry out the provisions of the condition mentioned, the Government of the United States will discuss the matter with your Excellency’s Government in an effort to adjust any question which may have arisen.

Accept [etc.]

Charles E. Hughes

811.7353b W 52/138 : Telegram

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

Washington, June 30, 1923—2 p.m.

165. Your 250, June 26, 4 p.m.

The Department will not oppose the proposed agreement. Department has been actuated in its efforts to assist American cable companies to obtain concession in the Azores by desire to place them in the Azores in a position no less advantageous than that enjoyed by British companies. If American companies desire to accept less than Department has endeavored to assist them to obtain they are at liberty to do so and must accept consequences and assume responsibility for their action.

The Department observes that it is not clear from the second paragraph of the offer whether that paragraph relates to all traffic originating in European countries or whether the paragraph is limited to unordered traffic.

Hughes

811.7353b W 52/141 : Telegram

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

London, July 3, 1923—11 a.m.

[Received 12:51 p.m.]

264. Your 165, June 30, 2 p.m. The second paragraph of the offer mentioned relates to all traffic originating in South Europe, i.e., the south to be served by the Italian cable.

Wheeler

*The license referred to was signed by the President, Aug. 25, 1923.*
821.73/33: Telegram

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

Bogotá, July 16, 1923—5 p.m.
[Received July 18—10 a.m.]

17. Your May 5, 6 p.m. I am informed by Foreign Office that the Minister of Government considers waiver of All America Cables is already accepted by resolution of March 3rd, 1923 [1933]. Full report by mail.87

Piles

811.7363b W 52/150: Telegram

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

London, July 13, 1923—4 p.m.
[Received 6:55 p.m.]

303. My number 250, June 26, 4 p.m. On the 13th instant the Western Union despatched a letter to Sir John Pender stating that in the event he did not reply to the company’s offer set forth in the telegram above referred to it would be withdrawn.

Yesterday Sir John replied to the Western Union rejecting the offer.

Wheeler

811.7363b W 52/174: Telegram

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

London, November 20, 1923—3 p.m.
[Received 4:07 p.m.]

516. Recently, as an outcome of conversations between Sperling and myself in re the Azores cable situation, the suggestion was made that Sir John Pender and Mr. Carlton be invited to confer together at the Foreign Office at which conference representatives of the Foreign Office, the Postmaster General and this Embassy should be present, with a view to ascertaining whether the differences between their companies might not be adjusted. The first meeting under this arrangement took place yesterday.

In the discussion it developed that at the bottom of Pender’s opposition to the Western Union applications at the Azores is the agreement by which that company is to subscribe $1,250,000 for the construction of the Italian cable from Piunicorno to the Azores via

87 Not printed.
Malaga. As this cable will eventually be a part of the Italian cable to South America which is to be laid Fiumicino–Malaga–Canaries–
Fernando–Noronha–Brazil, it was claimed by Sir John that a Western Union interest therein would be in violation of the agreement of July 24th, 1919, which created the through line via Barbados. Carlton admitted that this was an arguable point and offered to confine the Western Union subscription to the Italian cable to the section between Malaga and the Azores. Pender accepted this offer in principle. Both Pender and Carlton then dictated tentative heads of agreement which cover the same points as the Western Union offer of June 26th (reported in my 250, June 26, 4 p.m.) plus the above and a clause giving Pender's group the option of taking an interest of 25% in the Malaga–Fiumicino portion of the projected Italian scheme. Both gentlemen indicated their complete satisfaction with this arrangement and if no new difficulties arise I anticipate that the withdrawal of the British opposition will follow in the near future.

WHEELER

Memorandum of a Conversation between the Assistant Secretary of State (Harrison) and Messrs. Goldhammer and Burden of the Commercial Cable and Postal Telegraph Companies, November 22, 1923

Mr. Goldhammer stated the present status of the situation regarding the Company's enterprises at the Azores and explained the reasons which had influenced the Company in their decision to secure landing rights through the British company. He was glad to say that he had found that the 1913 rights which they had secured through the British company had not been invalidated through the lapse of time and that it had been found possible to obtain an extension of these rights by action of the Council of Ministers of Portugal without again submitting the matter to the Portuguese Parliament. The Company had been glad in this way to avoid direct contact with the Portuguese officials. Their relations in the future as in the past would be handled through the British company. In view of this situation, the Company did not propose to secure legislative action on a direct concession.

