

## GREAT BRITAIN.

### DEATH OF HIS MAJESTY KING EDWARD VII AND SUCCESSION OF HIS MAJESTY KING GEORGE V TO THE THRONE.

*President Taft to Her Majesty Queen Alexandra.*

[Telegram.]

THE WHITE HOUSE,  
Washington, May 6, 1910.

On the sad occasion of the death of King Edward I offer to Your Majesty and to your son, his illustrious successor, the most profound sympathy of the people and of the Government of the United States whose hearts go out to their British kinsmen in this, their national bereavement. To this I add the expression to Your Majesty and to the new King of my own personal sympathy and of my appreciation of those high qualities which made the life of the late King so potent an influence toward peace and justice among the nations.

WM. H. TAFT.

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*The Secretary of State to Ambassador Reid.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, May 6, 1910.

Apart from the message which the President has sent to Queen Alexandra you will make to British Government appropriate expression of the sympathy of the President, Government, and people of the United States in the loss by their British kinsman of a ruler so beloved and so distinguished among the nations for the influence of his kindness and wisdom toward all that is best.

P. C. KNOX.

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*The British Ambassador to the Secretary of State.*

No. 74.]

BRITISH EMBASSY,  
Washington, May 7, 1910.

SIR: I am profoundly grieved to inform you that I have received a cable message from Sir Edward Grey announcing the demise of the King last evening at 11.45.

It is my melancholy duty to request that you will bring the sad intelligence to the knowledge of the President and his Cabinet.

I have, etc.,

JAMES BRYCE.

File No. 13251/8.

*The Acting Secretary of State to the British Ambassador.*DEPARTMENT OF STATE,  
Washington, May 7, 1910.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of this day's date, by which you officially communicate the sad intelligence of the death last evening at 11.45 o'clock of His late Majesty King Edward VII.

Deeply moved by this lamentable event the President has, in telegrams addressed to Queen Alexandra and to His Majesty George V, given expression to the profound sympathy of the people and Government of the United States with their majesties and with the British Nation in their bereavement, as well as to his personal sympathy and appreciation of the high qualities which made the life of His late Majesty so full of influence toward peace and justice among the nations; and, participating in these sentiments, the Secretary of State, in a telegram to Sir Edward Grey, expressed his sympathy and sorrow in the loss sustained by the British Government. Added to these, I beg to assure your excellency of my own sympathy and condolence with your excellency and the British people in this hour of grief.

Should your excellency so desire the department places itself subject to your request in cooperating with the embassy in arranging for a memorial service to His late Majesty at such date and place as your excellency may select.

I have, etc.,

HUNTINGTON WILSON.

File No. 24607.

*The Secretary of State to the British Minister for Foreign Affairs.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, May 7, 1910.

I offer to your excellency the expression of my personal sympathy and sorrow in the great loss which has been sustained by the Government of Great Britain in the death of His Majesty King Edward.

P. C. KNOX.

File No. 24607/2a.

*President Taft to His Majesty King George V.*

[Telegram.]

THE WHITE HOUSE,  
Washington, May 7, 1910.

In renewing to your majesty the condolences of the American Government and people upon the death of His Late Majesty I convey to you the heartiest good wishes for the prosperity of your reign.

WM. H. TAFT.

*His Majesty King George V to President Taft.*

[Telegram.]

LONDON, May 7, 1910.

I am deeply grateful to you, your Government, and people for your condolence on the death of my beloved father and for your good wishes for my future prosperity.

GEORGE R. AND I.

*Her Majesty Queen Alexandra to President Taft.*

[Telegram.]

LONDON, May 7, 1910.

I am deeply touched by your telegram, and I ask you to convey my heartfelt thanks to the people and the Government of the United States for their sympathy in my irreparable loss and sorrow.

ALEXANDRA

File No. 24607/21.

*Ambassador Reid to the Secretary of State.*

No. 1268.]

AMERICAN EMBASSY,  
LONDON, May 8, 1910

SIR: I have the honor to inclose herewith a copy of a foreign office note dated the 7th instant announcing the death of His Majesty King Edward VII and informing me that the British ambassador at Washington has been instructed by telegraph to convey the sad news to the Government of the United States

I have, etc.,

WHITELAW REID

[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*FOREIGN OFFICE,  
London, May 7, 1910.

YOUR EXCELLENCY: It is with profound sorrow that I have the honor to announce to your excellency that it has pleased Almighty God to call to his rest His Most Gracious Majesty Edward VII, King of the United Kingdom of Great Britain and Ireland, Emperor of India.

His Majesty passed away peacefully at Buckingham Palace at 11.45 last night to the profound affliction of the royal family and of all classes of his loyal subjects throughout the British Empire.

I feel persuaded that your excellency will participate in the deep and widespread sorrow which this melancholy event has occasioned.

The British ambassador at Washington has been instructed by telegraph to announce the mournful intelligence of His Majesty's death to the United States Government.

I have, etc.,

E. GREY.

File No. 24607/6.

*The British Ambassador to the Secretary of State.*

No. 75.]

BRITISH EMBASSY,  
Washington, May 8, 1910.

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant and to convey to you my sincere thanks for your sympathy and condolence on the occasion of the death of His Late Majesty King Edward VII.

The telegrams which the President has addressed to Queen Alexandra and His Majesty the King will be received by them and the British Nation with a grateful sense of the feeling which has animated the President in his warm appreciation of the great qualities and services rendered to the cause of international good will by His Late Majesty King Edward, and it will be universally recognized that he is expressing the sentiments of the people of the United States.

As soon as I hear from His Majesty's principal secretary of state for foreign affairs on what day the funeral of His Late Majesty is to take place I shall at once avail myself of your kind offer of cooperation in arranging for a memorial service.

I have, etc.,

JAMES BRYCE.

File No. 24607/5.

*The British Minister for Foreign Affairs to the Secretary of State.*

[Telegram.]

LONDON, May 9, 1910.

I am very grateful to you for your kind message of sympathy in the irreparable loss which my country has sustained.

EDWARD GREY.

File No. 24607/11 A.

*The Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, May 11, 1910.

Mr. Knox informs Mr. Reid that the President desires to show the high respect due to the memory of the late King, and has invested ex-President Theodore Roosevelt with the rank and character of a special ambassador to represent him and the people of the United States at the funeral ceremonies, which are to take place at London on the 20th instant. Mr. Knox says that as time will not permit of a formal letter of credence being sent to Col. Roosevelt, who has been notified through the embassy at Berlin, the President desires him to make this designation known to the appropriate British authorities.

File No. 24607/11.

*The British Ambassador to the Secretary of State.*

No. 77.]

BRITISH EMBASSY,  
Washington, May 11, 1910.

SIR: With reference to my note No. 75 of the 7th instant, I have the honor to inform you that I have received a telegram from His Majesty's principal secretary of state for foreign affairs informing me that the funeral of His late Majesty King Edward VII will take place at Windsor on the 20th instant.

I have, etc.,

(For the Ambassador.)  
C. INNES MITCHELL.

File No. 24607/14 A.

*The Secretary of State to Ambassador Reid.*

No. 1295.]

DEPARTMENT OF STATE,  
Washington, May 13, 1910.

SIR: The department desires you to communicate to the foreign office the text of the following resolution, which was adopted by the United States Senate on the 9th instant, on the occasion of the death of His Majesty King Edward VII:

*Resolved*, That the death of His Royal and Imperial Majesty Edward VII, the bereavement of his people, and the loss to the world of his wise and kindly influence for peace and good government are deeply deplored by the Senate of the United States of America.

*Resolved*, That the foregoing resolution be communicated through the Department of State to the Government of Great Britain.

*Resolved*, That, as a further mark of respect, the Senate do now adjourn.

I am, etc.,

(For Mr. Knox.)  
HUNTINGTON WILSON.

File No. 24607/14 E.

*The Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, May 14, 1910.

Mr. Reid is instructed to accredit the suite of Special Ambassador Roosevelt in the following terms: Henry White, ex-ambassador, diplomatic delegate, with the rank of envoy extraordinary and minister plenipotentiary; Commander Andrew T. Long, naval aid-de-camp; and Maj. T. Bentley Mott, military aid-de-camp.

File No. 24607/30.

*Ambassador Reid to the Secretary of State.*

No. 1276.]

AMERICAN EMBASSY,  
London, May 17, 1910.

SIR: With reference to the department's cable of the 7th instant, instructing me to express to the British Government the sympathy of the President, Government, and people of the United States at the

lamented death of King Edward VII, I have the honor to transmit herewith copies of my notes to the foreign office of the 7th and 8th instant in this sense, together with Sir Edward Grey's replies of the 11th and 13th instant.

I have, etc.,

WHITELAW REID.

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[Inclosure 1.]

*Ambassador Reid to the Minister for Foreign Affairs.*

AMERICAN EMBASSY,  
London, May 7, 1910.

SIR: My Government instructs me to express to you, and through you to the British Government and people, the sincere and profound sympathy of the President, Government, and people of the United States in the loss by their British kinsmen of a ruler so beloved and so justly distinguished among all the nations of the earth for his wisdom and kindness and for the influence of these high qualities in behalf of all that is best.

I have, etc.

WHITELAW REID.

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[Inclosure 2.]

*Ambassador Reid to the Minister for Foreign Affairs.*

AMERICAN EMBASSY,  
London, May 8, 1910.

SIR: I have the honor to acknowledge the note of May 7, in which you communicate the lamentable information as to the death during the previous night of His Majesty Edward VII, King of the United Kingdom of Great Britain and Ireland, Emperor of India.

I had previously kept the President and the Secretary of State of the United States informed concerning the critical illness of His Majesty, and later had announced to them its sad ending. The President immediately offered direct by cable to Queen Alexandra, for Her Majesty and for her son, the late King's illustrious successor, the most profound sympathy of the people and Government of the United States, whose hearts go out to their British kinsmen in this national bereavement. He had added his own personal sympathy for Her Majesty and for the new King, together with his appreciation of those high qualities which made the life of the late King so potent an influence toward peace and justice among the nations.

I have had the honor earlier to-day of expressing to you, under instructions from the Secretary of State, the sincere and profound sympathy of the President, Government, and people of the United States in the loss by their British kinsmen of a ruler so beloved and so justly distinguished among all the nations of the earth for his wisdom and kindness and for his influence in behalf of all that is best.

You only do me justice, sir, in the conviction you are kind enough to express that I participate, as indeed I do with all my heart, in the deep and widespread sorrow which this melancholy event has occasioned.

I have, etc.,

WHITELAW REID.

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[Inclosure 3.]

*The Minister for Foreign Affairs to Ambassador Reid.*

FOREIGN OFFICE,  
London, May 11, 1910.

YOUR EXCELLENCY: I duly laid before the King, my Sovereign, your note of the 7th instant, in which your excellency expresses the condolences of the President, Government, and people of the United States of America on the occasion of the deeply lamented death of His Late Majesty King Edward VII, and I have received the King's commands to request your excellency to convey to the President and Government of

the United States his most sincere thanks for their much appreciated messages of sympathy in the great loss which has been sustained by His Majesty, his royal house, and his subjects throughout the world.

I have, etc.,

E. GREY.

[Inclosure 4.]

*The Minister for Foreign Affairs to Ambassador Reid.*

FOREIGN OFFICE,  
London, May 13, 1910.

YOUR EXCELLENCY: I duly laid before the King, my Sovereign, your note of the 8th instant, in which your excellency informs me of the feelings of profound sympathy of the President, Government, and people of the United States of America on the occasion of the deeply lamented death of His Late Majesty King Edward VII, and I have received the King's commands to convey to your excellency His Majesty's best thanks for this communication and for the kind sentiments to which you give expression, which are much appreciated by His Majesty and the royal family.

I have, etc.,

E. GREY.

File No. 24607/30.

*Ambassador Reid to the Secretary of State.*

1277.]

AMERICAN EMBASSY,  
London, May 17, 1910.

SIR: I have the honor to transmit herewith a copy of a note received by me from Sir Edward Grey on the 14th instant, in reply to my note of the 12th instant, forwarding a copy of the resolution adopted by the House of Representatives on the announcement of the deeply lamented death of His Majesty King Edward VII.

I have, etc.,

WHITELAW REID.

[Inclosure 1.]

*Ambassador Reid to the Minister for Foreign Affairs.*

AMERICAN EMBASSY,  
London, May 12, 1910.

SIR: Under instructions from my Government I have the honor to inform you that the following resolution was adopted by the House of Representatives at Washington on the 7th instant.<sup>1</sup>

I have, etc.,

WHITELAW REID.

[Inclosure 2.]

*The Minister for Foreign Affairs to Ambassador Reid.*

FOREIGN OFFICE,  
London, May 14, 1910.

YOUR EXCELLENCY: I laid before the King your excellency's note of the 12th instant, conveying a resolution adopted by the House of Representatives at Washington on the 7th instant, in which their condolences and sympathy are expressed on the occasion of the lamented death of His Late Majesty King Edward VII.

The King commands me to request that your excellency will convey to the House of Representatives His Majesty's sincere appreciation and warmest thanks for this kind message of sympathy in the irreparable loss which has fallen upon His Majesty, his royal house, and the British Empire.

I have, etc.,

E. GREY.

<sup>1</sup> Resolution printed, supra.

File No. 24607/22 A.

*The Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, May 18, 1910.*

Secretary Knox instructs Ambassador Reid to send, in the name of the President of the United States, a handsome and suitable wreath for the funeral ceremonies of King Edward.

File No. 24607/41.

*Ambassador Reid to the Secretary of State.*

No. 1306.]

AMERICAN EMBASSY,  
*London, June 6, 1910.*

SIR: With reference to your instruction No. 1295 of the 13th ultimo, conveying a resolution, adopted by the Senate on May 9, expressing their condolence and sympathy on the occasion of the death of His Late Majesty King Edward VII, I have the honor to inclose herewith copy of the foreign office reply, expressing, on behalf of the King, his grateful appreciation and sincere thanks for this kind message of sympathy.

I have, etc.,

WHITELAW REID.

[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*FOREIGN OFFICE,  
*London, June 4, 1910.*

YOUR EXCELLENCY: I duly laid before the King your excellency's note of the 25th ultimo conveying a resolution adopted by the Senate of the United States of America, on the 9th ultimo, expressing their condolences and sympathy on the occasion of the deeply lamented death of His Late Majesty King Edward VII.

