

GREAT BRITAIN

NEGOTIATIONS TO ENSURE BY TREATY THE RIGHTS OF THE UNITED STATES IN CENTRAL AFRICAN TERRITORIES UNDER BRITISH MANDATE¹

800.01 M 31/186 : Telegram

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

WASHINGTON, February 16, 1924—7 p. m.

39. Your despatch 3181, November 30, 1923,² regarding mandates.

You will acknowledge appropriately Lord Curzon's note of November 26, 1923,³ and reply as follows:

"The Government of the United States understands that, except as to the text of the preambles, there is now complete agreement between it and His Majesty's Government with respect to the terms of the proposed 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.

As explained in its previous notes on this subject, the Government of the United States, in proposing the text of the preambles in question, followed substantially the same form as has been accepted in the treaties with Belgium⁴ and France⁵ covering territories in tropical Africa under mandate to those Governments and in the treaty with Japan⁶ covering the former German territories in the North Pacific Ocean under mandate to that Government, believing it to be desirable in the interest of uniformity to incorporate in the treaties proposed for negotiation between Great Britain and the United States substantially the same preambles as those incorporated in the other treaties mentioned above.

The Government of the United States adheres to the position it has heretofore taken, namely, that the right to dispose of the overseas possessions of Germany was acquired only through the victory of the Allied and Associated Powers, and that there can be no valid or effective disposition of these territories without the assent of the United States as one of the participants in that victory. This position of the United States is not opposed, but is confirmed, by the Treaty of Versailles,⁷ by which Germany renounces in favor of the Principal Allied and Associated Powers, of which the United States was one, all her rights and titles over her overseas possessions. It

¹ For previous correspondence, see *Foreign Relations*, 1923, vol. II, pp. 228 ff.

² *Ibid.*, p. 230.

³ *Ibid.*

⁴ *Ibid.*, vol. I, p. 433.

⁵ *Ibid.*, vol. II, p. 8.

⁶ *Ibid.*, 1922, vol. II, p. 600.

⁷ Malloy, *Treaties*, 1910-1923, vol. III, p. 3329.

may further be observed that in providing (Article 440) that the Treaty when ratified by Germany and three of the Principal Allied and Associated Powers should come into force between the ratifying Powers, it was manifestly not the intention that on such ratification by three Powers there should still remain in Germany any undivided share of right, title or sovereignty in the overseas possessions described. It would seem to be clear that the renunciation set forth in Article 119 of the Treaty was not intended to be divisible. In consequence, had the Treaty come into force on the ratification by only three of the Principal Allied and Associated Powers, the renunciation would still have been completely effective, disposing of the entire interest of Germany, and Article 119 would necessarily have thus become effective according to its express terms, that is, in favor of the five Principal Allied and Associated Powers and not otherwise. The three ratifying Powers could have claimed no greater right or title than the Treaty gave and no exclusive right or title which the Treaty by its terms did not confer. There was the same result on the actual ratification of the Treaty and the failure of the United States to ratify did not qualify the terms of Germany's renunciation. Any different terms would necessarily require the agreement of the parties concerned, including Germany herself, and no such agreement was made. Subsequently, it may be added, Germany by her treaty with the United States⁸ confirmed to the United States the rights and benefits accruing to it under Article 119 of the Treaty of Versailles. Thus, it must be insisted that both by virtue of the participation of the United States in the common victory and by the explicit terms of Germany's renunciation of her overseas possessions, no valid disposition of the territories in question can be made without the consent of the United States, and, as has already been pointed out, this consent can only be granted through a duly negotiated treaty ratified with the advice and consent of the Senate of the United States. The Government of the United States cannot depart from this fundamental position and consequently is unable to admit that four of the five Principal Allied and Associated Powers can accord to themselves or to others any privileged position or any advantages not equally accorded to the United States in the former German overseas possessions title and right to which, as a result of the common victory, were renounced by Germany in favor of the five Principal Allied and Associated Powers.

Although, as stated above, the Government of the United States believes that it would be desirable in the interest of uniformity if the preambles of the treaties which it is negotiating with His Majesty's Government could follow substantially the form of the preambles accepted by the Governments of Belgium, France and Japan in the treaties concluded between those countries and the United States, nevertheless, the Government of the United States, while it maintains unqualifiedly the position it has taken with regard to its rights in mandated territories, is not disposed to insist unduly upon the mere form of the preambles heretofore suggested for incorporation in the pending treaties with Great Britain. Ac-

⁸ *Foreign Relations*, 1921, vol. II, p. 29.

cordingly, the Government of the United States submits for the consideration of His Majesty's Government the following alternative form of preamble which, it is hoped, satisfactorily meets the objections of the latter Government.

'WHEREAS His Britannic Majesty has accepted a mandate for the administration of part of the former colony of BLANK, the terms of which have been defined by the Council of the League of Nations as follows: (Insert terms of mandate except for preamble.)

And,

WHEREAS the Government of the United States of America and the Government of His Britannic Majesty are desirous of reaching a definite understanding as to the rights of their respective Governments and of their nationals in the said territory:

The President of the United States of America and His Britannic Majesty have decided to conclude a convention to this effect and have nominated as their plenipotentiaries et cetera.'

The Government of the United States is willing to proceed immediately to the signature of these proposed treaties with the preambles modified as suggested herein."

Department would be glad to have you proceed as soon as possible to signature of these treaties and will be prepared to telegraph you the necessary full powers when a favorable response is received from the Foreign Office. Senate Committee on Foreign Relations has reported favorably two French B mandate treaties and Belgian mandate treaty has been sent to Senate.

HUGHES

800.01 M 31/201

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

No. 623

LONDON, July 31, 1924.

[Received August 11.]

SIR: I have the honor to enclose a copy, in triplicate, of a note dated July 29, 1924, from the Foreign Office regarding the proposed treaties affecting the former German territories in Central Africa (B Mandates)....

I have [etc.]

For the Ambassador:

F. A. STERLING

Counselor of Embassy

[Enclosure]

*The British Secretary of State for Foreign Affairs (MacDonald)
to the American Ambassador (Kellogg)*

No. W5896/23/98

LONDON, July 29, 1924.

YOUR EXCELLENCY: You recently enquired whether His Majesty's Government were in a position to reply to Your Excellency's note

of the 18th February last⁹ regarding the proposed 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, and to proceed to the conclusion of those treaties.

2. I have the honor to state that His Majesty's Government would prefer to postpone their final answer to the note in question until a more advanced stage has been reached in the negotiation of the treaty relating to the British mandate in Palestine. Their views on the latest proposals of the United States Government in regard to that matter were communicated to you in my note of the 17th instant.¹⁰

I have [etc.]

(For the Secretary of State),

G. H. VILLIERS

800.01 M 31/204 : Telegram

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

LONDON, December 30, 1924—3 p. m.

[Received December 30—1:39 p. m.]

541. A note from the Foreign Office states that the British Government are now prepared to conclude with the United States Government treaties in the terms of the draft enclosed in Mr. Harvey's note March 24, 1923, concerning the former German territories in Central Africa now administered under mandate by His Majesty's Government; and that the preamble suggested in my note of February 18 last is acceptable to the British Government subject to the substitution in the case of the Cameroons and Togoland of the word "protectorate" for "colony," the former being the designation given to those territories by the German Government at the outbreak of the war. The note concludes by stating that I will be informed as soon as the necessary documents are ready for signature.

Mr. Harvey's note above referred to was based on your telegram 61, March 21, 5 p. m., 1923.¹¹ My note of February 18th above referred to was based on your telegram 39, February 16, 7 p. m., 1924. Please instruct.

KELLOGG

⁹ See telegram no. 39, Feb. 16, to the Ambassador in Great Britain, p. 193.

¹⁰ *Post*, p. 208.

¹¹ *Foreign Relations*, 1923, vol. II, p. 228.

**EFFORTS TO MAINTAIN AMERICAN CAPITULATORY RIGHTS IN
PALESTINE PENDING AGREEMENT BY TREATY REGARDING THE
BRITISH MANDATE¹²**

367n.1121 Hanovich, Israel/2: Telegram

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

WASHINGTON, April 15, 1924—2 p. m.

99. Following telegram received from Consul Jerusalem:

"April 11, 10 a. m. Referring to Department's telegram of November 2, 2 p. m.¹³ Israel Hanovich, American citizen, has been fined ten pounds sterling by a court at Jaffa and imprisoned notwithstanding protest and the demand that he be given into our possession for trial. Local courts insist that they have same jurisdiction over American citizen as natives, and resist all efforts of the Consulate to assume jurisdiction in civil or criminal proceedings brought against American citizens. Unless necessary representations come from Foreign Office, London, to the Government of Palestine, there is no prospect of change in the situation on the part of judicial authorities. Two native judges always overrule British judge on questions concerning American claims to capitulations and the agreement reached between the Consulate and the Legal Secretary is ignored by the courts and not enforced by this government. Heizer."

In this connection see Department's written instruction 977, October 4, 1923¹⁴ and British Foreign Office reply of November 29, 1923 (your written despatch 3180, November 30, 1923).¹⁵

Please bring to attention of Foreign Office substance of Heizer's telegram. With reference to Department's telegram 85, April 4, 4 p. m.,¹⁶ you may state to Foreign Office that Department hopes to take up correspondence with regard to Palestine Mandate Convention within a few days and that it trusts that pending the conclusion and ratification of such an agreement, measures will be taken to avoid raising an issue by the insistence of the local courts upon jurisdiction over American citizens.

In connection with reference in above telegram to two native judges always overruling British judge, Department would call your attention to assurances in British Foreign Office note of December 29, 1921, your written despatch 831, December 30, 1921,¹⁷ from which it was understood here that even after Palestine Convention

¹² Continued from *Foreign Relations*, 1923, vol. II, pp. 218-228.

¹³ Not printed.

¹⁴ *Foreign Relations*, 1923, vol. II, p. 222.

¹⁵ *Ibid.*, p. 225.

¹⁶ Not printed.

¹⁷ *Foreign Relations*, 1921, vol. II, p. 115.

went into effect foreign nationals, including citizens of the United States, would have the right to be tried by a court with a majority of British judges except in trivial cases.

HUGHES

367n.1121 Hanovich, Israel/6 : Telegram

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

WASHINGTON, April 18, 1924—7 p. m.

104. Department's 99, April 15. Following telegram received from Consul Jerusalem:

"April 14, 8 a. m. Referring to my telegram of April 11, 10 a. m. Attorney General now declares the Government of Palestine, in accordance with instructions received from the Secretary of State, cannot admit the American Consulate has any longer jurisdiction over American citizens in Palestine, whether in cases civil or criminal. Department's instruction regarding course to be taken desired. Heizer."

Department desires you to make appropriate representations to the British Foreign Office in the sense outlined in Department's 99. Inform Department by telegraph of action taken and of attitude of Foreign Office.

HUGHES

367n.1121 Hanovich, Israel/12 : Telegram

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

LONDON, May 13, 1924—1 p. m.

[Received May 13—11:48 a. m.]

180. Your 99, April 15, 2 p. m. I have received a note from the Foreign Office of which the following are the pertinent portions:

"The information now received from Sir Herbert Samuel¹⁸ is to the following effect: Israel Hanovich, who resides at Telaviv, was convicted in his absence by a magistrate of contravening the town planning law and sentenced to a fine. In default of payment, the accused was imprisoned. Hanovich did not appear before the court to lodge opposition and did not appeal after judgment had been notified to him, nor did he ever raise the plea of United States citizenship. Subsequently, however, representations were received by the attorney general of the Palestine Administration from the United States consul, whereupon the attorney general informed the United States consul of the facts of the case and Israel Hanovich was immediately released."

¹⁸ British High Commissioner for Palestine.

The note concludes by expressing the pleasure of the Government in receiving the information from the Embassy that it is the intention of the American Government to resume negotiations immediately for the conclusion of a convention in regard to the Palestine mandate.

KELLOGG

367n.1121 Hanovich, Israel/14 : Telegram

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

JERUSALEM, May 21, 1924—10 a. m.

[Received May 21—9:23 a. m.]

Referring to Department's telegram May 19, 3 p. m.¹⁹ Hanovich released on bail. Court now pressing him to pay fine which he refuses reiterating at every step from the beginning his citizenship American and demanding to be heard in the Consular Court. May be imprisoned again unless he pays. Should a protest be made by me to the Government of Palestine in all cases heard in the courts locally versus American citizens who refuse to submit in writing to local jurisdiction?

HEIZER

367n.1121 Hanovich, Israel/15 : Telegram

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

WASHINGTON, May 24, 1924—3 p. m.

Your May 21, 10 a. m. Pending recognition of British mandate over Palestine protest should be made in any case where local courts assume jurisdiction over American citizens. If further action taken against Hanovich in other than Consular Court strong protest should be lodged and matter immediately reported to Department.²⁰

HUGHES

667n.003/15 : Telegram

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

JERUSALEM, August 19, 1924—11 a. m.

[Received 11:47 a. m.]

New customs duties amendment ordinance increasing considerably rate on imported articles published August 15th, and duty collected under new schedule from August 18th. Some instances of special

¹⁹ Not printed.

²⁰ The consul at Jerusalem reported in despatch no. 211, July 15, 1924, that Hanovich had not been required to pay the fine (file no. 367n. 1121 Hanovich, Israel/16).

interest are herewith: coffee 150 piastres; flour 17.5 piastres; vegetable fats 75 piastres; margarine 125 piastres per hundred kilograms; kerosene, [omission?] .6 piastres gallon; motor spirits 4 piastres gallon; Diesel solar crude oil 60 piastres ton; confectionery, jam, preserved fruit, 20 percent; wood for furniture 100 piastres cubic meter; sole leather Egyptian 130, other countries 200 piastres per hundred kilograms; matches 20 piastres gross of boxes of 10 thousand; pure alcohol and spirits, 60 piastres gallon; charcoal and anthracite 50 piastres; other coal 30 piastres ton; mother of pearl shells 8 percent; bicycles, motor cycles, trucks, carts, automobiles, tires, accessories, musical instruments, photographic apparatus, typewriters, all 15 percent; snuff 15 piastres; tobacco uncut 50 piastres, manufactured and cigarettes 60 piastres; cigars, chewing tobacco 65 piastres per kilogram. Cereals and building material about the same. Most other goods not mentioned 12 percent ad valorem plus 1 percent octroi.

HEIZER

667n.113/1: Telegram

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

WASHINGTON, September 2, 1924—4 p. m.

315. The American Consul at Jerusalem, under date of August 19, 1924, telegraphed the Department "New customs duties amendment ordinance increasing considerably rate on imported articles published August 15th, and duty collected under new schedule from August 18th".

As you are aware, this Government has consistently taken the position that pending the final determination of the status of the territories detached from the Ottoman Empire, and in the absence of the assent of the interested Powers to the suspension or modification of the rights derived from the capitulations, the authorities administering territories detached from the Ottoman Empire are bound by the obligations incident to the existence of the capitulatory regime. By virtue of the capitulations American citizens in Palestine are entitled to exemption from all taxes except such as are approved by this Government.

