

SWITZERLAND

TREATY OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES AND SWITZERLAND, SIGNED FEBRUARY 16, 1931¹

711.5412A/28

The Assistant Secretary of State (Carr) to the Swiss Minister (Peter)

WASHINGTON, June 21, 1930.

SIR: I have the honor to refer to your note of June 20, 1928,² with which you were good enough, in reply to Mr. Kellogg's note of April 2, 1928,² to submit for the consideration of this Government a draft treaty of arbitration and conciliation² which your Government was willing to enter into with the United States.

Reference is also made to recent informal discussions which you have carried on with officers of the Department. These discussions were based upon a draft of a treaty of arbitration and conciliation which had been drawn up in the Department for the purpose of substantially meeting the position of your Government and at the same time maintaining the essential characteristics of the treaties of arbitration and conciliation which have recently been entered into between the United States and a number of other countries.³

As a result of these informal conversations, the draft herewith enclosed² has been prepared with the idea of including, as far as possible, the particular requests which you have made. It is believed to embody provisions which will meet the points which you raised and which may be acceptable to your Government as well as to the Government of the United States.

With reference to the question whether, in juridical disputes, there should be a fixed order of precedence for the utilization of the methods of arbitration and conciliation, this Government feels that the better plan is to leave the two Governments free to decide at the time a given dispute arises whether they will submit it first to the conciliation

¹ For previous correspondence, see *Foreign Relations*, 1928, vol. III, pp. 937 ff.

² Not printed.

³ For correspondence concerning these negotiations, see *Foreign Relations*, 1929, vols. II and III, under Belgium, Bulgaria, Egypt, Estonia, Hungary, Luxembourg, Norway, Portugal, Rumania; *ibid.*, 1930, vols. II and III, under China, Greece, Iceland, Latvia, the Netherlands.

commission provided for in the treaty or whether they will submit it to an arbitral tribunal. If conciliation should by any chance fail in such case, the parties would be bound thereupon to submit the dispute to arbitration.

Accept [etc.]

WILBUR J. CARR

711.5412A/29

The Secretary of State to the Swiss Minister (Peter)

WASHINGTON, November 13, 1930.

SIR: I have the honor to refer to Mr. Carr's note of June 21, 1930, with which was transmitted a draft of a Treaty of Arbitration and Conciliation between the United States and Switzerland, and to a statement of suggested alterations in this draft which you handed to one of the officers of the Department of State on October 22, 1930.⁵

I am happy to be in a position to inform you that all of the suggestions of the Swiss Government are acceptable to this Government with the single exception of a purely verbal change affecting the language of lines 8 and 9 of Article III of the draft submitted to you on behalf of this Government. It is understood that you are willing to withdraw this suggestion and have so informed one of the officers of the Department by telephone.

With reference to the last sentence of Article II, concerning which you ask that this Government study the possibility of either eliminating it or substituting a counter-project, I believe that simply to eliminate the sentence is the preferable course.

Accordingly, I am transmitting herewith a draft of the proposed treaty⁶ containing the changes referred to above, and request that you furnish me with the French text in order that the treaty may be put in final form for signature.

You will note that, in the second paragraph of Article VIII of the enclosed draft treaty, the place at which ratifications are to be exchanged is not specified. Presumably your Government expects that ratifications will be exchanged at the place of signature, namely, Washington. But should you prefer that ratifications be exchanged at Berne, please prepare the French text accordingly and I will see that the English text is made to conform thereto.

Accept [etc.]

HENRY L. STIMSON

⁵ Not printed. The Swiss Government proposed a number of minor verbal changes.

⁶ Not printed.

711.5412A/34

The Swiss Minister (Peter) to the Secretary of State

WASHINGTON, December 8, 1930.

SIR: I have the honor to acknowledge the receipt of the draft of a Treaty of Arbitration and Conciliation which was transmitted with your note of November 13, 1930, and of your communication of December 5, 1930,⁷ informing me that the suggestions made in regard to the language of the Treaty of Arbitration to the Assistant Chief of the Treaty Division in my letter of November 17th,⁸ meet with the approval of the Government of the United States. For my own part, I am sending you herewith enclosed the French text of the draft⁸ just forwarded to my Government for its final approval. I shall not fail to inform you of this approval as soon as received.

As for the place at which ratifications are to be exchanged, I presume that my Government will also suggest that the ratifications be exchanged at the place of signature, namely, Washington.

