NETHERLANDS

UNDERSTANDING BETWEEN THE UNITED STATES AND THE NETHERLANDS CONCERNING RECIPROCAL ACCESS TO PETROLEUM RESOURCES[1]

856d.6363/494

The Netherlands Minister (Van Royen) to the Secretary of State

No. 3225 WASHINGTON, *November 14, 1927.*

SIR: After having taken cognizance of a press release, issued by the Federal Trade Commission, according to which the American petroleum interests, in consequence of restrictive laws of the Dutch East Indies, should have been practically excluded from working in those countries, and in view of the reluctance of the United States authorities to consider the Netherlands, with regard to oil and mining policy, as a "reciprocating" country my predecessor had the honor to point out to the then Secretary of State in a letter dated May 17, 1923, No. 1580,[2] that neither the existing laws nor the facts could prove the desire of the Dutch Government to exclude the American interests from petroleum winning in the Netherlands East Indies. In fact he showed, that there does not exist in our colonies any monopoly of Dutch groups, but on the contrary, that several foreign interests have a great number of concessions for mining, oil and agricultural purposes.

He pointed out further that all "inhabitants" of the Dutch East Indies or corporations, having on their board a majority of inhabitants of the Dutch East Indies, are admitted to enter into contract with the Government for mining petroleum, and that it is for an American in the Dutch East Indies only a question of certain simple formalities to become "inhabitant" of our Colonies. As a result of this, several mining and agricultural enterprises operating with American capital are working in the Netherlands East Indies. As an example I may add, that the "Nationale Koloniale Petroleum Maatschappij", a subsidiary of the Standard Oil Company of New York [*New Jersey*] has acquired a great many prospecting licenses

[1] For previous correspondence concerning negotiations for American participation in exploiting the oil fields of the Netherlands East Indies, see *Foreign Relations*, 1921, vol. II, pp. 528 ff.

[2] Not printed.

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from the Government and is operating a considerable number of concessions.

In order to prove more clearly still the "open door" policy, which has always been followed by the Netherlands East Indies Government, I am now instructed by my Government to inform Your Excellency, that by Royal Message of April 27th of this year, a bill has been introduced in Parliament at The Hague, in order to obtain the necessary authorization for contracting with the "Nederlandsche Koloniale Petroleum Maatschappij", (the above mentioned subsidiary of the Standard Oil Company of New York [*New Jersey*] for the purpose of issuing her four tracts of petroleum lands for exploration and exploitation. This bill has been well received and reported by the Second Chamber of our Parliament and will probably pass in this session.

Further I am instructed to inform Your Excellency that the Netherlands Government has the intention, after this project will become Law, to continue taking the same line in future with regard to the issuing of oil lands.

In view of these facts, the Royal Netherlands Government expresses the wish, that now the Government of the United States may declare the Netherlands a reciprocating country regarding the American "Land Leasing Act of 1920".[8]

Although the Netherlands Government is quite willing to continue the aforesaid line of conduct with respect to issuing oil lands, it could only take the responsibility of doing so, if the Government of the United States were willing to make the above mentioned declaration of reciprocity.

Considering the open door policy followed by the Netherlands East Indies Government and the equal rights that exist in our colonies regarding foreigners and foreign capital interested in all sorts of enterprises for purposes of oil production as well as agriculture, I venture to express the hope, that the United States authorities will see their way to make the above mentioned declaration. I should feel greatly obliged if Your Excellency would lend his kind intermediary in order that the necessary propositions be made to the United States Government to that end.

Please accept [etc.] J. H. VAN ROYEN

856d. 6363/498

The Secretary of State to the Netherlands Minister (Van Royen)

WASHINGTON, *December 28, 1927.*

SIR: I have the honor to refer to your note, dated November 14, 1927, and to the Department's reply, dated November 28th, regarding

[8] 41 Stat. 437.

oil concessions in the Netherlands East Indies and reciprocity between the United States and the Netherlands under the provisions of the Act of February 25, 1920.[4]

The Department is now in receipt of a letter from the Department of the Interior, dated December 14th, the pertinent portions of which are quoted for your information as follows:

"It is the disposition of the Department of the Interior to accord to the citizens of any country whatsoever, when organized as a corporation under the laws of the United States, or any State or Territory thereof, precisely the same treatment as regards the mineral leasing law of February 25, 1920 (41 Stat., 437), as though they were citizens of the United States similarly organized, but that in order that such citizens of a foreign country may be eligible to receive such action from this Department it is requisite that like privileges shall be accorded by their Government to citizens of the United States. The privilege accorded to duly qualified citizens of foreign countries by the mineral leasing law is not restricted to any one group or company but is as broad as the citizenship of the country concerned.

"If it be made to appear that laws, customs, and regulations of the Government of the Netherlands do not deny to citizens of this country the privileges offered by our laws to citizens of that country, the Department of the Interior will take full cognizance of such laws, customs and regulations in considering applications falling within the purview of the proviso of Section 1 of the Act of February 25, 1920."

Accept [etc.]

For the Secretary of State:
W. R. CASTLE, Jr.

856d. 6363/502

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1385 THE HAGUE, *January 7, 1928.*
[Received January 21.]

SIR: Referring to my despatch No. 1365 of December 20, 1927,[5] I have the honor to inform you that in an interview which I had to-day with Mr. Beelaerts van Blokland, Minister for Foreign Affairs, he spoke of the recent passage through the Second Chamber of the Bill which makes important and valuable concessions to an American oil company operating in the Dutch East Indies (the Koloniale).

"I hope," he said, "that this may be accepted by your country as evidence of our desire to establish complete reciprocity between the two nations. We are earnest in our intention of doing so. We hope that we shall meet on your side with a similar spirit and that the disadvantages encountered by Dutch capital invested in oil and shipping enterprises in your country may now be removed."

I have [etc.] RICHARD M. TOBIN

[4] Department's reply of November 28, 1927, not printed.
[5] Not printed.

811.6363/193a : Telegram

The Secretary of State to the Chargé in the Netherlands (Norweb)

[Paraphrase]

WASHINGTON, *February 3, 1928—7 p. m.*

6. It has been stated by representatives of the Standard Oil Company that reports are being circulated in the Netherlands concerning possible legislation in the United States applicable to Naval Oil Reserves in such a manner as possibly to prejudice favorable action next week in the Dutch Parliament on the Koloniale concessions. The facts, which are given for your information and discreet use if necessary, are as follows:

It is contemplated by the Navy Department to recommend legislation which would apply to Naval Oil Reserves with reciprocal provisions similar to those contained in the General Leasing Act of February, 1920. These reserves constitute less than two per cent of the total proven oil lands of the United States totaling only about 50,000 acres. It is the present intention of the Navy to make no further leases covering naval oil lands to anyone. Legislation, it is understood, is sought only to lay down a permanent policy.

That the information outlined above has no present and probably no prospective application to Dutch interests, will be readily appreciated.

Some questions have been raised in the press with regard to arrangements made by the Honolulu Oil Company for the sale of oil that has been produced from lands leased on Naval Reserve No. 2. The Dutch Shell is now purchasing some of this oil under contract. It is alleged that sales of some of this oil have been made to Japan. Of course, existing lawful contracts will not be interfered with by the Government, and no action is contemplated with regard to this matter so far as the Department knows. In case reports on this subject are current, telegraph promptly and specific comment will be made by the Department for your guidance. Report briefly by telegraph.

KELLOGG

811.6363/194 : Telegram

The Chargé in the Netherlands (Norweb) to the Secretary of State

[Paraphrase]

THE HAGUE, *February 4, 1928—5 p. m.*

[Received February 4—4:06 p. m.]

6. Referring to Department's 6, February 3, 7 p. m. A Reuter news agency despatch circulating here this week alleged that diffi-

culties had resulted from the Royal Dutch purchase of naval reserve oil from the Honolulu Oil Company and that sale of such oil to foreign companies may possibly be prevented. The Netherlands Colonial Minister on February 1 consulted F. Horstmann, of the Koloniale Oil Company, regarding the matter. The Minister, while well disposed, said he was considering postponement of the Koloniale bill, because the first chamber of the Netherlands Parliament might ask for an investigation prior to action on the measure in view of recent rumors. Mr. Horstmann insisted on the bill coming up for discussion, but the Minister did not give any definite assurance. However, today's Senate calendar has the bill scheduled to come up February 8 at 11 a. m. After discussing the matter with the chief of the mining bureau, also with several upper House members, Horstmann sees little chance of the first chamber holding up the bill. Since any move right now by this Legation might possibly suggest to the Colonial Minister the desirability, pending further details from his Legation at Washington, of postponing discussion of the bill, I hesitate to recommend any action by the United States.

NORWEB

856d.6363/507 : Telegram

The Chargé in the Netherlands (Norweb) to the Secretary of State

THE HAGUE, *February 8, 1928—4 p. m.*
[Received February 8—12:50 p. m.]

7. My telegram No. 6, February 4, 5 p. m. Am gratified to report Koloniale oil bill approved this afternoon by the first chamber without record vote.

NORWEB

856d.6363/511

The Chargé in the Netherlands (Norweb) to the Secretary of State

No. 1427 THE HAGUE, *February 18, 1928.*
[Received March 1.]

SIR: I have the honor to acknowledge the receipt of the Department's Instruction No. 524, of January 21, 1928,[6] informing the Legation that the Netherland Legation in Washington has formally raised the question of reciprocity with respect to petroleum exploitation and that the Secretary of the Interior has suggested that an application be filed under the provisions of the General Leasing Law of February 25, 1920 in order that the Dutch position under our laws may be now passed upon.

[6] Not printed.

