CUBA

RATIFICATION OF THE TREATY OF MARCH 2, 1904, BETWEEN THE UNITED STATES AND CUBA FOR THE ADJUSTMENT OF TITLE TO THE OWNERSHIP OF THE ISLE OF PINES

837.014P/324

Senator Joe T. Robinson to the Secretary of State

[WASHINGTON,] *December 31, 1924.*

MY DEAR MR. SECRETARY: In making a study of the proposed treaty between the United States and Cuba relating to the Isle of Pines,[1] which treaty it appears to me should be ratified, I find that one Senator takes the position that the treaty making power cannot dispose of property belonging to the United States, or divest our Government of sovereignty over any part of its territory.

I understand that about December, 1904, Secretary Hay addressed a communication to Representative Jenkins, of Wisconsin, bearing upon this phase of the subject, and I would like to be furnished with a copy of this communication for use in preparing to advocate the ratification of the treaty.

With personal regards [etc.] JOE T. ROBINSON

837.014P/324

The Secretary of State to Senator Joe T. Robinson

WASHINGTON, *January 2, 1925.*

MY DEAR SENATOR ROBINSON: I have received your letter of December 31, 1924, regarding the proposed treaty between the United States and Cuba relating to the Isle of Pines in which you state you understand that about December 1904 Secretary Hay addressed a communication to Representative Jenkins bearing upon the question whether by this treaty the treaty-making power of the United States is disposing of property belonging to the United States or is divesting the Government of sovereignty over any part of its territory.

In reply I take pleasure in enclosing herewith a copy of a letter addressed to Representative J. J. Jenkins on December 15, 1903, which is I think the letter to which you refer. I am also enclosing a memorandum regarding the status of the Isle of Pines.

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[1] Treaty of Mar. 2, 1904, p. 11.

In this connection I should like to draw your attention to the following:

The opinion of the Supreme Court of the United States in *Pearcy* v. *Stranahan*, 205 U. S. 257, is significant, not only as a judicial decision disposing of the question before the Court, but as expressing the views of Mr. Justice William R. Day who concurred in that opinion. Judge Day, then Secretary of State, signed the protocol of August 12, 1898, embodying the basis for the establishment of peace and he was the head of the United States delegation which signed the Treaty of Peace with Spain on December 10, 1898.[2] No one who had the privilege of knowing Judge Day would doubt for a moment that when he concurred in the opinion of the Court, delivered by Chief Justice Fuller in *Pearcy* v. *Stranahan*, he believed that opinion to be a correct statement of the status of the Isle of Pines. You thus have in the opinion of the Supreme Court the deliberate judgment of the distinguished jurist who negotiated the treaty as to what it meant in this particular. You will readily understand how careful Judge Day would have been, in view of his connection with the negotiation of the Treaty, that no error should be made in anything that the Court might say about it.

It is in this view that the following paragraph in the opinion is of especial importance, (p. 266):

"In short, all the world knew that it was an integral part of Cuba, and in view of the language of the joint resolution of April 20, 1898, it seems clear that the Isle of Pines was not supposed to be one of the 'other islands' ceded by Article II. Those were islands not constituting an integral part of Cuba, such as Vieques, Culebra and Mona Islands adjacent to Porto Rico."

I think, therefore, that the argument that the Isle of Pines was ceded to the United States by the Treaty of Peace is without foundation. The Island belonged to Cuba, and, as the Supreme Court said (p. 272) while the sixth clause of the Platt Amendment "gave opportunity for an examination of the question of ownership and its settlement through a treaty with Cuba", Congress "has taken no action to the contrary of Cuba's title as superior to ours."

The Treaty, as you are doubtless aware, contemplates the relinquishment by the United States in favor of Cuba of all claim of title to the island, thus providing, in the opinion of this and preceding administrations, an equitable solution of a problem of many years' standing. The present undetermined status of the Isle of Pines constitutes one of the few remaining questions capable of prejudicing the intimate relations between the United States and Cuba, and it is my earnest hope that the Senate in its present session will give its consent to the ratification of the Treaty.

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[2] For texts of protocol and treaty, see *Foreign Relations*, 1898, pp. 828 and 831.

Permit me to emphasize the following points: The failure to ratify the Treaty would not give the Island to the United States. To accomplish that purpose it would be necessary to negotiate another treaty with Cuba, but I am satisfied that Cuba would not consent to relinquish the Island. It would be a waste of money to attempt to buy it and the considerations which appeal to Cuba would, in my judgment, preclude her from putting the matter upon a pecuniary basis. She considers herself entitled to the Island and looks to the United States to perform an act of justice. The failure of the Treaty, then, would simply leave the status of the Island unsettled; it would still remain under Cuban administration; and we should have stirred up ill-feeling. While we cannot obtain the Island for ourselves by refusing to ratify the Treaty, we can by its ratification put an end to an unpleasant question and strengthen the bonds of friendship between the two peoples.

I am [etc.] CHARLES E. HUGHES

[Enclosure 1]

The Acting Secretary of State to Representative J. J. Jenkins, Chairman of the House Judiciary Committee

WASHINGTON, *December 15, 1903.*

SIR: The President has referred hither a copy of your letter to him of the 9th instant, inclosing a copy of a resolution with respect to the Isle of Pines introduced in the House of Representatives on the preceding day, which reads as follows:

"Whereas it is commonly reported that a treaty negotiated between the President of the United States and the Republic of Cuba granting and ceding the Isle of Pines to the Republic of Cuba is pending in the Senate of the United States for ratification or rejection; and

"Whereas by the terms of the treaty of Paris the Kingdom of Spain relinquished sovereignty over the Isle of Pines as part of the Island of Cuba; and

"Whereas by the action of this Government in establishing and recognizing the independence of the Republic of Cuba it was expressly provided that the Isle of Pines should not be within the constitutional boundary of that Republic; and

"Whereas this Government has been administering the affairs and exercising sovereignty over the Isle of Pines ever since the treaty of Paris was ratified; and

"Whereas section three of article four of the Constitution of the United States provides that 'the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States': Therefore,

"*Resolved*, That the Committee on the Judiciary be instructed to inquire into the facts hereinbefore recited and report to this House as soon as practicable:

"First. Whether the Isle of Pines is 'territory or other property belonging to the United States' within the sense and meaning of the Constitution.

"Second. Whether a treaty granting and ceding territory of or belonging to the United States to a foreign government without action on the part of Congress is authorized by the Constitution.

"*Resolved*, That the Committee on the Judiciary may report at any time under the foregoing resolution."

Your letter invites a hearing of the Departments severally concerned in the constitutional and diplomatic questions involved in the negotiation for the relinquishment in favor of the Republic of Cuba of any title that the United States may have to the Isle of Pines under the Treaty of Peace between the United States and Spain.

So far as the Department of State is concerned, the question is as to its power and authority to negotiate the pending treaty with Cuba whereby the United States of America relinquishes in favor of the Republic of Cuba all claim of title to the Isle of Pines, situate in the Caribbean Sea near the southwestern part of the Island of Cuba, which has been or may be made in virtue of Article II of the Treaty of Peace between the United States and Spain, signed in the City of Paris on the tenth day of December eighteen hundred and ninety-eight.

Article I of the Treaty of Peace with Spain provides that: "Spain relinquishes all claim of sovereignty over and title to Cuba" subject to its temporary occupation by the United States. Article II reads:

"Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies and the Island of Guam in the Marianas or Ladrones."

In this manner, Spain divested herself of title and claim of title to all her West Indian possessions—not merely as to the mainland of the respective islands of Cuba and Porto Rico but as to all the islands, islets, keys and rocks pertaining to either island. As a historical fact, Spain, at the time of concluding the Treaty of Peace, possessed no territory in the West Indies which was not included in or dependent upon the administrative jurisdiction of the one or the other of the main islands named.