Accept [etc.]

MARC PETER

711.5412A/35

The Swiss Minister (Peter) to the Secretary of State

[Translation]

WASHINGTON, February 2, 1931.

MR. SECRETARY OF STATE: I have the honor to inform you that, having submitted to my Government the text of the draft treaty of conciliation and arbitration resulting from negotiations between your Department and this Legation, I have just received from the Federal Council the attached Full Powers to sign the treaty.⁹

In transmitting its adhesion, the Federal Council advises me that, as anticipated in my letter to you of December 8, 1930, it agrees to have the ratifications exchanged in Washington, the place of signature of the treaty. It informs me further that it shares the opinion expressed in your letter dated June 21, 1930, concerning the advantage of leaving to the contracting parties the liberty of deciding, for each conflict of a juridical character, whether they wish to submit it first to the Commission of Conciliation, or prefer resorting immediately to the Tribunal of arbitration. But aside from this optional and preliminary use of the Commission of Conciliation for conflicts

⁷ Letter not printed.⁸ Not printed.⁹ Document not attached to the original of this file.

of a juridical character, contemplated in Article V, it is well understood, that for all conflicts not [of] a juridical character, or that would be excluded from arbitration by virtue of Article VI of the Treaty, recourse to the Commission of Conciliation would be obligatory in all cases, in conformity with Article II.

Please accept [etc.]

MARC PETER

Treaty Series No. 844

*Treaty Between the United States of America and Switzerland,
Signed at Washington, February 16, 1931*¹¹

The President of the United States of America and the Swiss Federal Council

Mindful of the obligations, which have been assumed by the United States of America and Switzerland, that the settlement of all disputes of whatever nature or of whatever origin, which may arise between them, shall never be sought except by pacific means; desirous moreover of reaffirming the adherence of the two countries to the principle of submitting to impartial decision all juridical controversies in which they may become involved; and eager to demonstrate the sincerity of the renunciation of war as an instrument of national policy in the relations between the United States of America and Switzerland,

Have decided to conclude a treaty of arbitration and conciliation and for that purpose have appointed as their respective Plenipotentiaries:

The President of the United States of America:

Henry L. Stimson, Secretary of State of the United States of America; and

The Swiss Federal Council:

Marc Peter, Envoy Extraordinary and Minister Plenipotentiary of Switzerland to the United States of America;

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

Every dispute arising between the Contracting Parties, of whatever nature it may be, shall, when ordinary diplomatic proceedings have failed, be submitted to arbitration or to conciliation, as the Contracting Parties may at the time decide.

¹¹ In English and French; French text not printed. Ratification advised by the Senate, April 29, 1932; ratified by the President, May 9, 1932; ratified by Switzerland, May 4, 1932; ratifications exchanged at Washington, May 23, 1932; proclaimed by the President, May 25, 1932.

ARTICLE II

Any dispute which has not been settled by diplomacy and in regard to which the Contracting Parties do not in fact have recourse to adjudication by an arbitral tribunal shall be submitted for investigation and report to a Permanent Commission of Conciliation constituted in the manner hereinafter prescribed.

ARTICLE III

The Permanent Commission of Conciliation shall be composed of five members and shall be constituted as soon as possible after the exchange of ratifications of this Treaty. Each of the Contracting Parties shall appoint two members, one from among its own nationals, the other from among the nationals of a third State. The Contracting Parties will, in common accord, appoint the fifth member, who shall not be one of their nationals, and who shall be *ex officio* the President of the Commission. If no agreement is reached as to the choice of the President of the Commission his election shall be conducted in accordance with the method prescribed in the fourth, fifth and sixth paragraphs of Article 45 of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907.¹²

At any time when there is no case before the Commission, either of the Contracting Parties may recall a member of the Commission appointed by it and may designate his successor. The recall of the President of the Commission will be effected at any such time on the request of either Contracting Party, provided that if the President shall have been elected in accordance with the method prescribed in the fourth, fifth and sixth paragraphs of Article 45 of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907, no request for his recall may be made within a period of two years from the date of his election. Vacancies, from whatever cause, shall be filled as soon as possible in the manner hereinabove provided for the making of original appointments.

Members of the Commission shall receive an adequate honorarium during the time when they are engaged in the performance of duties relating to a case before them. Each of the Contracting Parties will bear its own expenses and one-half of the expenses of the Commission.