Mr. Goldhammer also mentioned the Company's relations with Mr. Suarez and the efforts of their German connecting company itself to procure landing rights in the Azores, that presumably these would have to be obtained through the British company or at least with the assistance of the British company, and in this connection he informed me that the Germans had reached an agreement to land the loose
end of the Emden cable in Great Britain, there to connect with the Eastern, for South American traffic via the Azores and the Western Company.

811.7353b W 52/186 : Telegram

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

[Paraphrase]

LONDON, December 18, 1923—6 p.m.
[Received December 18—5:03 p.m.]

561. Foreign Office informs me that it has advised British Minister to Portugal regarding signing on December 10 of agreement by the Western Union, Italian, and the Western Telegraph Companies and has instructed him not to oppose any longer the Western Union concession.

Repeated to Legation in Portugal.

Wheeler

811.7353b W 52/187 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

[Paraphrase]

LISBON, December 19, 1923—noon.
[Received 4:10 p.m.]

86. London’s telegram to Department, December 18. Does Department think it advisable to insist that as a matter of primary fair-dealing the British Government should withdraw its opposition here, which from the first has been unwarranted and arbitrary, not to the Western Union alone but to any other concession to American interests, thus insuring that equal opportunity shall be open to all?

Shall I still press for the provisional concession to the Commercial Cable Company, which, if British withdrawal of opposition is limited to the Western Union, continues blocked? Instructions are desired.

Dearing

811.7353b W 52/190

The General Attorney for the Western Union Telegraph Company (Francis R. Stark) to the Assistant Secretary of State (Harrison)

NEW YORK, December 22, 1923.
[Received December 24.]

DEAR MR. HARRISON: I have received this morning a copy of the agreement recently signed in London between Mr. Carlton, Sir John
Pender, and the representative of the Italian Company, and I enclose a copy herewith for your information and that of the Department. You will observe that the English Company agrees to "raise no objection to the grant by the Portuguese Government to the American Company of the right to land at the Azores the cables in respect of which the American Company has already applied for landing permits."

Sincerely,

FRANCIS R. STARK

[Enclosure]

Agreement between The Western Telegraph Company, Ltd., the Compagnia Italiana dei Cavi Telegrafici Sottomarini, and The Western Union Telegraph Company, Signed December 10, 1923

AN AGREEMENT made this tenth day of December One thousand nine hundred an twenty-three between The Western Telegraph Company Limited of London (hereinafter called "the English Company") of the first part The Compagnia Italiana dei Cavi Telegrafici Sottomarini of Rome (hereinafter called "the Italian Company") of the second part and The Western Union Telegraph Company of New York (hereinafter called "the American Company") of the third part.

WHEREAS the English Company in association with other English Companies operates a system (hereinafter called "the English System") of submarine telegraph cables connecting Great Britain and the Continent of Europe with South America via the Azores.

AND WHEREAS the Italian Company under concession from the Italian Government with the benefit of certain guarantees and privileges proposes to lay and operate first a submarine telegraph cable connecting Fiumicino on the Coast of Italy with the Azores touching at Malaga on the Coast of Spain (hereinafter referred to as "the Italian Azores Cable") and secondly a submarine telegraph cable connecting Malaga with the coast of South America thus connecting Fiumicino with South America the cable or cables effecting such last mentioned connection being hereinafter referred to as "the Italian Direct Cable."

AND WHEREAS the American Company proposes to lay and operate a submarine telegraph cable between the Azores and North America thereby facilitating telegraphic communication between Italy and North America.

AND WHEREAS the American Company is not concerned in Mediterranean South American traffic to be carried by the Italian Direct Cable.
AND WHEREAS the English Company is not concerned in Italian North American traffic to be carried by the Italian Azores Cable and is only interested in that cable insofar as it may affect traffic between the Mediterranean and South America.

AND WHEREAS it is expedient that the traffic relations between the Companies should be regulated in manner hereinafter mentioned.