Under Spanish rule Cuba and Porto Rico each constituted an administrative province or district, styled a Gobierno General and administered by a Governor-General. The Gobierno of Porto Rico included the outlying islands of Culebra and Vieques and all adjacent islets and keys. The Gobierno of Cuba embraced the numerous islands and keys stretching in almost continuous chains along more than one-third of the insular coast, and lying at varying distances therefrom, much as Key West and the Dry Tortugas jut from the

Florida peninsula, or as Nantucket and Santa Catalina lie off the mainland of Massachusetts and California.

The Isle of Pines is not specifically mentioned in the Treaty of Peace. The first statutory reference to it, subsequent to the Treaty of Peace, is found in the so-called Platt Amendment to the Army Appropriation Act, approved March 2, 1901. That Amendment, in laying down the general conditions under which the military occupation of Cuba should cease and the future relations of the United States with Cuba should be determined, provided among other terms:

"That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

The Constitution of Cuba, thus spoken of in the future tense, had in fact been adopted February 21, 1901, eleven days before the Platt Amendment became law. By the 2nd Article the constitutional boundaries of Cuba were thus defined:

"Article 2. The territory of the Republic is composed of the Island of Cuba, as well as the adjacent islands and keys, which, together therewith, were under the sovereignty of Spain until the ratification of the Treaty of Paris on December 10, 1898."

To meet the requirements of the Platt Amendment, a change became necessary in this regard, as well as in some other respects, and, accordingly, the Constitutional Convention of the Republic of Cuba, on June 12, 1901, added an Appendix to the Constitution of Cuba, substantially in the terms of the Platt Amendment. The Sixth Article of that Appendix reads:

"Article VI. The Island of Pines shall be omitted from the boundaries of Cuba specified in the Constitution, the title and ownership thereof being left to future adjustment by treaty."

The law of the United States and the Constitution of Cuba are thus brought into perfect accord so far as the ownership of the Isle of Pines is concerned. Each party waives claim thereto, subject to the attainment of a mutual conventional understanding. The Congress of the United States has expressly relegated to the treaty making power the duty of adjusting the title to the Isle of Pines. The Cuban Constitutional Convention, having by Article II of the Constitution declared all the adjacent islands and keys to be part of the territory of the Republic, subsequently amended the Constitution by specifically omitting the Isle of Pines from that enumeration and leaving the ownership thereof to be adjusted by treaty.

A peculiar situation thus confronted the treaty making power of the two countries. Neither claimed the sovereignty of the Isle of

Pines. The Act of March 2, 1901, estopped the United States from an *ex parte* assertion of ownership under the provisions of Article II of the Treaty of Peace, by requiring the agreement of Cuba thereto. The Cuban Constitution waived, with similar condition, such an assertion on the part of the Republic. The supreme law of each nation made it mandatory upon its executive to seek a conventional adjustment of the matter with the other, in accordance with the facts and the equities of the case. Neither party was in a position, as self-declared and recognized master of the territory in question, to cede or grant it to the other. No such extreme condition interposed to tax the national sentiment of either. All that became incumbent upon the two governments was to agree whether, under the terms of Article I of the Treaty of Peace between the United States and Spain, the Isle of Pines was territorially embraced in the generic denomination of "Cuba" and as such came within the Spanish relinquishment of sovereignty and title thereto; or whether, finding that the Isle of Pines was not a part of the Cuban domain, under Spanish rule, it fell within the alternative enumeration of "other islands" than Cuba and Porto Rico then under Spanish sovereignty in the West Indies, and, as such, was ceded to the United States by Article II of the Treaty of Peace.

Thus presented, the question before the negotiators was simplified. There was no possible doubt as to the antecedent status of the Isle of Pines. Its past and present history made it difficult to be differentiated from the "Cuba" of Article I of the Treaty of Peace and to be constructively regarded as one of the "other islands" embraced in the intendment of Article II. For centuries it had been an integral part of the gubernative domain of Cuba. Politically and judicially it pertained to the municipal jurisdiction of Habana, being an ayuntamiento or municipal district of the judicial district of Becujal, in the Province of Habana. Its inhabitants voted for municipal officers as citizens of Habana. They cast their votes in like manner for Deputies to the national Cortes at Madrid. They were identified with the people of Cuba, and this merger of their franchises and interests continued under the military occupation of Cuba by the United States, but with some enlarged and purely local municipal privileges. Under the general orders of the United States military governor, they voted in the general election for a delegate to the Constituent Assembly, casting their votes as belonging to the Third Circuit of the Province of Habana, and thus shared in framing and adopting the Constitution of the Republic of Cuba. They subsequently voted in the same manner for Presidential electors. In short, the weightier considerations led to the conclusion that (as well phrased in the preamble to the Resolution submitted in the House of Representatives on December

8, 1903) "by the terms of the treaty of Paris the Kingdom of Spain relinquished sovereignty over the Isle of Pines as part of the Island of Cuba", and that in virtue of such relinquishment, as distinguished from the cession of other islands in the West Indies, the Isle of Pines was to be deemed an integral part of the territory over which, in pursuance of the Resolution of Congress of April 20, 1898, the relinquishment of Spain's authority and Government had been demanded, and which territory, in obedience to the same mandate of law, the United States in due time ceased to occupy and turned over to the people of Cuba. By like mandate of law, it became the duty of the treaty making power to declare this conclusion and give it effect by a treaty which should adjust the title to the Isle of Pines.

A treaty was accordingly negotiated under and within the statutory powers conferred by the law of each country.[2a] It is now pending before the Senate of the United States. While its text has not been made public, it is proper to the purposes of this report to say that its terms do not stipulate for "granting and ceding the Isle of Pines to the Republic of Cuba", as recited in the Resolution now submitted in the House of Representatives. It simply relinquishes in favor of the Republic of Cuba whatever claim of title has been or may be made in virtue of the stipulations of Article II of the Treaty of Peace of December 10, 1898.

I have [etc.] ALVEY A. ADEE

[Enclosure 2]

Memorandum of the Department of State on the Status of the Isle of Pines [2b]

The Isle of Pines is situated about fifty miles from the coast of Cuba, and, therefore, as was indicated by the Supreme Court of the United States in its opinion in the case of *Pearcy* versus *Stranahan*, 205, U. S. 257, under the principles of international law applicable to such coasts and shores as those of Florida, the Bahamas, and Cuba, it would ordinarily be regarded as an integral part of Cuba.

[2a] The first treaty by which the United States relinquished claim to the Isle of Pines was signed on July 2, 1903 (not printed), and submitted to the Senate on Nov. 10, 1903. Injunction of secrecy was removed on Nov. 24, 1903. The treaty lapsed, as it carried a provision (article IV) that ratifications should be exchanged within seven months from date of signature and no final action was taken on it by the Senate within that period. A similar treaty not carrying any time limit was signed in Washington on Mar. 2, 1904 (*post*, p. 11), and submitted to the Senate on Mar. 3, 1904. The other articles of the two treaties are the same except that in article I of the treaty signed on Mar. 2, 1904, the clause "which has been or may be made in virtue of Articles I and II of the Treaty of Peace between the United States and Spain" replaces the clause "which has been or may be made in virtue of Article II of the Treaty of Peace between the United States and Spain" in the unratified treaty of July 2, 1903.

[2b] Filed separately as file No. 837.014P/301a.

Prior to 1898 the Isle of Pines was a Spanish possession apparently governed as a municipal district of the Province of Habana, Cuba.