The King commands me to request that your excellency will be so good as to take the necessary steps to convey to the United States Senate his grateful appreciation and sincere thanks for this kind message of sympathy in the irreparable loss which has been sustained by His Majesty, his royal house, and the British Empire.

I have, etc.,

(For Sir Edward Grey.)  
F. A. CAMPBELL.

File No. 24607/48.

*Ambassador Reid to the Secretary of State.*

No. 1318.]

AMERICAN EMBASSY,  
*London, June 16, 1910.*

SIR: I have the honor to inclose herewith copy of a note from the foreign office, dated the 10th instant, in reply to mine of the 2d instant inclosing an engrossed copy of the resolution of condolence passed by the Senate on the occasion of the death of His Majesty King Edward VII, which came inclosed in your unnumbered instruction of the 21st ultimo.

I have, etc.,

WHITELAW REID.



[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*FOREIGN OFFICE,  
London, June 10, 1910.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's note of the 2d instant, inclosing an engrossed copy of the resolution of condolence passed by the Senate of the United States on the occasion of the death of His Majesty King Edward VII.

I have the honor to inform your excellency that I have not failed to lay this copy before the King.

I have, etc.,

E. GREY.

**TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN  
RELATING TO BOUNDARY WATERS BETWEEN THE UNITED  
STATES AND CANADA.**

*Signed at Washington, January 11, 1909.**Ratification advised by the Senate, March 3, 1909.**Ratified by the President, April 1, 1910.**Ratified by Great Britain, March 31, 1910.**Ratifications exchanged at Washington, May 5, 1910.**Proclaimed, May 13, 1910.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Whereas a treaty between the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, was concluded and signed by their respective plenipotentiaries at Washington on the eleventh day of January, one thousand nine hundred and nine, the original of which treaty is word for word as follows:

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, O. M., his ambassador extraordinary and plenipotentiary at Washington;

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

#### PRELIMINARY ARTICLE.

For the purpose of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

#### ARTICLE I.

The high contracting parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties and the ships, vessels, and boats of both of the high contracting parties, and they shall be placed on terms of equality in the use thereof.

#### ARTICLE II.

Each of the high contracting parties reserves to itself or to the several State Governments on the one side and the Dominion or provincial governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the high contracting parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of

waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

### ARTICLE III.

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the international joint commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States, on the one side, and the Government of the Dominion of Canada, on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbors, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

### ARTICLE IV.

The high contracting parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary, unless the construction or maintenance thereof is approved by the aforesaid international joint commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

### ARTICLE V.

The high contracting parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licenses authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of 20,000 cubic feet of water per second.

The United Kingdom, by the Dominion of Canada or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of 36,000 cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes or for the service of canals for the purposes of navigation.

#### ARTICLE VI.

The high contracting parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries; but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country, so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the international joint commission.

#### ARTICLE VII.

The high contracting parties agree to establish and maintain an international joint commission of the United States and Canada composed of six commissioners, three on the part of the United States, appointed by the President thereof, and three on the part of the United Kingdom, appointed by His Majesty on the recommendation of the governor in council of the Dominion of Canada.

## ARTICLE VIII.

This international joint commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this treaty the approval of this commission is required, and in passing upon such cases the commission shall be governed by the following rules or principles which are adopted by the high contracting parties for this purpose:

The high contracting parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

1. Uses for domestic and sanitary purposes.
2. Uses for navigation, including the service of canals for the purposes of navigation.
3. Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions and where such diversion does not diminish elsewhere the amount available for use on the other side.

The commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the commissioners shall have power to render a decision. In case the commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the commissioners on each side to their own Government. The high contracting parties shall thereupon endeavor to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol and shall be communicated to the commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

## ARTICLE IX.

The high contracting parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the international joint commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The international joint commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The commission shall make a joint report to both Governments in all cases in which all or a majority of the commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the commissioners on each side to their own Government.

## ARTICLE X.

Any questions or matters of difference arising between the high contracting parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants may be referred for decision to the international joint commission by the consent of the two parties, it being understood that, on the part of the United States, any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the governor general in council. In each case so referred the said commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the high contracting

parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth, and sixth paragraphs of Article XLV of The Hague convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the commission failed to agree.

#### ARTICLE XI.

A duplicate original of all decisions rendered and joint reports made by the commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the commission.

#### ARTICLE XII.

The international joint commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each commissioner, upon the first joint meeting of the commission after his appointment, shall, before proceeding with the work of the commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the commission.

The United States and Canadian sections of the commission may each appoint a secretary, and these shall act as joint secretaries of the commission at its joint sessions, and the commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the commission incurred by it shall be paid in equal moieties by the high contracting parties.

The commission shall have power to administer oaths to witnesses and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the high contracting parties agree to adopt such legislation as may be appropriate and necessary to give the commission the powers above mentioned on each side of the boundary and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the commission. The commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

#### ARTICLE XIII.

In all cases where special agreements between the high contracting parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct

agreements between the high contracting parties, but also any mutual arrangement between the United States and Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

#### ARTICLE XIV.

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 His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by 12 months' written notice given by either high contracting party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

ELIHU ROOT. [SEAL.]  
JAMES BRYCE. [SEAL.]

And whereas the Senate of the United States by their resolution of March 3, 1909 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said treaty with the following understanding, to wit:

*Resolved further, as a part of this ratification,* That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Marys River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty.

And whereas the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the city of Washington, on the 5th day of May, one thousand nine hundred and ten;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.



Done at the city of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten, and of the independence of the United States of America the one hundred and thirty-fourth.

[SEAL.]

WM. H. TAFT.

By the President:

P. C. KNOX,

*Secretary of State.*

#### PROTOCOL OF EXCHANGE.

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Marys River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Marys River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In witness whereof, they have signed the present protocol of exchange and have affixed their seals thereto.

Done at Washington this fifth day of May, one thousand nine hundred and ten.

PHILANDER C. KNOX. [SEAL.]  
JAMES BRYCE. [SEAL.]

#### TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING TO THE BOUNDARY LINE IN PASSAMAQUODDY BAY.

*Signed at Washington, May 21, 1910.*

*Ratification advised by the Senate, June 6, 1910.*

*Ratified by the President, July 13, 1910.*

*Ratified by Great Britain, June 23, 1910.*

*Ratifications exchanged at Washington, August 20, 1910.*

*Proclaimed, September 3, 1910.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

#### A PROCLAMATION.

Whereas a treaty between the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of

India, fixing and defining the location of the international boundary line between the United States and the Dominion of Canada in Passamaquoddy Bay and to the middle of Grand Manan Channel, and removing all causes of dispute in connection therewith, was concluded and signed by their respective plenipotentiaries at Washington on the 21st day of May, one thousand nine hundred and ten, the original of which treaty is word for word as follows:

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous of fixing and defining the location of the international boundary line between the United States and the Dominion of Canada in Passamaquoddy Bay and to the middle of Grand Manan Channel, and of removing all causes of dispute in connection therewith, have for that purpose resolved to conclude a treaty, and to that end have appointed as their plenipotentiaries:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, O. M., his Ambassador Extraordinary and Plenipotentiary at Washington;

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

#### ARTICLE I.

Whereas by Article I of the treaty of April 11, 1908, between the United States and Great Britain, it was agreed that commissioners should be appointed for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada in the waters of Passamaquoddy Bay from the mouth of the St. Croix River to the Bay of Fundy, the description of the location of certain portions of such line being set forth in the aforesaid article, and it was agreed with respect to the remaining portion of the line that each of the high contracting parties shall present to the other within six months after the ratification of this treaty a full printed statement of the evidence, with certified copies of original documents referred to therein which are in its possession, and the arguments upon which it bases its contentions, with a view to arriving at an adjustment of the location of this portion of the line in accordance with the true intent and meaning of the provisions relating thereto of the treaties of 1783 and 1814 between the United States and Great Britain, and the award of the Commissioners appointed in that behalf under the treaty of 1814; it being understood that any action by either or both Governments or their representatives authorized in that behalf or by the local governments on either side of the line, whether prior or subsequent to such treaties and award, tending to aid in the interpretation thereof, shall be taken into consideration in determining their true intent and meaning;

And it was further agreed that if such agreement was reached between the parties the commissioners aforesaid should lay down and mark this portion of the boundary in accordance therewith and as provided in the said article, but it was provided that in the event of a failure to agree within a set period, the location of such portion of the line should be determined by reference to arbitration;

And whereas the time for reaching an agreement under the provisions of the aforesaid article expired before such agreement was reached but the high contracting parties are nevertheless desirous of arriving at an adjustment of the location of this portion of the line by agreement without resort to arbitration, and have already, pursuant to the provisions above quoted of Article I of the treaty aforesaid, presented each to the other a full printed statement of the evidence and of the arguments upon which the contentions of each are based, with a view to arriving at an adjustment of the location of the portion of the line referred to in accordance with the true intent and meaning of the provisions relating thereto in the treaties of 1783 and 1814 between the United States and Great Britain and the award of the commissioners appointed in that behalf under the treaty of 1814;

Now, therefore, upon the evidence and arguments so presented, and after taking into consideration all actions of the respective Governments and of their representatives authorized in that behalf and of the local governments on either side of the line, whether prior or subsequent to such treaties and award, tending to aid in the interpretation thereof, the high contracting parties hereby agree that the location of the international boundary line between the United States and the Dominion of Canada from a point in Passamaquoddy Bay accurately defined in the treaty between the United States and Great Britain of April 11, 1908, as lying between Treat Island and Friar Head, and extending thence through Passamaquoddy Bay and to the middle of Grand Manan Channel, shall run in a series of seven connected straight lines for the distances and in the directions as follows:

Beginning at the aforesaid point lying between Treat Island and Friar Head, thence

(1) South  $8^{\circ} 29' 57''$  west true, for a distance of 1,152.6 meters; thence

(2) South  $8^{\circ} 29' 34''$  east, 759.7 meters; thence

(3) South  $23^{\circ} 56' 25''$  east, 1,156.4 meters; thence

(4) South  $0^{\circ} 23' 14''$  west, 1,040.0 meters; thence

(5) South  $28^{\circ} 04' 26''$  east, 1,607.2 meters; thence

(6) South  $81^{\circ} 48' 45''$  east, 2,616.8 meters to a point on the line which runs approximately north  $40^{\circ}$  east true, and which joins Sail Rock, off West Quoddy Head Light, and the southernmost rock lying off the southeastern point of the southern extremity of Campobello Island; thence

(7) South  $47^{\circ}$  east 5,100 meters to the middle of Grand Manan Channel.

The description of the last two portions of the line thus defined, viz, those numbered (6) and (7), is intended to replace the description of the lowest portion of the line, viz, that numbered (2), as defined in Article I of the treaty of April 11, 1908.

#### ARTICLE II.

The location of the boundary line as defined in the foregoing article shall be laid down and marked by the commissioners under Article I of the aforesaid treaty of April 11, 1908, in accordance with the provisions of such article, and the line so defined and laid

down shall be taken and deemed to be the international boundary extending between the points therein mentioned in Grand Manan Channel and Passamaquoddy Bay.

### ARTICLE III.

It is further agreed by the high contracting parties that on either side of the hereinabove-described line southward from the point of its intersection with a line drawn true north from Lubec Channel Light, as at present established, either party shall have the right, upon two months' notice to the other, to improve and extend the channel to such depth as may by it be deemed desirable or necessary, and to a width not exceeding one hundred and fifteen (115) meters on each side of the boundary line, and from such point of intersection northerly through Lubec Narrows to the turning point in the boundary lying between Treat Island and Friar Head, either party shall have the right, upon two months' notice to the other, to improve and deepen the present channel to a width not exceeding sixty-five (65) meters on each side of the boundary line and to such depth as may by it be deemed desirable or necessary; it being understood, however, that each party shall also have the right to further widen and deepen the channel anywhere on its own side of the boundary.

### ARTICLE IV.

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof, the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the twenty-first day of May, in the year of our Lord one thousand nine hundred and ten.

P. C. KNOX. [SEAL.]  
JAMES BRYCE. [SEAL.]

And whereas the said treaty has been duly ratified on both parts and the ratifications of the two Governments were exchanged in the city of Washington on the twentieth day of August, one thousand nine hundred and ten;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this third day of September, in the year of our Lord one thousand nine hundred and ten,  
[SEAL.] and of the Independence of the United States of America the one hundred and thirty-fifth.

WM. H. TAFT.

By the President:

HUNTINGTON WILSON,  
*Acting Secretary of State.*

**THE NORTH ATLANTIC COAST FISHERIES ARBITRATION—DECISION OF THE PERMANENT COURT OF ARBITRATION AT THE HAGUE IN THE CASE SUBMITTED BY THE UNITED STATES AND GREAT BRITAIN.**

**PREAMBLE.**

Whereas a special agreement between the United States of America and Great Britain, signed at Washington the 27th January, 1909, and confirmed by interchange of notes dated the 4th March, 1909, was concluded in conformity with the provisions of the general arbitration treaty between the United States of America and Great Britain, signed the 4th April, 1908, and ratified the 4th June, 1908;

And whereas the said special agreement for the submission of questions relating to fisheries on the North Atlantic coast under the general treaty of arbitration concluded between the United States and Great Britain on the 4th day of April, 1908, is as follows:<sup>1</sup>

And whereas the parties to the said agreement have by common accord, in accordance with Article V, constituted as a tribunal of arbitration the following members of the permanent court at The Hague: Mr. H. Lammasch, doctor of law, professor of the University of Vienna, aulic councillor, member of the upper house of the Austrian Parliament; His Excellency Jonkheer A. F. De Savornin Lohman, doctor of law, minister of state, former minister of the interior, member of the Second Chamber of the Netherlands; the honorable George Gray, doctor of laws, judge of the United States circuit court of appeals, former United States Senator; the right honorable Sir Charles Fitzpatrick, member of the Privy Council, doctor of laws, chief justice of Canada; the honorable Luis Maria Drago, doctor of law, former minister of foreign affairs of the Argentine Republic, member of the Law Academy of Buenos Aires;

And whereas the agents of the parties to the said agreement have duly and in accordance with the terms of the agreement communicated to this tribunal their cases, countercases, printed arguments, and other documents;

And whereas counsel for the parties have fully presented to this tribunal their oral arguments in the sittings held between the first assembling of the tribunal on 1st June, 1910, to the close of the hearings on 12th August, 1910;

Now, therefore, this tribunal having carefully considered the said agreement, cases, countercases, printed and oral arguments, and the documents presented by either side, after due deliberation makes the following decisions and awards:

**QUESTION I.**

To what extent are the following contentions, or either of them, justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said article, which the inhabitants of the United States have forever, in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances,

<sup>1</sup> See *Foreign Relations*, 1909, p. 275.

or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects.

