FINLAND

PROPOSED MILITARY SERVICE CONVENTION BETWEEN THE UNITED STATES AND FINLAND

711.60D4/20

The Secretary of State to the Minister in Finland (Brodie)

No. 95 WASHINGTON, August 2, 1932.

SIR: The Department acknowledges the receipt of your despatches of April 5, 6 and 27, 1932,[1] relating to the negotiations of a treaty of naturalization and military service between the United States and Finland. It is noted in your despatch of April 6, 1932, that the first two paragraphs of Article I of the draft treaty [2] as submitted by the Legation on January 4, 1929, are not acceptable to the Finnish Government.

For your information in connection with further discussions of the matter with the Finnish Government, there is herewith enclosed a draft treaty relating to military service and other acts of allegiance which the Department would be prepared to conclude if the Finnish Government definitely refuses to accept the provisions of Article I of the original draft.

With reference to the suggestion made in your despatch of April 27, 1932 that full powers be issued, you are informed that it is customary for the Department to issue full powers for the signature of a treaty only after the terms have been agreed upon.

Very truly yours, For the Secretary of State:
JAMES GRAFTON ROGERS

[Enclosure]

[*Convention Between the United States of America and Finland Relating to Military Service and Other Acts of Allegiance*]*

The President of the United States of America and the President of the Republic of Finland, being desirous of regulating the liability for military service and other acts of allegiance of persons who are nationals

[1] None printed.

[2] See "Draft Treaty of Naturalization between the United States and Estonia" and footnote 60, *Foreign Relations*, 1928, vol. I, p. 503.

* This title is for purposes of reference during the negotiations and is not to appear in the final draft. [Footnote in the original; brackets around the title also appear in the original.]

of both countries, under their respective laws, have decided to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America: .....
and the President of the Republic of Finland: .....

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

ARTICLE I

A person born in either the United States of America or Finland of parents who are nationals of the other country, and having the nationality of both countries under their respective laws, shall not, if he has his habitual residence, that is, the place of his general abode, in one of the countries be held liable for military service or any other act of allegiance during a temporary stay in the other country.

ARTICLE II

Nationals of either country who have been or shall become naturalized in the other country, shall not, upon returning to the country of former nationality, be held liable for the performance of military service in the armed forces of such country; nor shall they be punished for the original act of emigration, or for failure, prior to naturalization, to respond to calls for military service accruing after bona fide residence was acquired in the country of naturalization.

ARTICLE III

If a national of either country, who has been or shall have become naturalized in the territory of the other country, shall renew his residence in the country of his former nationality without the intent to return to the country of his naturalization, he shall be held to have abandoned his naturalization.

Provided that, if the stay in the country of former nationality is protracted beyond the period of two years it shall be presumed to be permanent in the absence of sufficient evidence to the contrary.

ARTICLE IV

The present convention shall be ratified. It shall come into force on the day of the exchange of ratifications, and shall continue in force for ten years. If six months before the termination of the said ten years, neither Contracting Party shall have given to the other Party notice of an intention to terminate the convention, it shall remain in force until

the end of twelve months after either of the parties shall have given to the other party notice of such intention.

In Witness Whereof, the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate in the English and Finnish languages which are equally authentic, at Helsingfors, this .... day of .....

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.....

711.60D4/22

The Secretary of State to the Minister in Finland (Brodie)

No. 101 WASHINGTON, September 13, 1932.

SIR: The receipt is acknowledged of your despatch No. 774 of August 3, 1932,[3] reporting the willingness of the Finnish Government to conclude a military service agreement containing the following article:

"A person born *or naturalized* in the territory of one party of parents who are nationals of the other party, and having the nationality of both parties under their laws, shall not, if he has his habitual residence, that is, the place of his general abode, in the territory of the State of his birth be held liable for military service or any other act of allegiance during a temporary stay in the territory of the other party.

"Provided, that if such stay is protracted beyond the period of two years, it shall be presumed to be permanent, in the absence of sufficient evidence showing that return to the territory of the other party will take place within a short time."

At the time you discussed this matter with the Director of Juridical Affairs of the Finnish Foreign Office, you were not in receipt of the Department's instruction of August 2, 1932, submitting a revised draft.

With respect to the Finnish counter-proposal above mentioned, the Department considers it confusing to incorporate in a single paragraph provisions relating both to persons born with dual nationality and to naturalized persons. It is not entirely clear from the Finnish counter-proposal what would be the nature of the exemption from military service of naturalized persons.