You should call the foregoing to the attention of the British Government and say that this Government would be pleased to receive an expression of the views of the British Government with respect to the situation in Palestine which has arisen as a result of the reported attempt to collect from American citizens an increased customs duty to which the assent of this Government had not been previously requested.

You may likewise inform the British Government that the Department has forwarded to you by mail a note to be communicated

to the British Government assenting, except as regards certain minor points, to the proposals made by the British Government in its note of July 17, 1924 enclosed with your despatch No. 606 of July 24, 1924.²¹ You may add that this Government confidently expects that it will be possible to sign the proposed Palestine Mandate convention at an early date. Repeat to American Consul Jerusalem for his information only.

HUGHES

367n.1141 Sk 5/2: Telegram

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

WASHINGTON, October 18, 1924—2 p. m.

365. American Consul Jerusalem reports that Messrs. Berlin and Pacowsky, Russian nationals who have opted for Palestinian nationality have brought suit against Philip Skora an American in the Magistrate's Court at Tel-Aviv, which has seized the bank account of Skora for a sufficient sum to meet the judgment. Consul protested to the Chief Secretary of the Government of Palestine who replied that the Palestinian Government had no power by administrative order to remove the attachment. The judgment in this case was handed down by a local court in disregard of the rights of the American Consular Court.

The Department desires you to bring this case to the attention of the Foreign Office and call attention to the position of this Government that, pending conclusion of the proposed agreement between Great Britain and the United States, with reference to Palestine, the capitulatory rights of the United States persist. This Government trusts that appropriate instructions in this matter will be issued to the officials in Palestine.

See Department's 99 April 15, 2 p. m. and 357 October 13, 7 p. m.²²
Report result of this action.

GREW

867n.01/410: Telegram

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

WASHINGTON, December 6, 1924—7 p. m.

Palestine Mandate Treaty was signed at London December 3d.²³
As treaty does not enter into effect until exchange of ratifications you

²¹ *Post*, p. 207.

²² Latter not printed.

²³ *Post*, p. 212.

should maintain, pending such exchange, the same position as heretofore with respect to rights and duties of Consulate. Embassy London is being instructed to forward copy of treaty direct to you.

HUGHES

667n.113/3 : Telegram

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

LONDON, December 11, 1924—4 p. m.

[Received December 11—2:23 p. m.]

516. The Foreign Office inquires whether in view of the signature of the Palestine mandate convention you now desire to pursue the questions raised concerning increased customs duty in Palestine and the attachment of the bank account of Skora; see your telegrams 315, September 2, 4 p. m. and 365, October 18, 2 p. m. The Foreign Office suggests that although the points raised are still under consideration by His Majesty's Government, their importance is no longer such as to warrant continuance of the correspondence.

KELLOGG

667n.113/3 : Telegram

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

WASHINGTON, December 17, 1924—4 p. m.

473. Your 516, December 11, 4 p. m.

1. This Government's position regarding the indispensability of its assent to any dues or taxes to be imposed upon Americans in Palestine prior to the coming into effect of the Mandate Convention has not been changed by the signature of that convention. Meanwhile the Department would, however, be disposed to give favorable consideration to any reasonable request of the Mandatory Power that the United States assent to the collection of increased dues or taxes from Americans in Palestine as from the date of the communication of its assent to the British Government. A similar procedure was followed with respect to a contemplated increase of customs dues in Syria shortly after signature of the Syrian mandate convention between the United States and France.

2. Inasmuch as the capitulatory rights of the United States in Palestine will continue in force until the coming into effect of the mandate convention, this Government cannot recede from the position it has taken with reference to the Skora case and other cases involving the exercise of judicial functions by American Consuls. This Government relies upon the Mandatory Power to take appropriate measures to the end that judgments rendered against Ameri-

can citizens by Palestinian courts prior to the suspension of American capitulatory rights and in disregard of those rights shall not be enforced by the Palestinian authorities either before or after the coming into effect of the mandate convention.

HUGHES

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN
RELATING TO RIGHTS IN PALESTINE, SIGNED DECEMBER 3, 1924

867n.01/371 : Telegram

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

WASHINGTON, April 28, 1924—5 p. m.

108. Department's 85, April 4, 4 p. m.²⁴ Your written despatch 3180, November 30, 1923.²⁵

Department desires you to address to British Foreign Office a communication substantially as follows:

"I have the honor to acknowledge the receipt of the communication of His Britannic Majesty's Government of November 29, 1923,²⁶ proposing the conclusion of the convention with respect to the British Mandate in Palestine which was the subject of a communication from the Embassy to the Foreign Office of July 14, 1922,²⁷ and of a communication addressed by Lord Curzon to my predecessor under date of October 2, 1922.²⁸ There was also received, under date of November 29, 1923,²⁹ a second communication from the Foreign Office which adverted to certain difficulties resulting from the exercise of extraterritorial jurisdiction by the American Consular Court and suggested that the early conclusion of a convention for the recognition of the British Mandate over Palestine would provide the most satisfactory solution of the difficulties in question.

Under instructions, I take pleasure in informing you that my Government concurs in the desirability of an early conclusion of the convention with respect to Palestine and has authorized me to submit to you for your confidential information a copy of the convention recently signed with the Government of France relating to the Mandate for Syria and the Lebanon³⁰ and also to communicate to you copies of certain correspondence exchanged with the French Government in connection with this convention.

In view of the fact that the subject matter to be dealt with in the case of the Palestine Convention is similar to that involved in the negotiations in the case of the Syrian Mandate, there would appear to be obvious advantages in preparing conventions in the two cases as nearly alike as possible.

²⁴ Not printed.

²⁵ *Foreign Relations*, 1923, vol. II, p. 225.

²⁶ *Ibid.*, p. 228.

²⁷ Not printed; see Department's memorandum of July 12 to the British Embassy, *ibid.*, 1922, vol. II, p. 287.

²⁸ *Ibid.*, p. 304.

²⁹ *Ibid.*, 1923, vol. II, p. 225.

³⁰ Vol. I, p. 741.

My Government however has not overlooked the fact that three previous drafts of the Palestine Mandate convention have already been prepared; namely, that submitted with the communication of the British Foreign Office June 20, 1922,⁸¹ a second draft communicated to the Foreign Office by this Embassy under date of July 14, 1922, and a third draft of October 2, 1922, to which reference was made in Lord Curzon's communication of November 29, 1923. The convention recently concluded with France with respect to Syria and the Lebanon follows on essential points the proposals which were considered in July 1922 and taking this convention as a basis for negotiation, would not involve any material divergence from the earlier proposals.

With respect to the preamble to the Convention, I am instructed to express the hope of my Government that objection will not be raised to the formula which has already been adopted in the case of the convention relating to Syria and the Lebanon. If this result would be facilitated by my Government's concurrence in incorporating not only the text of the Mandate but also the Preamble to the Mandate in the Preamble to the Convention, my Government is prepared to accept this modification.

As your Excellency will note, my Government suggested to the French Government the inclusion in the Convention with respect to Syria of a provision extending to Syria and the Lebanon the provisions of the existing Extradition and Consular Treaties and Conventions between France and the United States. For reasons which appear in the annexed correspondence, the French Government, while quite willing to extend to the United States the privileges of these treaties, preferred to effect this by an exchange of notes rather than by the addition of an Article in the Convention itself. It is suggested that in the Palestine Convention express provision be made for the application to Palestine of the extradition treaties in force between the two countries along the lines proposed in the British draft of October 2, 1922. The first paragraph of Article VI of the draft convention contains an appropriate provision to this effect.

With regard to the privileges and immunities of Consuls in the mandated territory, your attention is directed to the assurances in this respect which have been given by the French Government in its correspondence with regard to Syria and the Lebanon. Under the capitulatory regime in Palestine the position of Consular Officers and the prerogatives of their offices were safeguarded. As it is contemplated that, in view of the terms of the mandate, capitulatory rights should be suspended, it will be particularly important to my Government that the British Government give assurances that American Consular Officers in the mandated territory would enjoy all the immunities and privileges accorded by international law and custom or as may be granted to the consuls of any other power by treaty or otherwise. In view of the insufficiency of the existing treaty provisions with Great Britain relating to consular rights, a stipulation to this effect as well as for the application to the mandated territory of the provisions of any treaties in

⁸¹ Apparently the draft enclosed with despatch no. 512, July 5, 1922, from the British Chargé; *Foreign Relations*, 1922, vol. II, p. 281.

force between the two countries which relate to consular rights, is contained in the proposed Article VI.

The text of Article VI which my Government proposes would read as follows:

"The extradition treaties and conventions in force between the United States and Great Britain and the provisions of any treaties in force between the two countries which relate to extradition or consular rights shall apply to the Mandated territory.

American Consular Officers shall enjoy in the Mandated territory all the rights, privileges and immunities now accorded or hereafter to be accorded by treaty or otherwise to the consular officers of any other country."

Your Excellency will note that the eight articles of the convention of which I enclose a draft are substantially those proposed in the British Foreign Office draft of October 2, 1922, with the exception of the article given above and article V, with regard to the establishment and maintenance of American educational and philanthropic institutions in the mandated territory. It is hoped that the British Government will not raise objection to the provisions of Article V which have already been accepted by the French Government with regard to Syria and the Lebanon.

My Government's attention has been called to a note of the Secretary General of the League of Nations dated September 23, 1922 (C 667.M396.1922 VI)³² relating to Article 25 of the Palestine Mandate which indicated that the Council of the League of Nations had approved a memorandum submitted by the British representative outlining the provisions of the mandate for Palestine which are not to be applicable to the territory known as Transjordan as therein defined. In this memorandum it is stated that His Majesty's Government accept full responsibility as mandatory for Transjordan and that such provision as may be made for the administration of that territory, in accordance with Article 25 of the mandate, shall be in no way inconsistent with those provisions of the mandate which are not, by the resolution, declared inapplicable.

Upon the conclusion of the convention between the United States and Great Britain with respect to Palestine it is my Government's understanding that the convention will be applicable to such territory as may be under British mandate to the east as well as to the west of the River Jordan and that in view of the provisions of Article VII as proposed no further change would be made with respect to the conditions of the British administration of the territory known as Transjordan without the previous assent of my Government. I am instructed to inquire whether the British Government is in accord with this view.

In a communication of August 15 [17], 1922,³³ the Foreign Office brought to the attention of the Embassy a communication of the British Government to the Italian Government outlining the privileges which the British Government indicated its willingness to extend to Italy in respect of Palestine. You will note in the enclosures hereto annexed the views which my Government has expressed to the

³² See Great Britain, Cmd. 1785, League of Nations (1922): *Mandate for Palestine*, etc., p. 10; also League of Nations *Official Journal*, 3d year, no. 11 (Part II), pp. 1189 and 1390.

³³ Not printed.

French Government with respect to the somewhat similar assurances given to Italy by France with respect to Syria. It will also be noted that the French Government has undertaken in this correspondence to assure to my Government most-favored-nation treatment with respect to the agreement between France and Italy and any other agreements relating to Syria and the Lebanon which may be entered into by France with any other government. In concluding an agreement with respect to Palestine, my Government trusts that the British Government will be prepared likewise to give in an exchange of notes the assurance of most-favored-nation treatment with respect to the arrangement reached by Great Britain with Italy or any other agreements relating to Palestine which have been or may in the future be reached affecting the Mandated territory." End of Note.

In addition to draft text of Convention, the Department also desires you to enclose with this note a copy of Syrian Mandate Convention and copies of four communications exchanged between Embassy Paris and French Foreign Office, as follows:

- (1) Foreign Office to Embassy November 2, 1923;³⁵
- (2) Embassy to Foreign Office December 18, 1923;³⁶
- (3) and (4) Communications exchanged between Embassy and Foreign Office at time of signature of Treaty on April 4.³⁷

Department understands that Embassy Paris has communicated this correspondence to you and Department has already received French Foreign Office's consent to bringing the correspondence to attention of British Government.

With reference to the statement in the concluding paragraph of the note quoted above as to the assurances desired by this Government in the case of Palestine, it is believed that reference to the note itself and to the correspondence with the French Government with respect to the Syrian Mandate will sufficiently indicate the nature of the assurances which the Department desires. The two situations are quite similar, as the undertakings which Great Britain has given to Italy with respect to Palestine are similar to those given by France to Italy with respect to Syria.

In the negotiations with the French Government it was found convenient to agree, prior to formal communication, upon the text of notes to be exchanged at the time of the signature of the convention, and in case the British Foreign Office is agreeable to this procedure, and would be willing to submit in draft form a communication embodying the assurances they are prepared to give, the Department will also communicate a draft reply. If agreement can be reached upon the text of the Mandate Convention and upon the two com-

³⁵ *Foreign Relations*, 1923, vol. II, p. 4.

³⁶ See telegram no. 466, Dec. 17, 1923, 8 p. m., to the Ambassador in France, *ibid.*, p. 6.

³⁷ Vol. I, pp. 738 ff.

munications to be exchanged, it will be possible to proceed to the early signature of the Convention for which full powers will be sent you.

Draft text of Convention to be annexed to this note should follow text given in Department's 201, July 12, 4 p. m. 1922,³⁸ and British draft October 2, 1922³⁹ in the form indicated below:

(a) Preamble as given in Department's telegram July 12, with following changes:

(1) After fourth paragraph of Preamble, insert "(terms of Mandate)" not "(terms of Mandate without Preamble)".

(2) Paragraph of Preamble immediately following text of Mandate should read: "Whereas the mandate in the above terms came into force on September 29, 1923."

(b) Articles of convention, as follows: (1) Articles I to IV inclusive of convention similar to corresponding article of British draft of October 2, 1922, except that concluding word of Article I "hereto" should be replaced by "recited above". (2) Article V identical with corresponding article in Department's telegram July 12, 1922. (3) Article VI, as quoted above in text of note. (4) Article VII identical with Article VI of British draft October 2. (5) Article VIII identical with first paragraph Article VII of British draft October 2. No second paragraph.

This draft convention as above described is, as you will note, similar to Syrian Mandate Treaty with the exception that text of Mandate with Preamble may be quoted in Preamble to Convention, a slight change of phraseology is made in Article I and Article VI is added.

From above analysis you will be in a position to draw up and submit with your note a draft of the proposed convention. Department will mail copy to permit you to verify text.

HUGHES

867n.01/400

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

No. 606

LONDON, July 24, 1924.

[Received August 4.]

SIR: Referring to the Department's telegraphic instruction No. 108, April 28, 5 p.m., 1924, and the Department's mail instruction No. 182 of May 2, 1924,⁴⁰ concerning the proposed convention between the United States and Great Britain respecting Palestine, I have the honor to enclose a copy, in triplicate, of the reply of the

³⁸ Not printed.

³⁹ *Foreign Relations*, 1922, vol. II, p. 304.

⁴⁰ Not printed.

British Government, under date of July 17, 1924, to my representations in the premises.

In this connection I am informed orally by the Foreign Office that the reply of His Majesty's Government with regard to the proposed B Mandate Convention will be forthcoming shortly.

I have [etc.]

For the Ambassador:

F. A. STERLING
Counselor of Embassy

[Enclosure]

The British Secretary of State for Foreign Affairs (MacDonald)
to the American Ambassador (Kellogg)

No. E 5825/1354/65

[LONDON,] 17th July, 1924.