NOW IT IS HEREBY MUTUALLY AGREED as follows:—

1. As and from the opening for public traffic of the Italian Azores Cable all messages handed to the Italian Company at the terminus or at any point on the Italian Azores Cable to be transmitted to any place in South America and not being directed by the senders to be transmitted by any other named route (hereinafter referred to as "unrouted South American traffic") shall until the opening for public traffic of the Italian Direct Cable be handed by the Italian Company at the Azores or other point to be agreed for transmission to destination by the English System. The Italian Company to receive out of the total cable rates in respect of such messages the same net sum per word passing over the Italian Azores Cable as it would have received if such message had been a message passing over the said cable and destined for or originating in New York City at the rates at present in force between Italy and New York. In the event of the interruption of either the Fiumicino-Malaga section or the Malaga Azores section of the Italian Azores Cable the sum per word payable to the Italian Company in respect of such messages to be proportionately reduced according to cable mileage and further if both such sections be interrupted or unable to carry the traffic Mediterranean South American traffic shall be handed to the English System at points to be agreed upon.

2. If at any time after having been opened for public traffic the Italian Direct Cable shall be interrupted or unable to carry the traffic the Italian Company shall for a period of ten years dating from the opening of the Italian Direct Cable hand all unrouted South American traffic to the English Company at the Azores or other point to be agreed. The amount to be received by the Italian Company in respect of such messages shall be agreed between the English Company and the Italian Company or in default of agreement shall be decided by arbitration in accordance with the provisions of Clause 7 hereof.

3. The Italian Company will not directly or indirectly recommend suggest or influence the routing by senders of messages of South American origin or destination by any route other than that of the English System during any period in which pursuant to this Agreement unrouted South America traffic is to be handed to the English System at the Azores or other agreed point.
4. The Italian Company agrees in principle to a participation by the English Company in the capital to be invested by the Italian Company in that part of the Italian Company’s proposed cables which lies between Fiumicino and Malaga the terms and conditions of such participation to be arranged to the mutual satisfaction of the Italian Company and the English Company with the approval so far as necessary of the Italian Government. The Italian Company undertakes that any funds so to be provided by the English Company shall be exclusively devoted towards meeting the cost of manufacturing and laying the cable from Fiumicino to Malaga.

5. The American Company has agreed to subscribe for a part of an issue of Debentures to be issued by the Italian Company and the Italian Company undertake that any funds so to be provided by the American Company shall be exclusively devoted towards meeting the cost of manufacturing and laying the cable from Malaga to the Azores.

6. The English Company will in consideration of the foregoing engagements raise no objection to the grant by the Portuguese Government to the American Company of the right to land at the Azores the cables in respect of which the American Company has already applied for landing permits.

7. This Agreement shall be read and construed in accordance with the principles of the law of Great Britain and in the event of any difference arising in respect of the construction of this Agreement or the rights hereunder of any of the parties hereto such difference shall be referred to the arbitrament of a single arbitrator under the provisions of the British Arbitration Act or any statutory amendment thereof such single arbitrator to be appointed by Agreement between the parties between whom the difference arises and failing agreement by the English Attorney General for the time being for all of which purposes the parties hereto submit to the jurisdiction of the Courts of England.

In witness whereof the Companies parties hereto represented respectively by their duly authorised officers have hereunto set their hands the day and year first above written.

For The Western Telegraph Company Limited,

J. Denison Pender,
Chairman.

For Compagnia Italiana dei Cavi Telegrafici Sottomarini,

Richard T. Durrant,
Attorney for the Company.

For The Western Union Telegraph Company,

S. J. Goddard,
Vice President.
The Secretary of State to the Minister in Portugal (Dearing)

[Paraphrase]

WASHINGTON, December 26, 1923—3 p.m.

46. Your telegram 86 of December 19. Your first paragraph. The Department is gratified that British Minister to Portugal has been instructed to withdraw his opposition to the application of the Western Union. The British Government, however, has not replied to our last note protesting against its attitude. The Department has not changed its attitude as presented in its correspondence with the British Government.

Second paragraph of your telegram. It is Department’s understanding that the Commercial Cable Company will continue its present efforts to have the 1913 concession revived. The Department’s assistance has not been asked by the company. If present efforts fail, however, it is presumed that the company would ask the assistance of the Department in an effort to secure the direct provisional concession.

As you will remember, both American companies asked for assistance from the Department in obtaining direct concessions. Later the Commercial Cable Company tried to meet its needs by a duplication of cables under the 1899 concession and obtained Sir John Pender’s aid in its present effort to have the 1913 concession revived. Our telegram 18, May 21, 6 p.m., advised you of the Department’s attitude. Before the Western Union made its June offer to Pender it asked whether the Department objected. In replying, through the Embassy in London, the Department stated that it would not offer objections to the proposed agreement; that it had been the wish of the Department to obtain for the American cable companies a position in the Azores no less favorable than the British companies enjoyed, but that if it was the wish of American companies to accept less they were free to do so. In that case, however, they must assume responsibility for their actions and take the consequences.