You are, therefore, requested to present to the Finnish Foreign Office the draft submitted with the Department's instruction of August 2, 1932, and to request further consideration of the proposals relating to the exemption from military service of naturalized persons.

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

[3] Not printed.

711.60D4/27

The Secretary of State to the Minister in Finland (Brodie)

No. 118 WASHINGTON, April 3, 1933.

SIR: The Department has received your despatch No. 881, of January 3, 1933,[4] concerning the proposed military service convention between the United States and Finland.

It is noted that Article I of the Department's draft convention which accompanied its instruction of August 2, 1932, is acceptable to the Finnish Government.

With respect to Article II of the Department's draft, you state that Mr. Kivikoski, the Director of Juridical affairs of the Finnish Foreign Office, referred to the general rule of the Finnish law according to which a Finnish national who becomes naturalized in another country loses his Finnish nationality. After pointing out that such a person is not held liable for military service, he added that, were there no exception to this law, there would be no need for Article II.

It may be observed, however, that non-liability for military service, in the absence of a treaty provision, would depend on municipal law and not on an international obligation. Furthermore, even if there were no exception, the Department would prefer to have Article II included in the convention, if for no other reason, because its omission might, when the proposed convention is concluded and published, prompt other States, whose laws are not similar to the Finnish law, to request the conclusion of similar conventions.

The above discussion might seem academic in its nature in view of the fact that the Finnish law contains the following exception to the general rule that naturalization terminates former nationality:

"However, a male citizen of Finland, whose age is between seventeen and twenty-eight years and who has not fulfilled as a conscript his active military service and who has not been legally exempted from military service, may lose his Finnish citizenship only by a special decree of the President of the republic." (Law of June 17, 1927, 1, Flournoy and Hudson, *A Collection of Nationality Laws*, New York, 1929, 239.)

It is believed, however, that the above discussion would be useful in dispelling any idea which might probably be in Mr. Kivikoski's mind that the inclusion of Article II was desired by this Government only because of the existence of the exception.

The exception appears to be also at the basis of the objection of the Foreign Office to Article II of the Department's draft. It may be pointed out, however, that Article II of the Finnish counter-proposal transmitted with your despatch under acknowledgment does not purport to

[4] Not printed.

make a Finnish male person who, as a result of the exception, has not lost his Finnish nationality by being naturalized in another country, subject to the provisions of the Finnish military law. On the contrary, such a person is expressly exempted from the performance of military service. The phrase "without losing their former nationality" in Article II of the Finnish draft, which is not in the Department's draft, would seem to have been added in order to imply that naturalization in a foreign country does not terminate Finnish nationality in a case of a Finn who is within the exception quoted above. The Finnish Government is aware of this Government's position that even in that class of cases naturalization should be regarded as terminating former nationality. If the last quoted phrase is included, it would carry with it a clear implication contrary to this Government's position, while, if it is omitted—this should be emphasized in your discussions with the Foreign Office—Article II would relate merely to liability for military service and would leave open the question whether naturalization should be regarded as terminating former nationality. For your own information it may be observed that this Government could not in any case enter into a treaty containing the phrase quoted above.

The only other difference between Article II of the Department's and Article II of the Finnish draft is that the latter provides that a person shall be exempt from military service only "during a temporary stay in the country of original nationality". It appears from your despatch under acknowledgment that this phrase and Article III of the Finnish draft are intended as a substitute for the provisions of Article III of the Department's draft.

The Finnish Government objects to the last mentioned Article because the Finnish law contains no provisions for the renunciation of acquired foreign nationality or of resumption of Finnish nationality through the mere act of returning to and residing in Finland for a period of two years, and points out that under Finnish law every foreigner, even though a former Finnish national must be naturalized in due order, though former Finnish nationals are granted special facilities in the matter. You will please make clear to the Foreign Office that Article III was not intended by the Department to mean, nor does it provide that, if a former Finnish national who had been naturalized as an American citizen should establish a permanent residence in Finland he would thereby resume Finnish nationality. It merely provides that such a person would be held to have renounced his American naturalization, leaving the question of his re-acquisition of Finnish nationality for determination by the municipal law of Finland. This Article would not only make it unnecessary for the Government of the United States to extend protection to a Finn who, after naturalization in the United

States, had acquired a permanent residence in his former country, but would enable the Finnish Government to object to such extension of protection. A detailed discussion of the policy and reasons back of this Article is contained in the Department's instruction No. 99, of December 1, 1928,[5] concerning the conclusion of a naturalization treaty between the United States and Finland.