YOUR EXCELLENCY, His Majesty's Government have given their attentive and sympathetic consideration to the draft convention respecting the British Mandate in Palestine enclosed in Your Excellency's note No. 187 of the 30th of April,⁴¹ and I am now happy to inform you that they accept, subject to certain minor textual amendments, the United States Government's draft of the convention, with the exception of the second half of article 6, dealing with the privileges to be accorded to United States consular officers in Palestine. His Majesty's Government regret that they do not see the necessity for the insertion in the convention of any such stipulation as that proposed, since the Palestine Administration have every intention of treating United States consular officers in as favorable a manner as the consular representatives of other states.

2. As regards the remainder of the draft, I beg leave to suggest certain slight alterations in the wording to avoid all risk of ambiguity. It would be preferable that the second paragraph of the preamble should be amended to read ". . . Covenant of the League of Nations in the Treaty of Versailles". Article 1 would also be clearer if it were worded "Subject to the provisions of the present convention the United States consent to the administration of Palestine by His Britannic Majesty, pursuant to the mandate recited above". The first half of article 6 might with advantage be altered to ". . . and conventions which are or may be in force between the United States and Great Britain and the provisions of any treaties which are or may be in force . . .". Lastly I suggest that the final sentence of article 8 should begin "The present Convention shall take effect . . .".

3. As regards the penultimate paragraph of your note, His Majesty's Government agree that the present convention shall be ap-

⁴¹ See telegram no. 108, Apr. 28, to the Ambassador in Great Britain, p. 203.

plicable to such territory as may be under British mandate to the east as well as to the west of the River Jordan. They regret, however, that they cannot concur in the interpretation put by the United States Government on article 7 of the draft convention as regards changes in the administration of Trans-jordania, as it is essential that they be allowed latitude to make changes in the administration of that territory in such manner as may appear necessary, provided that such action does not conflict with the terms of the mandate.

4. The concluding paragraph of your note dealt with the question of most-favoured-nation treatment. I desire to assure the United States Government that American nationals in Palestine will receive most-favoured-nation treatment, but as no exchange of notes has yet taken place as regards the proposed assurances to be given to the Italian Government I regret that His Majesty's Government are not in a position to give the specific assurance asked for in the last sentence of your note.

I have [etc.]

J. RAMSAY MACDONALD

867n.01/400

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

No. 325

WASHINGTON, August 22, 1924.

SIR: The Department has received your despatch No. 606 of July 24, 1924, enclosing a copy of the reply of the British Government of July 17, 1924 to the communication which you addressed to the British Foreign Office pursuant to the Department's instructions under date of April 30 last.

I desire that you reply to the British Foreign Office communication of July 17 in the following sense:

My Government has instructed me to acknowledge the receipt of Your Excellency's communication of July 17th with regard to the Convention respecting the British Mandate in Palestine. In this communication it is indicated that, subject to certain minor textual changes and subject to the omission of the second paragraph of Article 6 the British Government is prepared to accept the draft convention communicated in my note of April 30.

(2) In view of the assurances contained in the first paragraph of Your Excellency's note that the Palestine administration have every intention of treating American consular officers in as favorable a manner as the consular representatives of other States, my Government does not consider that the retention of the second paragraph of Article 6 is essential. Further, my Government assents to the minor textual amendments suggested in the second paragraph of Your Excellency's note save that the phrase "the United States consent," should read "the United States consents,"

since my Government regards the term "United States" as singular and not plural.

(3) With regard to the third paragraph of Your Excellency's communication which relates to the territory of Transjordan, I desire to make it clear that it was not my Government's intention to suggest the necessity of consultation in matters relating to minor administrative changes in Transjordan. Its attention, however, had been called to the communication of the League of Nations of September 23, 1922 which indicated that the British Government, after a consultation with the States represented on the Council of the League of Nations, had reached an agreement as to the Articles of the Mandate in addition to Articles 15, 16 and 18 mentioned in Article 25, which are in any case applicable, which would control the character of the British administration of Transjordan. It is my Government's view, as briefly set forth in my communication of April 30 last, that it would be entirely consistent with the general policy which is followed by States enjoying mandatory administration over territories relinquished by the Central Powers as a result of the late war to consult with this Government as well as with the States represented on the Council of the League of Nations in connection with any general changes in the form of the Mandatory administration of Transjordan.

(4) My Government had, however, noted the statement contained in Your Excellency's communication that the Palestine Convention shall be applicable to territory under British Mandate to the east as well as to the west of the River Jordan and, the further statement, that the changes which may be made in the administration of the territory will not be of a character to conflict with the terms of the Mandate. My Government is not therefore disposed to delay the conclusion of the Palestine Convention for the purpose of entering into a further discussion of the questions relating to Transjordan, since the essential points in which my Government is interested appear to be safeguarded by the assurances already given, which are understood also to embody the undertaking that the changes which may be made in the administration of the territory will not be of such a character as to conflict with the terms of the Convention.

(5) I am further instructed to inform you that my Government is gratified to note the assurance contained in Your Excellency's communication of July 17 that American nationals in Palestine will receive most-favored-nation treatment. This assurance satisfactorily meets the point raised in my note of April 30 with respect to agreements which the Mandatory might reach with other powers if my Government's understanding is correct that the benefits of any agreements, such for example as that outlined in the communication from the British Foreign Office of August 15 [17], 1922 ⁴² would, if definitely concluded, automatically be extended to the United States and its nationals in the Mandate territory of Palestine.

(6) In view of the fact that full agreement has now been reached as to the provision of the Convention to be concluded with respect

⁴² Not printed.

to Palestine and in the event that my Government's understanding of the British Government's position, as outlined in paragraphs 2 to 5 is correct, I am happy to state that my Government is prepared to proceed promptly to the signature of the Convention and will send me full powers for this purpose.

The Department desires you to present the above note to the British Foreign Office at the earliest possible moment and to ascertain whether the British Government has any comment to make with respect to the interpretation which this Government places upon the assurances contained in the British note of July 17. In the event that no objection is raised the Department desires that you inform it by telegraph and full powers will be sent for the signature of the Convention which should follow the draft communicated to you in the Department's written instruction No. 182 of May 2, 1922 [1924],⁴³ as amended by the suggestions contained in the British note of July 17, 1924, with the exception noted in the concluding sentence of paragraph two of the communication quoted above.

For the purpose of verification there is enclosed a draft of the Convention⁴⁴ as now understood by the Department.

I am [etc.]

CHARLES E. HUGHES

867n.01/407

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

No. 850

LONDON, November 12, 1924.

[Received November 24.]

Sir: In accordance with my telegram No. 466 of November 11, 5 p. m.,⁴⁴ I have the honor to transmit herewith a copy, in triplicate, of the note dated November 10, 1924, from the Foreign Office, together with its enclosure, the printed proof of the proposed Convention between the United States and British Governments respecting the British Mandate in Palestine.⁴⁵

I have [etc.]

For the Ambassador:

F. A. STERLING

Counselor of Embassy

⁴³ Not printed; substantially the same as draft contained in telegram no. 108, Apr. 28, 5 p. m., to the Ambassador in Great Britain, p. 203.

⁴⁴ Not printed.

⁴⁵ Subenclosure not printed. In telegram 436, Nov. 25, the Ambassador was instructed to accept the draft convention, subject to minor changes in form and the correction of a clerical error, and was given full powers to sign (file no. 867n.01/407).

[Enclosure]

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

No. E9780/1354/65

LONDON, November 10, 1924.

YOUR EXCELLENCY, I have the honour to refer to the note No. 415 which Your Excellency was so good as to address to my predecessor on the 2nd September⁴⁷ regarding the proposed Convention between the United States Government and His Majesty's Government respecting the British Mandate in Palestine. I am happy to note that the United States Government is prepared to proceed promptly to the signature of the Convention and will send you full powers for that purpose.

2. In that note you state that the United States Government desire an assurance that His Majesty's Government will consult them, as well as the Powers represented on the Council of the League of Nations, regarding any alteration in the administration of Transjordan for which His Majesty's Government may decide to seek the approval of the Council: this assurance His Majesty's Government have no hesitation in giving. With regard to paragraph 5 of your note, I am happy to state that the interpretation placed by the United States Government on paragraph 4 of my predecessor's note of July 17th⁴⁸ is correct, and that any special privileges granted to the subjects of any other Power will automatically be acquired by United States citizens in Palestine.

3. A proof of the proposed Convention in form suitable for signature has now been printed and a copy is enclosed herein for examination by you.⁴⁹ I shall be glad to learn in due course on what date it will be convenient for you to sign the Convention.

I have [etc.]

For the Secretary of State

D. G. OSBORNE

Treaty Series No. 728

*Convention between the United States of America and Great Britain,
Signed at London, December 3, 1924⁵⁰*

WHEREAS by the Treaty of Peace concluded with the Allied Powers, Turkey renounces all her rights and titles over Palestine; and
Whereas article 22 of the Covenant of the League of Nations in

⁴⁷ In compliance with Department's instruction no. 325, Aug. 22, p. 209.

⁴⁸ *Ante*, p. 208.

⁴⁹ Not printed; see signed text, *infra*.

⁵⁰ Ratifications advised by the Senate, Feb. 20, 1925; ratified by the President, Mar. 2, 1925; ratified by Great Britain, Mar. 18, 1925; ratifications exchanged at London, Dec. 3, 1925; proclaimed by the President, Dec. 5, 1925.

the Treaty of Versailles provides that in the case of certain territories which, as a consequence of the late war, ceased to be under the sovereignty of the States which formerly governed them, mandates should be issued, and that the terms of the mandate should be explicitly defined in each case by the Council of the League; and

Whereas the Principal Allied Powers have agreed to entrust the mandate for Palestine to His Britannic Majesty; and

Whereas the terms of the said mandate have been defined by the Council of the League of Nations, as follows:—

“The Council of the League of Nations:

“Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

“Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on the 2nd November, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

“Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

“Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and

“Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and

“Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

“Whereas by the aforementioned article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the members of the League, shall be explicitly defined by the Council of the League of Nations;

“Confirming the said mandate, defines its terms as follows:—

“Article 1

“The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

"Article 2

"The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

"Article 3

"The Mandatory shall, so far as circumstances permit, encourage local autonomy.

"Article 4

"An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

"The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

"Article 5

"The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

"Article 6

"The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

"Article 7

"The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

"Article 8

"The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly

enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

"Unless the Powers whose nationals enjoyed the aforementioned privileges and immunities on the 1st August, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

"Article 9

"The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights.

"Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

"Article 10

"Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.

"Article 11

"The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

"The Administration may arrange with the Jewish agency mentioned in article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

"Article 12

"The Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled

to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

"Article 13

"All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

"Article 14

"A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

"Article 15

"The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

"The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

"Article 16

"The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

"Article 17"

"The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

"Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine.

"The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

"Article 18"

"The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

"Subject as aforesaid and to the other provisions of this mandate, the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

"Article 19"

"The Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

"Article 20"

"The Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the

League of Nations for preventing and combating disease, including diseases of plants and animals.

"Article 21

"The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archæological research to the nationals of all States members of the League of Nations.

"(1)

"'Antiquity' means any construction or any product of human activity earlier than the year A. D. 1700.

"(2)

"The law for the protection of antiquities shall proceed by encouragement rather than by threat.

"Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

"(3)

"No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

"No antiquity may leave the country without an export licence from the said Department.

"(4)

"Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

"(5)

"No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Department.

"(6)

"Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archæological interest.

"(7)

"Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archæological experience. The Admin-

istration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds.

“(8)

“The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

“*Article 22*

“English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic.

“*Article 23*

“The Administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

“*Article 24*

“The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

“*Article 25*

“In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of articles 15, 16 and 18.

“*Article 26*

“The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the Covenant of the League of Nations.

"Article 27"

"The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

"Article 28"

"In the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

"The present instrument shall be deposited in original in the archives of the League of Nations, and certified copies shall be forwarded by the Secretary-General of the League of Nations to all members of the League.

"Done at London, the 24th day of July, 1922;" and

Whereas the mandate in the above terms came into force on the 29th September, 1923; and

Whereas the United States of America, by participating in the war against Germany, contributed to her defeat and the defeat of her Allies, and to the renunciation of the rights and titles of her Allies in the territory transferred by them but has not ratified the Covenant of the League of Nations embodied in the Treaty of Versailles; and

Whereas the Government of the United States and the Government of His Britannic Majesty desire to reach a definite understanding with respect to the rights of the two Governments and their respective nationals in Palestine;

The President of the United States of America and His Britannic Majesty have decided to conclude a convention to this effect, and have named as their plenipotentiaries:—

The President of the United States of America:

His Excellency the Honourable Frank B. Kellogg, Ambassador Extraordinary and Plenipotentiary of the United States at London:

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 Right Honourable Joseph Austen Chamberlain, M.P., His Majesty's Principal Secretary of State for Foreign Affairs:

who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:—

ARTICLE 1

Subject to the provisions of the present convention the United States consents to the administration of Palestine by His Britannic Majesty, pursuant to the mandate recited above.

ARTICLE 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the Mandatory under article 24 of the mandate shall be furnished to the United States.

ARTICLE 5

Subject to the provisions of any local laws for the maintenance of public order and public morals, the nationals of the United States will be permitted freely to establish and maintain educational, philanthropic and religious institutions in the mandated territory, to receive voluntary applicants and to teach in the English language.

ARTICLE 6

The extradition treaties and conventions which are, or may be, in force between the United States and Great Britain, and the provisions of any treaties which are, or may be, in force between the two countries which relate to extradition or consular rights shall apply to the mandated territory.

ARTICLE 7

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 modifications shall have been assented to by the United States.

ARTICLE 8

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

In witness whereof, the undersigned have signed the present convention, and have thereunto affixed their seals.

Done in duplicate at London, this 3rd day of December, 1924.

[SEAL] FRANK B. KELLOGG

[SEAL] AUSTEN CHAMBERLAIN

CONTINUED NEGOTIATIONS TO ENSURE RECOGNITION OF THE PRINCIPLE OF THE OPEN DOOR IN THE TURKISH PETROLEUM COMPANY'S CONCESSION IN IRAQ⁵¹

890g.6363 T 84/126

The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Secretary of State

NEW YORK, January 16, 1924.

[Received January 18.]

MY DEAR MR. SECRETARY: Referring further to the Department's letter of December 18, 1923, its file NE 890g.6363,T/84/123,⁵² and to the copy of our cablegram to Mr. H. E. Nichols of the 19th of that month,⁵³ a copy of which was sent to the Department on the latter date, we are just in receipt of a cablegram from Mr. H. E. Nichols addressed to Mr. Teagle,⁵⁴ dated January 15, 1924, with reference to Article 34 of the Draft Convention between the Iraq Government and the Turkish Petroleum Company, Limited.⁵⁵ This telegram is in reply to our telegram of December 19th above-mentioned, and reads as follows:

"Referring to your telegram December 19th and 4 conditions therein.

"1. We guarantee operation subleasing system will not be defeated by collateral understanding. No provision is made in agreement for application of British law but as Iraq law still in process of evolution we can obviously give no guarantee as to its final scope.