(b) Desirable on grounds of public order and morals.

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty, and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question I, thus submitted to the tribunal, resolves itself into two main contentions:

First. Whether the right of regulating reasonably the liberties conferred by the treaty of 1818 resides in Great Britain.

Second. And, if such right does so exist, whether such reasonable exercise of the right is permitted to Great Britain without the accord and concurrence of the United States.

The treaty of 1818 contains no explicit disposition in regard to the right of regulation, reasonable or otherwise; it neither reserves that right in express terms, nor refers to it in any way. It is therefore incumbent on this tribunal to answer the two questions above indicated by interpreting the general terms of Article I of the treaty, and more especially the words "the inhabitants of the United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind." This interpretation must be conformable to the general import of the instrument, the general intention of the parties to it, the subject matter of the contract, the expressions actually used, and the evidence submitted.

Now in regard to the preliminary question as to whether the right of reasonable regulation resides in Great Britain:

Considering that the right to regulate the liberties conferred by the treaty of 1818 is an attribute of sovereignty, and as such must be held to reside in the territorial sovereign, unless the contrary be provided; and considering that one of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is coterminous with the sovereignty, it follows that the burden of the assertion involved in the contention of the United States (viz, that the right to regulate does not reside independently in Great Britain, the territorial Sovereign) must fall on the United States. And for the purpose of sustaining this burden, the United States have put forward the following series of propositions, each one of which must be singly considered.

It is contended by the United States:

1. That the French right of fishery under the treaty of 1713 designated also as a liberty, was never subjected to regulation by Great Britain, and therefore the inference is warranted that the American liberties of fishery are similarly exempted.

The tribunal is unable to agree with this contention—

(a) Because although the French right designated in 1713 merely “an allowance,” (a term of even less force than that used in regard to the American fishery) was nevertheless converted, in practice, into an exclusive right, this concession on the part of Great Britain was presumably made because France, before 1713, claimed to be the sovereign of Newfoundland, and, in ceding the Island, had, as the American argument says, “reserved for the benefit of its subjects the right to fish and to use the strand.”

(b) Because the distinction between the French and American right is indicated by the different wording of the statutes for the observance of treaty obligations towards France and the United States, and by the British declaration of 1783.

(c) And also because this distinction is maintained in the treaty with France of 1904, concluded at a date when the American claims was approaching its present stage, and by which certain common rights of regulation are recognized to France.

For the further purpose of such proof it is contended by the United States—

2. That the liberties of fishery, being accorded to the inhabitants of the United States “forever,” acquire, by being in perpetuity and unilateral, a character exempting them from local legislation.

The tribunal is unable to agree with this contention—

(a) Because there is no necessary connection between the duration of a grant and its essential status in its relation to local regulation; a right granted in perpetuity may yet be subject to regulation, or, granted temporarily, may yet be exempted therefrom; or being reciprocal may yet be unregulated, or being unilateral may yet be regulated, as is evidenced by the claim of the United States that the liberties of fishery accorded by the reciprocity treaty of 1854 and the treaty of 1871 were exempt from regulation, though they were neither permanent nor unilateral;

(b) Because no peculiar character need be claimed for these liberties in order to secure their enjoyment in perpetuity, as is evidenced by the American negotiators in 1818 asking for the insertion of the words “forever.” International law in its modern development

recognizes that a great number of treaty obligations are not annulled by war, but at most suspended by it;

(c) Because the liberty to dry and cure is, pursuant to the terms of the treaty, provisional and not permanent, and is nevertheless, in respect of the liability to regulation, identical in its nature with, and never distinguished from, the liberty to fish.

For the further purpose of such proof the United States allege—

3. That the liberties of fishery granted to the United States constitute an international servitude in their favor over the territory of Great Britain, thereby involving a derogation from the sovereignty of Great Britain, the servient State, and that therefore Great Britain is deprived, by reason of the grant, of its independent right to regulate the fishery.

The tribunal is unable to agree with this contention—

(a) Because there is no evidence that the doctrine of international servitudes was one with which either American or British statesmen were conversant in 1818, no English publicists employing the term before 1818, and the mention of it in Mr. Gallatin's report being insufficient.

(b) Because a servitude in the French law, referred to by Mr. Gallatin, can, since the code, be only real and can not be personal (Code Civil, art. 686).

(c) Because a servitude in international law predicates an express grant of a sovereign right and involves an analogy to the relation of a *praedium dominans* and a *praedium serviens*; whereas by the treaty of 1818 one State grants a liberty to fish, which is not a sovereign right, but a purely economic right, to the inhabitants of another State.

(d) Because the doctrine of international servitude in the sense which is now sought to be attributed to it originated in the peculiar and now obsolete conditions prevailing in the Holy Roman Empire of which the *domini terræ* were not fully sovereigns; they holding territory under the Roman Empire, subject at least theoretically, and in some respects also practically, to the courts of that Empire; their right being, moreover, rather of a civil than of a public nature, partaking more of the character of *dominium* than of *imperium*, and therefore certainly not a complete sovereignty. And because in contradistinction to this quasi-sovereignty with its incoherent attributes acquired at various times, by various means, and not impaired in its character by being incomplete in any one respect or by being limited in favor of another territory and its possessor, the modern State, and particularly Great Britain, has never admitted partition of sovereignty, owing to the constitution of a modern State requiring essential sovereignty and independence.

(e) Because this doctrine being but little suited to the principle of sovereignty which prevails in States under a system of constitutional government such as Great Britain and the United States, and to the present international relations of sovereign States, has found little, if any, support from modern publicists. It could therefore in the general interest of the community of nations, and of the parties to this treaty, be affirmed by this tribunal only on the express evidence of an international contract.

(f) Because even if these liberties of fishery constituted an international servitude the servitude would derogate from the sovereignty



of the servient State only in so far as the exercise of the rights of sovereignty by the servient State would be contrary to the exercise of the servitude right by the dominant State; whereas it is evident that, though every regulation of the fishery is to some extent a limitation, as it puts limits to the exercise of the fishery at will, yet such regulations as are reasonable and made for the purpose of securing and preserving the fishery and its exercise for the common benefit, are clearly to be distinguished from those restrictions and "molestations," the annulment of which was the purpose of the American demands formulated by Mr. Adams in 1782, and such regulations consequently can not be held to be inconsistent with a servitude.

(g) Because the fishery to which the inhabitants of the United States were admitted in 1783, and again in 1818, was a regulated fishery, as is evidenced by the following regulations:

Act 15, Charles II, cap. 16, s. 7 (1663) forbidding "to lay any seine or other net in or near any harbor in Newfoundland, whereby to take the spawn or young fry of the Poor-John, or for any other use or uses, except for the taking of bait only," which had not been superseded either by the order in council of March 10, 1670, or by the statute 10 and XI, William III, cap. 25, 1699. The order in council provides expressly for the obligation "to submit unto and to observe all rules and orders as are now, or hereafter shall be established," an obligation which can not be read as referring only to the rules established by this very act, and having no reference to antecedent rules "as are now established." In a similar way the statute of 1699 preserves in force prior legislation, conferring the freedom of fishery only "as fully and freely as at any time heretofore." The order in council, 1670, provides that the admirals, who always were fishermen, arriving from an English or Welsh port, "see that His Majesty's rules and orders concerning the regulation of the fisheries are duly put in execution" (sec. 13). Likewise the act 10 and XI, William III, cap. 25 (1699) provides that the admirals do settle differences between the fishermen arising in respect of the places to be assigned to the different vessels. As to Nova Scotia, the proclamation of 1665 ordains that no one shall fish without license; that the licensed fishermen are obliged "to observe all laws and orders which now are made and published, or shall hereafter be made and published in this jurisdiction," and that they shall not fish on the Lord's day and shall not take fish at the time they come to spawn. The judgment of the chief justice of Newfoundland, October 26, 1820, is not held by the tribunal sufficient to set aside the proclamations referred to. After 1783, the statute 26, George III, cap. 26, 1786, forbids "the use, on the shores of Newfoundland, of seines or nets for catching cod by hauling on shore or taking into boat, with meshes less than 4 inches," a prohibition which can not be considered as limited to the bank fishery. The act for regulating the fisheries of New Brunswick, 1793, which forbids "the placing of nets or seines across any cove or creek in the province so as to obstruct the natural course of fish," and which makes specific provision for fishing in the harbor of St. John, as to the manner and time of fishing, can not be read as being limited to fishing from the shore. The act for regulating the fishing on the coast of Northumberland (1799) contains very elaborate dispositions concerning the fisheries in the bay

of Miramichi which were continued in 1823, 1829, and 1834. The statutes of Lower Canada, 1788 and 1807, forbid the throwing overboard of offal. The fact that these acts extend the prohibition over a greater distance than the first marine league from the shore may make them nonoperative against foreigners without the territorial limits of Great Britain, but is certainly no reason to deny their obligatory character for foreigners within these limits.

(h) Because the fact that Great Britain rarely exercised the right of regulation in the period immediately succeeding 1818 is to be explained by various circumstances and is not evidence of the non-existence of the right.

(i) Because the words "in common with British subjects" tend to confirm the opinion that the inhabitants of the United States were admitted to a regulated fishery.

(j) Because the statute of Great Britain, 1819, which gives legislative sanction to the treaty of 1818, provides for the making of "regulations with relation to the taking, drying, and curing of fish by inhabitants of the United States in 'common.'"

For the purpose of such proof it is further contended by the United States in this latter connection—

4. That the words "in common with British subjects" used in the treaty should not be held as importing a common subjection to regulation, but as intending to negative a possible pretention on the part of the inhabitants of the United States to liberties of fishery exclusive of the right of British subjects to fish.

The tribunal is unable to agree with this contention—

(a) Because such an interpretation is inconsistent with the historical basis of the American fishing liberty. The ground on which Mr. Adams founded the American right in 1782 was that the people then constituting the United States had always, when still under British rule, a part in these fisheries and that they must continue to enjoy their past right in the future. He proposed "that the subjects of His Britannic Majesty and the people of the United States shall continue to enjoy unmolested the right to take fish \* \* \* where the inhabitants of both countries used, at any time heretofore, to fish." The theory of the partition of the fisheries, which by the American negotiators had been advanced with so much force, negatives the assumption that the United States could ever pretend to an exclusive right to fish on the British shores; and to insert a special disposition to that end would have been wholly superfluous.

(b) Because the words "in common" occur in the same connection in the treaty of 1818 as in the treaties of 1854 and 1871. It will certainly not be suggested that in these treaties of 1854 and 1871 the American negotiators meant by inserting the words "in common" to imply that without these words American citizens would be precluded from the right to fish on their own coasts and that, on American shores, British subjects should have an exclusive privilege. It would have been the very opposite of the concept of territorial waters to suppose that, without a special treaty provision, British subjects could be excluded from fishing in British waters. Therefore that can not have been the scope and the sense of the words "in common."

(c) Because the words "in common" exclude the supposition that American inhabitants were at liberty to act at will for the purpose of

taking fish, without any regard to the coexisting rights of other persons entitled to do the same thing, and because these words admit them only as members of a social community, subject to the ordinary duties binding upon the citizens of that community, as to the regulations made for the common benefit, thus avoiding the "bellum omnium contra omnes," which would otherwise arise in the exercise of this industry.

(d) Because these words are such as would naturally suggest themselves to the negotiators of 1818 if their intention had been to express a common subjection to regulations as well as a common right.

In the course of the argument it has also been alleged by the United States—

5. That the treaty of 1818 should be held to have entailed a transfer or partition of sovereignty in that it must in respect to the liberties of fishery be interpreted in its relation to the treaty of 1783, and that this latter treaty was an act of partition of sovereignty and of separation, and as such was not annulled by the War of 1812.

Although the tribunal is not called upon to decide the issue whether the treaty of 1783 was a treaty of partition or not, the questions involved therein having been set at rest by the subsequent treaty of 1818, nevertheless the tribunal could not forbear to consider the contention on account of the important bearing the controversy has upon the true interpretation of the treaty of 1818. In that respect the tribunal is of opinion—

(a) That the right to take fish was accorded as a condition of peace to a foreign people, wherefore the British negotiators refused to place the right of British subjects on the same footing with those of American inhabitants and, further, refused to insert the words also proposed by Mr. Adams, "continue to enjoy," in the second branch of article III of the treaty of 1783.

(b) That the treaty of 1818 was in different terms, and very different in extent from that of 1783, and was made for different considerations. It was, in other words, a new grant.

For the purpose of such proof, it is further contended by the United States—

6. That as contemporary commercial treaties contain express provisions for submitting foreigners to local legislation, and the treaty of 1818 contains no such provision, it should be held a contrario; that inhabitants of the United States exercising these liberties are exempt from regulation.

The tribunal is unable to agree with this contention—

(a) Because the commercial treaties contemplated did not admit foreigners to all and equal rights, seeing that local legislation excluded them from many rights of importance—e. g., that of holding land—and the purport of the provisions in question consequently was to preserve these discriminations; but no such discriminations existing in the common enjoyment of the fishery by American and British fishermen, no such provision was required.

(b) Because no proof is furnished of similar exemptions of foreigners from local legislation in default of treaty stipulations subjecting them thereto.

(c) Because no such express provision for subjection of the nationals of either party to local law was made either in this treaty in respect to their reciprocal admission to certain territories as agreed in article III

or in article III of the treaty of 1794, although such subjection was clearly contemplated by the parties.

For the purpose of such proof it is further contended by the United States—

7. That, as the liberty to dry and cure on the treaty coasts and to enter bays and harbors on the nontreaty coasts are both subjected to conditions, and the latter to specific restrictions, it should therefore be held that the liberty to fish should be subjected to no restrictions, as none are provided for in the treaty.