An important corollary of Article III would be that the naturalizing state could not claim as its nationals, *jure sanguinis*, children born to a naturalized citizen after he had acquired a permanent residence in his country of origin.

The provisions in Articles II and III of the Finnish draft regarding military liability during a temporary stay in the country of origin are similar to those in Article I of the treaty between the United States and Norway, signed at Oslo, November 1, 1930.[6] While the Department prefers Article III of its draft, it would be prepared to accept the Finnish counter-proposal regarding this Article if the Finnish Government should definitely refuse to accept the provisions of the former. However, this should not be indicated to the Foreign Office in any way unless and until you are convinced of the futility of any further efforts to have Article III of the Department's draft accepted.

You are, therefore, requested to present a note to the Foreign Office in the sense indicated above and to express the hope that after further study the Finnish Government may find it possible to enter into an agreement on the basis of the draft convention submitted with the Department's instruction of August 2, 1932.

Very truly yours, For the Secretary of State:
WILLIAM PHILLIPS

711.60D4/28

The Minister in Finland (Brodie) to the Acting Secretary of State

No. 990 HELSINGFORS, July 3, 1933.
[Received August 1.]

SIR: With reference to the Department's Instruction No. 118 of April 3, 1933, concerning the proposed military service convention between the United States and Finland, I have the honor to inform the Department that the observations made in the Department's instruction herein referred to were brought to the attention of the Finnish Foreign Office which duly took the matter under consideration through the competent authorities of the Finnish Government.

After considerable deliberation, the Foreign Office, through Mr. Bruno Kivikoski, has drawn up a new proposal termed "Convention between

[5] Not printed.
[6] *Foreign Relations*, 1930, vol. III, p. 713.

the United States of America and Finland Relating to Military Service and other Acts of Allegiance" to which the Government of Finland is ready to subscribe. Copies of the proposed convention are herewith enclosed for the Department's consideration. From the proposal, the Department will perceive that it is more or less similar to our treaty with Norway, exempting from military service and other acts of allegiance certain nationals as approved by the Senate on December 20, 1930.

Respectfully yours, EDWARD E. BRODIE

[Enclosure]

Draft Convention Between the United States and Finland Relating to Military Service and Other Acts of Allegiance, Presented by the Finnish Foreign Office

The President of the United States of America and the President of the Republic of Finland, being desirous of regulating the liability for military service and other acts of allegiance of persons who are nationals of both countries, under their respective laws, have decided to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America:.....
and the President of the Republic of Finland:.....

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

ARTICLE I

A person possessing the nationality of Finland and of the United States of America under the respective laws of these countries, shall not if he has his habitual residence, that is, the place of his general abode, in one of the countries, be held liable for military service or any other act of allegiance during a temporary stay in the other country.

Provided that, if such stay is protracted beyond the period of two years, it shall be presumed to be permanent in the absence of sufficient evidence to the contrary.

ARTICLE II

The present convention shall be ratified. It shall come into force on the day of the exchange of ratifications, and shall continue in force for ten years. If six months before the termination of the said ten years, neither Contracting Party shall have given to the other party notice of an intention to terminate the convention, it shall remain in force until the end of twelve months after either of the parties shall have given to the other party notice of such intention.

IN WITNESS WHEREOF,
the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

DONE
in duplicate in the English and Finnish languages which are equally authentic, at Helsingfors, this .... day of .....

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711.60D4/31

The Secretary of State to the Minister in Finland (Albright)

WASHINGTON, September 1, 1933.

SIR: The receipt is acknowledged of the Legation's despatch No. 990 of July 3, 1933, transmitting the counter proposals of the Finnish Government on the proposed treaty relating to military service.

The Department regrets to inform you that this Government is unable to enter into a convention on the basis of the draft submitted. The wording of the first three lines of Article 1 would still appear to admit of the construction that a naturalized American of Finnish origin may have Finnish nationality. Such a proviso would be directly contrary to the Act of Congress of July 27, 1868 (15 Stat. 223, 224) which reads in part as follows:

". . . any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government."

As the Legation has been informed in previous instructions, this Government is desirous of obtaining a convention with Finland covering the nationality and military obligations of persons of Finnish origin naturalized in the United States and also those of persons born with the nationality of Finland as well as that of the United States, provided such convention, as is the case with those concluded by the United States with various other states, definitely recognizes naturalization as having the effect of terminating the prior nationality. You will please inform the Finnish Government to that effect. You may also avail yourself of a suitable opportunity to discuss this subject informally with the Foreign Minister. You will find the Department's position set forth in previous instructions. With reference to the objection of the Finnish officials to the inclusion in the convention of the provision mentioned above concerning termination of nationality because such a provision would not coincide with the present law of Finland, you may call attention to the fact that the United States has concluded naturalization conventions similar to the proposed convention with Finland,

with a number of European countries whose laws concerning expatriation were substantially similar to the present law of Finland.