It is presumed that withdrawal of British opposition will lead to favorable action soon with respect to the Western Union’s direct concession. The Commercial Cable Company has not asked the Department to aid it in having the 1913 concession revived.

It would seem wise under these circumstances for the Legation to take no action regarding the application of either company unless

*Not printed.*
the company requests it and in that case only after consideration by the Department and instructions from it.

The above is strictly confidential for your guidance.

Hughes

811.7853b W 52/200 : Telegram

The Minister in Portugal (Dearing) to the Secretary of State

Lisbon, January 24, 1924—5 p.m.

[Received 8:20 p.m.]

6. Chamber of Deputies has just approved finally Western Union contract. Report by mail. Embassies London and Rome informed. Please inform Newcomb Carlton in reply his letter 10th to me.

Dearing

DISPUTE WITH THE BRITISH GOVERNMENT OVER WITHDRAWAL OF RECOGNITION OF THE AMERICAN CONSULAR OFFICERS AT NEWCASTLE-ON-TYNE.*

125.655/55a

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

No. 812

Washington, February 12, 1923.

Sir: You are requested to deliver to Lord Curzon a note in the following sense, concerning the case of Consul Slater and Vice Consul Brooks whose exequatur and recognition, respectively, were canceled by the British Government:

"On behalf of my Government, I have the honor to inform Your Lordship of the receipt of Your Lordship's note of December 27, 1922, in which you state the decision of the British Government with regard to the cancellation of the exequatur and recognition, respectively, of Mr. Slater and Mr. Brooks, Consul and Vice Consul at Newcastle-on-Tyne.

"In the circumstances, I am instructed to inform Your Lordship that orders have been issued not to reopen the Consulate and to dispose of the lease of the Consular premises.

"May I call once more to your attention the fact that a thorough investigation, of which the British Government has been fully informed, was made of this case by officers of my Government and that the evidence secured convinced my Government that the charges preferred cannot be substantiated.

"My Government desires me, furthermore, once again to point out that although it has never questioned the right of the British Government to cancel the exequatur of an American Consul on the ground

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1 Ibid., p. 404.
that he is *persona non grata*, it considers that when specific charges are advanced it is compelled to make the most thorough investigation in order to clear or to discipline the alleged offender. My Government must, moreover, call in question the accuracy of the parallel which Your Lordship found in the cancellation in 1856 by the Government of the United States of the exequatur of the British Consuls at New York, Philadelphia and Cincinnati. The evidence against these Consuls was developed in judicial proceedings which showed them to be guilty of violating the laws and the sovereign rights of the United States."

I am [etc.]

CHARLES E. HUGHES

125.655/66: Telegram

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

**LONDON, March 2, 1923—4 p.m.**

[Received 8:11 p.m.]

63. Your 43, February 28, 7 p.m. Note from the Foreign Office acknowledging receipt of our note of February 28th on Newcastle case states:

"With regard paragraph 3, I venture to observe that Your Excellency is under a misapprehension in stating that His Majesty's Government 'has been fully informed' of the thorough investigation made by officers of the United States Government. Such is not the case. A member of my Department was informed verbally in October last that such an investigation had been held and the statement was made in Your Excellency's note number 446 of November 9th last that two separate inquiries into the facts were instituted by the United States Government. His Majesty's Government were not informed of the proceedings in the inquiries, nor shown the evidence submitted, although His Majesty's Government had furnished their evidence to the United States Government in my note to Your Excellency of August 28th last."

As regards the accuracy of the parallel with the cancellation of the exequatur of certain British consuls in the United States in 1856, I venture to refer Your Excellency to the quotation by the legal adviser to the [President] on that occasion from the commercial convention of July [3], 1815, Article IV, of which provides, 'In case of illegal or improper conduct towards the laws or government of the country to which he is sent, such consul may either be punished according to law, if the laws reach the case, or be sent back,

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*See supra.*

*See telegram no. 348, Nov. 8, 1922, to the Ambassador in Great Britain. Foreign Relations, 1922, vol. ii, p. 400.*

*Not printed.*

the offended government assigning to the other the reasons for the same.' Reference was made to Mr. Cushing's advice to the President in my note above mentioned.”