The tribunal is unable to apply the principle of “*expressio unius exclusio alterius*” to this case—

(a) Because the conditions and restrictions as to the liberty to dry and cure on the shore and to enter the harbors are limitations of the rights themselves, and not restrictions of their exercise. Thus the right to dry and cure is limited in duration, and the right to enter bays and harbors is limited to particular purposes;

(b) Because these restrictions of the right to enter bays and harbors applying solely to American fishermen must have been expressed in the treaty, whereas regulations of the fishery, applying equally to American and British, are made by right of territorial sovereignty.

For the purpose of such proof it has been contended by the United States—

8. That Lord Bathurst in 1815 mentioned the American right under the treaty of 1783 as a right to be exercised “at the discretion of the United States;” and that this should be held as to be derogatory to the claim of exclusive regulation by Great Britain.

But the tribunal is unable to agree with this contention—

(a) Because these words implied only the necessity of an express stipulation for any liberty to use foreign territory at the pleasure of the grantee, without touching any question as to regulation;

(b) Because in this same letter Lord Bathurst characterized this right as a policy “temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences from a military, naval, and commercial point of view;” so that it can not have been his intention to acknowledge the exclusion of British interference with this right;

(c) Because Lord Bathurst in his note to Gov. Sir C. Hamilton in 1819 orders the governor to take care that the American fishery on the coast of Labrador be carried on in the same manner as previous to the late war; showing that he did not interpret the treaty just signed as a grant conveying absolute immunity from interference with the American fishery right.

For the purpose of such proof it is further contended by the United States—

9. That on various other occasions following the conclusion of the treaty as evidenced by official correspondence, Great Britain made use of expressions inconsistent with the claim to a right of regulation.

The tribunal, unwilling to invest such expressions with an importance entitling them to affect the general question, considers that such conflicting or inconsistent expressions as have been exposed on either side are sufficiently explained by their relations to ephemeral phases of a controversy of almost secular duration, and should be held to be without direct effect on the principal and present issues.

Now, with regard to the second contention involved in question I, as to whether the right of regulation can be reasonably exercised by Great Britain without the consent of the United States:

Considering that the recognition of a concurrent right of consent in the United States would affect the independence of Great Britain, which would become dependent on the Government of the United States for the exercise of its sovereign right of regulation, and considering that such a codominium would be contrary to the constitution of both sovereign States; the burden of proof is imposed on the United States to show that the independence of Great Britain was thus impaired by international contract in 1818 and that a codominium was created.

For the purpose of such proof it is contended by the United States—

10. That a concurrent right to cooperate in the making and enforcement of regulations is the only possible and proper security to their inhabitants for the enjoyment of their liberties of fishery, and that such a right must be held to be implied in the grant of those liberties by the treaty under interpretation.

The tribunal is unable to accede to this claim on the ground of a right so implied—

(a) Because every State has to execute the obligations incurred by treaty *bona fide*, and is urged thereto by the ordinary sanctions of international law in regard to observance of treaty obligations. Such sanctions are, for instance, appeal to public opinion, publication of correspondence, censure by parliamentary vote, demand for arbitration with the odium attendant on a refusal to arbitrate, rupture of relations, reprisal, etc. But no reason has been shown why this treaty, in this respect, should be considered as different from every other treaty under which the right of a State to regulate the action of foreigners admitted by it on its territory is recognized.

(b) Because the exercise of such a right of consent by the United States would predicate an abandonment of its independence in this respect by Great Britain, and the recognition by the latter of a concurrent right of regulation in the United States. But the treaty conveys only a liberty to take fish in common, and neither directly nor indirectly conveys a joint right of regulation.

(c) Because the treaty does not convey a common right of fishery, but a liberty to fish in common. This is evidenced by the attitude of the United States Government in 1823 with respect to the relations of Great Britain and France in regard to the fishery.

(d) Because if the consent of the United States were requisite for the fishery, a general veto would be accorded them, the full exercise of which would be socially subversive and would lead to the consequence of an unregulatable fishery.

(e) Because the United States can not by assent give legal force and validity to British legislation.

(f) Because the liberties to take fish in British territorial waters and to dry and cure fish on land in British territory are in principle on the same footing, but in practice a right of cooperation in the elaboration and enforcement of regulations in regard to the latter liberty (drying and curing fish on land) is unrealizable.

In any event, Great Britain, as the local sovereign, has the duty of preserving and protecting the fisheries. In so far as it is necessary for that purpose, Great Britain is not only entitled, but obliged, to

provide for the protection and preservation of the fisheries, always remembering that the exercise of this right of legislation is limited by the obligation to execute the treaty in good faith. This has been admitted by counsel and recognized by Great Britain in limiting the right of regulation to that of reasonable regulation. The inherent defect of this limitation of reasonableness, without any sanction except in diplomatic remonstrance, has been supplied by the submission to arbitral award as to existing regulations in accordance with Articles II and III of the special agreement, and as to further regulation by the obligation to submit their reasonableness to an arbitral test in accordance with Article IV of the agreement.

It is finally contended by the United States—

That the United States did not expressly agree that the liberty granted to them could be subjected to any restriction that the grantor might choose to impose on the ground that in her judgment such restriction was reasonable. And that while admitting that all laws of a general character controlling the conduct of men within the territory of Great Britain are effective, binding, and beyond objection by the United States, and competent to be made upon the sole determination of Great Britain or her colony, without accountability to anyone whomsoever; yet there is somewhere a line beyond which it is not competent for Great Britain to go or beyond which she can not rightfully go, because to go beyond it would be an invasion of the right granted to the United States in 1818. That the legal effect of the grant of 1818 was not to leave the determination as to where that line is to be drawn to the uncontrolled judgment of the grantor, either upon the grantor's consideration as to what would be a reasonable exercise of its sovereignty over the British Empire, or upon the grantor's consideration of what would be a reasonable exercise thereof toward the grantee.

But this contention is founded on assumptions, which this tribunal can not accept for the following reasons, in addition to those already set forth:

(a) Because the line by which the respective rights of both parties accruing out of the treaty are to be circumscribed can refer only to the right granted by the treaty; that is to say, to the liberty of taking, drying, and curing fish by American inhabitants in certain British waters in common with British subjects, and not to the exercise of rights of legislation by Great Britain not referred to in the treaty.

(b) Because a line which would limit the exercise of sovereignty of a State within the limits of its own territory can be drawn only on the ground of express stipulation, and not by implication from stipulations concerning a different subject matter.

(c) Because the line in question is drawn according to the principle of international law that treaty obligations are to be executed in perfect good faith, therefore excluding the right to legislate at will concerning the subject matter of the treaty and limiting the exercise of sovereignty of the States bound by a treaty with respect to that subject matter to such acts as are consistent with the treaty.

(d) Because on a true construction of the treaty the question does not arise whether the United States agreed that Great Britain should retain the right to legislate with regard to the fisheries in her own territory, but whether the treaty contains an abdication by Great Britain of the right which Great Britain, as the sovereign power,

undoubtedly possessed when the treaty was made, to regulate those fisheries.

(e) Because the right to make reasonable regulations not inconsistent with the obligations of the treaty, which is all that is claimed by Great Britain, for a fishery which both parties admit requires regulation for its preservation, is not a restriction of or an invasion of the liberty granted to the inhabitants of the United States. This grant does not contain words to justify the assumption that the sovereignty of Great Britain upon its own territory was in any way affected, nor can words be found in the treaty transferring any part of that sovereignty to the United States. Great Britain assumes only duties with regard to the exercise of its sovereignty. The sovereignty of Great Britain over the coastal waters and territory of Newfoundland remains after the treaty as unimpaired as it was before, but from the treaty results an obligatory relation whereby the right of Great Britain to exercise its right of sovereignty by making regulations is limited to such regulations as are made in good faith and are not in violation of the treaty.

(f) Finally, to hold that the United States, the grantee of the fishing right, has a voice in the preparation of fishery legislation involves the recognition of a right in that country to participate in the internal legislation of Great Britain and her colonies, and to that extent would reduce these countries to a state of dependence.

While therefore unable to concede the claim of the United States as based on the treaty, this tribunal considers that such claim has been and is to some extent, conceded in the relations now existing between the two parties. Whatever may have been the situation under the treaty of 1818 standing alone, the exercise of the right of regulation inherent in Great Britain has been, and is, limited by the repeated recognition of the obligations already referred to, by the limitations and liabilities accepted in the special agreement, by the unequivocal position assumed by Great Britain in the presentation of its case before this tribunal, and by the consequent view of this tribunal that it would be consistent with all the circumstances, as revealed by this record, as to the duty of Great Britain, that she should submit the reasonableness of any future regulation to such an impartial arbitral test, affording full opportunity therefor, as is hereafter recommended under the authority of Article IV of the special agreement, whenever the reasonableness of any regulation is objected to or challenged by the United States in the manner, and within the time hereinafter specified in the said recommendation.

Now therefore this tribunal decides and awards as follows:

The right of Great Britain to make regulations without the consent of the United States, as to the exercise of the liberty to take fish referred to in Article I of the treaty of October 20, 1818, in the form of municipal laws, ordinances or rules of Great Britain, Canada, or Newfoundland is inherent to the sovereignty of Great Britain.

The exercise of that right by Great Britain is, however, limited by the said treaty in respect of the said liberties therein granted to the inhabitants of the United States in that such regulations must be made bona fide and must not be in violation of the said treaty.

Regulations which are (1) appropriate or necessary for the protection and preservation of such fisheries, or (2) desirable or necessary on grounds of public order and morals without unnecessarily

interfering with the fishery itself, and in both cases equitable and fair as between local and American fishermen, and not so framed as to give unfairly an advantage to the former over the latter class, are not inconsistent with the obligation to execute the treaty in good faith, and are therefore reasonable and not in violation of the treaty.

For the decision of the question whether a regulation is or is not reasonable, as being or not in accordance with the dispositions of the treaty and not in violation thereof, the treaty of 1818 contains no special provision. The settlement of differences in this respect that might arise thereafter was left to the ordinary means of diplomatic intercourse. By reason, however, of the form in which Question I is put, and by further reason of the admission of Great Britain by her counsel before this tribunal that it is not now for either of the parties to the treaty to determine the reasonableness of any regulation made by Great Britain, Canada or Newfoundland, the reasonableness of any such regulation, if contested, must be decided not by either of the parties, but by an impartial authority in accordance with the principles hereinabove laid down, and in the manner proposed in the recommendations made by the tribunal in virtue of Article IV of the agreement.

The tribunal further decides that Article IV of the agreement is, as stated by counsel of the respective parties at the argument, permanent in its effect, and not terminable by the expiration of the general arbitration treaty of 1908, between Great Britain and the United States.

In execution, therefore, of the responsibilities imposed upon this tribunal in regard to Articles II, III, and IV of the special agreement we hereby pronounce in their regard as follows:

#### AS TO ARTICLE II.

Pursuant to the provisions of this article, hereinbefore cited, either party has called the attention of this tribunal to acts of the other claimed to be inconsistent with the true interpretation of the treaty of 1818.

But in response to a request from the tribunal, recorded in protocol No. XXVI of 19th July, for an exposition of the grounds of such objections, the parties replied as reported in protocol No. XXX of 28th July to the following effect:

His Majesty's Government considered that it would be unnecessary to call upon the tribunal for an opinion under the second clause of Article II, in regard to the executive act of the United States of America in sending warships to the territorial waters in question, in view of the recognized motives of the United States of America in taking this action and of the relations maintained by their representatives with the local authorities. And this being the sole act to which the attention of this tribunal has been called by His Majesty's Government, no further action in their behalf is required from this tribunal under Article II.

The United States of America presented a statement in which their claim that specific provisions of certain legislative and executive acts of the Governments of Canada and Newfoundland were inconsistent with the true interpretation of the treaty of 1818 was based on the contention that these provisions were not "reasonable" within the meaning of Question I.



After calling upon this tribunal to express an opinion on these acts, pursuant to the second clause of Article II, the United States of America pointed out in that statement that under Article III any question regarding the reasonableness of any regulation might be referred by the tribunal to a commission of expert specialists, and expressed an intention of asking for such reference under certain circumstances.

The tribunal having carefully considered the counter-statement presented on behalf of Great Britain at the session of August 2, is of opinion that the decision on the reasonableness of these regulations requires expert information about the fisheries themselves and an examination of the practical effect of a great number of these provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, as contemplated by Article III. No further action on behalf of the United States is therefore required from this tribunal under Article II.

#### AS TO ARTICLE III.

As provided in Article III, hereinbefore cited and above referred to, "any question regarding the reasonableness of any regulation, or otherwise, which requires an examination of the practical effect of any provisions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, may be referred by this tribunal to a commission of expert specialists; one to be designated by each of the parties hereto and the third, who shall not be a national or either party, to be designated by the tribunal."

The tribunal now therefore calls upon the parties to designate within one month their national commissioners for the expert examination of the questions submitted.

As the third nonnational commissioner this tribunal designates Dr. P. P. C. Hoek, scientific adviser for the fisheries of the Netherlands and if any necessity arises therefor a substitute may be appointed by the president of this tribunal.

After a reasonable time, to be agreed on by the parties, for the expert commission to arrive at a conclusion, by conference, or, if necessary, by local inspection, the tribunal shall, if convoked by the President at the request of either party, thereupon at the earliest convenient date, reconvene to consider the report of the commission, and if it be on the whole unanimous shall incorporate it in the award. If not on the whole unanimous—i. e., on all points which in the opinion of the tribunal are of essential importance—the tribunal shall make its award as to the regulations concerned after consideration of the conclusions of the expert commissioners and after hearing argument by counsel.

But while recognizing its responsibilities to meet the obligations imposed on it under Article III of the special agreement, the tribunal hereby recommends as an alternative to having recourse to a reconvention of this tribunal, that the parties should accept the unanimous opinion of the commission or the opinion of the nonnational commissioner on any points in dispute as an arbitral award rendered under the provisions of Chapter IV of The Hague convention of 1907.

## AS TO ARTICLE IV.

Pursuant to the provisions of this article, hereinbefore cited, this tribunal recommends for the consideration of the parties the following rules and method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in this award:

1. All future municipal laws, ordinances or rules for the regulation of the fishery by Great Britain in respect of (1) the hours, days or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements used in the taking of fish or in carrying on fishing operations; (3) any other regulation of a similar character shall be published in the London Gazette two months before going into operation.