ARTICLE IV

After the Contracting Parties shall have agreed to submit a dispute to conciliation, the Commission shall proceed to the consideration of such dispute upon a request sent to its President by either of them.

¹² *Foreign Relations*, 1907, pt. 2, pp. 1181, 1189.

The Commission shall meet, in the absence of an agreement otherwise, at the place designated by its President.

The Commission may frame its own rules of procedure. In the absence of such rules it shall follow in so far as practicable the procedure set forth in Articles 18 to 34, inclusive, of the Convention for the Pacific Settlement of International Disputes concluded at The Hague, October 18, 1907.

The Commission shall submit its report within one year after the date on which the case shall have been submitted to it, unless the Contracting Parties should, in common accord, shorten or extend the time limit. 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 Contracting Parties agree to furnish the Commission with all the means and facilities required for its investigation and report.

The 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 V

The Contracting Parties bind themselves to submit to arbitration every difference which may have arisen or may arise between them by virtue of a claim of right, which is juridical in its nature, provided that it has not been possible to adjust such difference by diplomacy and it has not in fact been adjusted as a result of reference to the permanent Commission of Conciliation constituted pursuant to Articles II and III of this treaty.

ARTICLE VI

The provisions of Article V shall not be invoked in respect of any difference the subject matter of which

(a) is within the domestic jurisdiction of either of the Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States of America concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of Switzerland in accordance with the Covenant of the League of Nations.

ARTICLE VII

The tribunal to which juridical differences shall be submitted shall be determined in each case by the Contracting Parties but shall, in the

absence of other agreement, be the Permanent Court of Arbitration established at The Hague by the Convention for the Pacific Settlement of International Disputes concluded October 18, 1907. Decision as to the tribunal shall be made in each case by a special agreement, which special agreement shall provide for the organization of the tribunal if necessary, shall define its powers, shall state the question or questions at issue and shall settle the terms of reference.

Such special agreement shall, in each case, be made on the part of the United States of America by the President thereof, by and with the advice and consent of the Senate, and on the part of Switzerland in accordance with its constitutional law.

ARTICLE VIII

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 Switzerland in accordance with its constitutional law.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall come into force on the day of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated on notice of one year by either Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and French languages, both texts having equal force, and have hereunto affixed their seals.

Done at Washington the sixteenth day of February in the year one thousand nine hundred and thirty-one.

[SEAL]	HENRY L. STIMSON
[SEAL]	MARC PETER

711.5412A/35

The Secretary of State to the Swiss Minister (Peter)

WASHINGTON, February 24, 1931.

MY DEAR MR. MINISTER: Referring further to your note of February 2, 1931, in regard to the Treaty of Arbitration and Conciliation between the United States and Switzerland, which was signed on February 16, 1931, I have given attention to your statement that your Government informs you that it shares the opinion expressed in this Government's letter of June 21, 1930, concerning the advantage of leaving to the contracting parties the liberty of deciding, for each conflict of a juridical character, whether they wish to submit it first

to the Commission of Conciliation, or prefer resorting immediately to the Tribunal of Arbitration. You add:

“But aside from this optional and preliminary use of the Commission of Conciliation for conflicts of a juridical character, contemplated in Article V, it is well understood, that for all conflicts not of a juridical character, or that would be excluded from arbitration by virtue of Article VI of the treaty, recourse to the Commission of Conciliation would be obligatory in all cases, in conformity with Article II.”

I am happy to inform you that I concur in your interpretation of the treaty as thus set forth.

I am [etc.]

HENRY L. STIMSON

**RIGHT OF CONSULS TO RECEIVE FUNDS FROM ESTATES FOR
TRANSMISSION TO NON-RESIDENT NATIONALS**

711.5421/17

The Secretary of State to the Minister in Switzerland (Wilson)

No. 1239

WASHINGTON, January 15, 1931.