Although this would seem to be the procedure clearly indicated, there is reason to believe, from the Colonial Minister's references to reciprocity when speaking in defense of the Koloniale Bill, that the Dutch Government will not be entirely satisfied with the course of action outlined by the Secretary of the Interior. The Department will recall that during the recent debate (see despatch No. 1419, of February 13, 1928).[7] the Minister for Colonies declared in effect that should the American Government fail to extend complete reciprocity in oil matters, it was always possible for him to withhold his signature to the Bill. The Minister referred of course to the reciprocity provisions of the 1920 leasing act, but what I believe he had also in mind is to clear the record of the charges of lack of reciprocity which were made in the "President's Message to Congress of May 16, 1921, on restrictions against American petroleum prospectors in certain foreign countries."[8] As these charges were made publicly and formally, it would not be unnatural if the Dutch Government should now desire to have them removed from the record by a formal statement from the American Government rather than to leave their vindication to the filing of an application for a permit by the Royal Dutch. I understand that conversations are now taking place between the Foreign Office and the Colonial Department with a view to determining the instructions to be sent to Mr. van Royen in presenting the Dutch viewpoint to the Department.

Without entering upon a discussion of the merits of the Dutch expectations, which seem to lose sight of the fact that at no time has any Dutch concern operating in the United States been denied reciprocal treatment, the Colonial Minister's position unquestionably complicates the final satisfactory settlement of this long outstanding issue. While this development need not be taken too seriously, it is possible that until details of procedure satisfactory to both governments can be worked out, the Koloniale will not be permitted to take possession of the concessions granted them in the new law. However, with the very evident good will existing on both sides, it should not be difficult to come to an understanding satisfactory to both governments.

In connection with this general question of procedure the possibility should not be overlooked that the Royal Dutch, unless very anxious to obtain concessions to operate in our public lands, may delay for an indefinite period the filing of an application in the hope of embarrassing the Koloniale. It may be that the Secretary of the Interior anticipated this possibility when in closing his letter of November 9, 1927, to the Secretary of State,[7] he expressed his

[7] Not printed.

[8] S. Doc. 11. 67th Cong., 1st sess.; for part of report dealing with Netherlands and Netherlands East Indies, see pp. 9–27.

willingness to consider the question of reciprocity without awaiting a formal application by a Dutch company.

I have [etc.] R. HENRY NORWEB

856d.6363/512 : Telegram

The Chargé in the Netherlands (Norweb) to the Secretary of State

THE HAGUE, *February 24, 1928—4 p. m.*

[Received February 24—1:40 p. m.]

8. My telegram No. 7, February 8, 4 p. m. Foreign Office informed me this morning that mail instruction sent yesterday to Van Royen informing him in connection with passage oil bill that before signing Netherlands Government wishes formal statement that our Government now considers Holland reciprocating country under the provisions of general leasing act of 1920.

I understand that such a declaration is desired not only to assure Royal Dutch of favorable consideration in respect of leases in the United States public lands but also to clear the record of the charges of lack of reciprocity on the part of Holland made in the President's message of May 16, 1921. See my mail despatch No. 1427 of February 18, 1928.

NORWEB

856d.6363/512 : Telegram

The Secretary of State to the Chargé in the Netherlands (Norweb)

WASHINGTON, *March 2, 1928—4 p. m.*

8. Your 8, February 24, 4 p. m. Please at once present to the appropriate official the following informal memorandum:

"The American Chargé d'Affaires ad interim promptly reported to the Secretary of State the information informally communicated to him to the effect that the Netherlands Government had instructed its Minister at Washington to initiate certain further formal correspondence with the Secretary of State in relation to the question of reciprocity between the two Governments in matters pertaining to petroleum. The Government of the United States, however, believes that an informal exchange of views rather than continuation at this time of the formal diplomatic correspondence which has now extended over eight years is better calculated to facilitate a prompt understanding satisfactory to both Governments. Accordingly, the Chargé d'Affaires has been instructed to make the following statement of the position of the Government of the United States in the matter.

The laws of the United States with respect to its petroleum resources are general in terms and, as a matter of policy, have been applied with the greatest possible liberality, and the benefits thereof are equally available to the citizens of foreign countries and to

American nationals. Under the general mining laws of the United States it has been held, by formal decisions still in force,[9] that a corporation organized under the laws of the United States or one of its States can acquire title to public mineral lands even though its stock is controlled by citizens of foreign countries. Private lands, to which the foregoing principles also apply, constitute about 90% of the proven oil lands of the United States.

With respect to Indian lands, which comprise approximately 10% of the above-mentioned private oil lands, it may be pointed out that a corporation organized under the laws of the United States but controlled by a Netherlands corporation has acquired and holds leases specifically approved on May 15, 1923, by the appropriate Department of the Government.

The Mineral Leasing Act of February 25, 1920, is applicable to production on public lands of a limited number of specified minerals, including petroleum. This Act contains a provision that citizens of other countries, the laws, customs or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding or stock control own any interest in any lease acquired under the provisions of the Act. The Act is thus not discriminatory in its terms, nor has discrimination appeared at any time in the customs or regulations affecting the grant of leases in pursuance of the Act. The existence of reciprocity is expressly made a question of fact, and is determined on the basis of applications made to the competent authorities. Such applications would be granted if the applicant shows in support of his application that the laws, customs or regulations of the foreign country in question do not deny reciprocal privileges to American nationals.

This means that if the laws, customs or regulations of the Netherlands permit the acquiring of mineral leases or concessions affecting mineral lands in the Netherlands or its colonial possessions by corporations formed under the laws of the Netherlands or of its possessions, the stock of which is controlled by American citizens or corporations, then a corporation organized in the United States, the stock of which is controlled by citizens of the Netherlands, could acquire a mineral lease on public lands of the United States under the Act of February 25, 1920.

It is a fact of very great importance that the Government of the United States has permitted foreign interests freely to acquire petroleum holdings on private lands of the United States which, as stated, constitute about 90% of the proven petroleum areas in the United States. In this connection, it is significant that in 1926 one group of Dutch companies obtained from the petroleum fields of the United States 5,793,267 metric tons of oil, amounting to over 37% of its total production in all countries and to about twice its production in the Dutch East Indies. The Government of the United States is certain that the Netherlands Government will admit that Netherlands interests have received most liberal treatment in the United States.

On the other hand, however, applications by or on behalf of American interests for concessions under existing laws for exploitation of petroleum resources in the Dutch East Indies have been urged

[9] Marginal notation by the Economic Adviser, Department of State: "Note. Refers to 28 Land Decisions, 178. A[rthur] N. Y[oung]."

for years without favorable action, and it is only recently that the Netherlands Parliament has approved a measure authorizing the Minister of Colonies to grant an application of such interests.

The Government of the United States has noted with considerable gratification the assurance extended in a note of November 14, 1927, from the Netherlands Minister at Washington to the Secretary of State to the effect that the Netherlands Government has the intention, after the above-mentioned project shall have become law, to continue taking the same line in future with regard to the issuing of oil lands. The Government of the United States understands from this assurance that the Netherlands Government proposes to treat American petroleum interests on a footing equivalent to that accorded to Dutch nationals, somewhat as foreign nationals of reciprocating countries are treated by the Government of the United States.

It is further stated in the note under reference that the Netherlands Government is quite willing to continue such a line of conduct with respect to issuing oil lands, but that it could only take the responsibility of doing so if the Government of the United States were willing to declare the Netherlands a reciprocating country within the meaning of the Mineral Leasing Act of February 25, 1920.

As has been indicated in previous correspondence, especially Mr. Phillips' note of September 25, 1920,[10] the laws of the Netherlands seem not to deny the right of an American citizen to own or hold stock in Netherlands corporations engaged in exploiting or producing oil. But in view of the fact that, so far as the Government of the United States is advised, the Netherlands Government has never directly granted an exploitation concession to any American company, the existing Netherlands law as administered has not accorded to American nationals reciprocal participation in the development of Netherlands petroleum resources.

The Chargé d'Affaires is authorized to state that action by the competent authorities of the Government of the United States holding the Netherlands to be a reciprocating country would in principle be assured in case the Netherlands Government, as an earnest of its policy,

(1) should confirm the understanding of the Government of the United States that the laws of the Netherlands do not deny the right of Americans to own or hold stock in corporations organized thereunder to exploit petroleum resources of the Netherlands or of its possessions;

(2) should definitely grant an important concession or concessions to American interests; and

(3) should confirm the understanding of the Government of the United States that the Netherlands Government will take the same line in the future with regard to the granting of oil lands, and will treat responsible American interests on a footing equivalent to that accorded to Dutch interests."

Telegraph when you present memorandum and report promptly any significant developments.

KELLOGG

[10] Not printed; but see telegram No. 573, Sept. 22, 1920, 7 p. m. to the Minister in the Netherlands, *Foreign Relations*, 1920, vol. III, p. 278.

856d.6363/514 : Telegram

The Chargé in the Netherlands (Norweb) to the Secretary of State

THE HAGUE, *March 5, 1928—5 p. m.*
[Received March 5—1:50 p. m.]

9. Department's telegram 8, March 2, 4 p. m. Delivered memorandum this morning to the Secretary General of the Foreign Office who expressed the opinion that it should not be difficult to meet its provisions. He believed, however, the Colonial Minister in complying therewith would expect it to be understood that definite declaration would be forthcoming on our part that Holland is considered a mere [*sic*] reciprocating country. Is the Department of the Interior disposed to give this assurance? Anticipate no further developments until return of Minister for Foreign Affairs from Geneva next week.

NORWEB

856d.6363/514 : Telegram

The Secretary of State to the Chargé in the Netherlands (Norweb)

WASHINGTON, *March 10, 1928—6 p. m.*

9. Your 9, March 5, 5 p. m. Department does not understand suggestion regarding desire for a definite declaration or assurance from the Interior Department. In the latter part of the memorandum presented to the Netherlands Government it is definitely stated that the recognition of the Netherlands as a reciprocating country would in principle be assured should that Government, as an earnest of its policy, do certain specified things. Should Dutch officials again bring up the subject, you may orally and informally say that in view of the statement contained in the memorandum you are unable to understand what more definite declaration could be made at this time.