Similar regulations by Canada or Newfoundland shall be similarly published in the Canada Gazette and the Newfoundland Gazette, respectively.

2. If the Government of the United States considers any such laws or regulations inconsistent with the treaty of 1818, it is entitled to so notify the Government of Great Britain within the two months referred to in rule No. 1.

3. Any law or regulation so notified shall not come into effect with respect to inhabitants of the United States until the permanent mixed fishery commission has decided that the regulation is reasonable within the meaning of this award.

4. Permanent mixed fishery commissions for Canada and Newfoundland, respectively, shall be established for the decision of such questions as to the reasonableness of future regulations, as contemplated by Article IV of the special agreement; these commissions shall consist of an expert national appointed by either party for five years. The third member shall not be a national of either party; he shall be nominated for five years by agreement of the parties, or failing such agreement within two months, he shall be nominated by Her Majesty the Queen of the Netherlands. The two national members shall be convoked by the Government of Great Britain within one month from the date of notification by the Government of the United States.

5. The two national members having failed to agree within one month, within another month the full commission, under the presidency of the umpire, is to be convoked by Great Britain. It must deliver its decision, if the two Governments do not agree otherwise, at the latest in three months. The umpire shall conduct the procedure in accordance with that provided in Chapter IV of the Convention for the Pacific Settlement of International Disputes, except in so far as herein otherwise provided.

6. The form of convocation of the commission, including the terms of reference of the question at issue, shall be as follows:

The provision hereinafter fully set forth of an act dated \_\_\_\_\_, published in the \_\_\_\_\_ has been notified to the Government of Great Britain by the Government of the United States, under date of \_\_\_\_\_, as provided by the award of The Hague Tribunal of September 7, 1910.

Pursuant to the provisions of that award the Government of Great Britain hereby convokes the permanent mixed fishery commission for <sup>(Canada)</sup> ~~(Newfoundland)~~, composed of \_\_\_\_\_ commissioner for the United States of America, and of \_\_\_\_\_ commissioner for <sup>(Canada)</sup> ~~(Newfoundland)~~, which shall meet at \_\_\_\_\_ and render a decision within one month as to whether the provision so notified is reasonable and consistent with the treaty of 1818, as interpreted by the award of The Hague tribunal of September 7, 1910, and if not, in what respect it is unreasonable and inconsistent therewith.

Failing an agreement on this question within one month the commission shall so notify the Government of Great Britain in order that the further action required by that award may be taken for the decision of the above question.

The provision is as follows: \_\_\_\_\_

7. The unanimous decision of the two national commissioners, or the majority decision of the umpire and one commissioner, shall be final and binding.

#### QUESTION II.

Have the inhabitants of the United States, while exercising the liberties referred to in said article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

In regard to this question the United States claim in substance:

1. That the liberty assured to their inhabitants by the treaty plainly includes the right to use all the means customary or appropriate for fishing upon the sea, not only ships and nets and boats, but crews to handle the ships and the nets and the boats.

2. That no right to control or limit the means which these inhabitants shall use in fishing can be admitted unless it is provided in the terms of the treaty and no right to question the nationality or inhabitancy of the crews employed is contained in the terms of the treaty.

And Great Britain claims:

1. That the treaty confers the liberty to inhabitants of the United States exclusively.

2. That the Governments of Great Britain, Canada, or Newfoundland may, without infraction of the treaty, prohibit persons from engaging as fishermen in American vessels.

Now, considering (1) that the liberty to take fish is an economic right attributed by the treaty; (2) that it is attributed to inhabitants of the United States, without any mention of their nationality; (3) that the exercise of an economic right includes the right to employ servants; (4) that the right of employing servants has not been limited by the treaty to the employment of persons of a distinct nationality or inhabitancy; (5) that the liberty to take fish as an economic liberty refers not only to the individuals doing the manual act of fishing, but also to those for whose profit the fish are taken.

But considering that the treaty does not intend to grant to individual persons or to a class of persons the liberty to take fish in certain waters "in common"—that is to say, in company—with individual British subjects, in the sense that no law could forbid British subjects to take service on American fishing ships; (2) that the treaty intends to secure to the United States a share of the fisheries designated therein, not only in the interest of a certain class of individuals, but also in the interest of both the United States and Great Britain, as appears from the evidence and notably from the correspondence be-

tween Mr. Adams and Lord Bathurst in 1815; (3) that the inhabitants of the United States do not derive the liberty to take fish directly from the treaty, but from the United States Government as party to the treaty with Great Britain, and moreover exercising the right to regulate the conditions under which its inhabitants may enjoy the granted liberty; (4) that it is in the interest of the inhabitants of the United States that the fishing liberty granted to them be restricted to exercise by them and removed from the enjoyment of other aliens not entitled by this treaty to participate in the fisheries; (5) that such restrictions have been throughout enacted in the British statute of June 15, 1819, and that of June 3, 1824, to this effect, that no alien or stranger whatsoever shall fish in the waters designated therein, except in so far as by treaty thereto entitled, and that this exception will, in virtue of the treaty of 1818, as hereinabove interpreted by this award, exempt from these statutes American fishermen fishing by the agency of noninhabitant aliens employed in their service; (6) that the treaty does not affect the sovereign right of Great Britain as to aliens, noninhabitants of the United States, nor the right of Great Britain to regulate the engagement of British subjects while these aliens or British subjects are on British territory.

Now, therefore, in view of the preceding considerations, this tribunal is of opinion that the inhabitants of the United States while exercising the liberties referred to in the said article have a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States.

But in view of the preceding considerations the tribunal, to prevent any misunderstanding as to the effect of its award, expresses the opinion that noninhabitants employed as members of the fishing crews of United States vessels derive no benefit or immunity from the treaty and it is so decided and awarded.

### QUESTION III.

Can the exercise by the inhabitants of the United States of the liberties referred to in the said article be subjected, without the consent of the United States, to the requirements of entry or report at customhouses or the payment of light or harbor or other dues or to any other similar requirement or condition or exaction?

The tribunal is of opinion as follows:

It is obvious that the liberties referred to in this question are those that relate to taking fish and to drying and curing fish on certain coasts as prescribed in the treaty of October 20, 1818. The exercise of these liberties by the inhabitants of the United States in the prescribed waters to which they relate has no reference to any commercial privileges which may or may not attach to such vessels by reason of any supposed authority outside the treaty, which itself confers no commercial privileges whatever upon the inhabitants of the United States or the vessels in which they may exercise the fishing liberty. It follows, therefore, that when the inhabitants of the United States are not seeking to exercise the commercial privileges accorded to trading vessels for the vessels in which they are exercising the granted liberty of fishing, they ought not to be subjected to requirements as to report and entry at customhouses that are only appropriate to the exercise of commercial privileges. The exercise of

the fishing liberty is distinct from the exercise of commercial or trading privileges and it is not competent for Great Britain or her colonies to impose upon the former exactions only appropriate to the latter. The reasons for the requirements enumerated in the case of commercial vessels have no relation to the case of fishing vessels.

We think, however, that the requirement that American fishing vessels should report, if proper conveniences and an opportunity for doing so are provided, is not unreasonable or inappropriate. Such a report, while serving the purpose of a notification of the presence of a fishing vessel in the treaty waters for the purpose of exercising the treaty liberty, while it gives an opportunity for a proper surveillance of such vessel by revenue officers, may also serve to afford to such fishing vessel protection from interference in the exercise of the fishing liberty. There should be no such requirement, however, unless reasonably convenient opportunity therefor be afforded in person or by telegraph, at a customhouse or to a customs official.

The tribunal is also of opinion that light and harbor dues, if not imposed on Newfoundland fishermen, should not be imposed on American fishermen while exercising the liberty granted by the treaty. To impose such dues on American fishermen only would constitute an unfair discrimination between them and Newfoundland fishermen and one inconsistent with the liberty granted to American fishermen to take fish, etc., "in common with the subjects of His Britannic Majesty."

Further, the tribunal considers that the fulfillment of the requirement as to report by fishing vessels on arrival at the fishery would be greatly facilitated in the interests of both parties by the adoption of a system of registration, and distinctive marking of the fishing boats of both parties, analogous to that established by Articles V to XIII, inclusive, of the international convention signed at The Hague, 8 May, 1882, for the regulation of the North Sea fisheries.

The tribunal therefore decides and awards as follows:

The requirement that an American fishing vessel should report, if proper conveniences for doing so are at hand, is not unreasonable, for the reasons stated in the foregoing opinion. There should be no such requirement, however, unless there be reasonably convenient opportunity afforded to report in person or by telegraph, either at a customhouse or to a customs official.

But the exercise of the fishing liberty by the inhabitants of the United States should not be subjected to the purely commercial formalities of report, entry, and clearance at a customhouse, nor to light, harbor, or other dues not imposed upon Newfoundland fishermen.

#### QUESTION IV.

Under the provision of the said article that the American fishermen shall be admitted to enter certain bays or harbors for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at customhouses, or any similar conditions?

The tribunal is of opinion that the provision in the first article of the treaty of October 20, 1818, admitting American fishermen to enter certain bays or harbors for shelter, repairs, wood, and water, and for no other purpose whatever, is an exercise in large measure of those duties of hospitality and humanity which all civilized nations impose upon themselves and expect the performance of from others. The enumerated purposes for which entry is permitted all relate to the exigencies in which those who pursue their perilous calling on the sea may be involved. The proviso which appears in the first article of the said treaty immediately after the so-called renunciation clause, was doubtless due to a recognition by Great Britain of what was expected from the humanity and civilization of the then leading commercial nation of the world. To impose restrictions making the exercise of such privileges conditional upon the payment of light, harbor, or other dues, or entering and reporting at customhouses, or any similar conditions, would be inconsistent with the grounds upon which such privileges rest, and therefore is not permissible.

And it is decided and awarded that such restrictions are not permissible.

It seems reasonable, however, in order that these privileges accorded by Great Britain on these grounds of hospitality and humanity should not be abused, that the American fishermen entering such bays for any of the four purposes aforesaid and remaining more than 48 hours therein should be required, if thought necessary by Great Britain or the Colonial Government, to report, either in person or by telegraph, at a customhouse or to a customs official, if reasonably convenient opportunity therefor is afforded.

And it is so decided and awarded.

#### QUESTION V.

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said article?

In regard to this question, Great Britain claims that the renunciation applies to all bays generally, and the United States contend that it applies to bays of a certain class or condition.

Now, considering that the treaty used the general term "bays" without qualification, the tribunal is of opinion that these words of the treaty must be interpreted in a general sense as applying to every bay on the coast in question that might be reasonably supposed to have been considered as a bay by the negotiators of the treaty under the general conditions then prevailing, unless the United States can adduce satisfactory proof that any restrictions or qualifications of the general use of the term were or should have been present to their minds.

And for the purpose of such proof the United States contend:

1. That while a State may renounce the treaty right to fish in foreign territorial waters, it can not renounce the natural right to fish on the high seas.

But the tribunal is unable to agree with this contention. Because though a State can not grant rights on the high seas, it certainly can abandon the exercise of its right to fish on the high seas within certain definite limits. Such an abandonment was made with respect to their fishing rights in the waters in question by France and Spain in

1763. By a convention between the United Kingdom and the United States in 1846, the two countries assumed ownership over waters in Fuca Straits at distances from the shore as great as 17 miles.

The United States contend moreover:

2. That by the use of the term "liberty to fish" the United States manifested the intention to renounce the liberty in the waters referred to only in so far as that liberty was dependent upon or derived from a concession on the part of Great Britain, and not to renounce the right to fish in those waters where it was enjoyed by virtue of their natural right as an independent State.

But the tribunal is unable to agree with this contention:

(a) Because the term "liberty to fish" was used in the renunciatory clause of the treaty of 1818 because the same term had been previously used in the treaty of 1783 which gave the liberty; and it was proper to use in the renunciation clause the same term that was used in the grant with respect to the object of the grant; and, in view of the terms of the grant, it would have been improper to use the term "right" in the renunciation. Therefore the conclusion drawn from the use of the term "liberty" instead of the term "right" is not justified.

(b) Because the term "liberty" was a term properly applicable to the renunciation which referred not only to fishing in the territorial waters but also to drying and curing on the shore. This latter right was undoubtedly held under the provisions of the treaty and was not a right accruing to the United States by virtue of any principle of international law.

3. The United States also contend that the term "bays of His Britannic Majesty's dominions" in the renunciatory clause must be read as including only those bays which were under the territorial sovereignty of Great Britain.

But the tribunal is unable to accept this contention:

(a) Because the description of the coast on which the fishery is to be exercised by the inhabitants of the United States is expressed throughout the treaty of 1818 in geographical terms and not by reference to political control; the treaty describes the coast as contained between capes.

(b) Because to express the political concept of dominion as equivalent to sovereignty the word "dominion" in the singular would have been an adequate term and not "dominions" in the plural, this latter term having a recognized and well-settled meaning as descriptive of those portions of the earth which owe political allegiance to His Majesty—e. g., "His Britannic Majesty's Dominions beyond the Seas."

4. It has been further contended by the United States that the renunciation applies only to bays 6 miles or less in width "inter fauces terræ," those bays only being territorial bays, because the 3-mile rule is, as shown by this treaty, a principle of international law applicable to coasts and should be strictly and systematically applied to bays.

But the tribunal is unable to agree with this contention:

(a) Because admittedly the geographical character of a bay contains conditions which concern the interests of the territorial sovereign to a more intimate and important extent than do those connected with the open coast. Thus conditions of national and territorial

integrity, of defense, of commerce, and of industry are all vitally concerned with the control of the bays penetrating the national coast line. This interest varies, speaking generally, in proportion to the penetration inland of the bay; but as no principle of international law recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty, this tribunal is unable to qualify by the application of any new principle its interpretation of the treaty of 1818 as excluding bays in general from the strict and systematic application of the 3-mile rule; nor can this tribunal take cognizance in this connection of other principles concerning the territorial sovereignty over bays such as 10-mile or 12-mile limits of exclusion based on international acts subsequent to the treaty of 1818 and relating to coasts of a different configuration and conditions of a different character.

(b) Because the opinion of jurists and publicists quoted in the proceedings conduce to the opinion that speaking generally the 3-mile rule should not be strictly and systematically applied to bays.