⁵¹ For previous correspondence, see *Foreign Relations*, 1923, vol. II, pp. 240 ff.

⁵² *Ibid.*, p. 262.

⁵³ *Ibid.*, p. 263; Mr. Nichols was the managing director of the Turkish Petroleum Co.

⁵⁴ W. C. Teagle, president of the Standard Oil Co. of New Jersey.

⁵⁵ For text of draft convention, see *Foreign Relations*, 1923, vol. II, p. 247.

"2. Amendment has not been submitted Iraq Government and withdrawn.

"3. Turkish Petroleum Company guarantee carry out open door policy and would try to secure from Iraq Government on disclosure of policy undertaking to safeguard its application.

"4. Turkish Petroleum Company offer required assurance but we have not approached foreign office and seriously doubt wisdom and utility of asking them undertake suggested responsibility. Position now extremely critical and further complicated by fact that Iraq Government now pressing strongly acceptance Sassoon's amendments article 34 though Keeling⁵⁶ suggests they might accept in lieu thereof right to disapprove any particular sublessee.

To avoid absolute dead-lock would you accept this if Keeling can secure it. Having regard to all circumstances do you definitely advocate immediate disclosure open door notwithstanding all risks this would in my opinion entail. Alternatively would you advocate disclosure open door at later stage when convention ready for signatures, when risks might be less. Telegraph your views urgently as until this point settled progress in our negotiations is impossible."

Unless the Department views the matters differently, we are disposed to accept, as a sufficient compliance, the various assurances and guarantees given in this telegram from Mr. Nichols, as Managing Director of the Turkish Petroleum Company Limited, although it is to be noted that no assurances are forthcoming from the Foreign Office.

Referring to the statement that the Iraq Government is now pressing strongly for acceptance of Sassoon's amendment to Article 34, as reported to us this amendment contemplates that each sublease or transfer of areas, covered by the principal Convention made by the Turkish Petroleum Company Limited shall be subject to the approval of the Iraq Government, on the condition that such approval shall not be unreasonably withheld and shall not embody conditions not contained in the concession. In response to the proposal for this amendment, we urged on behalf of the American Group that a reservation of this right of approval by the Government might, in practice, absolutely vitiate or nullify the practical operation of the Open Door Plan. In this connection it is to be noted that the last cablegram from Mr. Nichols states that Mr. Keeling suggests that the Iraq Government might accept in lieu of the right of approval of subleases, the right to disapprove any particular sublessee.

Subject to the Department's wishes in respect to this important matter, we are considering making a proposal to Mr. Nichols whereby the contentions of the Iraq Government might be met by a provision that it should have the right of disapproval in respect to any particular sublessee where the Government could reasonably contend

⁵⁶ E. H. Keeling, representative of the Turkish Petroleum Co. in negotiations at Bagdad with the Government of Iraq.

that the proposed sublessee or sublease would impair its sovereign rights.

It is also our view that the Turkish Petroleum Company Limited should disclose to the Iraq Government the plan for subleasing under Article 34 in accordance with its accepted Open Door Policy, and that, as to whether this should be done immediately, or at any time before the execution of the Convention, those in charge of the negotiations should determine.

Respectfully,

GUY WELLMAN

890g.6363 T 84/128

*Memorandum by the Chief of the Division of Near Eastern Affairs,
Department of State (Dulles)*

[WASHINGTON,] *January 22, 1924.*

When Mr. Wellman called at the Department on January 22nd I took up with him his letter of January 16th which particularly dealt with the reported insistence of the Iraq Government upon the right to approve companies which, under Article 34 of the proposed concession, might desire to qualify as sublessees of the Turkish Petroleum Company. I said that the Department fully appreciated the importance of this question in its bearing on the future of the subleasing plan which had been formulated by the company and that for this reason the Department felt it was wise to take this opportunity to discuss this matter with him informally before making any reply to his letter. It was appreciated that the Iraq Government, jealous as it would probably be of its newly gained or partially gained sovereignty, might take a strong stand in demanding a right to pass upon companies which were to develop its oil resources. At the same time on the rather meager information which was available it was difficult for the Department, and possibly also for the American Group, to judge to what extent the opposition to the unqualified right to sublease was shared by the British interests in the Turkish Petroleum Company and by Mr. Keeling, the negotiator for the company in Bagdad.

The Department did not desire to make unreasonable conditions or to take a position which would render negotiation impossible. At the same time it was necessary to face the facts. If the Iraq Government had the qualified right of passing upon sublessees that government would be in a position to prevent the realization of the subleasing plan which would alter the general understanding upon which the Department's recent correspondence with the American Group had been carried on.

Mr. Wellman then stated that he had been considering the desirability of action by the American Group to clarify the situation with respect to the attitude of the Iraq Government towards the plan of subleasing. This was a matter in which the companies themselves were deeply interested. If this plan were not carried out it is doubtful whether the proposed 25 per cent. participation of the American Group would justify the initial expenditures which the development of the oil resources of Mesopotamia would require. The various American companies desired to qualify as sublessees as well as to have their percentage participation in the Turkish Petroleum Company. The subleasing plan, under the terms of the proposed concession, might not be put into effect for four years and the companies therefore had a natural interest in satisfactory assurances at the time of their participation that the subleasing plan would be put into effect. To my inquiry whether it was therefore correct that the companies themselves were very directly interested in the realization of the subleasing plan from the practical business standpoint as well as on account of their desire to work out an arrangement which would obviate the monopolistic features of the proposed concession, Mr. Wellman answered in the affirmative.

After further conversation during which the above points were developed, it was my understanding of Mr. Wellman's views that a telegram would be sent to Mr. Nichols by the American Group indicating it to be the position of the American Group that the right of the Turkish Petroleum Company to make subleases should not be unduly restricted and that the American Group would again suggest the desirability of retaining the present wording of Article 34 and of explaining to the Iraq Government the details of the subleasing plan. The result of this would be to bring to an immediate issue the question of the attitude of the Iraq authorities towards this plan. While this might result in an interruption of the negotiations and an invitation on the part of the British interests that the American Group should see what they could do through direct negotiations with the Iraq authorities, Mr. Wellman indicated that they would not be unprepared to face this eventuality, although they were not seeking or desiring to eliminate the present British negotiations.

In the light of this conversation it was understood that no immediate reply to Mr. Wellman's letter of January 16 would be awaited by the American Group and that the latter would inform the Department of the telegram which they would send to the Turkish Petroleum Company outlining their views as above indicated.

A. W. D[ULLES]

890g.6363 T 84/136

The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Chief of the Division of Near Eastern Affairs, Department of State (Dulles)

NEW YORK, January 29, 1924.

[Received January 30(?).]

DEAR MR. DULLES: This will confirm my reading to you over the telephone this morning a telegram from Mr. Nichols of the 28th instant as follows:

"Keeling reports Iraq Government committee have commenced by rejecting Article 34 even with Sassoon amendment. Without disclosing open door formula April 12th⁵⁷ he argued power sublet usual and absolutely essential for attaining maximum development. Committee adamant however saying essence preference exploitation by Turkish Petroleum Company was belief adequacy its resources etcetera. Committee strongly objected sub-lessee except for drilling contracts. Keeling adds: 'I will make effort persuade King Feisal veto opposition and if you can suggest other argument or find alternative formula telegraph promptly.' We have reached temporary impasse and shall appreciate any suggestions regarding solution."

While this message contains the words "commenced" and "temporary", and therefore lacks finality, it indicates a possibly serious situation so far as the Open Door Policy of the State Department regarding Mesopotamia is concerned. The subleasing plan of the Turkish Petroleum Company Limited, which is the practical application of the Open Door Policy of the Department, would be made impossible of operation by the Turkish Petroleum Company Limited if Article 34 is rejected by the Iraq Government. On the assumption that this proposed convention would constitute a new grant by the Iraq Government to the Turkish Petroleum Company Limited, the question of the invalidity of the Turkish Petroleum Company claims founded on the Turkish grants would seem to be eliminated.

We have just telegraphed Mr. Nichols asking him the meaning of the phrase "except for drilling contracts," and pointing out to him that in this country the phrase has two meanings, one which is that of the independent contractor who engages to drill wells upon a property and has no interest in the oil production from the wells, and the other, which contemplates that an operator will take a contract to drill wells and have the right to take a share from all of the oil produced from the wells.

In order to facilitate the acceptance of Article 34 by the Iraq Government, we may suggest to Mr. Nichols on behalf of the American Group, subject to the approval of the Department, that the

⁵⁷ *Foreign Relations*, 1923, vol. II, p. 243.

American Group would approve Article 34 with a reservation to the Iraq Government of the right of disapproval as to any particular sublessee where his financial responsibility is not adequate to develop and operate a sublease, or where, after determination by arbitration if necessary, the sublessee is found to be undesirable from the standpoint of the Iraq Government owing to past or anticipated political activities hostile to the Iraq Government. However, this suggestion would not meet the position apparently taken by the Iraq Government committee, which is that its preference for exploitation by the Turkish Petroleum Company is based upon its belief in the adequacy of that company's financial and technical resources.

The American Group will appreciate having the Department's views on the subject matter of this letter, with any additional suggestions that may occur to it, to the end that the Open Door Policy of the Department may be adequately realized through the pending negotiations.

I shall get in communication with you tomorrow.

Very truly yours,

GUY WELLMAN

890g.6363 T 84/138

The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Chief of the Division of Near Eastern Affairs, Department of State (Dulles)

NEW YORK, February 5, 1924.

[Received February 9.]

DEAR MR. DULLES: Referring to my letter to you of January 28th [29] quoting telegram received from Mr. Nichols of [on?] that date, further consideration has been given to the questions raised by this cablegram in regard to the possible deletion of Article 34 from the proposed convention between the Government of Iraq and the Turkish Petroleum Company, Limited. Mr. Teagle is sending a cablegram today to Mr. Nichols, of which a copy is enclosed for your files.

You will note the importance attached to the retention of Article 34. The so-called subleasing plan of the Turkish Petroleum Company, as proposed by the American Group, is in its opinion necessary for the proper realization of the Open Door Policy of the State Department.

We are sincerely hopeful that the position taken in this reply to Mr. Nichols will result in the acceptance by the Iraq Government of that Article, and feel confident that if Mr. Keeling's efforts in

this direction have the full and hearty support and backing of the British Foreign Office that this will be done.

Yours very truly,

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,] 5 February, 1924.

Referring your cables January 28th and 30th Article 34 is only one in proposed convention which gives full effect to open door formula which was the fundamental principle accepted by partners in Turkish Petroleum Co. prior to a discussion and agreement with American Group of the other details. Deletion of Article 34 might result in elimination of American Group's participation in Turkish Petroleum Co. We are absolutely confident that if your Foreign Office will support Keeling in his contention that Article 34 is essential that present impasse will be successfully overcome. As to possible disclosure of Open Door plan we confirm views expressed in our cable January 23rd and our letter October 25th. We are ready to send someone from here to cooperate with Keeling if you decide it is desirable that this disclosure should be made at Bagdad and you desire such cooperation on our part in the matter.

TEAGLE

890g.6363 T 84/152

The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Chief of the Division of Near Eastern Affairs, Department of State (Dulles)

NEW YORK, March 10, 1924.

[Received March 11.]

DEAR MR. DULLES: A letter under date of the 29th ultimo received today from our representative, Mr. Piesse, in London, states that he had just had a long interview with Mr. Nichols; that Mr. Nichols impressed him with the idea that Article 34 in the Iraq Convention will ultimately be agreed to by the Iraq Government in some form or other acceptable to the American Group. Mr. Nichols admits that there has been considerable delay, but says that this has been caused largely by the change of Government in England, for the permanent officials were not prepared to do anything, or discuss the question with him, until the new Government had decided whether or not it

would follow the policy of its predecessors in regard to Mesopotamia generally, and in particular the oil question. Mr. Nichols now says that the Government has indicated that it proposes to follow its predecessors in this respect, and that he had a meeting only on the previous Monday with representatives of the Foreign and Colonial Offices at which he was informed unofficially that the Government would be prepared to instruct the British High Commissioner at Bagdad to support Mr. Keeling in his negotiations with the Iraq Government, and in particular he was to inform the Iraq Government that the British Government was in accord with, and recommended, the Open Door Formula, a complete copy of which has been handed to the British Government, although Mr. Nichols says the Iraq Government has not yet had a copy of it but has been informed of its nature.

Mr. Nichols stated also that the French have practically accepted the general scheme for the American participation, including the plan for the Working Agreement;⁵⁹ that he was to go to Paris the following week to meet the Directors of the new French company which has been formed for the purpose of taking over the French interest under this plan; and that, within the next few weeks, he hopes to have the Working Agreement signed by the French interests.

The foregoing is for the information of the Department.

Sincerely yours,

GUY WELLMAN

890g.6363 T 84/167

Memorandum Prepared by Mr. Teagle and Mr. Thompson of the Standard Oil Company and Mr. Wadsworth of the Division of Near Eastern Affairs, Department of State

[WASHINGTON,] September 18, 1924.

Under what is known as the Foreign Office Agreement, dated March 19, 1914, Mr. G. S. Gulbenkian, a naturalized British citizen, is accorded in the Turkish Petroleum Company, Ltd. a beneficial 5% interest, without voting rights, all upon terms and conditions as covered by Section 9 of this agreement.

The interests of the American Group in the development of a possible oil production in Iraq have been with the sole object that, should a large production be developed there, the American interests would be able to use their proportionate part of this production in the carrying on of their business either at home or abroad. They are interested in Crude Oil as such, as distinct from a financial investment in a com-

⁵⁹ See telegram dated Dec. 12, 1922, from the London representative of the Standard Oil Co. of New Jersey to the president of the company, *Foreign Relations*, 1922, vol. II, p. 348.

pany organized under the laws of a foreign country and the control of which, owing to their preponderant stock interest, would be with foreigners.

With this object in view, the American Group proposed to the other three partners, a proposal accepted in principal by them, that the activities of the Turkish Petroleum Company should be limited to the production of the Crude Oil and its delivery to a seaboard terminal where it would be offered for sale as "Crude" to the four Groups, in proportion to their respective stock interests, at a price which should not exceed 7s. per ton above the actual cost of production and delivery at such seaboard terminal.

The practical carrying into effect of this plan is now blocked by Mr. Gulbenkian, the owner of the 5% interest, who takes the position that he is not an oil trader, doesn't want oil, is not interested from the international viewpoint but simply from that of his own personal business interest and profit, and that, in the protection of his own interest, he now insists that the Company should be operated as a complete unit, i. e. engaged, in addition to the production and transporting of the oil to seaboard, in the refining and sale of the products wherever markets could be found for them. This would mean that the American Group would obtain merely a share interest in a foreign company and, as such, entitled merely to participate in profits. The American Group would obtain no Crude Oil direct from such arrangement.