Very truly yours, For the Secretary of State:
WILBUR J. CARR

711.60D4/32

The Minister in Finland (Albright) to the Acting Secretary of State

No. 63 HELSINGSFORS, December 23, 1933.
[Received January 23, 1934.]

SIR: I have the honor to refer to the Department's instruction of September 1, 1933, to which reply has necessarily been deferred due to recent alteration in the administration of this Legation. I regret to report that the Finnish Foreign Office still maintains its previous position with respect to the phrasing of Article 1 of the proposed treaty with the United States relating to military service, holding that acceptance of this Article as phrased in the draft treaty appended to the Department's instruction to this Legation of August 2, 1932, would be incompatible with existing Finnish law.

Mr. Bruno Kivikoski, Chief of the Juridical Division of the Finnish Foreign Office, who is charged by the Minister for Foreign Affairs with the conduct of the preliminary negotiations leading to the possible conclusion of a treaty between the United States and Finland relating to military service, does not believe that a solution may be found to the conflict between existing legislation in the United States and in Finland, respectively, which arises from any and all of the drafts of Article 1 hitherto proposed by either party. The position of the Foreign Office thus remains substantially that described in my predecessor's despatch No. 881, dated January 3, 1933.[7] It may be recalled that the Finnish Foreign Office suggested in its draft treaty, submitted as an enclosure to this Legation's despatch No. 990, dated July 3, 1933, that the agreement follow more or less in nature a treaty upon this subject concluded between the United States and Norway, Article 1 failing to draw distinction between native born and naturalized citizens. Mr. Kivikoski points out that the President of Finland may, under the terms of Paragraph 46 of the Finnish Law of June 30, 1932, grant exemption from military service to any American citizens who are also considered to be Finnish citizens under the laws of this country and that, in practice, it would undoubtedly be his disposition to do so since the experience of several years has demonstrated that cases of dual nationality (as interpreted after Finnish law) involving liability of American citizens to military service in Finland are rare.

Mr. Kivikoski's attention was invited to that portion of the Depart-

[7] Not printed.

ment's instruction of September 1, 1933, which referred to the conclusion by the United States of naturalization conventions of a nature similar to that proposed to Finland with a number of other European countries. Mr. Kivikoski replied that the Finnish Foreign Office, although aware that this was the case, was, nevertheless, of the opinion that existing Finnish Legislation precluded the possibility of concluding a treaty between the United States and Finland along the lines proposed by the Department. He added that the Foreign Office understands that conflict over the question of dual nationality has thus far defeated efforts to conclude treaties relating to military service between the United States and certain other countries, but that the absence of any convention bearing upon this subject undoubtedly worked a hardship upon native-born American citizens of Finnish parentage whom the Finnish Government is quite ready to exempt from all liability to military service in the event of their temporary return to Finland, while the absence of specific exemption under the form of treaty proposed by the Finnish Foreign Office of naturalized American citizens of Finnish birth would, it was felt, not be important in practice in view of the authority vested in the Finnish Chief Executive by law to grant exemption from military service in individual cases.

In a later conversation on this subject, Mr. Kivikoski expressed the readiness of the Foreign Office to accept the phraseology of Article 1 of the military service convention agreed upon early this year between the Governments of the United States and of Sweden,[8] pointing out that the wording differs very little from that proposed by the Finnish Government.

As suggested in the Department's instruction of September 1, 1933, (Page 2), I availed myself a few days ago of an opportunity informally to discuss this matter with the Honorable A. Hackzell, Finnish Foreign Minister. Mr. Hackzell expressed the hope that a satisfactory solution of the present conflict in views with respect to the contents of the treaty might be found. It is my impression that the familiarity of the Finnish Foreign Office with the form and content of military service conventions negotiated between the United States and certain other countries in this part of the world—notably Norway and Sweden—is a considerable factor in its reluctance to accept the drafts of Article 1 proposed by the Department.

Respectfully yours, EDWARD ALBRIGHT

[A convention between the United States and Finland regulating the military obligations of persons having dual nationality was signed January 27, 1939; for text, see 54 Stat., 1712; or Treaty Series No. 953.]

[8] Signed January 31, 1933, p. 763.