KELLOGG

856d.6363/517 : Telegram

The Chargé in the Netherlands (Norweb) to the Secretary of State

THE HAGUE, *March 14, 1928—6 p. m.*
[Received March 14—2:40 p. m.]

11. Department's No. 9, March 10, 6 p. m. Having in mind the Netherlands Minister's note November 14, 1927, raising the question of a declaration on our part that Holland is a reciprocating country, and my telegram No. 8 of February 24, sent after conversations at the Foreign Office, also my despatch 1427, February 18, it is evident that

while desiring to protect their petroleum interests in the United States the Dutch are equally sensitive regarding the charges made against them of nonreciprocity and are determined to ask for a formal acknowledgment of reciprocal treatment for the purpose of clearing their record.

As reported in my telegram No. 9, March 5, 5 p. m., Snouck[11] doubted if the assurances of future action [by] our competent authorities, contained in the Department's memorandum, would be considered sufficiently specific to clear them of the charges of lack of reciprocity and while expressing only his personal opinion he showed that what is desired is the promise of a written declaration, possibly a letter from the Department of the Interior, recognizing the Netherlands as a reciprocating country, to be made upon receipt of a satisfactory reply to our memorandum.

If the Department of the Interior is prepared to make such a promise, may I be authorized, should the necessity arise, so to inform the Foreign Office? By thus anticipating an objection, which it is clear from statements made both here and in Washington will certainly be raised, a further delay in the signature of the bill will be avoided.

NORWEB

856d.6363/523 : Telegram

The Acting Secretary of State to the Chargé in the Netherlands (Norweb)

WASHINGTON, *March 28, 1928—7 p. m.*

10. Your 11, March 14, 6 p. m. Department feels that it is now the Dutch Government's move. If, however, you think it would be helpful in promoting understanding between the two Governments, Department sees no objection to your informally stating that when the Netherlands Government, in reply to your memorandum, gives assurance that the laws, customs and regulations of the Netherlands do not deny similar or like privileges to citizens or corporations of this country, definitely grants an important concession or concessions to American interests, and confirms the understanding that its future policy as to granting of oil lands will be along similar lines, there would be no objection to stating in writing that citizens of the Netherlands are considered as being within the reciprocal clause of the third proviso of Section one of the Act of February 25, 1920.

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[11] Mr. A. M. Snouck Hurgronje, Secretary General, Netherlands Ministry for Foreign Affairs.

856d.6363/525 : Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

THE HAGUE, *April 10, 1928—4 p. m.*
[Received 4:13 p. m.]

16. Department's telegram No. 10, March 28, 7 p. m. Foreign Office assures me that signature of bill granting concessions may soon be expected.

TOBIN

856d.6363/531 : Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

THE HAGUE, *May 14, 1928—5 p. m.*
[Received May 14—4:40 p. m.]

20. My telegram number 19, April 20 [*30*], noon.[12] Foreign Office informs me orally that Colonial Minister is prepared to sign bill provided assurances are given that the American Government regards the Shell Union Oil Corporation and the Bataafsche Petroleum Company, despite British interest in those concerns, as Dutch company within the meaning of the reciprocal provisions of the leasing act. The actual division of interests in these companies is as follows: Shell Union: American share 34 percent, Bataafsche Petroleum 66 percent; Bataafsche Petroleum: 40 percent British Shell and 60 percent Royal Dutch, thus giving the British approximately 24 percent interest in Shell Union. Assurances on this point are desired in order to preclude the possibility that a lease to public lands may be refused the Shell Union on the grounds Great Britain is a non-reciprocating country.

There are other reasons for delay of minor and not vital importance which I am reporting at length by mail.

TOBIN

856d.6363/533

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1517 THE HAGUE, *May 14, 1928.*
[Received May 28.]

SIR: I have the honor to confirm my telegram No. 20, May 14, 5 p. m., in which I reported the latest developments in the Koloniale concession negotiations.

The telegram was based on a conversation between Mr. Norweb

[12] Not printed.

and Mr. Snouck Hurgronje, Secretary General of the Foreign Office, who is the competent official in this matter.

Mr. Snouck first took up the considerations advanced in our memorandum of March 5th and read a communication from the Colonial Department agreeing to our contentions. It was pointed out, however, with reference to our desire for assurances that "the Netherland Government will treat responsible American petroleum interests on a footing equivalent to that accorded to Dutch interests," that while the Colonial Department is determined to pursue the open door policy and to accord equal opportunity in the Netherland East Indies to American petroleum interests, it could not bind itself to grant in every specific instance absolutely "identical" treatment to American and Dutch interests. It could not undertake, for instance, each time a concession was given a Dutch concern, to grant a concession of like size or importance to American interests. Mr. Snouck was of the opinion that this attitude of the Colonial Department should not occasion any difficulty as he felt that it was not the intention of the Department of State in asking for "equivalent" treatment for American interests to insist on concessions hectare for hectare with the Dutch.

In indicating his willingness to sign the Koloniale Bill, the Minister of Colonies further suggested that it might be desirable for the Foreign Office, in view of the fact that Great Britain is a non-reciprocating country and that indirectly British interests have a share in the Dutch companies operating in the United States, to inquire whether or not the American Government regards the Shell Union Oil Corporation and the Bataafsche Petroleum Company as Dutch companies within the meaning of the reciprocal provisions of the leasing act of 1920. The Colonial Minister went on to point out that the Shell Union Oil Corporation, which is the only Dutch company interested in acquiring leases in the United States, is controlled up to 66% by the Bataafsche Petroleum, the balance being in American hands. However, the Bataafsche Petroleum Company is, in turn, 40% British Shell and 60% Royal Dutch. This division of interests makes the British share in the Shell Union approximately 26%. With the reservation as to a satisfactory answer to this inquiry, the Colonial Minister stated that he was prepared to sign.

Assurances on this point are desired apparently in order that this indirect British interest, and the fact that Great Britain is not a reciprocating country, may not at some future date be used as an argument for refusing a lease to the Shell Union. Mr. Norweb informed Mr. Snouck that he was sure these facts were known at Washington and that because of the predominance of Dutch control the companies were regarded as Dutch. It might be possible to give

satisfactory assurances on this point from information in the Legation files but failing that the point would be submitted to Washington.

Mr. Snouck then referred to his conversation with me of a month ago at which time he said he hoped within a few days to be able to reply satisfactorily to the Legation's memorandum of March 5th. In saying this, he explained, he had not anticipated any delay in hearing from the Dutch Legation in Washington, to which a minor question had been referred for opinion. He said that he had only just received this reply, which was dated Washington, April 24th, and which was of a nature totally different from what he had expected. In this report, said Mr. Snouck, the Dutch Minister at Washington referred to conversations he had held with Mr. Kessler, the Royal Dutch representative in the United States, with Mr. Torchiana, the Dutch Consul General in San Francisco and with the American legal advisers of the Dutch oil interests in the United States, from all of whom he had gathered the distinct impression that because of uncertainties and conflicts in American oil legislation they could not recommend any Dutch company to attempt to obtain a lease to operate in public lands. Mr. van Royen suggested therefore that before the Koloniale Bill was signed an effort might be made to discuss these difficulties with the American Government.

According to Mr. Snouck, the substance of Mr. van Royen's report was as follows: Even though the public lands in the United States are of a comparatively small area, their oil resources remain untapped, a fact which, under the circumstances, greatly increases their value as future sources of supply. Of the various Dutch companies operating in the United States, the Shell Union Oil Corporation, a subsidiary of the Bataafsche, is the only Dutch company interested in obtaining leases in United States public lands and the legal advisers of this company for various reasons believe it unwise under existing conditions for the Shell Union to attempt to seek a lease in the United States public lands. The objections arise chiefly from the fact that public opinion in the United States with respect to oil, particularly oil controlled by companies other than American, is very uncertain. There is a danger of politics entering into the question to such a degree as to make it of doubtful advisability for foreign companies to undertake to operate in public lands. Specifically the objections are as follows: Any leases on public lands may be jeopardized (1) by a possible conflict between Federal and State laws. Even if the Federal Government recognized the Shell Union as belonging to a reciprocating country the State governments, who have a voice in the disposal of public lands, might not choose to follow suit. In this connection Mr. van Royen pointed to the laws

of the State of California which deprived Japanese of the right which had been acquired by treaty to hold land, and that the legality of the State action (as against the treaty entered into by the Federal Government) had been upheld by the American courts; (2) by the possibility of a change, by reason of political pressure, in the administration of the Federal Leasing Act which Congress has left to the discretion of the Secretary of the Interior, and (3) the possibility that even though the lease may be granted it could always be contested before the courts by inimical interests.

Mr. Snouck referred to these objections as difficult of solution except by a change in the American laws or by special treaty and for that reason, he said, the Foreign Office is prepared to disregard van Royen's suggestion that these factors be taken into consideration by the Dutch Government before signing the Koloniale Bill. He added, however, that he was bringing them to the attention of the Legation in case the American Government should care to express any views in the premises.

As a result of this conversation it was understood that the Legation, at Mr. Snouck's specific request, would inquire from Washington whether or not the Shell Union and Bataafsche companies, despite British interests therein, are regarded as Dutch companies within the meaning of the reciprocal provisions of the Leasing Act, and that if the Colonial Minister could be satisfied on this point the Foreign Office would then reply to our memorandum of March 5th which reply, he felt, would be in every way satisfactory to us.

Mr. Norweb took occasion to express the disappointment of the Legation and the disappointment which I know will be felt in Washington at this further procrastination upon the part of the Foreign Office, especially after having so recently received assurances that the matter had been accepted in principle and that the delay was simply one of drafting.

Despite these disappointing delays and though it is not possible now to assign any definite period when final action will be taken, I remain hopeful the Bill will be signed. I attribute the dilatory tactics more to a desire to make the best bargain possible than to any disposition to oppose Parliament on this issue, especially after the Bill had received such an impressive majority. It is possible that the Kina incident,[13] threatening as it did some of the most important men in Holland, may have had an unfavorable reaction upon the progress of these negotiations.