Harvey

125.655/31: Telegram

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

WASHINGTON, March 9, 1923—6 p.m.

47. Your 69, March 7, 3 p.m.  
Department yesterday gave to press for release today and so advised British Embassy, Department's notes of August 11, November 8, 9, February 28, also text of telegram No. 292, September 18, 7 p.m., substance of which according to your telegram No. 482 of October 25, 2 p.m. was conveyed by you to Foreign Office.

As a preface to the publication of the notes the following explanatory statement was made.

"The Department of State has taken the position that since the British Government has charged the American Consular Officers at Newcastle with improper conduct in the performance of their Consular functions, and has allowed these charges to become public, it was incumbent upon the Department to investigate carefully the charges, in order to determine whether or not the officers were guilty and, if guilty, the extent of the discipline required. With a view to reaching a conclusion, a very careful investigation of all the facts was at once undertaken, with the result that the Department reached the conclusion that the charges against the officers had not been substantiated. In these circumstances, the Department saw no alternative but frankly to advise the British Government of the result of its investigation and to express the hope that the charges could be withdrawn.

"Article 4, of the Convention of Commerce and Navigation of 1815 with Great Britain provides that, "in case of illegal or improper conduct towards the laws or Government of the country to which he (a Consul) is sent, such Consul may either be punished according to law, if the laws will reach the case, or be sent back, the offended Government assigning to the other the reasons for the same'.

"The position of the Department in the present case is that, in its opinion, no illegal or improper conduct towards the laws or government of Great Britain has been committed and that the only evidence of guilt which the British Government has produced in support of its charges consisted of three unsigned statements which upon examination by the Department were not regarded as all sufficient."

1 Senate Executive Document No. 35, 34th Cong., 1st sess., pp. 68-80.
2 Not printed.
4 See Department's telegram no. 812, Feb. 12, 1923, ante, p. 306.
6 Not printed.
Department also made public circular instruction No. 865 of December 30 to consular officers, transmitted to you in Dept. No. 786 Jan. 25, together with following statement:

"In the course of the negotiations in regard to the action of the British Government in revoking the recognition of the Consul and Vice Consul at Newcastle, the suggestion was made that as a means of avoiding misunderstandings in the future in respect to the aid which consular officers of the United States and Great Britain should give to the merchant marine of their respective countries the two Governments issue identical instructions to their consular officers. The British Government in its note of December 27, 1922, made the promulgation of identical instructions one of the conditions in the settlement of the Newcastle incident. The Department of State held that the question of identical instructions was a separate and distinct matter having no bearing on the settlement of the Newcastle incident, which settlement should be determined on the basis of truth of the charges preferred by the British Government against the two consular officers. It, therefore, declined to agree to a proposal for the issuance of identical instructions but indicated its willingness, after the Newcastle incident should have been disposed of, to discuss with Great Britain the conclusion of a consular convention defining the rights and duties of consular officers of the two countries.

"With a view to making clear the duties of consular officers of the United States in respect to American shipping, including Government owned vessels, and avoiding any occasion for misunderstanding in regard to the position of the United States with respect to the activities of consular officers in behalf of American shipping, a general instruction was issued to all American consular officers and in conformity with the frank spirit in which the discussions in regard to the Newcastle incident has been carried on with the British Government, a copy of that instruction was promptly handed to the British Embassy in Washington."

Above is sent you for your information only.

Hughes

123.655/89: Telegram

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

LONDON, June 7, 1923—3 p.m.

[Received 4:34 p.m.]

211. The city council of Newcastle-on-Tyne last night adopted a resolution urging the Government to come to a settlement with the United States that would secure the reopening of the American consulate there.

Wheeler

11 Not printed.
125.655/90: Telegram

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

LONDON, June 14, 1923—4 p.m.

[Received June 14—3:12 p.m.]

224. My telegram no. 211, June 7, 3 p.m. In the House of Commons yesterday, in response to the inquiry of a Labor member, whether he was aware of the resolution recently passed by the Newcastle city council as to the reopening of the American consulate at that port and whether he could reopen negotiations to arrive at a satisfactory solution, the Under Secretary to the Foreign Office said:

“...The Secretary of State has received the resolution referred to and is not only aware of but sympathizes with the sentiments which have inspired it. His Majesty's Government are fully prepared to reopen negotiations on this subject as soon as the United States Government show any sign of desiring to resume them.”