With respect to Cuba the Joint Resolution passed by the Congress of the United States April 20, 1898, provides (4) "That the United States hereby disclaims any disposition or intention to exercise sovereign jurisdiction or control over said island, except for the pacification thereof; and asserts the determination when that is accomplished to leave the government and control of the island to its people." (38 Stat. 378 [*30 Stat. 738*]).

The Treaty of Peace between the United States and Spain proclaimed April 11, 1899, makes no specific mention of the Isle of Pines, but by Article I of the Treaty, Spain relinquished all claim of sovereignty over and title to Cuba, and by Article II Spain ceded to the United States the Island of Porto Rico and other islands then under Spanish sovereignty in the West Indies, as well as the Island of Guam in the Marianas or Ladrones.

During the military occupation of Cuba by the United States the Isle of Pines was apparently administered as a municipal district of the Province of Habana. (Report of Census of Cuba published by War Department in 1900.)

When the Government of Cuba was turned over to the Cubans May 20, 1902, there was an exchange of communications between the Military Governor and the President of Cuba to the effect that the Isle of Pines was to continue *de facto* under the jurisdiction of the Government of Cuba, subject to treaty arrangements as to the future disposition of the island.

The Platt Amendment (Article VI) and Article VI of the Treaty of Cuba proclaimed July 2, 1904,[2c] provide that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba "the title thereof being left to future adjustment by treaty." On March 2, 1904, a treaty was signed by which the United States relinquished all claim of title to the Isle of Pines under the said Treaty of Peace with Spain. The Senate of the United States has not yet consented to the ratification of this treaty.

It, therefore, appears that the United States has never taken possession of the Isle of Pines as having been ceded by the Treaty of Peace with Spain, and that the island has been uniformly governed by the Republic of Cuba since that Republic came into existence, the United States recognizing Cuba as rightfully exercising *de facto* sovereignty until otherwise provided for.

In the case of *Pearcy* versus *Stranahan*, before mentioned, the court considered that it was justified in assuming that the Isle of Pines had always been treated by the representatives in Cuba of the President

[2c] *Foreign Relations*, 1904, p. 243.

of the United States as an integral part of Cuba. The court added that this was "no doubt to be expected in view of the fact that it was such at the time of the execution of the treaty and its ratification, and that the treaty did not provide otherwise in terms", to say nothing of the general principles of international law before mentioned.

The executive branch of the Government has apparently, as indicated by the treaty it concluded with Cuba March 2, 1904, and its other dealings with this subject above referred to, taken the ground that under the Treaty of Peace with Spain the Isle of Pines was not one of the "other islands now under Spanish sovereignty in the West Indies" and ceded to the United States by the treaty, but was an integral part of Cuba over which Spain relinquished claim to sovereignty by the treaty. In any event, the United States has undoubtedly indicated that it did not desire to assert any title to the Island under the Treaty of Peace with Spain, but wished to quit-claim in favor of Cuba any shadow of title it might have under that treaty.

It cannot be doubted that in adopting this attitude the Government of the United States was influenced by the proximity of the Island to Cuba and the consequently applicable principles of international law, and by the fact that the Isle of Pines had uniformly been administered as an integral part of Cuba.

The Secretary of State considers it desirable in the interest of relations between the United States and Cuba that the treaty before the Senate should be approved. The ratification of the treaty would leave the situation with respect to Cuban exercise of authority over the island as it is at the present time. Possible causes of friction between the two Governments would be obviated and the uncertainty in the minds of the inhabitants of the island as to its status would be removed.

It is true that a certain amount of opposition to the ratification of this treaty exists in the minds of persons who fear that their interests in the island will be imperiled in the event that this Government definitely renounced all claim of title to the Isle of Pines. The opponents of the treaty contend that American citizens were encouraged to purchase land in the island and to settle there by statements of the United States Government officials, either verbal or in writing, to the effect that the Isle of Pines was United States territory. The opponents of the treaty, furthermore, assert that as a consequence of such assurances large numbers of American citizens acquired property in the island and have made their homes there, believing that they would reside under the jurisdiction of the United States, and they therefore contend that the act of the Government in permitting Cuba to exercise control over the island, and its intention, as expressed in the treaty, to renounce any claim which it may have of

title thereto, constitute a breach of good faith and a betrayal of the interests of those American citizens who reside or possess property in the island. There is no foundation for this contention.

The written statements attributed to Government officials affirming the sovereignty of the United States over the Island consist, so far as I am aware, entirely of letters written in 1899 and 1900, in answer to inquiries on the subject, by the then Assistant Secretary of War, Mr. G. D. Meiklejohn, or by his direction. It should be observed in this connection that Mr. Meiklejohn had no authority to speak for the Government of the United States in the matter or to bind the Government of the United States by anything he saw fit to say on the subject. (Page 16, Senate Document No. 205, 59th Congress, 1st Session, entitled "Adjustment of Title to the Isle of Pines"). The oral statements said to have been made by United States government officials are not of record and cannot therefore be considered as evidence.

On the other hand, attention is called to the fact that the Isle of Pines was particularly and definitely regarded and treated as a municipality of the Province of Habana by the United States when it took the census of Cuba under order of President McKinley, dated August 17, 1899. The report of that census states in part: "The Government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines lying directly south of it . . .", and further, "The total population of Cuba, including the Isle of Pines and neighboring keys was, on October 16, 1899, 1,572,797." As stated by Senator Foraker on page 6 of his report contained in Senate Document No. 205, *supra:*

"Attention is particularly called to the fact that this census, taken subsequent to August, 1899, shows that at the time when it was taken there were in the Isle of Pines only 14 persons who were natives of any other country than Cuba or Spain. Practically all of the protestants must, therefore, have gone to the Isle of Pines subsequent to the taking of that census, and therefore with full knowledge that the Isle of Pines was being regarded and treated, for governmental purposes, as belonging to Cuba and as a part thereof. If the 14 persons citizens of other countries than Spain and Cuba were citizens of the United States, they should have taken notice of the fact that they were enumerated as foreigners, which of itself indicated that the Isle of Pines was not domestic territory of the United States."

With regard to the statement of opponents of the treaty that the business and property of American citizens residing in the Isle of Pines will be denied proper protection, in the event that Cuba acquires by treaty complete jurisdiction over the island, it should be observed that Article III of the treaty provides that:

"Citizens of the United States of America, who, at the time of the exchange of ratifications of this treaty, shall be residing or holding

property in the Island of Pines, shall suffer no diminution of the rights and privileges which they have acquired prior to the date of exchange of ratifications of this treaty; they may remain there or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions being subject in respect thereto to such laws as are applicable to other foreigners."

In this relation, it may be observed that for years past Cuba has exercised complete jurisdiction over the Isle of Pines.

837.014P/371a : Telegram

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

WASHINGTON, *March 13, 1925—6 p. m.*

38. The Senate today gave its advice and consent to the ratification of the Isle of Pines treaty on a substitute resolution of Senator Borah providing that an exchange of notes at the time of the exchange of ratifications shall stipulate that the treaty proclaimed July 2, 1904, between the United States and Cuba shall apply to the Isle of Pines and that "other foreigners" in Article III of the treaty shall be understood to mean those foreigners who receive the most-favored-treatment from Cuba. Text of the resolution will be cabled to you tomorrow.