SIR: The Department refers to the Legation's despatch No. 1337 of March 5, 1930,¹³ in regard to the interpretation of the most-favored-nation clause in Article VII of the Convention of Friendship, Commerce and Extradition between the United States and Switzerland, signed November 25, 1850.¹⁴

The Swiss Government appears to consider that this most-favored-nation clause entitles Swiss consular officers to privileges accorded to foreign consular officers by the United States in a treaty with some country other than Switzerland, irrespective of a showing by the Swiss Government that the privileges claimed for Swiss consular officers under the most-favored-nation clause are accorded to American consular officers in Switzerland. You may state that this Department has consistently held that the most-favored-nation clause with respect to rights and privileges of consular officers does not embrace unconditionally specific rights and privileges which are granted on the basis of reciprocity to consular officers of third countries, but that the right to enjoy such specific rights and privileges is embraced in the most-favored-nation clause in the event that the country whose consular officers assert such rights or privileges thereunder accords in fact the same rights and privileges to American consular officers in their territories.

The Legation's despatch was in reply to an inquiry from the Department as to whether American consular officers would be permitted to

¹³ Not printed.

¹⁴ Miller, *Treaties*, vol. 5, p. 845.

receive shares from estates probated in Switzerland for remission under the conditions stipulated in Article 25 of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, signed on December 8, 1923.¹⁵ The note of March 4, 1930,¹⁶ addressed to you by the Swiss Federal Political Department contained the following paragraph:

"The Department takes pleasure in adding, however, that Swiss law, by leaving to the state appointing them the task of regulating their duties in this field, in no way forbids foreign consuls from acting in behalf of their citizens and proceeding to the distribution of funds referred to in Article 25 of the German-American treaty of Friendship, Commerce, and Consular Rights of December 8, 1923."

This paragraph without the subsequent portion of the Swiss note would, it is believed, have been acceptable as showing that Swiss law met the condition of reciprocity required in order that Swiss consular officers may, by virtue of the most-favored-nation clause in Article VII of the convention of 1850 with Switzerland, receive, in the manner provided for in Article 25 of the Treaty of 1923 with Germany, referred to herein, proceeds of estates probated in the United States, for transmission to non-resident Swiss beneficiaries. A statement is made, however, following the paragraph quoted, that consular officers in Switzerland are called upon to prove in each individual case that the persons in whose name they are acting are legally entitled to receive the funds which they undertake to distribute, and that these consular officers have the right to give receipts.

The latter statements cause some doubt as to whether the Swiss Government considers that American Consular officers in Switzerland would have an unqualified right to receive the funds from estates probated in that country for transmission to non-resident American beneficiaries in the manner provided for in Article 25 of the treaty between the United States and Germany of 1923.

While the Department cannot undertake to say how the courts of this country would construe the provisions of Article 25 of the treaty between the United States and Germany of 1923 it would seem that the court probating the estate in the country in which the consular officer is stationed, would upon all the evidence before it determine who are legally entitled to the proceeds of the estate. While it is assumed that the court would receive and consider evidence from the consular officer on this point, the Department does not consider that the burden of showing who are entitled to receive the proceeds of the estate rests upon him, as might be inferred from the Swiss note.

¹⁵ *Foreign Relations*, 1923, vol. II, pp. 29, 43.

¹⁶ Not printed.

The Department interprets Article 25 of the treaty with Germany of 1923 to mean that a consular officer is made eligible so far as concerns the country of his residence to receive funds for transmission as provided for therein, but that whether he may act in this capacity depends upon whether he is authorized to do so by his own Government. The Department does not contemplate authorizing American consular officers in Switzerland to receive for transmission funds from estates probated in that country, but merely desires to determine whether the Swiss authorities would, if called upon to do so, grant to American consular officers in Switzerland the right, as provided in Article 25 of the treaty with Germany, that might be claimed for them to receive funds for transmission if they be authorized by their Government to receive such funds. This Government does not consider that it is necessary to enter into a special agreement with the Swiss Government bearing on the matter dealt with herein as suggested by the Swiss Government.

It is requested that you endeavor to obtain a categorical reply to the Department's inquiry. If the exercise of the right is not dependent upon a number of conditions you may inform the Department of the nature of the reply briefly by telegraph.

Very truly yours,

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

711.5421/21

The Minister in Switzerland (Wilson) to the Secretary of State

No. 1880

BERNE, February 5, 1931.
[Received February 26.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 1239 of January 15, 1931, in regard to the interpretation of the most favored nation clause in Article 7 of the Convention of Friendship, Commerce and Extradition between the United States and Switzerland, signed November 25, 1850. I am directed to endeavor to obtain from the Swiss Government a categorical reply in connection with the Department's contention that Swiss consular officers in the United States might be permitted to exercise the functions specified in Article XXV of the Treaty with Germany, of December 8, 1923, only on condition that American consular officers in Switzerland are permitted to exercise like functions. While the Swiss Government, in its note of March 4, 1930, expressed its willingness to allow American consular officers to perform such functions upon the completion of certain requirements, it let the inference be drawn that the most favored nation provision in Article 7 was not subject to reciprocity. There is thus created a clear issue

regarding the scope and extent of the treatment to be accorded by one country to the other by virtue of the most favored nation provision in Article 7.