As Mr. Snouck will be away for three weeks, it is unlikely that any action can be expected during his absence, but I should appreciate an expression of the Department's views in the premises by

[13] Suit instituted by the United States Department of Justice in New York against Netherlands quinine interests.

telegraph in order that I may again take up the matter with him immediately upon his return.

Mr. Horstmann has been informed of the present status of the negotiations.

I have [etc.] RICHARD M. TOBIN

856d.6363/531 : Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *May 21, 1928—3 p. m.*

17. (1) Your telegram 20, May 14, 5 p. m., reveals that the Netherlands officials may have overlooked the fact that the United States Government's interest in this situation, instead of being limited to a particular concession being granted, is rather directed toward an appropriate understanding being reached whereby the nationals of each country are granted by the Government of the other reciprocal access in regard to mineral resources.

(2) In the memorandum telegraphed by the Department on March 2 (No. 8, 4 p. m.), the United States Government went more than half way to make such an understanding possible. The Department consequently feels that, in so far as making the inquiry reported by your telegram 20, May 14, 5 p. m., is concerned, the Government of the Netherlands should be ready to indicate appropriately its definite decision to meet the views of the United States Government given in the memorandum mentioned above. The Department wishes a definite indication of the Netherlands Government's view in this matter before a request for any other assurances is considered. The appropriate officials may be orally informed by you accordingly, and you may state that the United States Government, after receiving more definite information concerning the Netherlands Government's position in this matter, will be willing further to consider the inquiry contained in your telegram 20. If you believe it to be helpful, you may state also that you would be ready to transmit to the Department a tentative statement of the Netherlands Government's position regarding the points to be found in the latter part of the Department's March 2 memorandum (telegram 8), in order that this Government may consider it.

(3) An oral expression of your belief may be given by you to the effect that, if the Government of the Netherlands meets the United States Government's views, as set forth in the memorandum already mentioned, the competent American officials will be disposed to examine in the friendliest spirit the means which would facilitate access for American companies controlled by Dutch interests to United States public mineral lands.

KELLOGG

856d.6363/532 : Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

[Paraphrase]

THE HAGUE, *May 26, 1928—1 p. m.*
[Received May 26—8:35 a. m.]

24. Referring to Department's telegram 17, May 21, 3 p. m. May I suggest authorization formally to assure the Foreign Office here that the Netherlands Government's assent to the three conditions required by the Government of the United States (see the Department's telegram 8, March 2, 4 p. m.) will be followed by the United States recognizing the Netherlands as a reciprocating country; and also American companies owned by the Dutch will be allowed thereafter to enjoy, even if a minor part of their stock may be owned by a non-reciprocating country's nationals, all the advantages appertaining to reciprocity. These assurances will, I believe, greatly aid in securing the action desired from the Netherlands Government.

Mail report to follow.

TOBIN

856d.6363/536

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1522 THE HAGUE, *May 26, 1928.*
[Received June 9.]

SIR: I have the honor to refer to my telegram No. 24, of May 26, 1928, 1 p. m.

Upon receipt of the Department's telegram No. 17, of May 21, 3 p. m., I obtained an interview with the Minister for Foreign Affairs. I expressed to him some disappointment at the continued delay my government had encountered in establishing reciprocal relations in the matter of American participation in the petroleum development of the Dutch East Indies. I reminded him that negotiations with this end in view had been carried on by my predecessor, Mr. Phillips, and had been the object of my unceasing efforts since my arrival—in all a period of something like eight years; that I had been assured more than a month ago by Mr. Snouck that the considerations contained in the Legation's memorandum of March 5th were acceptable in principle and that such delays as we were now encountering were occasioned merely by formal difficulties in making a satisfactory draft of the reply to our memorandum; that I was now surprised and disappointed to learn that more serious difficulties had been advanced.

Mr. Beelaerts said to me: "When we sign this important concession and turn it over to you we will have taken an irrevocable step. Before

we do so we would like to feel certain of your action. Why should you wish to hold all the trumps in your hand? We desire formal assurances that when we have formally accepted your conditions and signed the concession we may be certain to be removed from your list of non-reciprocating nations and that the only Dutch company desirous of entering upon public lands may be free to do so." He spoke also of the objections, already reported in my despatch No. 1517, of May 14, 1927 [*1928*], which had been urged against the Bill by the Dutch Minister in Washington.

I reminded him that it had never been the purpose of the United States Government to advance the interests of any particular company, but only the interests of American nationals at large; that the design of my government was to establish facilities for the nationals of each country to obtain access to the mineral resources of the other upon equal and reciprocal terms; that there was no desire upon the part of the American Government to obtain all the advantages; that, as a matter of fact, Dutch oil companies were now operating and had been operating for years past in America under most favorable conditions. I conveyed to him the assurance that if a satisfactory answer were obtained to the three inquiries of my government—contained in the Legation's note of March 5th—my government would then be in a position to discuss in a most friendly spirit the position of any Dutch owned American company.

The Minister made a very strong plea, difficult to resist, that the matter be left in the hands of Mr. Snouck, now absent on his vacation. While I protested at what seemed an unnecessary delay, I had no course but to submit.

The Minister reiterated the assurance of Mr. Snouck—that the matter was settled in principle and that the Bill would surely be signed—but it was impossible to extract from him any assurances as to the time when such signature might be expected.

As a result of my conversation with the Minister for Foreign Affairs, I am convinced that the Dutch Government is acting in good faith in requiring convincing assurances that their action in acceding to the requirements of the United States Government will be followed by the recognition of the Netherlands as a reciprocating country.

I believe from the expressions of Mr. Snouck, which have been previously reported, and those of Mr. Beelaerts, that the position of the Dutch Government may be summarized as follows: It is prepared to meet the conditions set forth in the Department's No. 8 of May [*March*] 2, 1928, provided such action on its part will be promptly followed by acknowledgment on our part of the Netherlands as a reciprocating country and also by an assurance in some form on the part of the United States Government which will satisfy the Foreign

Office that the Shell Union will be regarded as a Dutch company if and when that company applies for leases in our public lands. The Dutch Government also desires it to be understood that, in meeting the views of the American Government as set forth in the third condition advanced in the above-mentioned memorandum, Holland, like other countries with a parliamentary system, cannot bind succeeding governments, but that it would prefer to say, as Mr. van Royen has already stated (see note from Dutch Legation November 14, 1927), that it is its "present intention" to pursue in the future a liberal policy with regard to American participation in the petroleum development of the Dutch East Indies. Also with reference to the third condition contained in our memorandum, the Dutch Government desires to point out that while determined to accord equal opportunity in the Netherland East Indies to American petroleum interests it cannot bind itself to grant in every instance absolutely identical treatment to American and Dutch interests. To this summary of the Dutch position should also be added the objections referred to by both Mr. Snouck and Mr. Beelaerts relative to the uncertainties and conflicts in American oil legislation and the influence of politics on the operations of foreign controlled oil companies in the United States. To these latter objections I do not believe the Foreign Office will attach much weight.

These facts, which have at various times in the past three months been communicated orally to the Legation, have in turn been reported to the Department. They reveal, I believe, no differences of opinion which cannot be reconciled. The tendency of the past few months has been to give greater emphasis to the less important points of difference and thus minor disagreements have been made more prominent than the fact that agreement has been reached on the basic issue.

In order to solve the present problem, I venture to suggest for the Department's consideration that the Legation be authorized to put into writing (1) the substance of the Department's telegram No. 10, March 28, 7 p. m.—the contents of which have already been conveyed orally to the Foreign Office—and (2) an assurance on the part of the United States Government, that the advantages to be enjoyed by Dutch owned American companies, when Holland shall have been declared a reciprocating country, will not be denied to such companies, even though their stock is to a minor extent in the hands of nationals of a non-reciprocating country. If these assurances could be presented formally to Mr. Snouck upon his return, to be effective when the Dutch have fulfilled the assigned conditions, I believe matters would be brought to a point where I can obtain the definite and satisfactory answer to our requirements.

It may seem the Legation, in its desire to obtain prompt action and to meet every contingency, is urging a too conciliatory course.

The concessions suggested do not, however, cost us anything in bargaining power. The assurances contemplated are merely promises of action contingent upon the Dutch Government having first accepted our conditions. It would appear to the Legation that compliance with the second assurance desired by the Foreign Office, i. e., recognition in some form of the Dutch character of the Shell Union, is an essential part of and flows directly from the promise we have made orally that Holland will be held a reciprocating country. To grant one request and not the other might give rise, in the Dutch mind, to doubts regarding our good faith, for Dutch nationals cannot actually enjoy advantages of the promised reciprocity if we withhold the desired recognition from the only Dutch company in the United States which, according to the Foreign Office, is interested in obtaining American concessions.

I should greatly appreciate receiving by telegraph an expression of the Department's views.[14]

I have [etc.] RICHARD M. TOBIN

856d.6363/532 : Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *May 29, 1928—3 p. m.*

20. Referring to your 24, May 26, 1 p. m.

(1) In the effort to conclude satisfactorily the questions concerning reciprocity on oil lands, pending now for about eight years, the United States Government already has gone to considerable lengths and so far has had no satisfactory response to the Department's memorandum (telegram No. 8, March 2, 4 p. m.) as presented or to its statement (telegram No. 10, March 28, 7 p. m.) to the effect that no objection would be made to a suitable written statement if the Government of the Netherlands took appropriate action regarding the matter. While wishing to continue every reasonable effort to adjust the same, the Department considers that, in view of the available information, any formal advances would not be appropriate. As to your mentioning "assent" by the Government of the Netherlands, acceptance of the Department's proposal, it may be emphasized, involves both action and assent.