KELLOGG

Treaty Series No. 709

Treaty Between the United States of America and Cuba, Signed at Washington, March 2, 1904 [3]

The United States of America and the Republic of Cuba, being desirous to give full effect to the sixth Article of the Provision in regard to the relations to exist between the United States and Cuba, contained in the Act of the Congress of the United States of America, approved March second, nineteen hundred and one, which sixth Article aforesaid is included in the Appendix to the Constitution of the Republic of Cuba, promulgated on the 20th day of May, nineteen hundred and two and provides that "The island of Pines shall be omitted from the boundaries of Cuba specified in the Constitution, the title of ownership thereof being left to future adjustment

[3] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, with reservation, Mar. 13, 1925; ratified by the President Mar. 23, 1925; ratified by Cuba Mar. 18, 1925; ratifications exchanged at Washington, Mar. 23, 1925; proclaimed by the President Mar. 24, 1925.

by treaty;" have for that purpose appointed as their Plenipotentiaries to conclude a treaty to that end:

The President of the United States of America, John Hay, Secretary of State of the United States of America; and

The President of the Republic of Cuba, Gonzalo de Quesada, Envoy Extraordinary and Minister Plenipotentiary of Cuba to the United States of America;

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

ARTICLE I

The United States of America relinquishes in favor of the Republic of Cuba all claim of title to the Island of Pines situate in the Caribbean Sea near the southwestern part of the Island of Cuba, which has been or may be made in virtue of Articles I and II of the Treaty of Peace between the United States and Spain, signed at Paris on the tenth day of December eighteen hundred and ninety-eight.

ARTICLE II

This relinquishment, on the part of the United States of America, of claim of title to the said Island of Pines, is in consideration of the grants of coaling and naval stations in the Island of Cuba heretofore made to the United States of America by the Republic of Cuba.

ARTICLE III

Citizens of the United States of America who, at the time of the exchange of ratifications of this treaty, shall be residing or holding property in the Island of Pines shall suffer no diminution of the rights and privileges which they have acquired prior to the date of exchange of ratifications of this treaty; they may remain there or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions being subject in respect thereof to such laws as are applicable to other foreigners.

ARTICLE IV

The present treaty shall be ratified by each party in conformity with the respective Constitutions of the two countries, and the ratifications shall be exchanged in the City of Washington as soon as possible.

In witness whereof, We, the respective Plenipotentiaries, have signed this treaty and hereunto affixed our seals.

Done at Washington, in duplicate, in English and Spanish this second day of March one thousand nine hundred and four.

JOHN HAY [SEAL]
GONZALO DE QUESADA [SEAL]

Treaty Series No. 709

Senate Resolution Advising and Consenting to the Ratification of the Treaty of March 2, 1904

MARCH 13, 1925.

RESOLVED (*Two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the ratification of the Treaty with Cuba signed at Washington, D. C., on the second day of March, 1904, for the adjustment of title to the ownership of the Isle of Pines, subject to the following reservation and understanding to be set forth in an exchange of notes between the High Contracting Parties so as to make it plain that this condition is understood and accepted by each of them:

1. That all the provisions of existing and future treaties, including the Permanent Treaty proclaimed July 2, 1904, between the United States of America and the Republic of Cuba shall apply to the territory and the inhabitants of the Isle of Pines.

2. The term "other foreigners" appearing at the end of Article III shall be construed to mean foreigners who receive the most favorable treatment under the Government of Cuba.

Attest:

GEORGE A. SANDERSON, *Secretary*
By H. W. CRAVEN, *Chief Clerk*

837.014P/381b

The Secretary of State to the Cuban Ambassador (Torriente)

WASHINGTON, *March 17, 1925.*

EXCELLENCY: I have the honor to inform you that on March 13, 1925, the Senate advised and consented to the ratification of the Treaty between the United States and Cuba, signed on March 2, 1904, for the adjustment of title to the ownership of the Isle of Pines, subject to the following reservation and understanding to be set forth in an exchange of notes between the high contracting parties so as to make it plain that the reservation and condition are understood and accepted by each of them:

[Here follows the text of the reservation and understanding contained in the Senate resolution, printed *supra*.]

I am glad to assure you, by direction of the President, that this note will be considered as sufficient acceptance by the Government of the United States of the reservation and understanding quoted, and I beg to express the hope that they will also be accepted by your Government. An acknowledgment of this note, accepting, by direction and on behalf of your Government, the said reservation and understanding, will be considered as completing the required exchange of notes and the acceptance by both Governments of the reservation and understanding.

Accept [etc.] FRANK B. KELLOGG

837.014P/381

The Cuban Ambassador (Torriente) to the Secretary of State

[Translation]

WASHINGTON, *March 18, 1925.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note dated March 17, 1925, in which you were pleased to inform me that on the 13th day of this month of March the Senate advised and consented to the ratification of the Treaty between the United States and Cuba, signed on March 2, 1904, for the adjustment of title to the ownership of the Isle of Pines, subject to the reservation and interpretation which is set forth in your note, the translation of which follows hereinbelow.

I take pleasure in informing Your Excellency that, being duly authorized thereto by the Senate of Cuba, the President has empowered me to accept in behalf of my Government, as I hereby do, the following reservations to the above-mentioned Treaty, thus completing the exchange of notes required in this case, namely:

[Here follows the text of the reservation and understanding contained in the Senate resolution, printed on page 13.]

I avail myself [etc.] COSME DE LA TORRIENTE

NEGOTIATIONS BETWEEN THE UNITED STATES AND CUBA FOR TREATIES REGARDING CONSULAR RIGHTS, EXTRADITION, AND SMUGGLING

711.3721/—

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

No. 968 HABANA, *January 8, 1925.*

[Received January 13.]

SIR: I have the honor to report to the Department that quite recently the Minister of Foreign Affairs of Cuba approached this

Embassy as to the advisability of negotiating a Consular Treaty between the two countries. In the conversation which ensued I invited his attention to the fact that a Treaty of this general character had been drafted by the Fourth Pan-American Conference, held at Buenos Aires in 1910;[4] that subsequent thereto I had signed, with Mr. Wilbur Carr now Assistant Secretary of State, a memorandum on this general subject; and that I was unaware whether the said Treaty had been ratified by any of the twenty-one [*sic*] Republics participating in said conference, or as to the action taken on the memorandum above referred to.

I respectfully request that the Embassy be furnished English copies (not procurable here) of said Treaty and memorandum and, likewise, information as to whether the Department deems it opportune at this moment to enter upon negotiations with the Cuban Government of the character referred to. I was a member of the Fourth Pan-American Conference in 1910 and of the Committee thereof which dealt with consular administration of the several countries. I recall the wide diversity as to consular requirements respecting shipments which the study of the Committee revealed and likewise the urgent necessity which, in the minds of the Committee, existed for a Treaty which would introduce greater uniformity in this regard.

I have [etc.] E. H. CROWDER

711.379/orig.

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

No. 420 WASHINGTON, *February 2, 1925.*

SIR: I enclose two copies of a Convention between the United States and Canada, signed on June 6, 1924, to aid in suppressing smuggling operations along the boundary between the two countries and in the arrest and prosecution of persons violating the narcotic laws of either Government.[5] On December 12,[6] 1924, the Senate gave its advice and consent to the ratification of the Convention and removed the injunction of secrecy from it.

I also enclose two copies of a statement issued to the press on January 8, 1925,[7] with regard to the treaty between the United States and Canada, signed on January 8, 1925, with respect to extradition

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[4] No consular treaty appears to have been drafted at the Fourth International Conference of American States; see 4th paragraph of Department's instruction No. 442, Mar. 11, 1925, to the Cuban Ambassador, p. 17. For correspondence concerning the Fourth International Conference, see *Foreign Relations*, 1910, pp. 12 ff.

[5] *Ibid.*, 1924, vol. I, p. 189.

[6] Legislative day December 10.

[7] Not printed.

of persons charged with having violated the narcotic laws of either Government.