(c) Because the treaties referring to these coasts, antedating the treaty of 1818, made special provisions as to bays, such as the treaties of 1686 and 1713 between Great Britain and France, and especially the treaty of 1778 between the United States and France. Likewise Jay's treaty of 1794, article 25, distinguished bays from the space "within cannon shot of the coast" in regard to the right of seizure in times of war. If the proposed treaty of 1806 and the treaty of 1818 contained no disposition to that effect, the explanation may be found in the fact that the first extended the marginal belt to 5 miles, and also in the circumstance that the American proposition of 1818 in that respect was not limited to "bays," but extended to "chambers formed by headlands" and to "5 marine miles from a right line from one headland to another," a proposition which in the times of the Napoleonic wars would have affected to a very large extent the operations of the British Navy.

(d) Because it has not been shown by the documents and correspondence in evidence here that the application of the 3-mile rule to bays was present to the minds of the negotiators in 1818 and they could not reasonably have been expected either to presume it or to provide against its presumption.

(e) Because it is difficult to explain the words in Article III of the treaty under interpretation "country \* \* \* together with its bays, harbors, and creeks" otherwise than that all bays without distinction as to their width were, in the opinion of the negotiators, part of the territory.

(f) Because from the information before this tribunal it is evident that the 3-mile rule is not applied to bays strictly or systematically either by the United States or by any other power.

(g) It has been recognized by the United States that bays stand apart, and that in respect of them territorial jurisdiction may be exercised farther than the marginal belt in the case of Delaware Bay by the report of the United States Attorney General of May 19, 1793; and the letter of Mr. Jefferson to Mr. Genet of November 8, 1793, declares the bays of the United States generally to be, "as being landlocked, within the body of the United States."

5. In this latter regard it is further contended by the United States that such exceptions only should be made from the application of the



3-mile rule to bays as are sanctioned by conventions and established usage; that all exceptions for which the United States of America were responsible are so sanctioned; and that His Majesty's Government are unable to provide evidence to show that the bays concerned by the treaty of 1818 could be claimed as exceptions on these grounds either generally or, except possibly in one or two cases, specifically.

But the tribunal while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any principle of international law on the subject, nevertheless is unable to apply this, a contrario, so as to subject the bays in question to the 3-mile rule, as desired by the United States:

(a) Because Great Britain has during this controversy asserted a claim to these bays generally, and has enforced such claim specifically in statutes or otherwise, in regard to the more important bays such as Chaleurs, Conception, and Miramichi.

(b) Because neither should such relaxations of this claim, as are in evidence, be construed as renunciations of it; nor should omissions to enforce the claim in regard to bays as to which no controversy arose be so construed. Such a construction by this tribunal would not only be intrinsically inequitable but internationally injurious; in that it would discourage conciliatory diplomatic transactions and encourage the assertion of extreme claims in their fullest extent.

(c) Because any such relaxations in the extreme claim of Great Britain in its international relations are compensated by recognitions of it in the same sphere by the United States; notably in relations with France, for instance, in 1823, when they applied to Great Britain for the protection of their fishery in the bays on the western coast of Newfoundland, whence they had been driven by French war vessels on the ground of the pretended exclusive right of the French. Though they never asserted that their fishermen had been disturbed within the 3-mile zone, only alleging that the disturbance had taken place in the bays, they claimed to be protected by Great Britain for having been molested in waters which were, as Mr. Rush stated "clearly within the jurisdiction and sovereignty of Great Britain."

6. It has been contended by the United States that the words "coasts, bays, creeks, or harbors" are here used only to express different parts of the coast and are intended to express and be equivalent to the word "coast," whereby the 3 marine miles would be measured from the sinuosities of the coast and the renunciation would apply only to the waters of bays within 3 miles.

But the tribunal is unable to agree with this contention:

(a) Because it is a principle of interpretation that words in a document ought not to be considered as being without any meaning if there is not specific evidence to that purpose and the interpretation referred to would lead to the consequence, practically, of reading the words "bays, coasts, and harbors" out of the treaty; so that it would read "within 3 miles of any of the coasts," including therein the coasts of the bays and harbors.

(b) Because the word "therein" in the proviso—"restrictions necessary to prevent their taking, drying, or curing fish therein"—can refer only to "bays," and not to the belt of 3 miles along the coast, and can be explained only on the supposition that the words "bays

creeks, and harbors" are to be understood in their usual ordinary sense and not in an artificially restricted sense of bays within the 3-mile belt.

(c) Because the practical distinction for the purpose of this fishery between coasts and bays and the exceptional conditions pertaining to the latter has been shown from the correspondence and the documents in evidence, especially the treaty of 1783, to have been in all probability present to the minds of the negotiators of the treaty of 1818.

(d) Because the existence of this distinction is confirmed in the same article of the treaty by the proviso permitting the United States fishermen to enter bays for certain purposes.

(e) Because the word "coasts" is used in the plural form whereas the contention would require its use in the singular.

(f) Because the tribunal is unable to understand the term "bays" in the renunciatory clause in other than its geographical sense, by which a bay is to be considered as an indentation of the coast, bearing a configuration of a particular character easy to determine specifically, but difficult to describe generally.

The negotiators of the treaty of 1818 did probably not trouble themselves with subtle theories concerning the notion of "bays;" they most probably thought that everybody would know what was a bay. In this popular sense the term must be interpreted in the treaty. The interpretation must take into account all the individual circumstances which for any one of the different bays are to be appreciated, the relation of its width to the length of penetration inland, the possibility and the necessity of its being defended by the State in whose territory it is indented; the special value which it has for the industry of the inhabitants of its shores; the distance which it is secluded from the highways of nations on the open sea and other circumstances not possible to enumerate in general.

For these reasons the tribunal decides and awards:

In case of bays the 3 marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. All at other places the 3 marine miles are to be measured following the sinuosities of the coast.

But considering the tribunal can not overlook that this answer to Question V, although correct in principle and the only one possible in view of the want of a sufficient basis for a more concrete answer, is not entirely satisfactory as to its practical applicability, and that it leaves room for doubts and differences in practice. Therefore the tribunal considers it its duty to render the decision more practicable and to remove the danger of future differences by adjoining to it a recommendation in virtue of the responsibilities imposed by Article IV of the special agreement.

Considering, moreover, that in treaties with France, with the North German Confederation and the German Empire, and likewise in the North Sea convention, Great Britain has adopted for similar cases the rule that only bays of 10 miles width should be considered as those wherein the fishing is reserved to nationals. And that in the course of the negotiations between Great Britain and the United States a similar rule has been on various occasions proposed and adopted by Great Britain in instructions to the naval officers sta-

tioned on these coasts. And that though these circumstances are not sufficient to constitute this a principle of international law, it seems reasonable to propose this rule with certain exceptions, all the more that this rule with such exceptions has already formed the basis of an agreement between the two powers.

Now, therefore, this tribunal in pursuance of the provisions of Article IV hereby recommends for the consideration and acceptance of the high contracting parties the following rules and method of procedure for determining the limits of the bays hereinbefore enumerated.

1. In every bay not hereinafter specifically provided for the limits of exclusion shall be drawn 3 miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles.

2. In the following bays where the configuration of the coast and the local climatic conditions are such that foreign fishermen when within the geographic headlands might reasonably and bona fide believe themselves on the high seas, the limits of exclusion shall be drawn in each case between the headlands hereinafter specified as being those at and within which such fishermen might be reasonably expected to recognize the bay under average conditions.

For the Baie des Chaleurs the line from the light at Birch Point on Miscou Island to Macquereau Point Light; for the Bay of Miramichi, the line from the light at Point Escuminac to the light on the eastern point of Tabisintac Gully; for Egmont Bay, in Prince Edward Island, the line from the light at Cape Egmont to the light at West Point; and off St. Anns Bay, in the Province of Nova Scotia, the line from the light at Point Anconi to the nearest point on the opposite shore of the mainland.

For Fortune Bay, in Newfoundland, the line from Connaigre Head to the light on the southeasterly end of Brunet Island, thence to Fortune Head.

For or near the following bays the limits of exclusion shall be 3 marine miles seaward from the following lines, namely:

For or near Barrington Bay, in Nova Scotia, the line from the light on Stoddart Island to the light on the south point of Cape Sable, thence to the light at Baccaro Point; at Chedabucto and St. Peters Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; for Mira Bay, the line from the light on the east point of Scatari Island to the northeasterly point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the eastern mainland shore, to the most southerly point of Red Island, thence by the most southerly point of Merasheen Island to the mainland.

Long Island and Bryer Island, on St. Marys Bay, in Nova Scotia, shall for the purpose of delimitation be taken as the coasts of such bays.

It is understood that nothing in these rules refers either to the Bay of Fundy, considered as a whole apart from its bays and creeks, or as to the innocent passage through the Gut of Canso, which were excluded by the agreement made by exchange of notes between Mr. Bacon and Mr. Bryce dated February 21, 1909, and March 4, 1909; or to Conception Bay, which was provided for by the decision of the

privy council in the case of the *Direct United States Cable Co. v. The Anglo-American Telegraph Co.*, in which decision the United States have acquiesced.

## QUESTION VI.

Have the inhabitants of the United States the liberty under the said article or otherwise to take fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

In regard to this question, it is contended by the United States that the inhabitants of the United States have the liberty, under Article I of the treaty, of taking fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands and on the Magdalen Islands. It is contended by Great Britain that they have no such liberty.

Now, considering that the evidence seems to show that the intention of the parties to the treaty of 1818, as indicated by the records of the negotiations and by the subsequent attitude of the Governments was to admit the United States to such fishery, this tribunal is of opinion that it is incumbent on Great Britain to produce satisfactory proof that the United States are not so entitled under the treaty.

For this purpose Great Britain points to the fact that whereas the treaty grants to American fishermen liberty to take fish "on the coasts, bays, harbors, and creeks from Mount Joly on the southern coast of Labrador" the liberty is granted to the "coast" only of Newfoundland and to the "shore" only of the Magdalen Islands; and argues that evidence can be found in the correspondence submitted indicating an intention to exclude Americans from Newfoundland bays on the treaty coast, and that no value would have been attached at that time by the United States Government to the liberty of fishing in such bays because there was no cod fishery there as there was in the bays of Labrador.

But the tribunal is unable to agree with this contention:

(a) Because the words "part of the southern coast \* \* \* from \* \* \* to" and the words "western and northern coast \* \* \* from \* \* \* to," clearly indicate one uninterrupted coast line; and there is no reason to read into the words "coasts" a contradistinction to bays, in order to exclude bays. On the contrary, as already held in the answer to Question V, the words "liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described," indicate that in the meaning of the treaty, as in all the preceding treaties relating to the same territories, the words "coast, coasts, harbors, bays," etc., are used, without attaching to the word "coast" the specific meaning of excluding bays. Thus, in the provision of the treaty of 1783 giving liberty "to take fish on such part of the coast of Newfoundland as British fishermen shall use," the word "coast" necessarily includes bays, because if the intention had

been to prohibit the entering of the bays for fishing the following words, "but not to dry or cure the same on that island," would have no meaning. The contention that in the treaty of 1783 the word "bays" is inserted lest otherwise Great Britain would have had the right to exclude the Americans to the 3-mile line is inadmissible, because in that treaty that line is not mentioned.

(b) Because the correspondence between Mr. Adams and Lord Bathurst also shows that during the negotiations for the treaty the United States demanded the former rights enjoyed under the treaty of 1783, and that Lord Bathurst in the letter of 30th October, 1815, made no objection to granting those "former rights" "placed under some modifications," which latter did not relate to the right of fishing in bays, but only to the "preoccupation of British harbors and creeks by the fishing vessels of the United States and the forcible exclusion of British subjects where the fishery might be most advantageously conducted," and "to the clandestine introduction of prohibited goods into the British colonies." It may be therefore assumed that the word "coast" is used in both treaties in the same sense, including bays.

(c) Because the treaty expressly allows the liberty to dry and cure in the unsettled bays, etc., of the southern part of the coast of Newfoundland, and this shows that, a fortiori, the taking of fish in those bays is also allowed; because the fishing liberty was a lesser burden than the grant to cure and dry, and the restrictive clauses never refer to fishing in contradistinction to drying, but always to drying in contradistinction to fishing. Fishing is granted without drying, never drying without fishing.

(d) Because there is not sufficient evidence to show that the enumeration of the component parts of the coast of Labrador was made in order to discriminate between the coast of Labrador and the coast of Newfoundland.

(e) Because the statement that there is no codfish in the bays of Newfoundland and that the Americans only took interest in the codfisheries is not proved; and evidence to the contrary is to be found in Mr. John Adams Journal of Peace Negotiations of November 25, 1782.

(f) Because the treaty grants the right to take fish of every kind, and not only codfish.

(g) Because the evidence shows that in 1823 the Americans were fishing in Newfoundland bays and that Great Britain when summoned to protect them against expulsion therefrom by the French did not deny their right to enter such bays.

Therefore this tribunal is of opinion that American inhabitants are entitled to fish in the bays, creeks, and harbors of the treaty coasts of Newfoundland and the Magdalen Islands, and it is so decided and awarded.

#### QUESTION VII.

Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

Now, assuming that commercial privileges on the treaty coasts are accorded by agreement or otherwise to United States trading vessels generally, without any exception, the inhabitants of the United States, whose vessels resort to the same coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818, are entitled to have for those vessels when duly authorized by the United States in that behalf, the above-mentioned commercial privileges, the treaty containing nothing to the contrary. But they can not at the same time and during the same voyage exercise their treaty rights and enjoy their commercial privileges, because treaty rights and commercial privileges are submitted to different rules, regulations, and restraints.

For these reasons this tribunal is of opinion that the inhabitants of the United States are so entitled in so far as concerns this treaty, there being nothing in its provisions to disentitle them provided the treaty liberty of fishing, and the commercial privileges are not exercised concurrently, and it is so decided and awarded.

Done at The Hague, in the permanent court of arbitration, in triplicate original, September 7, 1910.

H. LAMMASCH.

A. F. DE SAVORNIN LOHMAN.

GEORGE GRAY.

C. FITZPATRICK.

LUIS M. DRAGO.

Signing the award, I state, pursuant to Article IX, clause 2, of the special agreement, my dissent from the majority of the tribunal in respect to the considerations and enacting part of the award as to Question V.

Grounds for this dissent have been filed at the international bureau of the permanent court of arbitration.

LUIS M. DRAGO.