(2) In view of the above, the best procedure would seem to be for you to talk over the matter informally, along the lines of the Department's 17, May 21, 3 p. m., and of this telegram, with the appro-

[14] Marginal notation dated June 14, 1928, by the Economic Adviser, Department of State: "All points have been substantially covered in telegrams. A[rthur] N. Y[oung]."

priate official and to make it clear the United States Government now is waiting for the Netherlands Government's expression of views in this regard. If you deem it helpful, you may express the opinion also that public opinion in the United States may, should a real reciprocity not be established within the near future, demand measures which would condition access to both public and private lands upon reciprocity. You may make an oral statement further that there appears to be at present in the United States an increasing sentiment to this effect; that the Department has on a number of occasions used its influence in opposition to proposals which would harm the interests of nonreciprocating countries' nationals; but that the Department will find it increasingly difficult to act similarly hereafter if American nationals cannot be shown to be enjoying abroad a substantial reciprocity. Again you may in this connection emphasize the fact that about 90 percent of this country's proven oil areas are private lands of the United States concerning which the Government does not impose any restriction on activities of corporations which are controlled or owned by foreign nationals.

KELLOGG

856d.6363/534 : Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *June 7, 1928—4 p. m.*

24. Referring to your 25, June 4, 3 p. m.[15]

(1) The Department is gratified by your statement in your despatch No. 1517, May 14, page 2, that the Netherlands Colonial Department is in agreement with American contentions (set forth in your March 5 memorandum) and understands that the remaining questions now relate only (*a*) to interpreting "a footing equivalent to that accorded to Dutch interests" and (*b*) as to whether American corporations controlled by Dutch could, on the Netherlands being declared a reciprocating country, acquire leases on United States public lands. The questions brought to attention by the Netherlands Minister here are understood not to be considered by the Netherlands Foreign Office to interfere with an understanding being reached.

(2) Regarding the above point (*a*), the United States Government, you may state, does not consider "equivalent" to mean "identical" and would not insist on "concessions hectare for hectare with the Dutch." This Government's present interest lies rather in estab-

[15] Not printed.

lishing a broad basis of reciprocity which both Governments would, it is assumed, apply in good faith.

(3) Regarding point (*b*), you may orally make the statement which was authorized in the Department's 17, May 21, paragraph 3, and clearly point out the necessity, of course, in each specific case of having Dutch control satisfactorily shown to the competent officials through the submission of a statement covering stock ownership and organization of the affected American companies.

(4) The Department has received informal advices that Colonel Donovan's Paris visit concerning the quinine matter has had satisfactory results.[16]

KELLOGG

811.6363/205

The Secretary of State to the Secretary of the Navy (Wilbur)

WASHINGTON, *June 29, 1928.*

MY DEAR MR. SECRETARY: I beg to refer to informal discussions which you and officers of your Department have had with officials of this Department in regard to matters pertaining to the naval oil reserves, and to the suggestion that a statement be furnished concerning certain questions involved that are of interest to the Department of State.

The Department of State, in connection with rendering assistance and support to American companies seeking or operating petroleum concessions abroad, is constantly seeking the recognition and practical application by foreign governments of the policy of the open door and equality of commercial opportunity. It is obvious that such a policy can be followed only as long as the United States accords to nationals of foreign countries treatment similar to that sought by this Government for its nationals abroad.

This Department frequently has had occasion to point out that the laws of the United States are very liberal as to access to private oil lands on the part of foreign interests, and that the laws of the United States appertaining to public oil lands do not discriminate against companies owned wholly or in part by foreign nationals as long as the foreign countries of which they are citizens grant reciprocal rights to American interests. I quote below, for your confidential information, a portion of a memorandum on this subject recently communicated by this Government to the Netherlands Government:

[Here follow the second, third, and fourth paragraphs of the informal memorandum transmitted in telegram No. 8, March 2, 4 p. m., to the Chargé in the Netherlands, printed on page 381.]

[16] Col. William J. Donovan, Assistant to the Attorney General, visited Paris and conferred with representatives of the quinine interests regarding alleged violations of American laws by their agents in the United States.

The Department of State has sought for American nationals abroad not only equality of treatment with all other foreign nationals, but also treatment equivalent to that accorded to the nationals of the country in question. Representations have been made as to action or legislation by foreign governments by which American interests were discriminated against merely by reason of the fact that such interests were foreign. The basis for such representations is the liberal treatment accorded by the United States to foreign nationals. This Department would obviously be handicapped in maintaining this position were any branch of this Government to take action discriminating against foreign interests as such.

In view of the extent of our probable future dependence upon foreign reserves of petroleum, the importance of keeping the Government of the United States in a position consistently to support and assist American interests will, I am sure, be appreciated. Accordingly, I consider it important that no action be taken in the United States discriminating against foreign interests as such in the oil industry.

The Navy Department, I understand, has been considering the advisability of a general policy of stipulating that nationals of non-reciprocating countries shall not have any interest, either directly or under contracts to be made hereafter, in leases pertaining to naval petroleum reserves. Such a policy would be analogous to the final proviso of Section 1 of the General Leasing Act of February 25, 1920 (41 Stat. 437). I understand that consideration has also been given to the adoption by administrative action of a policy of reciprocity with respect to existing leases in which foreign nationals are interested.

While there may be no objection to the principle involved in this proposal, I feel that its application at this time or under existing circumstances would not be advisable. In the first place, it could hardly be of any great practical importance. It is understood that naval petroleum reserves are less than 1½% of our total petroleum reserves, and that the larger part of the naval reserves has already been leased under long term contracts. Hence the opportunity for foreign-controlled companies to participate in the further development of these reserves is a very limited one. There are, moreover, considerable risks in the proposal. It would be misunderstood abroad and give basis for misrepresentations of our attitude. The present situation is specially delicate in view of our pending negotiations with the Netherlands Government. Also the proposal might tend to increase agitation in this country against the operation of foreign petroleum interests in the United States, and thus tend to make more difficult the support by this Department of American petroleum interests abroad. Besides, attention would be focused on the existence of

naval oil reserves, which might thus suggest to foreign governments the desirability of constituting a part or all of their own oil deposits as naval or military reserves to be exploited by the respective governments or their own nationals exclusively. In this connection, it may be observed that Brazil has lately been considering a proposal which would declare all petroleum deposits as well as deposits of many of the most important minerals to be reserved for national security and defense and excluding foreign interests from opportunity to participate in their development.

I wish to take this opportunity to express my appreciation of the informal cooperation which you and officers of your Department have already accorded in this matter, and to thank you for your willingness to take into account the considerations of special importance to this Department.

I am [etc.] FRANK B. KELLOGG

856d.6363/545

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1553 THE HAGUE, *July 10, 1928.*

[Received July 23.]

SIR: Referring to my telegram No. 34, of July 7, 1928, 3 p. m.,[17] I have the honor to transmit herewith copies and translations of three communications exchanged to-day between the Legation and the Foreign Office with respect to the establishment of reciprocal treatment in petroleum matters between the United States and the Netherlands. Memorandum No. 21432 (Enclosure No. 1) contains the assurances requested in the Legation's Memorandum of March 5, 1928. The Legation's acknowledgment is attached thereto (Enclosure No. 2). The second Memorandum, No. 21433 (Enclosure No. 3), to which no acknowledgment was made, records certain views of the Dutch Government with regard to possible legal and other difficulties which might arise in connection with the exploitation of concessions in the United States public lands.

For the sake of the record and as a matter of convenience I am likewise enclosing, in addition to copies of the final memoranda, copies of the first two drafts (Enclosures Nos. 4 and 5) [17] which were tentatively submitted to the Legation for consideration. A comparative study of these various documents will show that throughout the negotiations the Legation has been actuated by a desire first to obtain definite and satisfactory assurances as to Dutch future policy with respect to petroleum requested in the Legation's Memorandum of the 5th of March. The second object in mind was to persuade the Foreign Office to omit

[17] Not printed.

any reference in the discussions or correspondence to the ambiguous, extraneous and what the Legation considers as theoretical arguments which the Dutch Foreign Office advances to illustrate an alleged discrepancy in the security offered by the legal systems of the two countries. While, for reasons mentioned below, it has not been possible to bring about the elimination of all references to this subject, it has been possible to have these considerations included in a separate minute and in a form so modified as to make them comparatively innocuous. It is evident from the elliptical phraseology employed that the Foreign Office is itself none too sure of the arguments advanced. Admittedly, they have been introduced into the discussion because of a promise to do so made to the Royal Dutch, which sees in them a basis for an argument in the future should any difficulty arise on this score in connection with the operations of any of its subsidiaries in our public lands.

I have [etc.] RICHARD M. TOBIN

[Enclosure 1—Translation [18]]

The Netherlands Ministry for Foreign Affairs to the American Legation

No. 21432 MEMORANDUM

The Ministry of Foreign Affairs has noted with great interest the viewpoint of the Government of the United States concerning the exploitation of petroleum fields in the United States and in the Netherlands Indies as set forth in the American Legation's memorandum of March 5, 1928.

In response to the desire expressed by the American Legation to receive assurances on three points regarding the Netherlands policy with respect to the exploitation of petroleum fields in the Netherlands Indies, the Ministry of Foreign Affairs has the honor to inform the American Legation as follows:

1. The Netherlands Indies mining law (*Indische mi jnwet*) makes no objection to the granting of rights for the exploitation of petroleum fields by United States citizens or by companies with American capital, provided that such citizens or such companies comply with the stipulations of article 4 of that law.

2. The law of February 9, 1928 (S. 23), authorizes the Minister of Colonies to sign contracts with a company in which American capital is heavily interested, which will make it possible for that company to exploit important petroleum terrains in the Netherlands Indies. The Minister of Colonies is prepared to sign these contracts. It is under-

[18] File translation revised.

stood that, as soon as the signature of these contracts shall have been notified to the Legation of the United States, the latter will transmit to the Ministry a communication to the effect that the Government of the United States recognizes the Netherlands as a reciprocating country in the sense of the mineral leasing act of February 25, 1920.

3. Her Majesty's Government has no intention of abandoning the open-door policy in so far as the granting of rights for the exploitation of oil fields in the Netherlands Indies is concerned; and consequently the opportunity will remain open for American interests to participate in the exploitation of the petroleum wealth of the Netherlands Indies. It is, however, understood that this policy does not imply that in each specific instance of the granting of petroleum rights to other than American interests, the question of the granting of identical rights to American interests can be raised.