A recollection of past events in the treaty relations between the United States and Switzerland has prompted me to withhold compliance with the Department's present instruction until it has given further consideration to certain points which I submit. I refer in particular to the circumstances which led to the denunciation by the United States of Articles 8, 9, 10 and 12 of our Treaty of 1850 with Switzerland.¹⁷ This denunciation was made as a result of Switzerland's claim to the benefits of certain privileges accorded to France by virtue of a reciprocity treaty. In the course of the controversy, Switzerland proved to the satisfaction of the United States that it was the intent of [*that?*] the most favored nation clause should be subject to no condition. (Please see Moore's *Digest*, Volume V, page 283, paragraph 765).

Being in doubt as to whether this intent of the negotiators was applicable to all the articles of the Treaty, I obtained permission from the Political Department to consult the minutes of the negotiations leading to the conclusion of the Treaty. The pertinent archives in the Political Department, however, are in manuscript and, for the most part, in old German script, which made perusal difficult. I was unable to obtain any such definite assertion as Moore's *Digest* postulates. The nearest approach I could find was in a letter dated January 5, 1852, from the Federal Council to Mr. A. Dudley Mann, Special Agent of the United States. One paragraph reads as follows:

"And if we do not insist on the insertion of a clause authorizing expressly the respective consuls to claim the administration of property falling to absent nationals, it is because on the one hand you, Mr. Special Agent, declared to our delegates that such a provision did not exist in any treaty between the United States and other Powers, not even with Great Britain, and, on the other hand, because the clause of Article 7 which we are discussing, in stating that 'Consuls and Vice-Consuls of their own appointment, who shall enjoy the same privileges and powers, in the discharge of their duties, as those of the most favored nation' will necessarily have the effect of giving to the Consuls and Vice-Consuls the right to claim the administration of property falling to their absent nationals in the States and Cantons where Consuls of other nations may be admitted to this previously by the law and customs or by the practice of such States or Cantons."

This is obviously not a direct declaration of unconditional most favored nation treatment, but would tend to show that such an in-

¹⁷ Article 11 was also involved. For pertinent correspondence, see *Foreign Relations*, 1899, pp. 740 ff.

terpretation was already in the minds of the Swiss Government, and apparently unchallenged by our representative, at such an early date.

I trust that the Department will approve of my withholding immediate compliance with its instruction No. 1239 for the two following reasons:

(1) The language of Article 7 of our Treaty with Switzerland of 1850 does not seem to make most favored nation treatment subject to the condition of reciprocity. Consequently, in the absence of proof to the contrary, the Swiss Government's contention, as expressed in its note of March 4, 1930, would not seem to be without foundation.

(2) Absence of more definite information as to the extent of the intent of the negotiators of the Treaty of 1850. It is possible that in the Department's records there can be found a clearer statement of the understanding of the negotiators regarding the most favored nation clause as appearing in Article 7. In any case, it appears to me that the incidents of 1898, in so far as I am aware of events at that time, throw a certain doubt on the soundness of our contention.

Respectfully yours,

HUGH R. WILSON

711.5421/22

The Minister in Switzerland (Wilson) to the Secretary of State

No. 1895

BERNE, February 17, 1931.

[Received February 25.]

SIR: I have the honor to refer to my despatch No. 1880, dated February 5, 1931, concerning the interpretation of the most favored nation clause as contained in Article 7 of the Treaty of 1850 between the United States and Switzerland.

In addition to the points which I submitted to the Department for its consideration before carrying out its instruction No. 1239, of January 15, 1931, I invite its attention to the discussion of the administration on estates of deceased aliens by Samuel B. Crandall in his book (second edition) entitled *Treaties—Their Making and Enforcement*, beginning with Paragraph 173, on page 411. The first sentence of this paragraph reads: "State courts have in various cases coming before them held that the consuls of a nation enjoying most favored nation treatment were entitled to privileges and rights in administration on the estates of deceased countrymen extended by treaty to consuls of a third nation".