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GROUNDS FOR THE DISSSENT TO THE AWARD ON QUESTION V BY DR.  
LUIS M. DRAGO.

Counsel for Great Britain have very clearly stated that according to their contention the territoriality of the bays referred to in the treaty of 1818 is immaterial, because whether they are or are not territorial the United States should be excluded from fishing in them by the terms of the renunciatory clause, which simply refers to "bays, creeks, or harbors of His Britannic Majesty's dominions" without any other qualification or description. If that were so, the necessity might arise of discussing whether or not a nation has the right to exclude another by contract or otherwise from any portion or portions of the high seas. But in my opinion the tribunal need not concern itself with such general question, the wording of the treaty being clear enough to decide the point at issue.

Article I begins with the statement that differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on "certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America," and then proceeds to locate the specific portions of the coast with its

corresponding indentations, in which the liberty of taking, drying, and curing fish should be exercised. The renunciatory clause, which the tribunal is called upon to construe, runs thus: "And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on, or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits." This language does not lend itself to different constructions. If the bays in which the liberty has been renounced are those "of His Britannic Majesty's dominions in America," they must necessarily be territorial bays, because in so far as they are not so considered they should belong to the high seas and consequently form no part of His Britannic Majesty's dominions, which, by definition, do not extend to the high seas. It can not be said, as has been suggested, that the use of the word "dominions," in the plural, implies a different meaning than would be conveyed by the same term as used in the singular, so that in the present case, "the British dominions in America" ought to be considered as a mere geographical expression, without reference to any right of sovereignty or "dominion." It seems to me, on the contrary, that "dominions," or "possessions," or "estates," or such other equivalent terms, simply designate the places over which the "dominion" or property rights are exercised. Where there is no possibility of appropriation or dominion, as on the high seas, we can not speak of dominions. The "dominions" extend exactly to the point which the "dominion" reaches; they are simply the actual or physical thing over which the abstract power or authority, the right, as given to the proprietor or the ruler, applies. The interpretation as to the territoriality of the bays as mentioned in the renunciatory clause of the treaty appears stronger when considering that the United States specifically renounced the "liberty," not the "right," to fish or to cure and dry fish. "The United States renounce, forever, any liberty heretofore enjoyed or claimed, to take, cure, or dry fish on, or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America." It is well known that the negotiators of the treaty of 1783 gave a very different meaning to the terms "liberty" and "right," as distinguished from each other. In this connection Mr. Adams's journal may be recited. To this journal the British counter case refers in the following terms: "From an entry in Mr. Adams's journal it appears that he drafted an article by which he distinguished the right to take fish (both on the high seas and on the shores) and the liberty to take and cure fish on the land. But on the following day he presented to the British negotiators a draft in which he distinguishes between the 'right' to take fish on the high seas, and the 'liberty' to take fish on the 'coasts,' and to dry and cure fish on the land \* \* \*. The British commissioner called attention to the distinction thus suggested by Mr. Adams and proposed that the word 'liberty' should be applied to the privileges both on the water and on the land. Mr. Adams thereupon rose up and made a vehement protest, as is recorded in his diary, against the suggestion that the United States enjoyed the fishing on the banks of Newfoundland by any other title than that of right." \* \* \*

The application of the word "liberty" to the coast fishery was left as Mr. Adams proposed. "The incident, proceeds the British case,

is of importance, since it shows that the difference between the two phrases was intentional." (British counter case, p. 17). And the British argument emphasizes again the difference. "More cogent still is the distinction between the words 'right' and 'liberty.' The word 'right' is applied to the sea fisheries, and the word 'liberty' to the shore fisheries. The history of the negotiations shows that this distinction was advisedly adopted." If then a liberty is a grant and not the recognition of a right; if, as the British case, counter case, and argument recognize, the United States had the right to fish in the open sea in contradistinction with the liberty to fish near the shores or portions of the shores, and if what has been renounced in the words of the treaty is the "liberty" to fish on, or within 3 miles of the bays, creeks, and harbors of His Britannic Majesty's dominions, it clearly follows that such liberty and the corresponding renunciation refers only to such portions of the bays which were under the sovereignty of Great Britain and not to such other portions, if any, as form part of the high seas.

And thus it appears that far from being immaterial the territoriality of bays is of the utmost importance. The treaty not containing any rule or indication upon the subject, the tribunal can not help a decision as to this point, which involves the second branch of the British contention that all so-called bays are not only geographical but wholly territorial as well, and subject to the jurisdiction of Great Britain. The situation was very accurately described on almost the same lines as above stated by the British Memorandum sent in 1870 by the Earl of Kimberley to Gov. Sir. John Young: "The right of Great Britain to exclude American fishermen from waters within 3 miles of the coasts is unambiguous, and, it is believed, uncontested. But there appears to be some doubt what are the waters described as within 3 miles of bays, creeks, or harbors. When a bay is less than 6 miles broad its waters are within the 3-mile limit, and therefore clearly within the meaning of the treaty; but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions. This is a question which has to be considered in each particular case with regard to international law and usage. When such a bay is not a bay of Her Majesty's dominions, the American fisherman shall be entitled to fish in it, except within 3 marine miles of the 'coast'; when it is a bay of Her Majesty's dominions they will not be entitled to fish within 3 miles of it—that is to say (it is presumed), within 3 miles of a line drawn from headland to headland." (American Case Appendix, p. 629.)

Now, it must be stated in the first place that there does not seem to exist any general rule of international law which may be considered final, even in what refers to the marginal belt of territorial waters. The old rule of the cannon shot, crystallized into the present 3 marine miles measured from low-water mark, may be modified at a later period, inasmuch as certain nations claim a wider jurisdiction and an extension has already been recommended by the Institute of International Law. There is an obvious reason for that. The marginal strip of territorial waters based originally on the cannon shot was founded on the necessity of the riparian State to protect itself from outward attack, by providing something in the nature of an insulating zone, which very reasonably should be extended with the accrued possibility of offense due to the wider range of modern ordnance. In



what refers to bays it has been proposed as a general rule (subject to certain important exceptions) that the marginal belt of territorial waters should follow the sinuosities of the coast more or less in the manner held by the United States in the present contention, so that the marginal belt being of 3 miles, as in the treaty under consideration, only such bays should be held as territorial as have an entrance not wider than 6 miles. (See Sir Thomas Barclay's report to Institute of International Law, 1894, p. 129, in which he also strongly recommends these limits.) This is the doctrine which Westlake, the eminent English writer on international law, has summed up in very few words: "As to bays," he says, "if the entrance to one of them is not more than twice the width of the littoral sea enjoyed by the country in question—that is, not more than 6 sea miles in the ordinary case, 8 in that of Norway, etc.—there is no access from the open sea to the bay except through the territorial water of that country, and the inner part of the bay will belong to that country no matter how widely it may expand. The line drawn from shore to shore at the part where, in approaching from the open sea, the width first contracts to that mentioned, will take the place of the line of low water, and the littoral sea belonging to the State will be measured outward from that line to the distance of 3 miles or more, proper to the State." (Westlake, vol. 1, p. 187.) But the learned author takes care to add: "But although this is the general rule it often meets with an exception in the case of bays which penetrate deep into the land and are called gulfs. Many of these are recognized by immemorial usage as territorial sea of the States into which they penetrate, notwithstanding that their entrance is wider than the general rule for bays would give as a limit for such appropriation." And he proceeds to quote as examples of this kind the Bay of Conception in Newfoundland, which he considers as wholly British, Chesapeake and Delaware Bays, which belong to the United States, and others. (Ibid., p. 188.) The Institute of International Law, in its annual meeting of 1894, recommended a marginal belt of 6 miles for the general line of the coast, and as a consequence established that for bays the line should be drawn up across at the nearest portion of the entrance toward the sea where the distance between the two sides do not exceed 12 miles. But the learned association very wisely added a proviso to the effect, "that bays should be so considered and measured unless a continuous and established usage has sanctioned a greater breadth." Many great authorities are agreed as to that. Counsel for the United States proclaimed the right to the exclusive jurisdiction of certain bays, no matter what the width of their entrance should be, when the littoral nation has asserted its right to take it into their jurisdiction upon reasons which go always back to the doctrine of protection. Lord Blackburn, one of the most eminent of English judges, in delivering the opinion of the Privy Council about Conception Bay in Newfoundland, adhered to the same doctrine when he asserted the territoriality of that branch of the sea, giving as a reason for such finding "that the British Government for a long period had exercised dominion over this bay and its claim had been acquiesced in by other nations, so as to show that the bay had been for a long time occupied exclusively by Great Britain, a circumstance which in the tribunals of any country would be very important." "And, moreover," he added,

"the British Legislature has, by acts of Parliament, declared it to be part of the British territory and part of the country made subject to the legislation of Newfoundland." (Direct United States Cable Co. v. The Anglo-American Telegraph Co., Law Reports, 2 Appeal Cases, 374.)

So it may be safely asserted that a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay in North America, and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances such as geographical configuration, immemorial usage, and above all, the requirements of self-defense, justify such a pretension. The right of Great Britain over the bays of Conception, Chaleur, and Miramichi are of this description. In what refers to the other bays, as might be termed the common, ordinary bays, indenting the coasts, over which no special claim or assertion of sovereignty has been made, there does not seem to be any other general principle to be applied than the one resulting from the custom and usage of each individual nation as shown by their treaties and their general and time-honored practice.

The well-known words of Bynkershoek might be very appropriately recalled in this connection when so many and divergent opinions and authorities have been recited: "The common law of nations," he says, "can only be learned from reason and custom. I do not deny that authority may add weight to reason, but I prefer to seek it in a constant custom of concluding treaties in one sense or another and in examples that have occurred in one country or another." (*Quæstiones Jure Publici*, vol. 1, cap. 3.)

It is to be borne in mind in this respect that the tribunal has been called upon to decide as the subject matter of this controversy the construction to be given to the fishery treaty of 1818 between Great Britain and the United States. And so it is that from the usage and the practice of Great Britain in this and other like fisheries and from treaties entered into by them with other nations as to fisheries, may be evolved the right interpretation to be given to the particular convention which has been submitted. In this connection the following treaties may be recited:

Treaty between Great Britain and France. 2d August, 1839. It reads as follows:

ARTICLE IX. The subjects of Her Britannic Majesty shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the British Islands.

It is agreed that the distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays the mouths of which do not exceed 10 miles in width be measured from a straight line drawn from headland to headland.

ART. X. It is agreed and understood that the miles mentioned in the present convention are geographical miles, whereof 60 make a degree of latitude. (*Hertslett's Treaties and Conventions*, vol. V, p. 89.)

Regulations between Great Britain and France. 24th May, 1843.

ARTICLE II. The limits within which the general right of fishery is exclusively reserved to the subjects of the two kingdoms, respectively, are fixed (with the exception of those in Granville Bay) at 3 miles distance from low-water mark.

With respect to bays the mouths of which do not exceed 10 miles in width, the 3-mile distance is measured from a straight line drawn from headland to headland.

ART. III. The miles mentioned in the present regulations are geographical miles, of which 60 make a degree of latitude. (Hertslett, vol. VI, p. 416.)

Treaty between Great Britain and France. November 11, 1867.

ARTICLE I. British fishermen shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the British Islands.

The distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.

The miles mentioned in the present convention are geographical miles, whereof 60 make a degree of latitude. (Hertslett's Treaties, vol. XII, p. 1126, British Case App., p. 38.)

Great Britain and North German Confederation. British notice to fishermen by the board of trade. Board of trade, November, 1868.

Her Majesty's Government and the North German Confederation having come to an agreement respecting the regulations to be observed by British fishermen fishing off the coasts of the North German Confederation, the following notice is issued for the guidance and warning of British fishermen:

1. The exclusive fishery limits of the German Empire are designated by the Imperial Government as follows: That tract of the sea which extends to a distance of 3 sea miles from the extremest limits which the ebb leaves dry of the German North Sea coast of the German Islands or flats lying before it, as well as those bays and incurvations of the coast which are 10 sea miles or less in breadth reckoned from the extremest points of the land and the flats, must be considered as under the territorial sovereignty of North Germany. (Hertslett's Treaties, vol. XIV, p. 1055.)

Great Britain and German Empire. British board of trade, December, 1874.

(Same recital referring to an arrangement entered into between Her Britannic Majesty and the German Government.)

Then the same articles follow with the alteration of the words "German Empire" for "North Germany." (Hertslett's, vol. XIV, p. 1058.)

Treaty between Great Britain, Belgium, Denmark, France, Germany, and the Netherlands for regulating the police of the North Sea fisheries, May 6, 1882.

II. Les pêcheurs nationaux jouiront du droit exclusif de pêche dans le rayon de 3 milles, à partir de la laisse de basse mer, le long de toute l'étendue des côtes de leurs pays respectifs, ainsi que des îles et des bancs qui en dépendent.

Pour les baies le rayon de 3 milles sera mesuré à partir d'une ligne droite, tirée, en travers de la baie, dans la partie la plus rapprochée de l'entrée, au premier point où l'ouverture n'excédera pas 10 milles. (Hertslett, vol. XV, p. 794.)

British order in council, October 23, 1877.

Prescribes the obligation of not concealing or effacing numbers or marks on boats employed in fishing or dredging for purposes of sale on the coasts of England, Wales, Scotland, and the islands of Guernsey, Jersey, Alderney, Sark, and Man, and not going outside—

(a) The distance of 3 miles from low-water mark along the whole extent of the said coasts.

(b) In cases of bays less than 10 miles wide the line joining the headlands of said bays. (Hertslett's, vol. XIV, p. 1032.)

To this list may be added the unratified treaty of 1888 between Great Britain and the United States which is so familiar to the tribunal. Such unratified treaty contains an authoritative interpretation of the convention of October 20, 1818, sub-judice: "The 3 marine miles mentioned in Article I of the convention of October 20, 1818, shall be measured seaward from low-water mark; but at every bay, creek, or harbor not otherwise specifically provided for in this treaty such 3 marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor in the part nearest the entrance at the first point where the width does not exceed 10 marine miles," which is recognizing the exceptional bays as aforesaid and laying the rule for the general and common bays.