In the conversations between the American Legation and the Royal Ministry of Foreign Affairs, which were held upon the proposal of the American Government, the Ministry thought it advisable to request the American Legation to inform its Government that a Netherlands company, controlling an important American petroleum concern in which American capital likewise is interested, has as a shareholder for a minor part of its capital a company belonging to a nonreciprocating country. The Royal Ministry inquired how the Government of the United States would view a request on the part of such a company tending to obtain a concession covered by the mineral leasing act. In reply the American Legation informed the Ministry that in each specific case it would of course be necessary that the fact of Netherlands control be shown to the satisfaction of the competent officials by the production of evidence regarding the organization and stock ownership in the American company in question, and that these authorities would be disposed to consider in the most friendly spirit means to facilitate access to the public mineral lands of the United States on the part of American companies controlled by Netherlands interests.

THE HAGUE, *July 10, 1928.*

[Enclosure 2]

The American Legation to the Netherlands Ministry for Foreign Affairs

MEMORANDUM

The Legation of the United States of America at The Hague acknowledges the receipt of the Foreign Office's Memorandum No. 21432, of July 10, 1928, setting forth the latter's views in reply to a Memorandum submitted by the Legation on March 5, 1928, in regard to the question of reciprocity between the two Governments in matters relating to petroleum.

The communication under acknowledgment confirms the Legation's understanding of the informal conversations which have taken place between it and the Foreign Office. The assurances it contains adequately meet the contentions of the American Government as set forth in the Memorandum of March 5th.

THE HAGUE, *July 10, 1928.*

[Enclosure 3—Translation [19]]

The Netherlands Ministry for Foreign Affairs to the American Legation

No. 21433 MEMORANDUM

In the course of the conversations between the American Legation and the Royal Ministry of Foreign Affairs, mentioned in to-day's Memorandum No. 21432, the Royal Ministry pointed out that after the granting of the concession in question the company concerned will be able to exploit its fields under complete legal security, whereas the situation of [*sic*] American companies with Netherlands capital which desire to obtain and exploit fields in the public lands run grave risks by the absence of legal security.

In the first place, it should be noted that a company exploiting a petroleum concession conferred by the Federal Government in public lands must conform to the general laws enacted by the State in which the concession is situated. No guarantee exists that this State will not by its legislation render exploitation practically impossible.

Moreover, every American citizen may contest before the courts the legality of a granted concession. The American judicial authorities therefore could annul in practice rights granted by the Federal Government.

Finally, the present Government of the United States can bind only itself with regard to the application of the mineral leasing act. A succeeding administration might have a different opinion regarding the interpretation and application of this law, as a result of which American companies with Netherlands capital might not be able to obtain any further concessions in public lands.

From the information in its possession concerning American legislation, the Ministry of Foreign Affairs understands that in theory the position of companies with Netherlands capital could, in the face of the lack of legal security, be remedied either by the conclusion of a formal treaty or by a modification of the legislation. It is, however, of the opinion that in the present circumstances these solutions are imprac-

[19] File translation revised.

ticable and that all other remedies are defective. The Royal Ministry consequently contents itself with merely noting the points raised above.

THE HAGUE, *July 10, 1928.*

856d.6363/544 : Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

THE HAGUE, *July 17, 1928—4 p. m.*
[Received July 17—12:55 p. m.]

35. My 34, July 7, 3 p. m.[21] Minister for the Colonies has today signed and delivered Koloniale [Petroleum Company] contracts.

TOBIN

856d.6363/547

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1561 THE HAGUE, *July 21, 1928.*
[Received August 8.]

SIR: Confirming my telegram No. 35, of July 17, 4 p. m., I have the honor to transmit herewith a copy and translation of a Note from the Foreign Office [21] informing me of the signature, on July 17th of four contracts granting petroleum concessions in the Dutch East Indies to the Koloniale Petroleum Company. I enclose as well a copy of my acknowledgment of this communication, in which I formally convey to the Netherland Government recognition by the United States as a reciprocating nation within the meaning of the provisions of the Mineral Leasing Act of February 25, 1920.

I am informed that my note probably will be communicated by the Colonial Minister to the States General in fulfilment of his promise to keep the legislative body informed of the final outcome of this question.

The contracts just signed by the Colonial Minister constitute executive action which would appear to bring to a practical and satisfactory conclusion the discussions which we began eight years ago to obtain from the Dutch Government recognition of the fundamental principle of reciprocal treatment with respect to the development of natural resources and to secure for American interests a substantial participation in the petroleum industry of the Netherland East Indies similar to that enjoyed by Netherland citizens in the United States.

I have [etc.] RICHARD M. TOBIN

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[21] Not printed.

[Enclosure]

The American Minister (Tobin) to the Netherlands Minister for Foreign Affairs (Beelaerts)

No. 642 THE HAGUE, *July 21, 1928.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's Note of July 19, 1928 (Economic Section, No. 22689),[22] informing me that four contracts granting petroleum concessions in the Dutch East Indies to American interests were signed on July 17th. The conditions for which my Government hoped having now been established, I am authorized to convey to Your Excellency the assurance that the Government of the United States of America recognizes the Government of Her Majesty the Queen of the Netherlands as a reciprocating State within the meaning of the provisions of the Mineral Leasing Act of February 25, 1920.

May I be permitted to express my personal satisfaction at the successful culmination of the efforts of Your Excellency's Government and that of the United States to arrive at an agreement whereby the Government of each country grants to nationals of the other reciprocal access with respect to mineral resources.

I avail myself [etc.] RICHARD M. TOBIN

856d.6363/551

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1574 THE HAGUE, *August 4, 1928.*
[Received August 20.]

SIR: With reference to my despatch No. 1561 of July 21, 1928, I have the honor to transmit herewith a copy and translation of a Note from the Netherland Minister for Foreign Affairs in which Jonkheer Beelaerts expresses his satisfaction at the arrangement whereby the Netherlands is recognized as a reciprocating State in the sense of the Mineral Leasing Act of February 25, 1920.

I have [etc.] RICHARD M. TOBIN

[Enclosure—Translation]

The Netherlands Minister for Foreign Affairs (Beelaerts) to the American Minister (Tobin)

No. 24210 THE HAGUE, *August 2, 1928.*

MR. MINISTER: I have the honor to acknowledge the receipt of Your Excellency's Note No. 642, of July 21st last,[23] in which you were good

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[22] Not printed.
[23] *Supra.*

enough to inform me that your Government recognizes the Netherlands as a reciprocating State in the sense of the Mineral Leasing Act of February 25, 1920.

I desire to thank Your Excellency for the kind expressions which you have added to this communication and, on my side, to express my satisfaction at the arrangement reached by our two Governments, thanks to the benevolent co-operation of Your Excellency and the Legation.

Please accept [etc.] BEELAERTS VAN BLOKLAND

856d.6363/535

The Secretary of State to the Minister in the Netherlands (Tobin)

No. 592 WASHINGTON, *October 1, 1928.*

SIR: Reference is made to your despatch No. 1553 of July 10, 1928, with which you transmitted copies and translations of certain communications exchanged between the Legation and the Foreign Office with regard to the question of reciprocity in petroleum matters between the United States and the Netherland Government. As was indicated in the Department's telegraphic instruction No. 28, of June 29, 4 p. m.,[24] it had been hoped that the Netherland Government would not make of record the statements contained in memorandum No. 21433 to the effect that American companies with Dutch capital desiring to obtain and operate leases on the public lands of the United States run grave risks by the absence of legal security. However, since the Netherland Government has included these incorrect statements in its memorandum of July 10 the Department finds it necessary to instruct you to make reply thereto. The Department accordingly encloses a memorandum on this subject for communication to the Netherland Government.

In handing the memorandum to the Foreign Office you should point out orally that although this Government has found it necessary to make reply to the memorandum of July 10 it is not done in a spirit of controversy but merely for the purpose of record. You may also indicate that should the Netherland Government be willing to withdraw the memorandum in question, you are authorized to withhold the enclosed memorandum. The Department would, of course, prefer the latter course.

I am [etc.]

For the Secretary of State:
W. R. CASTLE, Jr.

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[24] Not printed.

[Enclosure]

Memorandum To Be Submitted to the Netherlands Ministry for Foreign Affairs

In memorandum No. 21433 of July 10, 1928, the Royal Ministry of Foreign Affairs made statements to the effect that American companies with Dutch capital desiring to obtain and operate leases on the public lands of the United States run grave risks because of the absence of legal security. Since, notwithstanding the explanations on the subject given by representatives of the Government of the United States in the course of the conversations which have taken place both between the Royal Ministry and the American Legation and between the Department of State and the Netherland Legation at Washington, these statements, which are incorrect, have been made of record, the Government of the United States is constrained to make the following comment.

(1) The statement that a company operating an oil concession granted by the Federal Government on public lands of the United States must conform to the general laws enacted by the State where the concession is situated is ambiguous. If it is meant that petroleum concessions on public lands of the United States conferred by the Federal Government are regulated by the laws of the State where a given concession is located, the statement is absolutely incorrect. It is likewise incorrect to state that a State may, through its legislation, make it practically impossible to work a concession on Federal public lands. The jurisdiction over and control of Federal public lands is exclusively vested in the Federal Government, and the States have no control whatsoever over concessions on such lands.

(2) An American citizen may not contest the legality and validity of a concession that has been granted on the Federal public lands unless such person has a prior valid claim in respect of such land. Such claims as have arisen have in almost all cases been decided by the appropriate Executive Department of this Government without recourse to the courts. Furthermore, any such claims that may exist would be heard by the appropriate Executive Department before a concession or lease is granted.