Wheeler

125.655/95: Telegram

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

[Paraphrase]

LONDON, July 27, 1923—5 p.m.

[Received July 27—2:55 p.m.]

323. In a conversation today Sperling suggested the following method of settling the Newcastle-on-Tyne case: a note to be written by the Foreign Office withdrawing the charges against Slater and Brooks unconditionally and without prejudice on account of insufficient evidence; the American Government to announce on the same day, without referring to the withdrawal of the charges, that it will reopen the consulate.

Sperling says that he feels he can guarantee the acceptance by the Foreign Office of this solution.

Wheeler

125.655/98: Telegram

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

[Paraphrase]

LONDON, July 28, 1923—1 p.m.

[Received July 28—9:15 a.m.]

324. My 323, July 27, 5 p.m. It is Sperling’s suggestion that the announcement by the American Government take the form of a note from our London Embassy to the British Foreign Office.

Wheeler

R. A. C. Sperling, head of the American and African Department of the British Foreign Office.
The Secretary of State to the Chargé in Great Britain (Wheeler)

[Paraphrase]

WASHINGTON, July 30, 1923—5 p.m.


The Department is willing to accept Sperling's proposal, provided the note from the Foreign Office withdraws without qualification the charges against Consul Slater and Vice Consul Brooks on the ground that they are not sustained by the evidence, and also provided that the publication by the Department of the Foreign Office note withdrawing the charges is not precluded by the publication of the note which it is proposed that the Embassy should send to the Foreign Office announcing that this Government intends to reopen the Newcastle consulate and presumably asking that a consul and vice consul be recognized. There should be a prior agreement as to the text of the two notes and the simultaneous publication of the notes should also be agreed upon.

Hughes

125.055/97

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

No. 2839

LONDON, September 7, 1923.

[Received September 18.]

Sir: With reference to my telegram No. 338 of August 1st, 5 p.m., in re a proposed solution of the Newcastle case, I have the honor to inform you that it is now suggested that the difference be settled by a simultaneous exchange of notes between the Foreign Office and this Embassy as follows:

From the Foreign Office to the Embassy:

Sir, I have the honour to inform you that after further consideration His Majesty's Government are prepared not to insist upon the charge of exceeding their Consular authority, laid about a year ago against the then American Consul and Vice-Consul at Newcastle-on-Tyne, and it has therefore been recalled.

I have the honour to be, with high consideration, Sir,

Your obedient servant,

(Signed) . . . . . . .

From the Embassy to the Foreign Office:

My Lord: I am instructed to inform your Lordship that it is the intention of my Government to reopen the Consulate at Newcastle-

*Not printed.
on-Tyne, and I have the honor to transmit herewith the Commissions of Messrs., of American citizens, as Consul and Vice-Consul, respectively, of the United States at that port, and to request Your Lordship to be good enough to take the steps necessary for their recognition in those capacities in case the appointments be found agreeable to His Majesty's Government.

I have the honor to be, with the highest consideration,
Your Lordship's obedient servant,

(Signed) 

This exchange of notes to be simultaneously published on both sides. It is stated (though this would not be formally communicated) that if the matter is settled on this basis, while it is understood that our present nominees shall be other than Slater and Brooks, their record will be considered clean and that it is "most unlikely" that any objection based on this closed incident would be raised to their service in future in any other part of the British Empire. In this connection it is further stated that in case such objection should be laid, the Foreign Office would use its best efforts to bring about its withdrawal.

There has of course been no undertaking given on either side, but I am privately assured that if this arrangement be acceptable to you, the Foreign Office will accept it also.

I have [etc.]

POST WHEELER

125.655/07: Telegram

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

[Paraphrase]

WASHINGTON, October 16, 1923—4 p.m.

286. Your despatch 2839 of September 7 regarding Newcastle-on-Tyne case.

With the history of the case in mind, the Department has carefully considered the suggestion of an exchange of notes and is not inclined to offer technical objections to the language of the notes as proposed. You may so inform the Foreign Office.

You may also call the attention of the Foreign Office to the statement in the British note of August 28, 1922, that it was the feeling of the British Government that the cases of which they happened to have information indicated a practice which on investigation might prove to be rather widespread and which was an unfair discrimination against British shipping interests. This statement called in

15 Not printed.
question the conduct of the whole American consular service. The
Department knew that this charge was baseless but it made it imper-
avative that the specific charges against Consul Slater and Vice Consul
Brooks be carefully investigated and that the scope of the investi-
gation should be broadened. If any proof were necessary, the result
of this investigation proved to the satisfaction of the Department
that there were no instances in which the irregular practices sug-
gested were resorted to by members of our consular service.