For the past two years the British partners in the Turkish Petroleum Company have been endeavoring to negotiate with Mr. Gulbenkian in the hopes of reaching a basis of settlement with him which would be acceptable to all. Up to July, last, no settlement with him had been reached, and the representatives of the American Group then in London were asked by the other three partners to take up, on behalf of the Turkish Petroleum Company, negotiations direct with Mr. Gulbenkian. The discussions by the American Group's representative with Mr. Gulbenkian have been unsuccessful. The position which the representative of the American Group has taken is that the American Group had been invited to participate in the Turkish Petroleum Company by the other international groups who had advised the American Group that Mr. Gulbenkian had a 5% non voting share interest in the Company, that the American Group had not been advised that he had any other claims against the Company of any shape or form other than his 5% share interest, and that in so far as this 5% share interest was concerned the American Group were entirely willing that it should be placed on an absolute parity with the share interest of the four Groups. This being the case, the American Group were quite willing to fairly compensate him for his consent to limiting the operations of the Turkish Petroleum Company to production and transportation, that this was absolutely as far as the American Group could go, that it was

impossible for us to compensate him for moral claims which he felt he had against the two English partners.

Under date of September 13 the American Group's representative in London cables that if the original plan of the American Group to receive Crude Oil instead of merely making an investment in an oil company is to be carried out, Mr. Gulbenkian demands

- (1) that he be carried by the other four groups for 5% share interest, with an option on his part to take up this interest at any time that he might so elect and dispose of it in any way that he might consider advantageous,
- (2) that he have at all times one director on the Board (making nine (9) instead of eight (8) Directors, thus giving him the controlling vote in the event of an equal division),
- (3) that he receive on all oil produced a royalty of 1s. per ton, this royalty to be paid him not only from the areas operated by the Turkish Petroleum Company itself but on all oil produced from the (a) areas covered by the concession and sublet in accordance with the terms of the concession to other producing companies and (b) any oil produced elsewhere by the Company or its sub-lessees in Turkey in Asia.

All of the partners in the Turkish Petroleum Company, including the American Group, considered Mr. Gulbenkian's proposals so unreasonable and burdensome as to preclude their acceptance.

In summary of the foregoing the American Group is faced with two alternative proposals

- (1) to accept an investment in a producing, transporting, refining and marketing, foreign oil company or
- (2) to accept a thoroughly unbusinesslike arrangement for the obtaining of a share of the Crude Oil to be produced in Mesopotamia.

The first of these alternatives is unacceptable because the American Group thereby would be unable to obtain Crude Oil, its sole object in desiring to participate in the development of the potential oil resources of Iraq being to secure Crude Oil and to dispose thereof as it might see fit.

The second alternative is as a business proposition unacceptable because what Mr. Gulbenkian demands is entirely out of proportion to what he is entitled to from the standpoint of his 5% non-voting share interest.

On the assumption that the American Group refuses both of these alternatives it is probable that the three foreign groups would continue the negotiations with Iraq and unless the State Department intervenes obtain the concession. The American Group has been told by the British partners that the Articles of Incorporation of the Company which would exploit this concession would include the

Open Door (Subleasing) formula⁶⁰ which would enable an American Group or company to sub-lease from the exploiting company possible oil producing territories in those portions of Iraq covered by the concession other than the 24 areas reserved to the exploiting company.

The American Group's position is that in the event of its withdrawal under the circumstances above outlined, the mere inclusion of the Open Door (Subleasing) formula in the Articles of Incorporation of the exploiting company would not guarantee to American interests equal participation in the development of the natural resources of Iraq. As already pointed out, the reason for the formation of the American Group and its continued object throughout the negotiations has been to obtain a proportionate share of such Oil as might be produced in Iraq. The Group was not formed with any idea of becoming merely an investor in a foreign oil company. Its sole object was to obtain actual Crude petroleum. The realization of this object, it holds, is the sole condition which would have as its effect fair participation of American interests in the development of the natural resources of Iraq. The State Department has stood for such participation. It is therefore the desire of the Group that the State Department facilitate the realization of its object. This realization, it suggests, can be obtained by the addressing to the Ambassador at London of an instruction directing him to make the necessary representations to the British Foreign Office to this end. This apparently cannot be brought about unless Mr. Gulbenkian, a naturalized British subject, accept on a reasonable basis the principle that the oil produced in Iraq shall be divided amongst the partner companies or groups, rather than that the profits of any joint enterprise entered into should be so divided.

890g.6363 T 84/162a : Telegram

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

[Paraphrase]

WASHINGTON, September 20, 1924—2 p. m.

331. 1. The Department has been informed by representatives of the American group of oil companies that according to advices from London it is probable that a conclusion will soon be reached in the negotiations now pending at Bagdad by which the interests represented by the Turkish Petroleum Company hope to obtain the grant of a concession from the Government of Iraq. The Department is also informed that the terms upon which the American group is to

⁶⁰ *Foreign Relations*, 1923, vol. II, p. 243.

participate in the company have not yet been fully agreed upon. Obstacles to an agreement have been created recently by Gulbenkian, an Armenian naturalized in Great Britain, who holds a stock interest of five per cent in the company as organized in 1914. The position taken by Gulbenkian has apparently prevented an arrangement for the division of any crude oil which the Turkish Petroleum Company may produce in Mesopotamia under the new concession which it may obtain. Gulbenkian's position is considered unreasonable by the American group. The latter have indicated that during more than two years of negotiation with the Turkish Petroleum Company they have steadily maintained that their object is to obtain their proper share of the actual oil produced, and that a mere stock participation in the Turkish Petroleum Company does not interest them. They have further stated that their British and French associates understood this position perfectly and had accepted it before the late difficulties arose with Gulbenkian in arranging a settlement. Apparently those difficulties have brought up again the question of participation through stock ownership between the American and foreign groups. The American group has indicated that if this position is insisted upon by the other interests they may themselves withdraw from participation.

2. The Standard Oil Company is instructing Mr. Wellman, who is representing the American group in London, to explain the situation fully to the Embassy.

3. In matters of business negotiation the Department could not, of course, properly intervene, and with regard to the negotiations of the American group this principle has been consistently maintained. The American group has, however, kept the Department in touch with the course of affairs. The position of this Government has been already fully communicated to the Embassy in the pertinent correspondence, and is briefly recapitulated below :

(a) This Government has contributed to the common victory, and has a right, therefore, to insist that American nationals shall not be excluded from a reasonable share in developing the resources of territories under mandate. In this view the British Government has concurred.

(b) In Mesopotamia the principle of equality of commercial opportunity and of the Open Door should be maintained. The British Government does not dissent from this view.

(c) This Government regards as invalid the alleged rights of the Turkish Petroleum Company as based on negotiations before the war. If claims should be advanced on the strength of those negotiations, it has been suggested by this Government that they be submitted to arbitration for settlement.

(d) More than two years ago the Department was informed that the American group included all American companies which wished

to participate. The Department felt, therefore, that, having regard to the practical requirements of the case, it should not oppose an attempt of the Turkish Petroleum Company to obtain a new concession provided that under the new arrangement a fair participation should be accorded to the interested American companies.

4. The sole object of the Department in concerning itself with the negotiations of the American companies has been to secure recognition of the principles for which this Government has stood throughout. Since the negotiations among the various groups interested in the Turkish Petroleum Company have looked toward arriving at a basis for American participation in Mesopotamian development, the Department has felt that if the arrangements arrived at were properly drawn up progress would have been made toward meeting the views which this Government has steadily advanced in its representations to the British Government regarding the rights of American nationals.

5. It is possible, however, that these negotiations may break down through no failure of the American companies to accept reasonable terms of participation. And inasmuch as the British interests hold a special position in negotiating with Iraq, since the British Government is the mandatory there and possesses special prerogatives in Iraq under treaties concluded with the Government of Iraq, it is also possible, therefore, that the British interests may try to obtain concessionary rights in Mesopotamia without according a fair share in them to the American companies ready and willing to participate. In that case the Department would carefully consider what steps it should take under the altered circumstances in order to protect American interests. This Government might be compelled to revert to the position it assumed in correspondence with the British Government, and to oppose resolutely any plan which did not give adequate recognition to the principle of the Open Door and which did not afford an application of this principle in the treatment of American companies which for more than two years have shown a steady and serious desire to participate on any just and reasonable terms in the development of Mesopotamian oil fields.

6. You should bring at once to the attention of the Foreign Office the views set forth in the three preceding paragraphs. This may be done orally, but you should indicate that while the Department contemplates addressing the British Government formally on the subject, you have been instructed to discuss it informally in the first instance as it is the belief of this Government that the British Government has no desire to see anything done which might end in an attempt to exclude American interests from a proper participation in developing Mesopotamian resources.

7. The outcome of your interview, as also the precise status of Wellman's negotiations with the Turkish Petroleum Company, should be promptly telegraphed to the Department. As soon as the Department has received your report it will consider what further steps should be taken. If a satisfactory agreement can be reached in consequence of the representations you make and without resorting to more formal measures, it would, of course, be a source of gratification to the Department. But it is very important that matters should not be permitted to arrive at the stage at which we would be faced by the accomplished fact of an agreement between the Turkish Petroleum Company and the Government of Iraq before the American companies have secured their own interests under a proper agreement.

8. You should read again the Department's instructions 630 of August 31, 1922, and 809 of February 10, 1923,⁶¹ as also the Monthly Political Reports of April, November, and December, 1923, and of February, 1924, for their references to Mesopotamia.⁶²

HUGHES

890g.6363 T 84/163 : Telegram

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

[Paraphrase]

LONDON, September 24, 1924—4 p.m.

[Received 4:33 p.m.]

393. The matter referred to in the Department's 331, of September 20, was discussed in detail today with an official of the Foreign Office, and an intimation was given of our hope that we could reach a settlement through informal discussion rather than by making formal representations to the Foreign Office. Mr. Wellman had already several times conferred with me. At the Foreign Office I received positive assurance that they have a sincere desire to see a fair participation given to the American interests and to expedite the conclusion of arrangements already drawn up and agreed to by the four groups concerned. Nichols of the Turkish Petroleum Company had already brought to the attention of the Foreign Office the obstructive attitude of Gulbenkian, and at interview today the Foreign Office official intimated on his own initiative that he would try to find out whether Gulbenkian's attitude might not somehow be altered.

KELLOGG

⁶¹ Neither printed.

⁶² Reports not printed.

890g.6363 T 84/169 : Telegram

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

LONDON, October 14, 1924—2 p.m.

[Received October 14—1:17 p.m.]

424. My 393, September 24, 4 p.m. I had applied for interview recently with the Foreign Office regarding Turkish petroleum matter. It appears that the Foreign Office has had several conferences with Gulbenkian or his representative, obtaining his point of view in the differences between him and the groups, and after careful consideration is of the opinion that Gulbenkian's contentions are founded on practical and legal grounds not to be disregarded. The policy of the Foreign Office is similar to that of the Department in that it will not intervene in business negotiations or disputes, but is ready to use all good offices in order to compose if possible differences between parties concerned. Foreign Office feels that recent offers of Turkish Petroleum Company to Gulbenkian are quite reasonable and hopes that latter will see his way clear to accepting them. On the other hand the intention of the Foreign Office is to urge the British group to use moderation and deal with Gulbenkian reasonably. It is hoped that the Department will correspondingly urge this attitude upon the American group.

I was again assured most emphatically that the British Government desires that United States nationals should have equal representation in the exploitation of the Mesopotamian oil fields and that the "working agreement" should become effective. Foreign Office understands clearly the Department's view as to the consequences which might arise from the failure of the "working agreement" to be concluded.

Wellman tells me that while Gulbenkian has so far refused the offers of the Turkish Petroleum Company, negotiations are continuing and that there is hope of a settlement this week. The heads of the several groups, as well as Gulbenkian, are now in London.

KELLOGG

890g.6363 T 84/184

The President of the Standard Oil Company of New Jersey (W. C. Teagle) to the Chief of the Division of Near Eastern Affairs, Department of State (Dulles)

NEW YORK, November 28, 1924.

[Received December 1.]

DEAR MR. DULLES: The following are two cables just received late this afternoon from Mr. Wellman:

"Procedure now agreed on by all groups is:

1st: Turkish Petroleum Company Anglo-Persian Oil Co., Ltd. and Americans will enter into one contract which I am initialing whereby

open door plan is adopted and 10% free oil will be delivered by Turkish Petroleum Company to Anglo-Persian Oil Company Limited as nominee of American Group in consideration its support and cooperation at Bagdad and as shareholders and further 23¾% of Turkish Petroleum Company share will be transferred to American group by Anglo-Persian Oil Company, Limited after concession is granted. 10% free oil is limited to 24 areas to be selected by Turkish Petroleum Company under open door plan.

2nd: Supplementary agreement likewise being initialled to be signed by all groups including Anglo-Persian Oil Co. Ltd. whereby in the event of invalidity above mentioned royalty contract four groups will pro rata to their holdings of voting shares buy 9½% oil from Turkish Petroleum Company and deliver same freely to Anglo-Persian Oil Co. Ltd. and this obligation attaches only to voting shares so that holder may by transferring its shares to Anglo-Persian Oil Co. Ltd. free of cost be released from this contract. Separate contracts will provide that article 10 foreign office agreement is to be cancelled thus leaving all groups free as far as former Turkey in Asia is concerned except Mosul and Bagdad as bounded prior to the war this being area of existing claim of Turkish Petroleum Co. and in addition whatever other territory comes under Irak Convention. As to Mosul in Turkey, if any we have made our participation conditional upon acceptance for purpose Anglo-Persian Oil Co. Ltd. and N. Gulbenkian royalty and of self denying ordinances that either first Irak Convention must apply to such part Mosul or second that Turkish Petroleum Company shall obtain from Turkey by virtue of its existing claim concession not worse as to royalty than proposed Irak Convention and if higher royalty necessary then Anglo-Persian Oil Co. Ltd to assume excess with regard to its 10% free oil and further if Turkey rejects claim and will grant concession 4 groups they are to take it and operate it on equal terms through another corporation and finally if Turkey unwilling to grant such joint concession all groups to be free to act individually. Both these agreements are void if Irak concession not granted by December 31st, 1925. Provision is also to be made for equal groups voting rights under first agreement and also for transfer of additional 1¼% shares and for putting working agreement into effect if and when N. Gulbenkian settlement made. Now planned that Turkish Petroleum Co. directors shall authorize first contract next Tuesday and that four groups shall thereafter sign second contract. Meantime French group now expected to agree settlement N. Gulbenkian on the basis of 1 shilling per ton whereupon discussion with N. Gulbenkian will be resumed. Pressure for early granting of concession seems to be relieved and Keeling advises that concession will not be granted before Dec. 15th. M. Piesse concurs in foregoing procedure. Guy Wellman has arranged to sail Dec. 9th *Majestic* please advise his office."

"Other groups urge American group to become participant in Turkish Petroleum Co. and to agree to take shares as soon as same are available even though Irak concession shall not have been granted. In view of previous position American group on this point please telegraph me whether or not it can now make such an agreement."

To the second cablegram, we have replied this afternoon as follows:

"Have called meeting of American Group for Monday afternoon. It is my understanding that American Group can not safely agree to take Turkish Petroleum Company shares before Irak concession is granted because of attitude State Department which requires that its open door policy shall be definitely realized through actual grant of proposed concession permitting open door plan before American Group can take its shares in company."

We have called a meeting of the American Group to discuss the same on Monday next, at two o'clock. I shall greatly appreciate it if you will call me on the telephone on Monday morning in the event of your having any comments or suggestions to make in connection therewith.