Mr. Crandall's discussion is so pertinent to the case at issue that I have ventured to supplement my despatch No. 1880 by this addition.

Respectfully yours,

HUGH WILSON

711.5421/24

The Secretary of State to the Minister in Switzerland (Wilson)

No. 1398

WASHINGTON, May 9, 1931.

SIR: The Department has received your despatch No. 1880 of February 5, 1931, requesting that further consideration be given to the question whether the most-favored-nation clause in Article VII of the Convention of Friendship, Commerce and Extradition between the United States and Switzerland, signed November 25, 1850, should be interpreted as conditional.

Prior to the negotiation of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, signed on December 8, 1923, it was the general practice of this Government to regard the most-favored-nation clause in treaties to which it was a party as conditional, regardless of whether the clause related to rights of consular officers or commercial matters. Beginning with the negotiation of the treaty of 1923 with Germany this Government adopted the unconditional form of the most-favored-nation clause as regards commercial matters but there was no change of policy with respect to the interpretation of the most-favored-nation clause as applied to the rights of consular officers.

The Legation raises the question whether, in view of the circumstances which led to the denunciation of Articles VIII to XII inclusive of the treaty with Switzerland of 1850, it may not be possible that the negotiators of the treaty understood that the most-favored-nation clause in Article VII relating to consular officers would be unconditional in its application. The Swiss Government was able to show that the negotiators of the treaty of 1850 understood that the most-favored-nation clause relating to Commerce in certain articles of the treaty was to be regarded as unconditional in its application, and the insistence by the Swiss Government on this interpretation finally led to the termination of Articles VIII to XII inclusive upon notice given by the Government of the United States on March 23, 1899.¹⁸ The Department's records in regard to the negotiation of the treaty with Switzerland of 1850 have been examined, but it has not been found that there was an understanding on the part of the negotiators that the most-favored-nation clause relating to consular officers in Article VII should be regarded as unconditional in its application.

You refer to a letter dated January 5, 1852, from the Swiss Federal Council to Mr. A. Dudley Mann, Special Agent of the United States, in which the Federal Council referred to a statement, said to have been made by Mr. Mann, that the most-favored-nation clause in Article VII would necessarily have the effect of giving to consuls and vice consuls

¹⁸ *Foreign Relations*, 1899, p. 756.

the right to claim the administration of property falling to their absent nationals in the States and Cantons where consuls of other nations may be admitted to this right by the law and customs or by the practice of such States or Cantons.

As stated by you, this is obviously not a direct declaration of unconditional most-favored-nation treatment. While, according to the Swiss Federal Council, the American Agent referred to a general right that could be asserted by the consular officers of either country, under certain conditions, there is nothing in the statement quoted to show whether the American Agent had in mind that a consular officer of either country could, under the most-favored-nation clause in Article VII, claim the right to act as administrator in the other country without the necessity of showing that the authorities of his own Government would accord a similar right to consular officers of such other country.

In the absence of information as to the exact nature of the declaration which is said to have been made by the American Agent and as to what may have been the understanding between the negotiators of the two Governments regarding the right of consular officers to claim administration of the property falling to their absent nationals, the Department could not, in view of its long established policy of regarding the most-favored-nation clause concerning rights of consular officers as conditional, assume that in the negotiation of the Treaty with Switzerland of 1850 it was the intention of this Government that the most-favored-nation clause in Article VII should be regarded as unconditional in its application.

You state that the language of Article VII of our Treaty with Switzerland of 1850 does not seem to make most-favored-nation treatment subject to the condition of reciprocity and that consequently, in the absence of evidence to the contrary, the Swiss Government's contention, as expressed in its note of March 4, 1930, would not seem to be without foundation.

While it is true that Article VII does not contain language indicating definitely whether it was the intention of the contracting parties to regard the most-favored-nation clause as conditional in its operation, neither does the Article contain language which could be construed as definitely showing that it was intended that the most-favored-nation clause in this Article should be given an unconditional application. The most-favored-nation clause regarding consular officers in Article X of the Treaty of Commerce and Navigation between the United States and Austria-Hungary of August 27, 1829,¹⁹ is the same as the clause in Article VII of the Treaty between the United States and Switzerland of November 25, 1850. In a case arising in

¹⁹ Miller, *Treaties*, vol. 3, p. 507.

the Department of State in 1846, only a few years before the Treaty with Switzerland was signed, the Department regarded the most-favored-nation clause regarding rights of consular officers in Article X of the Treaty with Austria-Hungary of 1829 as being conditional in its operation.