It is the Department's belief that the only way to remove the un-
fortunate impression which Lord Curzon's charges made on the pub-
lic mind would be the recognition of the appointment of Slater and
Brooks to stations in the British Empire. In case the Foreign
Office will give advance assurance that it will recognize the appoint-
ment of Consul Slater at Fort William and Port Arthur and of
Vice Consul Brooks at Belfast, the Department is willing to accept
the suggestion for the exchange of notes the texts of which are given
in your despatch. When the recognition of the appointments men-
tioned above is arranged with the Foreign Office you may proceed
with the exchange of notes and also request recognition for Charles
Roy Nasmith as the new American consul at Newcastle-on-Tyne.

Hughes

711.410/45: Telegram

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

[Extract—Paraphrase]

LONDON, November 3, 1923—2 p.m.
[Received 6:22 p.m.]

485. Following from Ambassador Harvey at Southampton.

"... Curzon was not available at the time I left London but
I signed a letter \(^{15a}\) setting forth your proposals respecting Newcastle
consulate, which was delivered to the Foreign Office. ... Unless
they change their minds the result in the case will be satisfactory to
you. Harvey."

Wheeler

125.655/107

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

No. 3086

LONDON, November 13, 1923.
[Received November 24.]

Sir: My despatch No. 3038 of November 5, 1923, transmitted a
copy of the Ambassador's private and confidential letter of No-

\(^{15a}\) Not printed.

145231—vol. II—38—28
November 2nd to Lord Curzon respecting the suggested settlement of the Newcastle case.

On November 5th Mr. Sperling in a conversation at the Foreign Office told me that, much to his disappointment Lord Curzon appeared to have receded from the position he took in his last talk with Mr. Harvey and seemed now unwilling to agree to the appointment of Mr. Vice-Counsel Brooks to Belfast at any time whatsoever, his idea being, as Mr. Sperling expressed it, that "he should be sent, if anywhere in the British Empire, to some inland port, rather than to a large port with a shipping activity similar to that of Newcastle".

I pointed out to Mr. Sperling that such a limitation in Mr. Brooks' case, so far from tending to remove the unfortunate impression made on the public mind by the allegation given currency a year ago reflecting on our whole Consular service, would appear to qualify the recall of the specific charge against him as set forth in the Foreign Office note that is a part of the suggested exchange. He said he quite realized this and for his own part heartily hoped that Lord Curzon's reply to the Ambassador's confidential letter above referred to might make possible the settlement on the lines laid down, although his mood had changed and he feared he would not waive the point.

In view of the strong British commercial and shipping pressure that has been continually exerted here upon the Foreign Office for the adjustment of this case, and which is not likely to lessen, I am of the opinion that lacking further recession on our part Lord Curzon must eventually yield.

I have [etc.]

POST WHEELER

125.655/112a : Telegram

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

WASHINGTON, December 13, 1923—5 p.m.

380. For your information.

Following is pertinent part of Associated Press despatch from Newcastle, dated December 13, 1923:

"Fifteen months have elapsed since the Consulate shut its doors. Commercial delegations have made frequent trips to London to urge the Foreign Office and the American Embassy to hasten the re-opening. It is understood that the next move rests with Washington.

19 Neither printed.
The only remaining condition for the re-establishment of the Consulate is believed to be the assignment of Consul Russell M. Brooks to a point within the British Empire other than Belfast, where it is understood the United States desires him to go. Ostensibly, Foreign Secretary Curzon takes the view that Belfast is too near Mr. Brooks old post, and to the United Kingdom. The deadlock between the two Governments is causing the loss of hundreds of thousands of dollars weekly to Newcastle business houses.\textsuperscript{17}

The Department to-day in reply to a press inquiry said that this Government has always insisted that the charges made by the British Government against Consul Slater and Vice Consul Brooks, formerly at Newcastle-on-Tyne, were unfounded and that action should be taken to remove the stigma placed upon these two American officials. It is impossible to reopen the Consulate unless this is done and up to the present time the British Government has not taken appropriate action. If it is taken the two officials will undoubtedly be appointed to posts within the British Empire where their services are needed and it is not anticipated that the British Government would have any objection to such appointments. It is expected that the United States will then reopen the Consulate at Newcastle-on-Tyne.