A copy of a despatch dated December 13, 1924, received from the American Consul General at Habana, setting forth the extent to which Cuban ports are used in smuggling intoxicating liquors into the United States, is enclosed.[7a]

According to information received from other sources it seems that smuggling operations are carried on extensively from Cuba, not only with respect to intoxicating liquors but with respect to narcotics, aliens and goods subject to the payment of customs charges in the United States. It is believed that it would be of assistance to the officers of the United States engaged in enforcing the laws with regard to prohibition, narcotic drugs, immigration and the collection of customs dues if a Convention could be concluded with Cuba similar to that signed by representatives of the United States and Canada on June 6, 1924. There would seem to be no reason for including in such a convention provisions similar to Articles 6 and 7 of the Convention with Canada signed on June 6, 1924. Changes of phraseology would also be necessary in the other articles, as there is no "international boundary" between the two countries. Amendments to Article 4 to include the exchange of information concerning the names and activities of persons known or suspected to be engaged in violation of the customs, liquor and immigration laws of the United States or of Cuba would be desirable.

As it also appears that there is no extradition treaty with Cuba covering crimes and offenses against the laws for the suppression of traffic in narcotics, it is suggested that it would be desirable to endeavor to negotiate an extradition treaty with Cuba covering this subject. Two copies of the Extradition Treaty concluded between the United States and Cuba on April 6, 1904 are enclosed.[8] A copy of a similar Convention concluded with Canada is enclosed for your confidential information.[9]

You are instructed to bring this matter to the attention of the Cuban Government with a view to ascertaining whether the Cuban Government is disposed to conclude similar conventions with the United States. It is earnestly hoped that Cuba will favorably consider the matter and you will telegraph the Department as soon as you receive a reply.

On account of the extent to which it appears that smuggling operations are now being carried on from Cuba, you will suggest to the Cuban authorities that they consider whether greater surveillance can be exercised over clearances of vessels and the cargoes car-

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[7a] Not printed.

[8] *Foreign Relations*, 1905, p. 280.

[9] Vol. I, p. 542.

ried by them pending a determination with respect to the conclusion of these conventions.

For your confidential information it may be stated that on December 17, 1924, instructions were forwarded to the American Ambassador at Mexico City with a view to bringing about the conclusion of similar conventions with Mexico.[10]

I am [etc.] CHARLES E. HUGHES

711.379/1 : Telegram

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

HABANA, *February 11, 1925—1 p. m.*
[Received 3:05 p. m.]

22. See my despatch 968, January 8. In discussing with the Cuban Secretary of State the conventions suggested in the Department's instruction 420, February 2, he also again referred to the desirability of negotiating a consular treaty. Does the Department wish to take any action?

CROWDER

711.379/1

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

No. 442 WASHINGTON, *March 11, 1925.*

SIR: The Department refers to your despatch No. 968, dated January 8, 1925, to the Department's instruction No. 420, dated February 2, 1925, and to your telegram No. 22, dated February 11, 1925, 1 P. M. concerning the negotiation by the United States and Cuba of a consular convention, a convention to suppress the smuggling of intoxicating liquors, narcotics, immigrants, and for other purposes, and a supplementary extradition convention providing for the extradition of persons charged with crimes and offenses against the laws for the suppression of the traffic in narcotics.

The Department has telegraphed you [11] that it is prepared to negotiate a consular convention with Cuba if the Cuban Government will agree to conclude the proposed extradition and smuggling conventions mentioned in the Department's instruction of February 2, 1925, and also conclude a convention with the United States to prevent the smuggling of intoxicating liquors similar to that concluded by the United States with Great Britain on January 23, 1924.

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[10] *Post*, p. 504.
[11] Telegram not printed.

With regard to the articles in a convention dealing with consular rights, the Department encloses copies of the articles on this subject from the convention signed by representatives of the United States and Germany on December 8, 1923.[12] On February 10, 1925, the Senate of the United States gave its advice and consent to the ratification of this convention with certain reservations which do not apply to the articles relating to consular rights.

In your despatch No. 968, dated January 8, 1925, you referred to a memorandum regarding consular administration which you had signed with Mr. Wilbur J. Carr, now Assistant Secretary of State. You stated that a treaty of a general character concerning consuls was drafted by the Fourth Pan American Conference held at Buenos Aires in 1910 and you requested English copies of the treaty and of the memorandum signed by you. The Department encloses a copy of the report signed by you and Mr. Carr "Upon Uniformity of Customs Regulations, Consular Certificates, and Invoices and Port Charges",[13] which it is understood was prepared in connection with the Pan American Financial Conference in 1915.[14] As the memorandum does not cover the usual subject matters dealt with in a consular convention and as the Department has drafted, on very careful consideration, the articles on this subject in the convention with Germany, signed on December 8, 1923, copies of which are enclosed,[12] it is believed that it would be inadvisable for you to make any further reference to the memorandum which you and Mr. Carr signed in continuing the discussion of the conclusion of a consular convention.

With regard to the proposed convention to suppress smuggling operations, you are informed that a similar convention, signed by the United States with Canada on June 6, 1924, was approved by the Canadian House of Commons on March 3, 1925.[15]

With regard to the proposed convention providing for extradition on account of crimes or offenses committed against the laws for the suppression of the traffic in narcotics, you are informed that on January 27, 1925, the Senate of the United States gave its advice and consent to the ratification of a similar Convention signed by the United States with Canada on January 8, 1925, and removed the injunction of secrecy from it. The Convention was approved by the Canadian House of Commons on March 3, 1925. Two copies of the convention are enclosed.[16]

With respect to the proposed convention for the prevention of smuggling of intoxicating liquors, the Department encloses two copies of

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[12] *Foreign Relations*, 1923, vol. II, p. 29.
[13] Not printed.
[14] Held in Washington, May 24–29, 1915; see *Foreign Relations*, 1915, pp. 20 ff. and p. 1310.
[15] *Ibid.*, 1924, vol. I, p. 189.
[16] Vol. I, p. 542.

the convention concluded by the United States with the British Government on January 23, 1924,[17] dealing with this question. You are instructed to propose to the Cuban Government that a similar convention be concluded between the United States and Cuba. In making this proposal you will point out that Cuban vessels engaged in legitimate commerce would receive the advantages provided by Article III of the Convention.

For your confidential information it may be stated that the Department is informed that the following vessels operating under the Cuban flag are engaged in smuggling intoxicating liquors into the United States:

Andres Garcia	Mentonette
Bermeo	Parmeo
Expreso	Paloma
Fantasma	Patria
G. H. Murray	Pepe Corcal
Lucinda	ex Cardenas
Maria	Riviera
Mary Beatrice	Yride.

You are instructed to telegraph the Department what the views of the Cuban authorities are with respect to these proposals.

I am [etc.] FRANK B. KELLOGG

711.379/1

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

No. 446 WASHINGTON, *March 18, 1925.*

SIR: The Department refers to its instruction No. 442, dated March 11, 1925, concerning the negotiation of conventions between the United States and Cuba. On page 3 of that instruction reference was made to the Convention for the prevention of the smuggling of intoxicating liquors, concluded between the United States and Great Britain on January 23, 1924, and you were instructed to propose to the Cuban Government that a similar convention be concluded between the United States and Cuba.