A claim was made by the Austrian Chargé d'Affaires for the benefit of the stipulation in the treaties between the United States and Russia and certain other countries conferring upon consuls the power to hear disputes between the masters and crews of vessels. In a note dated May 18, 1846, the Department made the following statement:

"Seeing that the right now under consideration, where it can be claimed under a treaty wherein it is expressly conferred is, in every such instance, given in exchange for the very same right conferred in terms equally express upon the consuls of the United States, it cannot be expected that it will be considered as established by the operation of a general provision which, if it were allowed so to operate, would destroy all reciprocity in this regard, leaving the United States without that equivalent in favor of their consuls, which is the consideration received by them for the grant of this right wherever expressly granted." (Mr. Buchanan, Secretary of State, to the Chev. Hülsemann, May 18, 1846, MS. Notes to German States VI, 130.)²⁰

Article X of the Treaty between the United States and the Hawaiian Islands signed December 20, 1849,²¹ less than a year before the signing of the Treaty between the United States and Switzerland November 25, 1850, contains the same kind of most-favored-nation clause with respect to the rights of consular officers as is found in Article VII of the Treaty of 1850 with Switzerland. In an opinion rendered on June 26, 1866,²² the Attorney General of the United States held that the American Consul at Honolulu had, by virtue of the most-favored-nation clause of Article X of the Treaty between the United States and the Hawaiian Islands of December 20, 1849, the same jurisdiction over differences between American citizens occurring on American merchant vessels as was conferred upon French consuls with respect to French nationals on board of French vessels by a treaty between the Hawaiian Islands and France.²³ It appears that in this case a judge of a court in the Hawaiian Islands had ordered the discharge of a seaman after the American Consul had held that

²⁰ Also printed in John Bassett Moore, *A Digest of International Law*, vol. II, p. 301.

²¹ Miller, *Treaties*, vol. 5, p. 591.

²² 11 *Opinions of the Attorney General* 508.

²³ Treaty of Friendship, Commerce, and Navigation, signed October 29, 1857, at Honolulu. For English text, see *Treaties and Conventions concluded between the Hawaiian Kingdom and Other Powers since 1825* (Honolulu, "Elele" Book, Card and Job Print., 1887), p. 57; for French text, see *British and Foreign State Papers*, vol. L, p. 378.

the seaman had been lawfully shipped and that there was no ground for his discharge.

On July 3, 1866, the Department of State transmitted a copy of the Attorney General's opinion to the American Minister Resident at Honolulu for his guidance in any representations he might make in the case to the Hawaiian Government.²⁴ (2 MS. Instructions, Hawaii, 144.) When the case was taken up with Hawaiian Government on the basis of the Attorney General's opinion the Hawaiian Government took the position that the most-favored-nation clause in Article X of the Treaty of 1849 between the United States and Hawaii conferred upon American consular officers the right to claim jurisdiction by virtue of the Treaty between Hawaii and France only in so far as the right claimed for American consular officers would be accorded to consular officers of Hawaii in ports of the United States.

The note of the Hawaiian Government was referred for consideration to the Examiner of Claims for the Department of State, a position corresponding to the present title of Solicitor, who made the following statement in an opinion in which he concurred in the view of the Hawaiian Government:

"They [the Hawaiian Government] ^{24a} hold that the powers granted to French consuls are entirely depended upon the allowance by France of similar powers to the Hawaiian consuls in French ports; that the clause is a reciprocal one, and that the 'parity' clause in our treaty only authorizes us to claim the jurisdiction for our consul which is granted to those of France, upon the same terms and conditions, viz., that of conceding to Hawaiian consuls the same rights in our ports."