(3) It is not clear what the Royal Ministry means by its statement that the present Government of the United States can not, with regard to the enforcement of the Mineral Leasing Act, bind any other but itself and that a succeeding administration might be of a different opinion concerning the interpretation and enforcement of that law, the consequence of which might be that American companies with Dutch capital would no longer be granted concessions on the public lands. The Mineral Leasing Act of February 25, 1920, is a permanent Fed-

eral statute and can only be changed by the Congress of the United States. A lease of the Federal public mineral lands of the United States is granted for a period of 20 years, with a right of renewal in the lessee, and such lease can not be invalidated except for non-compliance with its terms and then only by means of appropriate legal proceedings in the proper courts of the United States. The Government of the United States has always stood for the policy of the open door and equality of opportunity. Although it is, of course, possible that the Congress of the United States, at some future time, may alter existing legislation, just as the legislature of the Netherlands or some other country may modify the laws of the respective countries, the American Legation perceives no reason to anticipate that that position on the part of the Government of the United States is likely to be changed thereby.

856d.6363/560

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 1663 THE HAGUE, *October 15, 1928.*
[Received October 27.]

SIR: With reference to the question of reciprocity in petroleum matters between the United States and the Netherlands, I have the honor to report that pursuant to the Department's Instruction No. 593 [*592*], of October 1, 1928, I presented the memorandum referred to therein to Mr. Snouck Hurgronje, the Secretary General of the Foreign Office. I told him the objections made by his Government in its memorandum of July 10, 1928, were felt to be entirely baseless, and my Government hoped they might be removed from the record. I stated that it was considered regrettable that the happy result of the negotiations to establish unreserved reciprocity of opportunity between the nationals of the two countries should be marred by the presence of statements which were felt to be without justification. I added that if the assurances given by my Government were found to be adequate, it was hoped the Government of the Netherlands would consent to withdraw its memorandum of July 10, 1928, in which event the Government of the United States would refrain from making the rejoinder which would otherwise be considered necessary.

Mr. Snouck replied that the misgivings of his Government were directed not so much to the principle of the laws referred to as to the possibilities of their interpretation. He added, however, that the Netherland Government would seek the best legal advice upon the subject in Holland and in America, and he expressed the hope that the results might enable the Netherland Government to comply with the suggestions I presented to him.

Mr. Snouck concluded with the statement that he would acquaint me with his Government's views on the subject at the earliest possible moment.

I have [etc.] RICHARD M. TOBIN

TREATY BETWEEN THE UNITED STATES AND THE NETHERLANDS FOR THE ADVANCEMENT OF PEACE, SIGNED DECEMBER 18, 1913, AND PROTOCOL INTERPRETATIVE OF ARTICLE I THEREOF, SIGNED FEBRUARY 13, 1928

711.5612/56a

The Secretary of State to President Coolidge

WASHINGTON, *February 13, 1928.*

THE PRESIDENT: It will be recalled that in 1913–1914 this Government concluded treaties with several countries looking to the advancement of the cause of general peace. Such a treaty was concluded with the Government of the Netherlands. With minor changes the text for the most part was uniform in all the treaties. The treaty with the Netherlands (Dutch and English texts) was signed on December 18, 1913, and the Senate consented to its ratification on August 13, 1914. Article I defines the character of disputes which are the subject of the treaty. After the conclusion of the treaty, in 1917, the Netherlands Government invited the Department's attention to a variance between the Dutch and the English texts of Article I.

The English text reads:

"The High Contracting Parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent International Commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted."

It will be seen that this article covers "all disputes between them of every nature whatsoever" without specifying the time of origin of such disputes. The Dutch text specifies "all disputes of every nature whatsoever that may arise between them", thus implying that only those disputes arising after the coming into force of the treaty are contemplated. The Netherlands Government observed that a literal interpretation of the Dutch text would preclude disputes having their origin in fact arising prior to the time when the treaty goes into effect, and suggested the signing, at the time of the exchange of ratification of the treaty, of a Protocol interpretative of Article I, the

effect of which would be to make the treaty applicable to all disputes whether arising after the coming into force of the treaty or having their origin in facts arising prior thereto. Due to the exigencies of the late war, however, the matter lay dormant and was not renewed until 1923, at which time my predecessor was of the opinion that the proposed Protocol would have the effect of modifying the terms of the treaty to which the Senate had given its approval and would therefore require its submission to that body. At that time neither this Government nor the Netherlands Legation at this capital was aware of the existence of any controversy between the United States and the Netherlands and the Department advised the Legation that there would appear to be no occasion for submitting the proposed Protocol to the Senate.

The Department is now in receipt of a note from the Netherlands Minister [25] in which he states that his Government confirms his prior statement that there is no existing controversy between the two Governments. The Department understands that the insistence of the Netherlands Government to have the Protocol concluded is due solely to their desire to clarify the variance between the Dutch and the English texts, without which, they are not prepared to proceed to the exchange of ratifications of the original treaty, since the Netherlands States Assembly has approved the treaty on the understanding that this Government would accept the interpretative Protocol.

I have the honor therefore to request that, should your judgment approve thereof, you transmit the enclosed Protocol dated February 13, 1928, to the Senate with a view to receiving the advice and consent of that body to ratification.[26] When such ratification has been received steps will be taken immediately to effect the exchange of ratifications of the original treaty accompanied by this Protocol.

Respectfully,

FRANK B. KELLOGG

Treaty Series No. 760

Treaty Between the United States of America and the Netherlands, Signed at Washington, December 18, 1913 [27]

The President of the United States of America and Her Majesty the Queen of the Netherlands, being desirous to strengthen the bonds

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[25] Note No. 223, Jan. 28, 1928; not printed.

[26] For text of protocol, see p. 410. It was submitted by President Coolidge to the Senate Feb. 16, 1928 with letter from the Secretary of State; *Congressional Record*, Feb. 24, 1928, vol. 69, p. 3531.

[27] In English and Dutch; Dutch text not printed. Ratification advised by the Senate, Aug. 13, 1914; ratified by the President, Mar. 14, 1917; ratified by the Netherlands, July 8, 1924; ratifications exchanged at Washington, Mar. 10, 1928; proclaimed by the President, Mar. 12, 1928.

of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

Her Majesty the Queen of the Netherlands, Chevalier W. L. F. C. van Rappard, Envoy Extraordinary and Minister Plenipotentiary of the Netherlands to the United States;

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

Article I

The High Contracting Parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent International Commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

Article II

The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country. The expenses of the Commission shall be paid by the two Governments in equal proportion.

The International Commission shall be appointed within six months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

Article III

In case the High Contracting Parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, spontaneously offer its services to that effect, and in such case it shall notify both Governments and request their cooperation in the investigation.

The High Contracting Parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the International Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The High Contracting Parties reserve the right to act independently on the subject matter of the dispute after the report of the Commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by Her Majesty the Queen of the Netherlands; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the High Contracting Parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the eighteenth day of December, in the year of our Lord nineteen hundred and thirteen.

WILLIAM JENNINGS BRYAN [SEAL]
W. L. F. C. v. RAPPARD [SEAL]

Treaty Series No. 760

Protocol Interpretative of Article I, Signed at Washington, February 13, 1928 [28]

The Government of the United States and the Government of the Netherlands, desiring to remove any doubt or uncertainty that may exist or that may hereafter arise as to the interpretation to be placed on Article I of the Treaty signed between the two Governments on December 18, 1913, with respect to disputes that may exist between them at the time of the taking effect of the said treaty, have authorized the undersigned to declare that the said Article I is meant and in-

[28] In English and Dutch; Dutch text not printed. Ratification advised by the Senate, Feb. 24, 1928; ratified by the President, Feb. 27, 1928; proclaimed by the President, Mar. 12, 1928.

tended to apply, subject to the terms of that Article, to all disputes between the two Governments existing at the time of the taking effect of the Treaty as well as to those arising thereafter.

In Witness Whereof the undersigned have hereto signed their names and have affixed their respective seals at the City of Washington, this thirteenth day of February in the year one thousand nine hundred and twenty-eight.

FRANK B. KELLOGG [SEAL]
J. H. VAN ROYEN [SEAL]

711.5612/66a

The Acting Secretary of State to the Netherlands Chargé (Van Hoorn)

WASHINGTON, *September 8, 1928.*

SIR: The time specified in the Treaty for the Advancement of Peace between the United States and the Netherlands, signed at Washington December 18, 1913, the ratifications of which were exchanged at Washington on March 10, 1928, having expired without the fifth Member in the Commission provided for in Article II of that Treaty being named, I beg to suggest for the consideration of your Government that the date within which the organization of the Commission may be completed be extended from September 10, 1928 to March 10, 1929.

Your formal notification in writing, of the same date as this, that your Government receives this suggestion favorably, will be regarded on the part of this Government as sufficient to give effect to the extension, and I shall be glad to receive your assurance that it will be so regarded by your Government also.

Accept [etc.] J. REUBEN CLARK, Jr.

711.5612/67

The Netherlands Chargé (Van Hoorn) to the Secretary of State

No. 2906 WASHINGTON, *8 September, 1928.*

SIR: I have the honor to acknowledge the receipt of your note of today's date suggesting the extension from September 10, 1928 to March 10, 1929 of the time within which the organization of the International Commission provided for in the Treaty of December 18, 1913, between the Netherlands and the United States Looking to the Advancement of the General Cause of Peace may be completed.

I have the honor to inform you that the Netherland Government fully concurs with the suggestion made by the Government of the United States that this exchange of notes will be regarded by it as sufficient to give effect to the extension.

Please accept [etc.] L. G. VAN HOORN

PROPOSED TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND THE NETHERLANDS

711.5612A/3 : Telegram

The Acting Secretary of State to the Minister in the Netherlands (Tobin)

WASHINGTON, *March 29, 1928—5 p. m.*

11. The Department handed the Chargé d'Affaires of the Netherlands Legation, today, a draft of a proposed treaty of arbitration between the United States and the Netherlands.[29] The provisions of the draft operate to extend the policy of arbitration enunciated in the Convention signed at Washington, May 2, 1908,[30] which expires on March 25, 1929. The language of the draft is identical in effect with that of the Arbitration Treaty recently signed with France [31] and with the draft arbitration treaties already submitted to other governments in the general program for the extension of these principles. The text of the proposed treaty will be forwarded in the next pouch.