Yours very truly,

W. C. TEAGLE

890g.6363 T 84/186

The Chief of the Division of Near Eastern Affairs, Department of State (Dulles) to the Secretary of State

[WASHINGTON,] December 1, 1924.

MR. SECRETARY: While I did not myself telephone Mr. Teagle in reply to the inquiry in his letter of November 28th, he called me on the telephone this afternoon and asked whether the Department had any comment to make on his letter. I told him, in reply, that while the Department would not, of course, desire to advise the Group in connection with a business matter, such for example as their taking shares in the Turkish Petroleum Company, the Department's view that the Turkish Petroleum Company had no valid concession had undergone no change whatever and that therefore if American companies participated in the Turkish Petroleum Company they would, so far as we were concerned, be participating in a company which had acquired no valid concessionary rights as yet. Mr. Teagle said he fully appreciated this position and that it appeared to be the opinion of the Group, which was then meeting, that they should maintain their position that they would not take shares in the Company until the concession were actually granted.

Mr. Teagle then asked whether the Department had any comment to make on the longer telegram quoted in his letter of November 28th. I said that, as I recalled, this telegram related largely to business matters and that I did not believe that there was any point therein upon which the Department would desire to comment. Mr. Teagle said that the Group would probably agree to the arrangement outlined in this telegram.

A. W. D[ULLES]

890g.6363 T 84/190

The Associate General Counsel of the Standard Oil Company of New Jersey (Guy Wellman) to the Chief of the Division of Near Eastern Affairs, Department of State (Dulles)

NEW YORK, December 17, 1924.

[Received December 19.]

DEAR MR. DULLES: Since my return from London on Tuesday last, Mr. Dodge told me of his recent conference with you and your inquiry regarding the phraseology of Article 34 of the proposed concession from the Iraq Government to the Turkish Petroleum Company, with particular reference to the subleasing plan.

In order to ensure the adoption of the plan against any objecting minority shareholder of the Turkish Petroleum Company, we proposed that the elements of the subleasing plan should be embodied in the draft concession as a condition of the grant. This suggestion was adopted, and Mr. Keeling at Bagdad was instructed to endeavor to bring this about by agreement with the Iraq Government. While we have not been advised as to the definite acceptance of this suggestion by the Iraq Government, the proposed draft concession contains, in Articles 5 and 6, the definite obligation of the Turkish Petroleum Company to select its twenty-four plots of eight square miles each not later than the third 31st of October after the date of the convention, and to construct a pipe line as soon as it shall become commercially justifiable. In Article 6 it is also stipulated that the Company shall, not later than four years after the date of the convention, and annually thereafter, carry out the provision of offering not less than twenty-four plots of eight square miles each, "subject to the provisions of Article 34 hereof," for competitive bidding between all responsible corporations, firms and individuals without distinction of nationality. The other provisions regarding the right of the prospective operator to select plots, and of the furnishing of geological information, together with the provision of 30% of the capacity of the Company's pipe line for the transportation of oil on subleases at a cost not exceeding $\frac{1}{2}$ of one anna per barrel per mile, are included. The sublease shall bind the operator of each plot to drill not less than 1500 feet during the three years after the execution of the sublease, and thereafter not less than 500 feet each year until the plot shall have been fully tested.

With reference to Article 34, the Iraq Government has consistently insisted, as a matter of national dignity, that it must have some supervision over the transfer, by way of subleases, of the area covered by the concession. We have continued our insistence that the phraseology of Article 34 should be retained, whereby the right of rejection

of a sublessee by the Iraq Government should be limited to the objection of the proposed sublease on the ground that it would be prejudicial to Iraq political independence or territorial integrity, or that the sublessee is an unreliable person. The Iraq Government has served, in effect, an ultimatum that it must have the right of rejection of a sublessee upon reasonable grounds, and that the other restrictions above-referred to which we proposed must be deleted. The other three groups acquiesced in this change, and the American Group, as a matter of necessity, has also consented to the following phraseology:

"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, provided always that the Company shall not transfer its obligations under article 5 hereof, and that the Company shall give the Government written notice of any intended underletting or transfer, and the Government shall have the right on reasonable grounds, to be stated in writing, within 60 days of receipt of such notice, to notify the Company in writing that they object to such proposed underletting or transfer, and if such notification be given the Company shall not proceed with such underletting or transfer; and provided also that the Company shall accept full responsibility to the Government for the performance by underlessees and transferees of all obligations due hereunder."

In view of the provision of Article 6 requiring that a sublease be made to a person without restriction as to nationality, there is no objection to be feared on the ground of nationality, at least so far as Americans are concerned.

It is also to be noted that the Turkish Petroleum Company must guarantee to the Iraq Government the performance by each sublessee of all the provisions of the concession applicable to the subleased area in question. Hence, a trivial objection on the ground of lack of financial responsibility or operating experience could hardly be raised by the Iraq Government.

While Article 34 is not in exactly the form which I personally would select in order to avoid any delays or complications in the operation of the sub-leasing plan, yet it is essential to recognize that this concession, if granted, is coming from a sovereign government which may properly insist upon some degree of supervision of transfers of the territory under the subleasing plan. In fact, it is also to be noted that in almost all cases of concessionary grants, the right of transfer of the grant or any territory under it is subject to the approval of the granting government.

The concession was, when I left London on the 8th instant, still under discussion at Bagdad by Mr. Keeling on behalf of the Turkish Petroleum Company, with the Iraq Government.

Mr. Nichols has given me his personal assurance that Mr. Keeling has been instructed that, if the phraseology of Article 34 as above-quoted be adopted, it must be with the concurrent adoption of Articles 5 and 6 which embody, as conditions of the concession, the provisions for carrying out the subleasing plan of the Company.

With best wishes [etc.]

GUY WELLMAN

REPRESENTATIONS BY THE UNITED STATES AGAINST TRADE DISCRIMINATION BY NEW ZEALAND IN SAMOA, AND COUNTER-COMPLAINT BY NEW ZEALAND

611.62 m 31/23 : Telegram

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

WASHINGTON, April 8, 1924—3 p. m.

89. Department's telegram 1155, November 17, 1920.⁶³ Despite repeated requests which Department has made to British Government through Embassy for an indication of the attitude of the British Government with respect to the preferential tariff now in force in Samoa, in contravention of the Tripartite Convention between Great Britain, Germany and the United States, of 1899,⁶⁴ nothing has been received except statement that the matter was under consideration and that it would be dealt with as quickly as possible. The last word from the British Government was contained in Ambassador Harvey's telegram No. 236 of June 2, 1 p. m. 1922⁶⁵ to the effect that the Colonial Office would be pressed for an early decision.

The Department learns that the New Zealand Order in Council of September 3, 1923 which modified customs regulations in Samoa reiterates the position of the New Zealand Government with respect to American goods which by the above mentioned Order are subjected to the same duties as all goods of origin other than British. Furthermore, an Order in Council of September 25, 1923 admits the entry free of duty of German Austrian products. This Government has consistently objected to this discrimination against United States products. At present, articles of British origin enjoy 7½% preference in tariff over American goods.

It is obviously desirable that this matter be adjusted at the earliest possible moment in view of the severe losses resulting to American firms having business with Samoa. Department is informed that one large American firm in Samoa has retired from business, the owner attributing his action to the preferential duties established by New Zealand in Western Samoa. It is assumed that you have all the pertinent facts relating to the case at your disposal and that you are thoroughly familiar with this Government's attitude. If not, the

⁶³ Not printed.

⁶⁴ *Foreign Relations*, 1899, p. 667.

Department will be glad to cable a summary of its position in the matter.

You will please avail yourself of the first appropriate opportunity to take this matter up personally with the Secretary of State for Foreign Affairs pointing out that the action of the New Zealand Government is clearly in violation of Article III of the Convention of 1899, and that the government's action has resulted in serious loss to American commercial interests. You will also point out the very considerable period of time which has elapsed since this Government first instituted representations, and you will earnestly request that some arrangement may be promptly arrived at which will provide for United States goods being granted complete equality of treatment with British products as provided for in the Tripartite Convention.

HUGHES

611.62 m 31/24 : Telegram

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

LONDON, April 10, 1924—5 p. m.

[Received April 10—2:25 p. m.]

123. Your 89, April 8, 3 p. m. I had a personal conference today with the Secretary of State for Foreign Affairs in relation to discriminatory tariff imposed by New Zealand. I explained to him provisions of tripartite convention of 1899 which is still in force, also that the imposition of this tariff was in violation of the principle of mandated German territory which had been conceded by Japan, France, Belgium and by the British Government in exchange of communications in reference to Central African treaty. He said he would take the matter up and insist on an adjustment at an early date; that while he was not familiar with the details occurring during previous administrations he thought delay was due largely to having to deal with colonial governments and the imperial conference which took place last autumn; that he understood that New Zealand claimed some discrimination by the United States in the imposition of port duties against British ships in Samoa. I informed him that I had no knowledge of such discrimination unless it was the collection of fees for issuing consular bills of health for ships clearing from Apia to Pago Pago which were subsequently refunded as not being in accordance with the treaty of 1899. (See enclosures to Department's instruction No. 833 [883], August 18th, 1920, report of Mason Mitchell, Consul.)⁶⁵ Definitely promised early action. Will keep Department advised.

KELLOGG

⁶⁵ Not printed.

611.62 m 31/27

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

No. 537

LONDON, July 2, 1924.

[Received July 11.]

SIR: In connection with my despatch No. 503, of June 17, 1924,⁶⁶ I have the honor to enclose a copy, in triplicate, of a note from the Foreign Office dated June 30, 1924, together with its enclosures, concerning the subject in hand, namely the question of the discriminatory tariff imposed by New Zealand on American goods in the British mandate territory of Samoa. It appears that the Government of New Zealand would be willing to accede to the request of the United States Government for national treatment for its commerce and commercial vessels in Western Samoa, provided that the United States Government on its part is willing to give a specific assurance of its understanding that Article 3 of the Convention of 1899 ensures to British commerce and commercial vessels national treatment in that part of Samoa under United States administration.

An examination of the full text of the note will show that this raises the question of whether under our Coastwise Trading Act British ships bound for the United States may call at Tutuila and carry goods and passengers between that port and the United States under the same condition as our coastwise ships. I have not had time to examine this question but am sending the note on for your inspection.

I have [etc.]

FRANK B. KELLOGG

[Enclosure]

Mr. G. R. Warner of the American and African Department of the British Foreign Office to the American Ambassador (Kellogg)

No. A3920/2287/45

LONDON, June 30, 1924.

YOUR EXCELLENCY: With reference to our conversation on the 10th April last,⁶⁷ I have the honour to inform Your Excellency that His Majesty's Government have discussed with the Government of New Zealand the question dealt with in previous correspondence ending with Mr. Harvey's note No. 1071 of the 20th [25th] October, 1923,⁶⁸ with regard to the rights claimed by the United States in Western Samoa under article 3 of the Convention concluded at Washington on the 2nd December, 1899, between the United Kingdom, Germany and the United States.

⁶⁶ Not printed.⁶⁷ See telegram no. 123, April 10, from the Ambassador in Great Britain, p. 242.

2. You will observe that it is provided in the same article of that convention that each of the three signatory powers shall continue to enjoy in respect of their commerce and commercial vessels in all the islands of the Samoan group privileges and conditions equal to those enjoyed by the sovereign power in all ports which may be open to the commerce of either of them. It will be remembered that in 1911 the United States authorities had exercised some discrimination against British ships trading between Pago Pago and Leone in Tutuila. On that occasion inquiries were made of your government, who stated that Leone was not a port of entry; but in the course of the correspondence which ensued the United States Government admitted that British ships were entitled to the same treatment as United States and German ships in this respect (in this connection I would refer you to the note from the State Department to His Majesty's Ambassador at Washington of the 5th February, 1912, *et cetera*⁶⁹). In the same year also a complaint was made by a British firm that bills of health were being issued gratis by the United States Consul at Apia to United States vessels trading between Apia and Pago Pago, while a charge was made for similar bills of health issued to British vessels trading on the same route. This complaint being brought to the notice of the United States Government, it was decided by the State Department in 1913 that the exaction of fees from British vessels while United States vessels were exempt was contrary to article 3 of the Convention of 1899, and instructions were accordingly given for the collection of such fees to be discontinued (see note from the State Department to His Majesty's Ambassador at Washington, 15th October, 1913⁶⁹). The United States Government were thus, in 1913, of opinion that the convention prevented preference in this respect being given to United States ships trading with American Samoa.

3. The Government of New Zealand have also called my attention to the fact that, owing to the operation of the United States coast-wise laws, British ships trading from New Zealand to San Francisco are no longer able to call at Honolulu and to carry goods and passengers between that port and San Francisco. Consequently, British ships can no longer call at Honolulu except those on the Vancouver mail service. It is, therefore, a matter of considerable importance to the Government of New Zealand that British ships trading between New Zealand and the United States should be able to call at Tutuila and, if necessary, to carry goods and passengers between that port and the United States under the same conditions as United States ships.

4. In the circumstances the Government of New Zealand would be willing to consider the request of the United States Government for

⁶⁹ Not printed.

national treatment for their commerce and commercial vessels in Western Samoa, provided the United States Government on their part are willing to give a specific assurance of their understanding that article 3 of the Convention of 1899 ensures to British commerce and commercial vessels national treatment in that part of Samoa under United States administration.

5. At the request of the Government of New Zealand, I have the honour to append a communication received from them by His Majesty's Government stating their position in this matter.

6. I beg leave further to refer you to your personal letter to me of April 10th, giving the only case which you have been able to trace of any case of discrimination against British vessels in ports of Samoa under United States administration. In this connection I have the honour to point out that the discrimination of which complaint is made by His Majesty's Government is rather that involved by the extension to American Samoa of the coast-wise laws restricting trade between United States ports to vessels of United States registry, which was provided for by section 21 of the United States Merchant Marine Act of June 5th, 1920.⁷⁰

7. With regard to the statement contained in the *aide-memoire* which you were so good as to leave with me on April 10th last, to the effect that an Order in Council of September 25th, 1923, admits the entry free of duty into Western Samoa of German and Austrian goods, I have the honour to enclose herein a copy of the Order in Council in question, and of that of the 3rd September, 1923, which it amended.⁷¹ You will observe that the Order in Council of the 25th September only dispensed with the necessity for a licence in respect of German and Austrian goods imported into Western Samoa after April 1st, 1924, and did not provide for their entry free of duty.

I have [etc.]

G. R. WARNER

[Subenclosure—Telegram]

The Governor General of New Zealand to the British Secretary of State for the Colonies

1. The New Zealand Government acting by His Majesty's delegation as mandatory authority of Western Samoa regrets any apparent delay in reply to the representation of the United States Government on the subject of British preferential duties in Western Samoa.

2. This Government had, however, believed that the United States Government understood the points of difference and this Government were awaiting an intimation from the United States Govern-

⁷⁰ 41 Stat. 988.

⁷¹ Neither printed.

ment that the Tripartite Treaty of 1899 prevented the United States from restrictions upon British shipping in American Samoa.