In the second paragraph of Article IV of the Convention concluded on January 23, 1924, provision is made for referring cases of dispute to the Claims Commission established under the provisions of the Agreement for the Settlement of Outstanding Pecuniary Claims between the United States and Great Britain, signed at Washington on August 18, 1910.[18] As a similar commission has not been established to consider the claims between the United States and Cuba,

[17] *Foreign Relations*, 1924, vol. I, p. 158.
[18] *Ibid.*, 1911, p. 266.

it is believed that a provision similar to that contained in the convention concluded on June 6, 1924, between the United States and Panama[19] on this subject might be used in the convention with Cuba. The second paragraph of Article IV of the Convention concluded with Panama on June 6, 1924, provides that claims shall be referred to the Permanent Court of Arbitration at The Hague, described in the Convention for the Pacific Settlement of International Disputes, concluded at The Hague October 18, 1907. Two copies of the Convention with Panama are enclosed.[20]

In discussing the proposed Convention to prevent the smuggling of intoxicating liquors, you will therefore suggest that in drafting the second paragraph of Article IV of the Convention, phraseology similar to that used in the second paragraph of Article IV of the Convention with Panama, signed on June 6, 1924, be used.

Please keep the Department fully informed regarding further developments with respect to the negotiation of these conventions.

I am [etc.] FRANK B. KELLOGG

711.379/4

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

No. 505 WASHINGTON, *July 18, 1925.*

SIR: Having reference to your despatch No. 1108 of June 18, 1925, and the Department's telegram of today's date,[21] concerning the convention for the prevention of smuggling, you are informed that, during a conference held at El Paso with representatives of the Mexican Government a draft of a convention was agreed upon,[21a] which is considered more advantageous to the United States than provisions of the Canadian Convention, signed June 6, 1924,[22] forwarded to you with the Department's instruction No. 420 of February 2. These Articles read as follows:

"Quote. Article I. The High Contracting Parties agree that all shipments of merchandise crossing the International Boundary line between Mexico and the United States, originating in and consigned from either of the two countries, shall be covered by a shipper's export declaration, and a copy of same, verified by the customs officials of the country of origin, shall be furnished to the customs officials of the country of destination. It is agreed also that the appropriate officials of either country shall give such information as the appropriate officials of the other country may request concern-

[19] *Foreign Relations*, 1924, vol. I, p. 192.
[20] *Ibid.*, 1907, pt. 2, p. 1181.
[21] Neither printed.
[21a] See convention between the United States and Mexico, signed Dec. 23, 1925, p. 510.
[22] *Foreign Relations*, 1924, vol. I, p. 189.

ing the transportation of cargoes or the shipment of merchandise crossing the International Boundary line.

"Article II. The High Contracting Parties agree that clearance of shipments of merchandise by water, air or land from any of the ports of either country to a port of entrance of the other country shall be denied if such shipment comprises articles the introduction of which is prohibited or restricted for whatever cause in the country to which such shipment is destined, provided, however, that such clearance shall not be denied on shipments of restricted merchandise when there has been complete compliance with the conditions of the laws of both countries.

"It shall also be deemed to be the obligation of both of the High Contracting Parties to prevent by every possible means, in accordance with the laws of each particular country, the clearance of any vessel or other vehicle laden with merchandise destined to any port or place when there shall be reasonable cause to believe that such merchandise or any part thereof, whatever, may be its ostensible destination, is intended to be illegally introduced into the territory of the other Party.

"Article III. The High Contracting Parties reciprocally agree to exchange promptly all available information concerning the names and activities of all persons known or suspected to be engaged in violations of the laws of the United States or Mexico with respect to smuggling or the introduction of prohibited or restricted articles.

"Article IV. The High Contracting Parties agree that no merchandise or property of any character shall be authorized to be cleared or despatched out of either country, across the International Boundary line, except through ports or places duly authorized to clear such merchandise or property, and to or through duly authorized ports or places on the opposite side of said Boundary line; provided, that merchandise or property may be transported across said boundary line at any convenient place under special circumstances and after permits by both countries have been issued therefor.

"Article V. The High Contracting Parties agree that they will exchange all available information concerning the existence and extent of contagious and infectious diseases of persons, animals, birds or plants, and the ravages of insect pests and the measures being taken to prevent their spread. The parties will also exchange information relative to the study and use of the most effective scientific and administrative means for the suppression and eradication of such diseases and insect pests. Unquote.

Secretary of Labor requests that an agreement to prevent smuggling of aliens from Cuba be concluded similar to provisions agreed upon at El Paso. These Articles read as follows:

"Quote. Each of the High Contracting Parties agrees to employ all reasonable measures to prevent the departure of persons destined to territory of the other, except at or through regular ports or places of entry or departure established by the High Contracting Parties.

"The High Contracting Parties mutually agree that they will exchange information regarding persons proceeding to the country of

the other and regarding activities of any persons on either side of the border, when there is reasonable ground to believe that such persons are engaged in unlawful migration activities or in conspiracies against the other Government or its institutions, when not incompatible with the public interest. Unquote.

Please submit these Articles to the Cuban representatives confidentially and endeavor to have smuggling convention include these provisions.

I have [etc.]

For the Secretary of State:
JOSEPH C. GREW

711.379/14

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

No. 1166 HABANA, *September 1, 1925.*
[Received September 8.]

SIR: I have the honor to refer to the Department's instruction No. 422 [*442*] of March 11, 1925, transmitting certain articles, dealing with consular rights, from a convention signed by representatives of the United States and Germany on December 8, 1923.

It will be recalled that in the Department's instruction No. 458 of April 9, 1925,[23] the Embassy was authorized to defer the proposed treaty negotiations with Cuba until after the administration of General Machado had been established. Inasmuch, however, as it was the intention of this administration to retain Dr. Carlos Manuel de Céspedes as Secretary of State, I transmitted to him on May 5, 1925, drafts of the proposed treaties, among them the Consular Convention, in order that he might have an opportunity to study them in advance of the actual negotiations, which were to be taken up as soon as possible after the inauguration of the President on May 20, 1925. A copy of the suggested draft of the consular convention which was sent to Secretary Céspedes with my note of May 5, 1925, is to be found as Exhibit No. 2 of Enclosure No. 1 [23] to this despatch.

The installation of the new administration naturally made delay in the consideration of current business inevitable, and the subsequent illness of Secretary Céspedes again deferred the negotiations. Finally, however, under date of August 22 [*12?*], 1925, I received a communication from Dr. Céspedes, a copy of which is transmitted herewith as enclosure No. 1,[23] which submitted certain comments on the draft convention submitted by the Embassy and enclosed a counter-draft for the consideration of the American Government.

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[23] Not printed.

Informal discussions concerning the character of the changes proposed by the Cuban Government and the reasons therefor have been held with both Dr. Céspedes and Dr. Gutiérrez, the legal adviser of the Cuban Department of State. It appears that the Cuban Government is animated by certain very natural wishes in connection with the negotiation of the new treaties, and these wishes were frankly explained. In the first place, the Cuban Government feels that the Spanish texts of the treaties now in force between the United States and Cuba are obviously merely translations of the English texts and that the impression therefore conveyed to any one who studies these treaties is that the texts thereof were dictated by the United States and then literally translated into Spanish. Both Dr. Céspedes and Dr. Gutiérrez expressed the earnest desire that the texts of the new treaties being negotiated, and particularly that of the Consular Treaty, should be expressed in idiomatic Spanish as well as idiomatic English and that due regard should be had for Spanish phraseology.

A second point which was raised in connection with the Consular Treaty was the desire of the Cuban Government to make this convention a model convention—one which could be used as a basis not only for future treaties between Cuba and other foreign countries but also as a model for Latin-America in general.

Dr. Céspedes, during the course of our conversations, referred several times to Article II of Project No. 23 concerning consuls as prepared by the American Institute of International Law at the request of the Board of Directors of the Pan American Union. It appears that on March 6, 1925, the Board resolved to send this project to the Governments members of the Union [24] in order that their comments might be submitted to the Commission of Jurists which will meet at Rio de Janeiro on August 2, 1926.