 Hughes

AGREEMENT BETWEEN THE UNITED STATES AND GREAT BRITAIN, SIGNED JUNE 23, 1923, FURTHER EXTENDING THE DURATION OF THE ARBITRATION CONVENTION OF APRIL 4, 1908\textsuperscript{17}

Treaty Series No. 674

Agreement between the United States of America and Great Britain, Signed at Washington, June 23, 1923\textsuperscript{18}

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of extending for another five years the period during which the Arbitration Convention concluded between them on April 4, 1908, extended by the Agreement concluded between the two Governments on May 31, 1913,\textsuperscript{19} and further extended by the Agreement concluded between the two Governments on June 3, 1918,\textsuperscript{20} shall remain in force, have respectively authorized the undersigned, to wit: Charles Evans Hughes, Secretary of State of the United States; and Sir Auckland Geddes, G. C. M. G., K. C. B., His Britannic Majesty’s Ambassador

\textsuperscript{17} For text of convention of 1908, see Foreign Relations, 1908, p. 382.

\textsuperscript{18} Ratification advised by the Senate, Dec. 18, 1923; ratified by the President, Dec. 29; ratified by Great Britain, Aug. 1; ratifications exchanged at Washington, Dec. 29; proclaimed by the President, Dec. 29.

\textsuperscript{19} For Foreign Relations, 1914, p. 303.

\textsuperscript{20} Ibid., 1918, p. 431.
Extraordinary and Plenipotentiary to the United States, to conclude the following Articles:

**ARTICLE I**

The Convention of Arbitration of April 4, 1908, between the Government of the United States of America and the Government of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, the duration of which by Article IV thereof was fixed at a period of five years from the date of the exchange of ratifications of the said Convention on June 4, 1908, which period by the Agreement of May 31, 1918, between the two Governments was extended for five years from June 4, 1918, and was extended by the Agreement between them of June 3, 1918, for the further period of five years from June 4, 1918, is hereby extended and continued in force for the further period of five years from June 4, 1923.

**ARTICLE II**

The present Agreement shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty, and it shall become effective upon the date of the exchange of ratifications which shall take place at Washington as soon as possible.

Done in duplicate, this twenty-third day of June, one thousand nine hundred and twenty-three.

[seal] Charles Evans Hughes
[seal] A. C. Geddes

711.4112/161

The Secretary of State to the British Ambassador (Geddes)

Washington, June 23, 1923.

Excellency: In connection with the signing today of an agreement for the renewal of the Convention of Arbitration concluded between the United States and Great Britain, April 4, 1908, and renewed from time to time, I have the honor, in pursuance of our informal conversations, to state the following understanding which I shall be glad to have you confirm on behalf of your Government.

On February 24 last the President proposed to the Senate that it consent under certain stated conditions to the adhesion by the United States to the Protocol of December 16, 1920, under which the Permanent Court of International Justice has been created at The
Hague. As the Senate does not convene in its regular session until December next, action upon this proposal will necessarily be delayed. In the event that the Senate gives its assent to the proposal, I understand that the British Government will not be averse to considering a modification of the Convention of Arbitration which we are renewing, or the making of a separate agreement, providing for the reference of disputes mentioned in the Convention to the Permanent Court of International Justice.

Accept [etc.]  

CHARLES E. HUGHES

711.4112/163

The British Ambassador (Geddes) to the Secretary of State

No. 523  

WASHINGTON, June 23, 1923.

SIR: I have the honour to acknowledge the receipt of your note of today's date in which you were so good as to inform me, in connection with the renewal of the Arbitration Convention of April 4th, 1908, between Great Britain and the United States, that the President of the United States had proposed to the Senate the adherence of the United States, under certain conditions, to the Protocol of December 16th, 1920, creating the Permanent Court of International Justice at the Hague, and that, if the Senate assents to this proposal, you understand that His Britannic Majesty's Government would be prepared to consider the conclusion of an agreement, providing for the reference to the Permanent Court of International Justice of disputes mentioned in the Convention.

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs I have the honour to confirm your understanding of His Majesty's Government's attitude on this point and to state that if the Senate approve the President's proposal His Majesty's Government will be prepared to consider with the United States Government the conclusion of an agreement for the reference to the Permanent Court of International Justice of disputes mentioned in the Arbitration Convention.

I have [etc.]  

A. C. GEDDES