3. The New Zealand Government has recognised that the question whether obligations of Tripartite Treaty are still imposed on Western Samoa, notwithstanding its transition from German Sovereignty to mandatory authority, is one to be determined by the Law Officers of the Crown in England and in deference to their advice has not contended that it is free from those obligations.

4. But this government has maintained that Tripartite Treaty is equally binding upon the Government of American Samoa and therefore that restrictions upon British shipping in American Samoa are at least as inconsistent with Tripartite Treaty as are the British preferential duties in Western Samoa.

5. If the Government of the United States definitely concede that New Zealand ships and all British ships are entitled to carry goods and passengers between American ports and ports of American Samoa, and that British shipping will receive exactly the same treatment in all other respects in such trade as American ships, both in American Samoa and in United States ports, then the New Zealand Government will reciprocally legislate to place American imports in the same position as the British imports in Western Samoa.

**ANNOUNCEMENT BY THE BRITISH GOVERNMENT OF THE DECISION
TO ACCREDIT A MINISTER TO REPRESENT IN THE UNITED STATES
THE INTERESTS OF THE IRISH FREE STATE**

701.4111/487

The British Ambassador (Howard) to the Secretary of State

No. 564

WASHINGTON, June 24, 1924.

SIR: Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that His Majesty's Government have come to the conclusion that it is desirable that the handling of matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited to the United States Government. Such a minister would be accredited by His Majesty The King to the President of the United States and he would be furnished with credentials which would enable him to take charge of all affairs relating only to the Irish Free State. He would be the ordinary channel of communication with the United States Government on these matters.

Matters which are of Imperial concern or which affect other Dominions of the Commonwealth in common with the Irish Free State will continue to be handled as heretofore by this Embassy.

The arrangements proposed by His Majesty's Government would not denote any departure from the principle of the diplomatic unity of the Empire. The Irish Minister would be at all times in the closest touch with His Majesty's Ambassador and any question which may arise as to whether a matter comes within the category of those to be handled by the Irish Minister or not would be settled by consultation between them. In matters falling within his sphere the Irish Minister would not be subject to the control of His Majesty's Ambassador nor would His Majesty's Ambassador be responsible for the Irish Minister's actions.

In communicating to you these proposals, which His Majesty's Government trust will promote the maintenance and development of cordial relations between the British Empire and the United States, I have been instructed to express the hope that the United States Government will concur in the appointment of an Irish Free State Minister at Washington on the footing I have indicated above. As regards questions such as the precedence to be attributed to the Irish Minister or any other points which the United States Government may desire to raise in connection with the appointment, His Majesty's Government will await the views of the United States Government.

I have [etc.]

ESME HOWARD

701.4111/487

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, June 28, 1924.

EXCELLENCY: I have the honor to acknowledge the receipt of your note Number 564 of June 24, 1924, by which, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, you inform me of the conclusion which His Majesty's Government has reached that it is desirable that the handling of matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited by His Majesty The King with credentials which would enable him to take charge of all affairs relating only to the Irish Free State.

Responding to the hope which you express on behalf of Your Government that the Government of the United States will concur in the appointment of an Irish Free State Minister at Washington in conformity with the proposals of His Majesty's Government as set out in your note, I have the honor and the pleasure to inform you that the President, always happy to meet the wish of His Majesty's Government in every proper way, will be pleased to receive a duly

accredited Minister Plenipotentiary of the Irish Free State, on the footing you indicate.⁷²

Accept [etc.]

CHARLES E. HUGHES

APPLICATION TO THE IRISH FREE STATE OF THE PROPERTY CONVENTION OF MARCH 2, 1899, BETWEEN THE UNITED STATES AND GREAT BRITAIN

811.5241 d/7

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

No. 1019

LONDON, January 26, 1925.

[Received February 6.]

SIR: Referring to the Department's instruction No. 414 dated October 31, 1924,⁷³ I have the honor to enclose copies, in triplicate, of a note dated November 17, 1924, which the Embassy addressed to the Foreign Office, and the latter's reply dated December 12, 1924, concerning the application to the Irish Free State of the provisions of the Property Convention concluded between the United States and Great Britain on March 2, 1899.⁷⁴ I am informed by the Foreign Office that His Majesty's Government have no objection to the publication of this exchange of notes.

I have [etc.]

For the Ambassador:

F. A. STERLING

Counselor of Embassy

[Enclosure 1]

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

No. 568

LONDON, November 17, 1924.

SIR: Under instructions of my Government I have the honor to enquire whether, as a result of the creation of the Irish Free State, the British Government consider that the provisions of the Property Convention of March 2, 1899, are still binding on Ireland without notice, as provided for by Article 4, Paragraph 1.⁷⁵

I have [etc.]

FRANK B. KELLOGG

⁷² Timothy A. Smiddy presented his credentials as Minister to the President on Oct. 7, 1924.

⁷³ Not printed.

⁷⁴ Malloy, *Treaties*, 1776-1909, vol. I, p. 774.

⁷⁵ The paragraph reads: "The stipulations of the present Convention shall not be applicable to any of the Colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such Colony or foreign possession by Her Britannic Majesty's Representative at Washington to the United States Secretary of State, within one year from the date of the exchange of the ratifications of the present Convention."

[Enclosure 2]

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

No. A6753/984/45

[LONDON,] 12th December, 1924.

YOUR EXCELLENCY, With reference to Your Excellency's note of November 17th, I have the honour to inform you that the establishment of the Irish Free State is not regarded as affecting the position in connection with the applicability to Ireland of the convention of the 2nd March, 1899, relative to the disposal of real and personal property.

I have [etc.]

(For the Secretary of State)

G. R. WARNER

**SETTLEMENT OF THE DISPUTE WITH THE BRITISH GOVERNMENT
REGARDING WITHDRAWAL OF RECOGNITION OF AMERICAN CON-
SULAR OFFICERS AT NEWCASTLE-ON-TYNE⁷⁶**

125.655/122 : Telegram

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

[Paraphrase]

LONDON, March 26, 1924—noon.

[Received March 26—8:50 a. m.]

102. Embassy was told informally and confidentially yesterday by the Foreign Office that the Secretary of State for Foreign Affairs had agreed to have the Newcastle case settled on the lines which the Department had suggested, that the appointment of Brooks as vice consul at Belfast would be acceptable to the British Government, and that the Foreign Office had instructed the British Embassy at Washington to inquire whether you wished to have the notes exchanged at London or Washington.

KELLOGG

125.655/122 : Telegram

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

WASHINGTON, March 27, 1924—5 p. m.

74. Your 102, March 26, noon.

The Department is gratified to learn that there is good prospect of settling the Newcastle case along lines previously agreed on.

⁷⁶ For previous correspondence concerning withdrawal of recognition of American consular officers at Newcastle-on-Tyne, see *Foreign Relations*, 1923, vol. II, pp. 306 ff.

I wrote you letter March 25, in answer to your letter February 27, regarding the case.⁷⁷ My letter was sent by pouch yesterday and reiterates Department's position in the matter.

In discussing the case you should reiterate understanding already reached which has been fully covered in previous telegrams and instructions.

(1) Publication of the notes shall immediately follow the exchange. It is the opinion of the Department that this exchange should occur in London, but that publication should be simultaneous in London and in Washington.

(2) That at the time of publication the Department will also announce that the British Government has agreed that Slater and Brooks may be assigned to posts within the British Empire and will shortly be sent to such posts.

(3) That the British Government agrees to issue the necessary exequatur and recognition to Slater and Brooks when they are sent to Fort William and Port Arthur and to Belfast, respectively.

I have today had a conversation with the British Ambassador on this subject and have read to him the text of this instruction.

HUGHES

125.655/124 : Telegram

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

LONDON, March 31, 1924—6 p. m.

[Received 8:15 p. m.]

112. The following exchange of notes has been made today.

"His Excellency the Honorable Frank B. Kellogg. Your Excellency: I have the honor 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 and a half ago against the then American consul and vice consul at Newcastle-on-Tyne and it has therefore been recalled. I have the honor to be with the highest consideration Your Excellency's obedient servant. (Signed) J. Ramsay MacDonald."

"The Right Honorable J. Ramsay MacDonald. Sir: I am instructed to inform you that it is the intention of my Government to reopen the consulate at Newcastle-on-Tyne and I have the honor to state that Mr. Charles Roy Nasmith has been appointed as consul of the United States at that port. I beg therefore to request you to be good enough to take the steps necessary for his recognition in that capacity in case the appointment be found agreeable to His Majesty's Government. I have the honor to be with the highest consideration, Sir, your most obedient humble servant. (Signed) Frank B. Kellogg."

⁷⁷ Neither printed.

While the above notes signed by me and the Minister for Foreign Affairs have been exchanged they are undated to be held in abeyance and not put on record until you signify your approval when the dates will be inserted.

I am also addressing the Minister for Foreign Affairs the following note:

"The Right Honorable J. Ramsay MacDonald. Sir: I have the honor to refer to the exchange and simultaneous publication of the notes between ourselves wherein the charge against the American consul and vice consul at Newcastle-on-Tyne which was brought about a year and a half ago has been recalled and the appointment of Mr. Charles Roy Nasmith as American consul at that port was made known to you together with the request that he be recognized in that capacity. In this connection I desire to state, confirming my conversation of this morning with Sir Eyre Crowe, that the Department of State at Washington will announce at the time of the publication of the notes that the British Government has agreed that Messrs. Slater and Brooks formerly consul and vice consul at Newcastle-on-Tyne may be assigned to posts within the British Empire and will shortly be sent to such posts. Confirming also the conversation above referred to, it is my understanding that the notes shall be released simultaneously in London and Washington for publication in the morning newspapers of April 3d, 1924. I have the honor to be with the highest consideration, Sir, your most obedient humble servant. (Signed) Frank B. Kellogg."

And I have received the following note from the Foreign Office.

"March 31st, 1924. Immediate and confidential. Your Excellency. With reference to Your Excellency's note number 125 of today's date I have the honor to inform you that I shall be happy to take steps with a view to the issue of the King's exequatur to Mr. Slater as United States consul at Fort William and Port Arthur, Canada, and to the formal recognition of Mr. Brooks as United States vice consul at Belfast so soon as Your Excellency has put forward the necessary request to this Department. (Signed) For the Secretary of State for Foreign Affairs. G. R. Warner."

If the notes quoted above and the memorandum contained therein are satisfactory please send me your approval immediately.

KELLOGG

125.655/124 : Telegram

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

WASHINGTON, April 1, 1924—1 p. m.

81. Your 112, March 31, 6 p. m. Department approves of text of Notes to be exchanged. It is suggested that Notes be dated April 2, 1924 and that they be released for publication in the morning newspapers of April 3rd.

Unless a telegram to the contrary is received from you before noon to-morrow, it will be assumed that this course meets with the approval of the British Government and the Department will proceed with the arrangements for the release of Notes, preceded by the following statement:

"The United States Government having reached an understanding with the British Government with regard to the United States Consulate at Newcastle-on-Tyne, England, which was closed in 1922, the following Notes were exchanged yesterday between the British Secretary of State for Foreign Affairs and the American Ambassador at London. The British Government has agreed that Messrs. Slater and Brooks, formerly Consul and Vice Consul respectively at Newcastle may be assigned to posts within the British Empire and will shortly be sent to such posts."

HUGHES

REPRESENTATIONS BY THE BRITISH GOVERNMENT ON BEHALF OF
BRITISH INDIANS INELIGIBLE TO CITIZENSHIP IN THE UNITED
STATES

130Hindu/orig.

The British Chargé (Chilton) to the Acting Secretary of State

No. 812

WASHINGTON, September 19, 1923.

SIR: Under instructions from my Government, I have the honour to bring to your notice the effect on certain British subjects, natives of India resident in the United States, chiefly in the State of California, of the decision rendered by the United States Supreme Court on the 19th of February last in the case of Bhagat Singh Thind.⁷⁸ The Court ruled that a Hindu, of whatever caste, of full Indian blood, was ineligible for United States citizenship.

In certain States, notably California, aliens who are ineligible for citizenship are unable under the local law to possess real property, and it is fully realised by His Majesty's Government that British Indians resident in these States will thus in future be unable legally to acquire title to real property. I need hardly add that His Majesty's Government have of course no desire to impugn the right of the United States Government to determine what persons are eligible for United States citizenship.

His Majesty's Government desire me, however, to point out that a serious and altogether unwarranted hardship will be imposed on a large number of British subjects if the Supreme Court decision is immediately put into effect, and, still more, if it is given retroactive force. His Majesty's Government are advised that real property legally acquired by British Indians in California, (in which State the majority of the British subjects affected are situated), prior to

⁷⁸ 261 U. S. 204.

the passage of the first California Alien Land Law on May 19th, 1913, will not be liable to confiscation in consequence of the Supreme Court decision, inasmuch as its owners were not ineligible for citizenship when they acquired the property. His Majesty's Government trust that the United States Government will concur in this view. On the other hand, it would appear that real property acquired since that date is technically subject to escheat as from the date on which the Supreme Court ruling becomes effective, so my present representations are especially directed towards the attainment of some alleviation for British Indian property owners in this latter category.

I have further the honour to point out that there are certain British treaty rights which affect this question. In Article V of the Convention between the United States and Great Britain of March 2nd, 1899,⁷⁹ it is provided that most favoured nation treatment may be applied in all that concerns the disposal of real property. The most favoured nation in this case would appear to be Colombia; by the treaty between the United States and Colombia of December 12th, 1846,⁸⁰ it is provided, (Article XII,) :—"The citizens of each of the contracting parties shall have power to dispose of their personal goods or real estate within the jurisdiction of the other by sale, donation, testament or otherwise". His Majesty's Government feel that although, as regards California, under the recent Supreme Court ruling British Indians have technically no title to retain real property acquired since May 19th, 1913, they should certainly obtain the benefit of Article V of the Convention of March 2nd, 1899, by being permitted a reasonable period of exemption from the operation of the Supreme Court decision within which to dispose privately of their property. His Majesty's Government consider that even apart from these treaty stipulations the grant of such a period of respite would be only reasonable, and that it should be accorded to all British Indians who own such property (whether or not escheat proceedings have already been instituted against them), in all cases where the property was acquired in good faith and legally according to the laws in force at the time of its acquisition. His Majesty's Government suggest that this period of respite should amount to two years (thus coinciding with the period specified in Section 7 of the Alien Land Law of California of 1920) and that the Supreme Court decision should be held operative only as from January 1st, 1925.

In communicating to you the above considerations, I would also draw your attention to another aspect of the matter involving hardship to British Indian subjects who have come to the United States

⁷⁹ Malloy, *Treaties, 1776-1909*, vol. I, p. 774.

⁸⁰ *Ibid.*, p. 302.

to study. Here again I refer more especially to the conditions obtaining in California. In that State British Indian subjects who are students are affected by the Supreme Court decision owing to the fact that they are classified as non-resident if they are ineligible to citizenship and are thus obliged to pay the comparatively heavy fees demanded of non-resident students. While His Majesty's Government are aware that intervention in a question of this kind by the Federal Government may be a matter of some difficulty and delicacy, yet they feel sure that if the matter was put to the authorities responsible for determining students' fees in California and elsewhere through your kind intermediary, they would appreciate the hardship involved to British Indian students if they are suddenly to be called upon to pay greatly increased dues. It would seem not unreasonable that the students already attending courses should be allowed to retain their present status as resident students until their conclusion, and thus not be penalised by being compelled at once to pay the fees required from non-resident students.