It is the frankly expressed desire of the Cuban Government to conclude the negotiation, signature and ratification of the Consular Treaty with the United States prior to that date in order that Cuba may be able to present to the conference at Rio de Janeiro a *fait accompli* in the line of model consular conventions.

It is possible that the Department may be willing to concur in certain of the changes suggested by the Cuban Government as being more applicable to Latin-American countries whose penal codes are based on Spanish models and whose jurisprudence follows Latin rather than Anglo-Saxon practices.

. . . . . .

I have [etc.] E. H. CROWDER

[24] The resolutions were approved by the Governing Board on March 2; March 6 was the date of the letter of certification by the Secretary of the Governing Board; see *Codification of American International Law* (Washington, Pan American Union, 1925) p. 4.

211.37/25

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

No. 1176 HABANA, *September 11, 1925.*
[Received September 16.]

SIR: I have the honor to refer to the Department's instruction No. 532 of September 2, 1925,[25] in which I am directed to submit a complete report regarding the present status of the negotiations with respect to the proposed extradition convention.

With a communication dated May 5, 1925,[25] I transmitted to the Secretary of State of Cuba a draft convention for his consideration. This draft will be found as Enclosure No. 2 to a note of August 21, 1925, from Doctor Céspedes commenting on the American Government's proposals and submitting in return a counter-draft. Copy and translation of Doctor Céspedes note and its enclosures are transmitted herewith.[25] It will be observed that the Cuban Government desires to amplify the original proposals of the American Government by the inclusion of certain additional crimes. With reference to the expression "abusos deshonestos" referred to in Article I of the Cuban counter-draft, and which has been translated "immoral abuses", I requested the Cuban Foreign Office to furnish me with a definition of the meaning of this term. There is enclosed herewith copy and translation of a note from Doctor Céspedes, dated August 26, 1925,[25] furnishing the required explanations.

I have the honor to refer to my telegram No. 105 of August 28, 12 M.,[25] setting forth the Cuban desire to omit the word "offenses" and to confine the supplementary treaty to "crimes" (*delitos*) so as to emphasize the fact that misdemeanors (*faltas*) are excluded not only from the supplementary treaty, but from the original treaty. In its telegram No. 100 of September 3, 4 P. M.,[25] the Department informed me that it had no objection to the omission from the proposed supplementary extradition treaty of the words "and offenses", stating that, however, this omission, if made, could not be considered as altering obligations incurred by the existing extradition treaty. Acting on these instructions I sent a note to the Foreign Office on September 4, 1925, a copy of which is enclosed herewith.[25] There are enclosed herewith copy and translation of a note dated September 9, 1925,[25] expressing the concurrence of the Cuban Government in the statements made in my note.

With reference to the first sentence of the last paragraph of the second page of the Department's instruction No. 532 of September 2, 1925, I beg to state that I brought to the attention of the Cuban Government the desire of the American Government to include in

[25] Not printed.

the supplementary treaty violations of the customs laws of both countries. I enclose herewith copy and translation of a note dated September 10, 1925, from Doctor Céspedes [26] expressing the consent of the Cuban Government to comply with the Department's suggestion, but proposing certain changes in phraseology.

In considering, therefore, the text of the Cuban counter-draft (Enclosure No. 1) [26] there should be borne in mind the willingness of the Cuban Government to add, presumably as Paragraph No. 23 of Article II, the following provision:

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

I should be pleased to receive, as soon as may be convenient, instructions concerning the Department's attitude toward the changes which have been proposed by the Cuban Government.

I have [etc.] E. H. CROWDER

211.37/25

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

No. 543 WASHINGTON, *September 24, 1925.*

SIR: The Department has received your despatch No. 1176 of September 11, 1925, containing a report regarding the present status of the negotiations respecting the proposed extradition convention between the United States and Cuba. You forwarded a counter-draft of the convention submitted by the Cuban Foreign Office, together with copy and translation of the Foreign Office note respecting the provisions of such counter-draft, including the proposition to cover certain additional crimes in the proposed convention, and you state that in view of a subsequent note from the Foreign Office it should be considered in examining the text of the Cuban counter-draft that the Cuban Government is willing to add, presumably as paragraph No. 23 of Article II, the following provision:

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

It is noted that the Foreign Office desires to designate the proposed convention as an additional protocol to the present extradition treaty, rather than as a supplementary convention as proposed by this Government. With respect to this point it may be observed that as the word "protocol" is used in this country, and generally so far as the Department is informed, it signifies an agreement between two foreign offices, whereas the proposed convention will necessarily, under the system of Government prevailing in the United States,

[26] Not printed.

be submitted to the Senate for its advice and consent, and dealt with in all respects like other treaty agreements made by this Government. Therefore the Department is clearly of the opinion that it would be more fitting to refer to the proposed convention as a supplementary extradition convention rather than as a protocol.

With relation to the proposed additional crimes to be included in the convention, and taking them in the order in which they are mentioned in the Cuban counter-draft, it may be observed that the crime of dishonest or immoral abuses is not known as such in the jurisprudence of the United States, and the term is so lacking in definitiveness that the Department would be reluctant to include it among the list of extraditable crimes.

It may further be said that the Department would have no objection to including among extraditable crimes abortion and seduction of minors. However, the term "corruption of minors" does not connote as such, an offense known to the jurisprudence of the United States, and the Department would prefer not to include an extraditable crime so broadly and indefinitely termed.

The Cuban Foreign Office proposes to include the crime of "embezzlement, this being understood to be the defraudation made by one person against another by means of deceit." While pointing out that embezzlement by public officers or depositaries and embezzlement by persons hired or salaried to the detriment of their employers are included among the extraditable crimes covered by the existing extradition treaty between the United States and Cuba, the Department may say that the crime quoted as contained in the Cuban proposal would seem to be covered by the following crime covered in paragraph No. 6 of Article II of the present treaty:

"Obtaining money, valuable securities or other personal property by false devices."

The following crime is also proposed by the Foreign Office for inclusion in the convention: "Commercial frauds and crimes committed as the result of suspensions of payments or bankruptcy." The Department is of the opinion that this proposal is not sufficiently definite and certain and would prefer that it be amended to read as follows:

"Crimes against bankruptcy law, if made criminal by the laws of both countries."

The Department is, of course, in accord with the proposal to include in the convention "crimes against the laws for the suppression of the traffic in narcotic products". Furthermore, the Department is willing to accept the Cuban proposal for the wording above quoted of the extraditable crime involving violations of the customs laws and regulations.

You will please bring the foregoing promptly to the attention of the Foreign Office and endeavor to conclude a convention in accordance with the desires of the Department as above expressed.

I am [etc.] FRANK B. KELLOGG

211.37/30

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

No. 1217 HABANA, *October 22, 1924 [1925]*.

[Received October 27.]

SIR: I have the honor to refer to the Department's telegram No. 114 of October 20th, 1 P. M.,[27] directing me to forward a copy of my note to the Cuban Foreign Office pursuant to the Department's instruction No. 543 of September 24th and a copy of the Cuban Government's reply thereto with reference to the negotiation of a supplementary extradition convention between the two countries.

In compliance with the Department's instruction I transmit herewith, as enclosure No. 1, copy of my note No. 556, dated September 30, 1925, on this subject, addressed to the Secretary of State of Cuba.[27] I likewise transmit herewith, as enclosure No. 2, a copy of Dr. Céspedes' note No. 1027, dated October 7, 1925,[27] in reply to my note.