"I think the Hawaiian Government is right in this construction of our treaty and that our own practice is conformable to that construction. . . ."²⁵

"The favor granted by Hawaii to France is granted in consideration of a reciprocal favour. We are put, I think, on the same footing, when we are told that * can entitle our consuls to the privileges of French consuls by granting to Hawaiian consuls in the United States what France has granted to them." (Memorandum of the Bureau of Claims of April 19, 1867—1 So. Op. 418)

Your attention is also invited to an instruction dated May 9, 1867, to the American Consul at Strasbourg in which the Department said:

"The 'most-favored-nation' clause has not been construed by this Government as entitling it or those nations with whom it has treaties to the benefit of exceptional provisions made in behalf of a particular nation upon special consideration, as of reciprocity. Our consuls in Austria will be entitled to all the new privileges granted to French

²⁴ For Department's communication of July 3, 1866, see *Foreign Relations*, 1866, pt. 2, p. 488.

^{24a} Brackets appear in the original.

²⁵ Omission indicated in the original.

* Apparent omission. [Footnote in the original.]

consuls only when we shall extend similar privileges to Austrian consuls in this country. In other words we are to be favored as France has been and on the same conditions, that of giving reciprocal privileges." (44 Despatches to Consuls, Volume 13, page 253.)

The Legation's attention is further invited to an instruction sent to the American Minister at Riga, Latvia, as late as July 10, 1928,²⁶ in which the Department interpreted the most-favored-nation clause in regard to customs privileges and exemptions in Article XXVII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Latvia, signed on April 20, 1928.²⁷ In this instruction the Department made the following statement:

"I desire to point out that it is and has long been the policy of this Government to construe the most favored nation clause in respect to consular privileges and immunities and in particular in respect of fiscal concessions to consular officers as conditioned on reciprocity.

"The condition of reciprocity has been insisted upon by this Government in instances in which foreign Governments have relied upon a most-favored-nation provision to obtain in behalf of their consular officers in the United States the benefit of the particular privilege of free entry in the treaty between the United States and Germany."

If you will inform the Swiss authorities of the views of the Department as contained in its instruction No. 1239 of January 15, 1931, and can obtain from the Swiss Government assurances that it will accord to American consular officers the right to receive funds from estates in Switzerland, for transmission in the same manner that the right is accorded to American consular officers in Germany by Article XXV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of 1923, if American consular officers should at any time be authorized by their Government to exercise such right, the Department will consider that consular officers of Switzerland in the United States are entitled to the same right. If the Swiss Government will give such assurances it will be considered that reciprocity has in fact been established under Article VII of the treaty with Switzerland of 1850, and the Department will not in that event insist upon reaching a definite agreement with the Swiss Government at this time in regard to a general interpretation of the most-favored-nation clause in Article VII.

On April 4 last Mr. Etienne Lardy, Counselor of the Swiss Legation, called at the Department to discuss the note in regard to the interpretation of Article VII which was addressed to your Legation by the Swiss Federal Political Department on March 4, 1930. A copy of a

²⁶ *Foreign Relations*, 1928, vol. III, p. 224.

²⁷ *Ibid.*, p. 208.

memorandum of the conference with Mr. Lardy is enclosed for your information.²⁸

Very truly yours,

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

711.5421/25

The Chargé in Switzerland (Greene) to the Secretary of State

No. 2270

BERNE, October 6, 1931.
[Received October 14.]

SIR: I have the honor to refer to the Department's instruction No. 1398 of May 9, 1931, and to previous correspondence in regard to the interpretation of the most favored nation clause in Article VII of the Convention of Friendship, Commerce and Extradition between the United States and Switzerland, signed November 25, 1850.

On June 19, 1931, the Legation addressed to the Federal Political Department an inquiry in the sense of the Department's instruction No. 1398, and appended thereto a memorandum outlining the views held by the American Government in this connection. Copies of the note and the memorandum are enclosed herewith.²⁸

The Legation is now in receipt of a reply from the Federal Political Department, dated September 9, 1931, a copy and translation of which are enclosed.²⁸ The Political Department's reply is to the effect that Swiss law does not prevent American consular officers, if authorized to do so, from receiving funds for transmission to their nationals, as provided in Article XXV of the Treaty of 1923 between the United States and Germany, and assumes that under these conditions Swiss consular officers in the United States will be permitted to exercise similar rights. The Political Department therefore requests that this be brought to the attention of the appropriate authorities in the United States, and asks that it be furnished with a copy of the official journal containing the announcement to that effect.

I also invite attention to the last paragraph of the Political Department's note in which it maintains its view of the unconditional character of the most favored nation treatment in Article VII of the Treaty of 1850.

Respectfully yours,

WINTHROP S. GREENE

²⁸ Not printed.