His Majesty's Government suggest, as a fair and practical solution of these difficulties, that the date on which the Supreme Court ruling of February 19th, 1923, shall be deemed to become effective, shall be January 1st, 1925. Such a solution will involve a triple alleviation of the hardship caused by the Supreme Court ruling to British Indian residents in this country,—hardship which His Majesty's Government feel sure the United States Government would be reluctant to inflict. In the first place, British Indians who have acquired real property lawfully and in good faith will have the opportunity, to which by treaty they are entitled, to dispose of it without incurring the undeserved total loss which would attend escheat proceedings. In the second place, British Indians who have contemplated immigration to this country with the intention of acquiring real property, and those who may be already in this country and may have possessed such intentions, will have ample warning of the legal disability which would attend such a project. In the third place, British Indian students now resident in the United States, and more especially in California, will be enabled to finish their courses of study under the same conditions in which they commenced them, and due warning will be afforded to British Indians intending to come to study in this country, and more especially in California, that they will, after January 1st, 1925, be liable to the increased fees required from non-resident students.

His Majesty's Government feel sure that it is not the intention of the United States Government that British subjects who have, in a bona fide manner and in violation of no Federal or State law, acquired real property in this country, should, through no fault of their own, and owing to the operation of a decision which they could

not possibly have anticipated, be penalised by confiscation to the extent of the entire value of their property or be obliged to suffer a financial burden which might easily entail the abandonment of their studies. His Majesty's Government have the greater confidence in appealing to the United States Government for a reasonable and equitable solution of this question such as I have suggested above, because His Majesty's Government understand that it is the policy of the United States Government to resist any measures taken in foreign countries, which would involve confiscation, without due warning, of American property. In particular, I would refer in this connection to the communiqué issued by the Department of State to the press in November last,²¹ in which, with reference to the American interests in Mexico, the following passage occurred:—"We have said that, when a nation has established laws under which investments have been lawfully made, contracts entered into and property rights acquired by citizens of other jurisdictions, it is an essential condition of international intercourse that there shall be no resort to confiscation and repudiation". In view of this attitude in the matter of American property and interests in foreign countries, I feel sure that the United States Government will not be averse to affording, in the case of British Indians in the United States and more especially in California, a similar measure of protection for their property and interests. Moreover, the fact that many of the British Indians in question obtained their United States naturalization while serving as United States soldiers during the war will, I feel sure, render the competent authorities of the United States Government the more sympathetic to their case and the more favourably disposed to ensure that equitable treatment shall be afforded to them in this matter.

In conclusion I have the honour to point out that inasmuch as in several cases in California the Attorney General has already begun proceedings for the escheat of the property of British Indians in execution of the Supreme Court ruling, the matter is one of considerable urgency if an equitable settlement is to be reached before these unfortunate British Indians are called upon to incur the grave financial loss and hardship inseparable from the confiscation of their property. The case of British Indian students in California is also urgent as I understand that as far as the University of California is concerned, it is intended to exact non-resident fees from British Indians at the beginning of the approaching semester.

In these circumstances I have the honour, under instructions from my Government, to ask you to be so good as to draw the

²¹ See telegram no. 171, Nov. 20, 1922, to the Chargé in Mexico, *Foreign Relations*, 1922, vol. II, p. 703.

urgent attention of the competent authorities to these questions in order that they may take into immediate consideration the solution I have suggested above, and I trust that having regard to the treaty rights involved and in the interests of equity and justice, they may see their way to concur in the proposals put forward by His Majesty's Government and to take action without delay with a view to their execution.

I have [etc.]

H. G. CHILTON

130Hindu/5

The British Chargé (Chilton) to the Secretary of State

No. 1110

WASHINGTON, December 28, 1923.

SIR: In my note No. 812 of September 19th last I submitted to you certain considerations regarding the hardship which will be inflicted upon British Indian subjects resident in the United States, and especially in California, if the Supreme Court decision of February 19th last in regard to the ineligibility of British Indians for United States citizenship is to be enforced immediately or made retroactive, and I enquired whether it would not be possible to postpone the date of enforcement in order to minimize this hardship.

His Majesty's Consul-General at San Francisco now informs me that a report has appeared in the press to the effect that United States Judge William P. James of Los Angeles has already cancelled the naturalization certificate of Mr. Tulsa Ram Mamdal, a Hindu residing in Fresno County, California. On the other hand, information has reached me to the effect that the confiscation, under the terms of the Supreme Court decision, of certain property belonging to a British Indian at Orange Vale Colony, Fair Oaks, California, has been postponed until April in order to give the owner more time to dispose of his property.

I have the honour to enquire whether the report as to the cancellation of T. R. Mamdal's naturalization is correct and, in view of the leniency displayed in the matter of the confiscation of the property mentioned above, which I am sure will be greatly appreciated by His Majesty's Government, I would express the hope that, in the light of the arguments put forward in my note under reference, it may also be possible to defer the operation of the Supreme Court decision in the matter of the cancellation of naturalizations.

You will appreciate that the present uncertainty as regards the status of these Indians and their property places them in a position of considerable difficulty, and I have the honour to request that you will be so good as to communicate to me, at your earliest convenience, the decision of the United States Government on this question.

I have [etc.]

H. G. CHILTON

130Hindu/6

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, April 2, 1924.

EXCELLENCY: Referring to the Department's note dated February 2, 1924,⁸² with regard to the report which your Embassy had received that United States Judge William P. James, of Los Angeles, California, had cancelled the naturalization certificate of Mr. Tulsa Ram Mamdel, a Hindu residing in Fresno County, California, I have the honor to state that a communication has been received from the appropriate authority of this Government stating that a decree of cancellation of this man's naturalization certificate was entered by the United States District Court, Los Angeles, California, on November 17, 1923.

With respect to the matter of deferring proceedings to cancel naturalization in accordance with the decision of the Supreme Court of the United States in the case of Bhagat Singh Thind, I have the honor to state that the appropriate authority of this Government has informed me that a recommendation was contained in the last Annual Report of the Commissioner of Naturalization that Congress should pass a law relieving from doubt the title to citizenship acquired by Asiatic aliens who served in the armed forces of the United States during the World War and who were naturalized under the provisions of the Act of May 9, 1918. It is further stated that with the exception of a test case now pending in Boston, involving a Japanese subject who was in the Navy during the war and who obtained naturalization under the provisions of the Act of Congress approved May 9, 1918 (40 Stat. L. 542), cancellation proceedings have not been instituted in the cases of members of Asiatic races who acquired naturalization through this means.

The only cases that remain are those of Hindus who were naturalized under the provisions of the general naturalization laws, against whom cancellation suits have been filed as a result of the decision of the Supreme Court in the Thind case. According to information furnished by the Commissioner of Naturalization, approximately fifty cases are involved in this category and of these approximately fifteen cases have already been terminated by decrees of cancellation and of the remaining cases cancellation suits have already been begun and are now pending in the courts. About one-third of the total number of Hindu cancellation suits arose in California, and as it is considered unlikely that all of the California Hindus have acquired real property, it is believed that the total number of those who might be adversely affected by the proceedings is small.

⁸² Not printed.

With respect to the postponement of cases involving Hindus now pending, as well as any cases falling within this class that may hereafter arise, in order that these persons may have until January 1, 1925 to protect property rights which they believed they acquired, it is stated that it is doubted whether this action would have the desired effect, because under the decision of the Supreme Court in the Thind case, these persons were never eligible for naturalization and, hence, their naturalization was void *ab initio*.

I shall appreciate it if you will be so good as to furnish detailed information concerning the names of British Indians whose property rights are involved and the extent of their holdings of land in the various States. Upon receipt of this information further consideration will be given to the matter.

Accept [etc.]

CHARLES E. HUGHES

811.5245/6

The British Ambassador (Howard) to the Secretary of State

No. 495

WASHINGTON, June 2, 1924.

SIR: In the note which you were so good as to address to me on April 2nd last regarding the property rights acquired by British Indians in certain States of the Union, you enquired whether detailed information could be furnished to you concerning the names of the persons involved, and the extent of their holdings in land: you added that on the receipt of this information, further consideration would be given to the whole matter.

I have made the necessary enquiries from His Majesty's Consular officers in the States involved, and as a result of their reports I have the honour to enclose a list comprising the names of 95 Indians,⁸⁸ who hold either jointly or individually, separate tracts of land of a total area of 1868 acres valued at approximately \$1,328,000. In this connection I would however point out that the list is still incomplete for not only does it not include property holders in the Imperial Valley, Southern California, but also because, in several cases, only the name is given of one of the joint owners: but on the other hand, I must add that the names therein included are to the best of my knowledge those of bona fide property holders, the valuation of whose estates has been made on very conservative premises.

In the note which he addressed to you on September 19th last, Mr. Chilton made it clear that my Government in no way desired to impugn the right of the United States Government to determine what persons are eligible for United States citizenship, nor to con-

⁸⁸ Not printed.

test the validity of the laws in force in certain States by which aliens who are ineligible for citizenship are unable to possess real property. The suggestions of His Majesty's Government, to which Mr. Chilton gave expression, were to the effect that the inevitable hardships, ensuing from the decision of the United States Supreme Court of February 19, 1923, might possibly be mitigated if the competent United States authorities could see their way to extending the period of time within which the properties held by British Indians should be liquidated: and in this hope, His Majesty's Government ventured to propose, as a fair and practical solution of these difficulties, that the date on which the Supreme Court ruling shall be deemed to become effective, should be January 1st, 1925.

While still adhering to the views expressed in September, His Majesty's Government now feel that as the United States authorities have not yet found it possible to give a final decision in this matter, the delay, within which the ruling should be made effective, might with fairness to all parties concerned be extended for a further period of twelve months and become January 1st, 1926. His Majesty's Government cannot but reiterate that they do not wish to lay emphasis on questions of naturalization, or of eligibility or ineligibility for citizenship through naturalization, but rather on the patent hardship accruing to those Indians who have continuously retained their British nationality and who are now threatened with the forfeiture of legally acquired property rights. From the merely practical point of view, the British Indians in question will in any case be faced with conditions which will adversely affect their chances of selling their property at fair prices: the fact that these various Estates will be thrown upon the market more or less simultaneously will tend to reduce prices, at a time when there is likely to be a period of agricultural depression in California owing to the abnormally dry winter and to the serious outbreak of Foot and Mouth disease, and when the leases of land held under cropping contracts (amounting in the case of British Indians to 86,340 acres in 1920) will also be falling in.

My Government hopes therefore that the United States Government will see its way to considering as favourably as possible the views expressed above on the general question, and will urge upon the State authorities involved the possibility of alleviating, within the limits suggested, the hardships which the British Indians in this country are being unexpectedly called upon to face.

At the same time I should be glad to learn whether or not the United States Government concurs in the views expressed in the third paragraph of Mr. Chilton's note above-mentioned, to the effect that real property legally acquired by British Indians in California, prior to the passage of the first Californian Alien Land Law on

May 19, 1913, will not be liable to confiscation for the reasons therein adduced. An expression of your views on this question would be of particular value, because certain of the British Indians who figure in the attached list did in fact purchase land before May 19, 1913: namely No. 9, Fattu Peero purchased 10 acres at Orangevale, California, in 1910; No. 10, Charles Sri Ram purchased 10 acres in 1912, No. 21, Budh Singh purchased 20 acres, out of the 75 now jointly held, prior to 1913. In this connection I would observe that Charles Sri Ram was threatened with the confiscation of his holding in 1922 (at a date prior to the ruling of the Supreme Court) on the ground of his ineligibility to citizenship, but because purchase of part of his holding had been effected in 1912, the State Court dismissed the case. Moreover, you will observe that No. 8 on the attached list, Ram Nath Puri, holder of 10 acres of agricultural land, was naturalized in 1916 as a citizen of this country, and you will doubtless concur with me in considering that his is a case deserving the most sympathetic treatment prior to expropriation.

In conclusion, I have the honour to reiterate my request that you will be so good as to draw the urgent attention of the competent authorities to these questions, in order that they may consider with the least delay possible the solution which I have suggested above. I venture to hope that they will see their way to concur in His Majesty's Government's proposals in the interest of equity and justice.

I have [etc.]

ESME HOWARD

811.5245/10

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, September 16, 1924.

EXCELLENCY: I have the honor to refer to my note of September 5, 1924,⁸⁴ concerning real estate acquired by British Indians in certain States of the United States, and to inform you that a communication has now been received from the Governor of California, enclosing a copy of a letter he had received from the Attorney General of that State, dealing with this matter. The letter from the Attorney General of California reads in part as follows:

"In reply to your request for my views on this subject, I would say, first, that it is of course clear that there can be no postponing of the date when the United States Supreme Court decision referred to becomes effective. It is now effective and controlling with reference both to all public officials, and also to the various land holders of this state.

"I would say, however, that it has been the view of this office from the very inception of the alien land legislation that the spirit and

⁸⁴ Not printed.

purposes of that legislation will be best carried out if we encourage the sale by ineligible aliens of such land as they might hold. This will not only carry out the purposes of the act but will be aiding in the solution of this question in a way that will obviate unnecessary hardships.

"I am pleased to be able to state that, generally speaking, there has been an active cooperation on the part of the various district attorneys of the state in pursuing a policy which will lead to the desired result of so accomplishing the fundamental purposes of our alien land legislation. I am, therefore, prepared to state that so far as the attitude of this office is concerned we would be pleased, under the circumstances, to cooperate with your office in urging that the general policy requested by the British Embassy be carried out, to the end that unnecessary hardships be avoided, and to the further end that the real interests of the state be served by permitting the title to these lands to be finally vested in those qualified, under our law, to hold the same. The right of such persons so holding the legal title to lands to sell and convey good title to the same at any time prior to the institution of proceedings for escheat is generally conceded.

"With reference to the question of the right to escheat those lands which were lawfully acquired prior to the enactment of our Alien Land Act in 1913, I am of the opinion that the lands so lawfully acquired are not subject to escheat under the terms of our Alien Land Act.

"With reference to the other question of the rights of a Hindu who was naturalized as a citizen of the United States, it is, of course, clear that this naturalization was not lawful under the rule now established by the United States Supreme Court. I realize that several United States District Courts did in fact grant naturalization to these Hindus under a mistaken impression that they were 'white persons', as that expression is used in the United States Naturalization Statute. These decisions were subject to final review by the Supreme Court. This review has been had and the decision of the Supreme Court has shown that the attempt to naturalize these people was unauthorized by law.

"I do believe, however, that there is an element of justice here to be considered, and that so far as possible reasonable time should be extended to these aliens, who were so erroneously naturalized, within which to dispose of their property. These questions can be solved in accordance with law and at the same time accomplish the real ends of the state, without visiting harsh or unnecessary hardships upon individuals who in good faith accepted privileges which were erroneously granted to them."

Accept [etc.]

CHARLES E. HUGHES