OLDS

711.5612A/6

The Netherlands Minister (Van Royen) to the Secretary of State

No. 1949 AIDE-MÉMOIRE

The Netherland Legation has transmitted to the Government at The Hague the communication of the Secretary of State of March 29, 1928, concerning a new arbitration treaty, and the draft that was enclosed.[32]

The Netherland Minister for Foreign Affairs has learned with great satisfaction the wish of the United States Government to give extension to the existing policy of arbitration. Jonkheer Beelaerts van Blokland however is desirous of submitting the following remarks to the attention of the Secretary of State.

It might be preferable to omit in Article I the words "which have not been adjusted as a result of reference to the Permanent International Commission, constituted pursuant to the treaty signed at Washington December 18, 1913." The reason for this suggestion is as follows.

The so-called "Bryan-Treaty", existing between the United States and the Netherlands in Article I is based on the principle, that be-

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[29] Draft not printed.
[30] *Foreign Relations*, 1909, p. 442.
[31] Vol. II, p. 816.
[32] Not printed.

fore the "Bryan-Commission" will be brought the differences that are not submitted to Arbitration. The Netherland Government agrees with this idea. Arbitration and inquiry by the "Bryan-Commission" are thought in that treaty as procedures existing one beside the other and prescribed each for separate categories of cases. In the arbitration treaty now in force the cases that are submitted to arbitration, are described somewhat differently from those comprised in the proposed treaty and the exceptions especially are formulated differently. But in general in both treaties juridical differences are submitted to arbitration. The juridical differences that are excepted, the non-juridical differences and the differences that are not judged by arbitration in fact are submitted to the "Bryan-Commission."

This idea is logical and it seems desirable to maintain it.

By inserting in Article I of the new treaty the above mentioned sentence, the supposition is created, that differences, that this treaty has in view (juridical differences in other words) have to be submitted at any rate first to the "Bryan-Commission." This would be for the Netherlands a considerable change in their policy. It is true, that there are several Powers who, in their treaties, stipulate that the conciliation procedure shall be followed before any other settlement of differences, but the Royal Government has not deemed this advisable. In all its treaties the Netherlands Authorities have applied the system, that, at the request of one of the parties, juridical differences are judged at once by arbitration or jurisdiction in the Permanent Court of International Justice and that only by mutual agreement they can first be submitted to a conciliation commission.

If the above mentioned passage of Article I should be maintained, the stipulations of this Article and of Article I of the "Bryan-Treaty" would not properly harmonize. Article I of the new arbitration treaty supposes a procedure in the "Bryan-Commission" which, according to Article I of "the Bryan-Treaty", could not take place.

Jonkheer Beelaerts van Blokland, in making these remarks, starts from the idea, which is probably held likewise by the American Government, that, where Article I of the "Bryan-Treaty" speaks of "previous arbitration treaties or engagements", it is understood, that these arbitration treaties are previous to the difference and not that they are previous to the "Bryan-Treaty".

Differences arising after the conclusion of the new arbitration treaty and falling within the scope thereof, consequently are excluded likewise from the application of the procedure of the "Bryan-Commission".

Apart from the new arbitration treaty, it is important that there exist no doubt on this point. The interpretation given by Jonkheer Beelaerts van Blokland to Article I of the "Bryan-Treaty" is required also in connection with the existing arbitration treaty, inasmuch as

this is prolonged every five years, by which prolonging in fact each time a new arbitration treaty is concluded. The reason that prompted the stipulation of Article I of the "Bryan-Treaty" entails the natural fact, that not only the arbitration treaties which had been concluded on the moment of the signing or ratification of the "Bryan-Treaty", but also those concluded afterwards, prevail over the procedure in a "Bryan-Commission". This has also been the obvious intention when the Arbitration Treaty of 1908 was signed.

It is to be considered a progress that—as suggested—more precise exceptions—albeit still wide—take the place of the vague exceptions of differences concerning the honor, independence and vital interests. Especially the exception concerning the differences "involving the interests of third parties" must be considered as still wide. This exception—which figures likewise in the now existing treaty between the United States and the Netherlands—in the opinion of the Minister of Foreign Affairs at The Hague does not seem necessary nor very desirable. Since modification of the existing treaty has been taken up now, it seems advisable to consider whether that exception could not be omitted. It is vague and elastic and therefore undesirable: The number of cases in which a difference can concern, in a remote connection, likewise the interests of others, is legion. The convention of 1907 for the peaceful settlement of international differences [33] (ratified by the United States) therefore started from another principle. Article 84 of that convention stipulates:

"La sentence arbitrale n'est obligatoire que pour les Parties en litige. Lorsque 'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci avertissent en temps utile toutes les Puissances signataires, chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre Elles ont profité de cette faculté, l'interprétation contenue dans la sentence, est également obligatoire à leur égard".

Similar stipulations are to be found in the Statute of the Permanent Court of International Justice.

This same line of thought, which Jonkheer Beelaerts van Blokland considers the logical one, has been followed in the Netherlands-German arbitration treaty,[34] which stipulates in paragraph 3 for the final protocol: "The fact that in a difference third States are concerned, does not prevent the application of the treaty". "The contracting parties, when the case presents itself, shall seek to persuade third States to join the arbitration or conciliation procedure". In this case the respective Governments have the right to arrange by mutual agree-

[33] Signed at The Hague, October 18, 1907, *Foreign Relations*, 1907, pt. 2, p. 1181.
[34] Treaty of May 20, 1926, League of Nations Treaty Series, vol. LXVI, p. 103.

ment for the special composition of the Court of Arbitration or of the Permanent Commission of Conciliation. In case no agreement with third States, concerning their joining the proceedings, can be reached within a reasonable time, the procedure shall follow its course between the signatories of the arbitration treaty as provided thereby, and with consequence only for them.

Likewise it is stipulated in the Netherlands-French treaty, concluded recently:

"Le présent Traité reste applicable entre les Hautes Parties contractantes, encore que d'autres Puissances aient également un intérêt dans le différend".[35]

In many treaties, concluded by other Powers, a similar stipulation has been made.

Should the American Government object to an explicit stipulation as is made in these treaties, Jonkheer Beelaerts van Blokland would propose simply to do away with exception No. 2 and not to mention this point at all.

As to the question whether it is preferable to let the new treaty supersede the arbitration convention of May 2, 1908, as proposed in the draft of His Excellency Mr. Kellogg, or to make March 25, 1929 the effective date of the new treaty, Jonkheer Beelaerts van Blokland is of the opinion, that much depends on the time at which the new treaty will be completed. The sanction by the Senate in the United States and the approval by the legislature in the Netherlands require considerable time.

The Netherlands Minister for Foreign Affairs, in connection with *alinea* 2 of Article 3, wishes to make the following suggestion. The clause by which termination of the treaty by one year's written notice is made possible, has the advantage of great simplicity but presents one difficulty. This system would give to one of the parties, at the moment that a difference may arise, the opportunity of denouncing the treaty and of preventing the difference from being submitted to arbitration. This objection, which between the United States and The Netherlands, is of course hardly more than imaginary, could be met if the system was followed, adopted in the Hollando-German and Hollando-French arbitration treaties, according to which the treaty will be valid at once for 10 years and is supposed to be prolonged for 5 years if notice is not given within six months before the expiration of the term of 10 years. Notice can further be given six months before the expiration of each term of 5 years, failing which the treaty will be prolonged each time for 5 years.

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[35] Article 21 of treaty of March 10, 1928, *ibid.*, vol. CII, pp. 109, 119.

The Minister of Foreign Affairs at The Hague wishes it to be well understood that these remarks, made for the purpose of coming to a better and earlier agreement, should not convey the impression, that the proposal, made by the Secretary of State, has not been received at The Hague with great satisfaction.

WASHINGTON, *June 27, 1928.*

711.5612A/8

The Netherlands Legation to the Department of State

No. 3145

The Arbitration Treaty concluded between The Netherlands and the United States on May 2, 1908 and extended since by the operation of renewal agreements is going to finish its effect on March 25, 1929.[36]

It seems that the time is too short, considering the rather long delay necessary to obtain the sanction of the Senate in the United States and the approval of the Legislature required by the Constitution in The Netherlands, to have the new proposed Arbitration Treaty, mentioned in the note of the Royal Legation of June 27, 1928, No. 1949, in force before March 25, 1929.

As it will not be advisable that there should be a period of time during which no arbitration treaty at all would exist between the two powers, the Netherland Legation proposes to the State Department to enter into a renewal agreement of the existing treaty of May 2, 1908.

In case the Government of the United States should agree with this proposal, a draft of a convention in the Netherland and English languages is joined herewith,[37] extending for another period of five years the operation of the existing Arbitration Treaty.

The Netherland Government should appreciate highly if this Convention could be signed as soon as possible, as approval of the same by the Legislature in The Netherlands takes some time and as the First Chamber of the State General (Senate) on the occasion of the last renewal in 1925 has made the remark that the proposal of law for the agreement of the convention was introduced too late to allow sufficient time for consideration and discussion.

The Netherland Government is at the same time still willing to continue diligently the negotiations of the new Arbitration Treaty proposed by the Government of the United States and to cooperate in the conclusion of this treaty as soon as possible. A stipulation could be adopted that the new treaty would come in force immediately after the

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[36] Last previous extension of convention February 13, 1924; *Foreign Relations*, 1924, vol. II, pp. 473–476.

[37] Not printed.

exchange of ratifications and that it would automatically replace the extended treaty of May 2, 1908.[38]

WASHINGTON, October [4], *1928*.

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[38] An agreement further extending the duration of the convention of May 2, 1908, was signed Feb. 27, 1929 (Department of State Treaty Series No. 786).