It was readily apparent to me after studying Dr. Céspedes' note that the negotiation of the treaty was being unduly delayed because of the exchange of formal written correspondence. I therefore requested an interview, and on the morning of October 15th I had a long discussion with Dr. Céspedes and Dr. Gutierrez, his legal adviser, after which I sent the Department my telegram No. 123 of October 15, 3 P. M.[27]

This morning I had a further conference with Dr. Céspedes, who now consents to the elimination of paragraph 20 of Article II of the Cuban counter-draft, which formed a part of enclosure No. 1 [27] of my despatch No. 1176 of September 11, 1925, and which read:

"20. Embezzlement, this being understood to be the defraudation made by one person against another by means of deceit."

This was the point referred to in my telegraph No. 123 of October 15, 3 P. M., in the following words:

"It (the Cuban Government) insists further that the word 'estafa' be inserted in the Spanish text as the equivalent of embezzlement understanding as such obtaining money, valuable securities or other personal property by false devices."

Dr. Céspedes finally expressed the belief that the present extradition treaty covers under fair construction the offense sought to be

[27] Not printed.

made extraditable by said paragraph. I therefore request that the Department disregard so much of the previous correspondence as refers to that point, and of course the references thereto in Dr. Céspedes' note No. 1027 of October 7, 1925, which forms enclosure No. 2 of this despatch.

In considering this question Dr. Céspedes stated he felt it might be necessary for him to submit a note to the Embassy with reference to the Protocol Amending the Spanish Text of the Extradition Treaty of April 6, 1904,[28] in order that there might be no possibility of any doubt arising in Cuba of the inclusion of "estafa" as an extraditable offense. "Estafa" is a broader term than our words "embezzlement" or "larceny" and broader also than the phrase "obtaining money, etc. under false pretenses", and he expressed his agreement that it would be difficult to find an exact English equivalent for the qualified *estafa* which he wished to make an extraditable offense. He further said that he was of the opinion that the crime of qualified *estafa* could be made to appear as extraditable by changing the punctuation of paragraph 6 of Article II of the Protocol, where he apparently felt that the first two commas should be semicolons, as they are in the English text of the original treaty, and perhaps by changing other obscurities of the Spanish text arising out of improper punctuation.

I transmit herewith, as enclosure No. 3, a draft of the proposed Additional Extradition Treaty[29] in a form which according to the oral understanding arrived at with Dr. Céspedes is agreeable to his Government and which appears to me to be closely in accord with the views expressed by the Department. I should be pleased to receive the Department's comment on this draft.

I have [etc.] E. H. CROWDER

711.379/32

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

No. 1225 HABANA, *November 3, 1925.*

[Received November 9.]

SIR: I have the honor to refer to my despatch No. 1220 of October 30, 1925,[29] transmitting a translation of the Cuban counter draft entitled "Convention between the Republic of Cuba and the United States of America for the Suppression of Smuggling".

In order that the Department may be in a position to compare this draft with the two previous American drafts, which it combines into a single counter proposal, there is transmitted herewith a comparison in parallel columns of the corresponding articles of these drafts.[29]

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[28] *Foreign Relations*, 1905, p. 280.

[29] Not printed.

The Department will observe that in general the tendency of the Cuban Government has been to amplify and to attempt to render more specific certain of the articles in question. In general I think that the Cuban Government has shown a sincere spirit of good-will in the negotiations, but I am not certain that all of their proposals will be entirely suitable to conditions prevailing in the United States. It should be observed that the first twelve articles of the Cuban draft convention have provisions corresponding to all of the provisions of the American draft entitled "Convention between the United States and Cuba to Suppress Smuggling Operations Between Their Respective Territories", with the exception of the provisions in Article V of the American draft to the effect that the High Contracting Parties would agree to refuse admission to aliens seeking entry into their territory when there was reason to suspect that such aliens were endeavoring to enter said territory for the purpose of subsequently effecting unlawful entry into the territory of the other High Contracting Party.

Articles XIII to XX, inclusive, of the Cuban counter draft correspond to the articles of the American draft entitled "Convention for the Prevention of Smuggling of Intoxicating Liquors into the United States". Here it will be noted that Article XIV of the Cuban counter draft departs substantially from the American draft in that it makes the right of search of vessels, et cetera, a reciprocal privilege instead of confining the same to a unilateral declaration on the part of Cuba as was suggested in the American draft, which in turn was based on the convention between the United States and Great Britain on this subject, signed at Washington on January 23, 1924. It should further be noted that Article XV of the Cuban counter draft provides for the submission of a report of the boarding or search of a vessel to the diplomatic and consular representatives of the nation under the flag of which the ship sails. Article XVIII of the Cuban counter draft, it will be noted, substitutes the Permanent Court of International Justice of The Hague, in the event that the United States should adhere to the protocol of December 16, 1920,[30] for the Permanent Arbitration Tribunal mentioned in the American draft.

I shall defer discussing with the Cuban Government Article I of the American draft as instructed in the Department's instruction No. 566 of October 24, 1925,[31] and I shall await with interest the Department's comments on the Cuban counter proposals. I venture to express the hope that I may receive instructions on this subject at as early a date as possible, in order that I may be able to complete the negotiations so that the treaty will be ready to submit to the Senate of the United

[30] *Foreign Relations*, 1920, vol, I, p. 17.
[31] Not printed.

States at the next session of Congress, as proposed in the Department's instruction No. 458 of April 9, 1925.[33]

The Department will observe that the text of the English translation used in the parallel column statement enclosed herewith is slightly different from that transmitted with my despatch No. 1220 of October 30. These slight changes have been made with a view to rendering the translation into more idiomatic and accurate English.

There is also enclosed herewith, for the Department's consideration, a copy of the Spanish text of the Cuban counter draft.[33]

I have [etc.] E. H. CROWDER

711.3721/5

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

No. 1227 HABANA, *November 3, 1925.*
[Received November 9.]

SIR: I have the honor to refer to my telegrams Nos. 120 of September 30, 2 P. M., and 122 of October 13, 10 A. M., and to the Department's telegram No. 113 of October 16, 1 P. M.,[34] with reference to the desire of the Cuban Government to receive at an early date the reply of the American Government to the Cuban counter-draft of the proposed Consular Convention.

I now have the honor to transmit herewith a translation of a note, No. 1103, dated October 30, 1925, from Dr. Céspedes [33] in which he makes formal inquiry concerning the status of this matter and points out that it has been pending without reply for more than two months.

I am sure the Department will appreciate that under these circumstances it is somewhat embarrassing for me to attempt to urge expedition upon the Cuban Government in its consideration of the Smuggling and Extradition Treaties, and I trust the Department will assist me in my negotiations by giving the Consular Convention as prompt consideration as possible.

I have [etc.] E. H. CROWDER

211.37/30 : Telegram

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

WASHINGTON, *November 4, 1925—5 p.m.*

120. Draft extradition treaty enclosed in your No. 1217, October 22, is satisfactory . . .

Department will send you full powers.[35]

KELLOGG

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[33] Not printed.
[34] None printed.
[35] Full powers were sent the Ambassador on Nov. 7, 1925.

711.3721/5 : Telegram

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

WASHINGTON, *November 14, 1925—9 p. m.*

124. Your despatch No. 1227, November 3, 1925. You may, in your discretion, reply formally to note from Minister of Foreign Affairs as follows:

"My Government has instructed me to inform your Excellency that it regrets that it was unable to complete the examination of the counter proposals made by the Cuban Government in time to meet the desire of your Excellency to sign the Convention before the present session of the Cuban Congress convened.

I am, moreover, authorized to inform your Excellency that the Department of State will endeavor to expedite the consideration which is being given to the Cuban counter draft and to place its views in regard to the Cuban proposals in my hands at an early date for communication to your Excellency."

KELLOGG