It has been suggested that the treaty of 1818 ought not to be studied as hereabove in the light of any treaties of a later date, but rather be referred to such British international conventions as preceded it and clearly illustrate, according to this view, what were, at the time, the principles maintained by Great Britain as to their sovereignty over the sea and over the coast and the adjacent territorial waters. In this connection the treaties of 1686 and 1713 with France and of 1763 with France and Spain have been recited and offered as examples also of exclusion of nations by agreement from fishery rights on the high seas. I can not partake of such a view. The treaties of 1686, 1713, and 1763 can hardly be understood with respect to this, otherwise than as examples of the wild, obsolete claims over the common ocean which all nations have of old abandoned with the progress of an enlightened civilization. And if certain nations accepted long ago to be excluded by convention from fishing on what is to-day considered a common sea, it is precisely because it was then understood that such tracts of water, now free and open to all, were the exclusive property of a particular power, who, being the owners, admitted or excluded others from their use. The treaty of 1818 is in the meantime one of the few which mark an era in the diplomacy of the world. As a matter of fact it is the very first which commuted the rule of the cannon shot into the 3 marine miles of coastal jurisdiction. And it really would appear unjustified to explain such historic document by referring it to international agreements of 100 and 200 years before, when the doctrine of Selden's *Mare Clausum* was at its height and when the coastal waters were fixed at such distances as 60 miles, or 100 miles, or two days' journey from the shore, and the like. It seems very appropriate, on the contrary, to explain the meaning of the treaty of 1818 by comparing it

with those which immediately followed and established the same limit of coastal jurisdiction. As a general rule a treaty of a former date may be very safely construed by referring it to the provisions of like treaties made by the same nation on the same matter at a later time. Much more so when, as occurs in the present case, the later conventions, with no exception, starting from the same premise of the 3 miles coastal jurisdiction, arrive always to an uniform policy and line of action in what refers to bays. As a matter of fact all authorities approach and connect the modern fishery treaties of Great Britain and refer them to the treaty of 1818. The second edition of Kluber, for instance, quotes in the same sentence the treaties of October 20, 1818, and August 2, 1839, as fixing a distance of 3 miles from low-water mark for coastal jurisdiction. And Fiori, the well-known Italian jurist, referring to the same marine miles of coastal jurisdiction, says: "This rule, recognized as early as the treaty of 1818 between the United States and Great Britain, and that between Great Britain and France in 1839, has again been admitted in the treaty of 1867." (*Nouveau Droit International Public*, Paris, 1885, sec. 803.)

This is only a recognition of the permanency and the continuity of States. The treaty of 1818 is not a separate fact unconnected with the later policy of Great Britain. Its negotiators were not parties to such international convention, and their powers disappeared as soon as they signed the document on behalf of their countries. The parties to the treaty of 1818 were the United States and Great Britain, and what Great Britain meant in 1818 about bays and fisheries, when they for the first time fixed a marginal jurisdiction of 3 miles, can be very well explained by what Great Britain, the same permanent political entity, understood in 1839, 1843, 1867, 1874, 1878, and 1882, when fixing the very same zone of territorial waters. That a bay in Europe should be considered as different from a bay in America and subject to other principles of international law can not be admitted in the face of it. What the practice of Great Britain has been outside the treaties is very well known to the tribunal, and the examples might be multiplied of the cases in which that nation has ordered its subordinates to apply to the bays on these fisheries the 10-mile entrance rule or the 6 miles according to the occasion. It has been repeatedly said that such have been only relaxations of the strict right, assented to by Great Britain in order to avoid friction on certain special occasions. That may be. But it may also be asserted that such relaxations have been very many and that the constant, uniform, never contradicted, practice of concluding fishery treaties from 1839 down to the present day, in all of which the 10 miles entrance bays are recognized, is the clear sign of a policy. This policy has but very lately found a most public, solemn and unequivocal expression. "On a question asked in Parliament on the 21st of February, 1907, says Pitt Cobbett, a distinguished English writer, with respect to the Moray Firth case, it was stated that, according to the view of the foreign office, the admiralty, the colonial office, the board of trade, and the board of agriculture and fisheries, the term "territorial waters" was deemed to include waters extending from the coast line of any part of the territory of a State to 3 miles from the low-water mark of such coast line, and the waters of all bays, the

entrance to which is not more than 6 miles, and of which the entire land boundary forms part of the territory of the same State. (Pitt Cobbett Cases and Opinions on International Law, vol. 1, p. 143.)

Is there a contradiction between these 6 miles and the 10 miles of the treaties just referred to? Not at all. The 6 miles are the consequence of the 3 miles marginal belt of territorial waters in their coincidence from both sides at the inlets of the coast and the 10 miles far from being an arbitrary measure are simply an extension, a margin given for convenience to the strict 6 miles with fishery purposes. Where the miles represent 60 to a degree in latitude the 10 miles are besides the sixth part of the same degree. The American Government, in reply to the observations made to Secretary Bayard's memorandum of 1888, said very precisely: "The width of 10 miles was proposed not only because it had been followed in conventions between many other powers, but also because it was deemed reasonable and just in the present case; this Government, recognizing the fact that while it might have claimed a width of six miles as a basis of settlement, fishing within bays and harbors only slightly wider would be confined to areas so narrow as to render it practically valueless and almost necessarily expose the fishermen to constant danger of carrying their operations into forbidden waters." (British Case Appendix, p. 416.) And Prof. John Bassett Moore, a recognized authority on international law, in a communication addressed to the Institute of International Law, said very forcibly: "Since you observe that there does not appear to be any convincing reason to prefer the 10-mile line in such a case to that of double 3 miles, I may say that there have been supposed to exist reasons both of convenience and of safety. The 10-mile line has been adopted in the cases referred to as a practical rule. The transgression of an encroachment upon territorial waters by fishing vessels is generally a grave offense, involving in many instances the forfeiture of the offending vessel, and it is obvious that the narrower the space in which it is permissible to fish the more likely the offense is to be committed. In order, therefore, that fishing may be practicable and safe and not constantly attended with the risk of violating territorial waters, it has been thought to be expedient not to allow it where the extent of free waters between the 3 miles drawn on each side of the bay is less than 4 miles. This is the reason of the 10-mile line. Its intention is not to hamper or restrict the right to fish, but to render its exercise practicable and safe. When fishermen fall in with a shoal of fish, the impulse to follow it is so strong as to make the possibilities of transgression very serious within narrow limits of free waters. Hence it has been deemed wiser to exclude them from space less than 4 miles each way from the forbidden lines. In spaces less than this operations are not only hazardous, but so circumscribed as to render them of little practical value." (Annuaire de l'Institut de Droit International, 1894, p. 146.)

So the use of the 10-mile bays so constantly put into practice by Great Britain in its fishery treaties has its root and connection with the marginal belt of 3 miles for the territorial waters. So much so that the tribunal having decided not to adjudicate in this case the 10-miles entrance to the bays of the treaty of 1818, this will be the only one exception in which the 10 miles of the bays do not follow as

a consequence the strip of 3 miles of territorial waters, the historical bays and estuaries always excepted.

And it is for that reason that an usage so firmly and for so long a time established ought, in my opinion, be applied to the construction of the treaty under consideration, much more so, when custom, one of the recognized sources of law, international as well as municipal, is supported in this case by reason and by the acquiescence and the practice of many nations.

The tribunal has decided that "in case of bays the 3 miles (of the treaty) are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration characteristic of a bay. At all other places the 3 miles are to be measured following the sinuosities of the coast." But no rule is laid out or general principle evolved for the parties to know what the nature of such configuration is, or by what methods the points should be ascertained from which the bay should lose the characteristics of such. There lies the whole contention and the whole difficulty, not satisfactorily solved, to my mind, by simply recommending, without the scope of the award and as a system of procedure for resolving future contestations under Article IV of the treaty of arbitration, a series of lines, which practical as they may be supposed to be, can not be adopted by the parties without concluding a new treaty.

These are the reasons for my dissent, which I much regret, on Question V.

Done at The Hague, September 7, 1910.

LUIS M. DRAGO.

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REPORT OF THE AGENT OF THE UNITED STATES.

*Mr. Anderson to the Secretary of State.*

WASHINGTON, *November 14, 1910.*

The undersigned, agent of the United States in the North Atlantic coast fisheries arbitration recently held at The Hague, has the honor to submit his report as follows:

The general arbitration treaty of April 4, 1908, between the United States and Great Britain requires that in each case submitted to arbitration thereunder the parties shall conclude a special agreement defining clearly the matter in dispute, the scope and power of the arbitrators, and the periods to be fixed for the formation of the arbitration tribunal and the several stages of procedure.

In this case, such a special agreement was signed on the 27th day of January, 1909, confirmed by the Senate on the 18th of February following, and formally ratified by both Governments on the 4th of March, 1909. In compliance with the requirements of the general treaty of arbitration, the special agreement sets out, first, a series of seven questions to be answered by the tribunal relating to the interpretation of the true intent and meaning of Article I of the treaty of October 20, 1818, between the United States and Great Britain; and it provides that the tribunal of arbitration shall be chosen in accordance with the provisions of Article XLV of The Hague convention of October 18, 1907, for the pacific settlement of international disputes; and provides further that when not inconsistent with any particular

provision of the special agreement, the provisions of that convention shall govern the proceedings in the case. The special agreement also contains a series of provisions covering the presentation of the case and the procedure before the tribunal.

The article of The Hague convention, in accordance with which the members of the tribunal were required to be chosen, provides that the tribunal shall be composed of five members selected from the list of the members of the permanent court at The Hague, and that their selection shall be made by direct agreement of the parties if possible, and in case of failure to agree other methods of selection are provided for. In this case a direct agreement was reached, and the members of the tribunal selected were as follows:

Dr. H. Lammasch, doctor of law, professor of the University of Vienna, aulic councillor, member of the upper house of the Austrian Parliament.

His Excellency Jonkheer A. F. de Savornin Lohman, doctor of law, minister of state, former minister of the interior, member of the second chamber of the Netherlands.

The Hon. George Gray, judge of the United States circuit court of appeals.

The Right Hon. Sir Charles Fitzpatrick, doctor of law, chief justice of Canada.

Mr. Luis Maria Drago, doctor of law, former minister of foreign affairs of the Argentine Republic.

The names of the agents and of the counsel appearing before the tribunal on each side are set forth in the protocol of its first meeting, a copy of which is hereto annexed.

Pursuant to the provisions of the special agreement, the printed case of each Government, together with copies of the evidence upon which it relied, was served upon the other within the period of seven months after the exchange of ratifications confirming the agreement, such service being made on the 4th day of October, 1909, the last day of such period; and on each side a counter-case in answer to the case was served upon the other side on the 21st day of February last, to which date the period for the service of such counter-case was extended by mutual consent. So, also, a printed argument on each side was delivered to the other on the 16th day of May last, in accordance with an arrangement agreed upon for the mutual convenience of both parties, which slightly modified the terms of the special agreement in that respect. Copies of these cases, counter-cases, and arguments were also delivered to the members of the tribunal in accordance with the requirements of the special agreement.

The determination of the true intent and meaning of Article I of the treaty of 1818 with reference to the questions submitted for the decision of the tribunal required an examination not only of the language of the treaty but also of the events leading up to its negotiation and signature and of the actions taken by either Government since the date of the treaty having a bearing upon its interpretation. The evidence presented in support of the contentions of the United States upon these questions, therefore, covered the entire period from the date of the special agreement submitting these questions to arbitration back to the treaty of peace of 1783, at the close of the Revolution, and some features of the controversy necessitated the introduction of a considerable amount of evidence even prior to that date.

The case of the United States, which was prepared by the agent, presented the contentions of the United States in the form of a brief on the facts, reviewing chronologically the course of events leading up to the treaty of 1818 and the subsequent governmental actions



on each side having a bearing upon its interpretation, and was based upon documentary evidence presented in the appendix to the case of the United States, which comprised upwards of 1,300 printed pages, and included all the pertinent and material diplomatic correspondence between the United States and Great Britain and the correspondence between Great Britain and her colonies and her diplomatic representatives, in so far as it was available to the United States; also all legislative and executive acts on the part of the United States and of Great Britain and the British colonies bearing upon the questions submitted, together with the available records of the negotiations leading up to the treaties of 1783, 1814, 1818, 1854, 1871, and the unratified treaty of 1888, and the *modus vivendi* entered into in 1885, in 1888, in 1906, in 1907, and in 1908 between Great Britain and the United States.

The counter-case of the United States, which also was prepared by the agent, presented in the form of a brief on the facts the evidence on the part of the United States in support of its contentions in reply to the evidence presented in the British case, dealing separately with each of the seven questions submitted for decision, the documentary evidence relied upon being printed in an accompanying appendix covering about 700 printed pages.

The documentary evidence presented in the British case and counter-case was similar in character to that presented on the part of the United States, and to a considerable extent identical with it, and about equally voluminous. The method of dealing with such evidence, however, in the British case and counter-case was somewhat different from that followed in the case and counter-case of the United States, a large part of the British pleadings being devoted to argument on the law and citations of authorities and precedents, in distinction from the mere argumentative presentation of the facts and evidence relied upon, which was the course adopted in the case and counter-case of the United States.

The Hon. Robert Lansing acted as solicitor for the agency, and rendered valuable assistance to the agent throughout the period devoted to the preparation of the case and counter-case in connection with the preparation of the appendices of the case and counter-case containing the documentary evidence relied on by the United States. Upon the completion of that work Mr. Lansing was designated as one of the associate counsel for the United States in the arbitration proceedings.

The Hon. James Brown Scott, then Solicitor for the Department of State and one of the associate counsel for the United States in this case, compiled for the use of the agent and counsel a very complete and useful collection of extracts from the writings of all the leading authorities on international law dealing with the doctrine of international servitudes. A similar compilation of extracts from the leading international law publicists dealing with the subject of coastal waters was prepared by Edwin M. Borchardt, Esq., of the Library of Congress, who was attached to the staff of the agency as international law expert. These compilations proved of great service in connection with the preparation both of the printed and of the oral arguments on the part of the United States.

The date originally fixed by the special agreement for the meeting of the tribunal having been found inconvenient on account of the extension of time agreed upon for the service of the counter-cases, it

was subsequently agreed by the two Governments that it should be postponed until the 1st day of June, 1910, and on that date the first meeting of the tribunal was held at The Hague for the oral arguments of counsel.

The protocols of the proceedings of the tribunal are hereto annexed as a part of this report, and from them it will appear that an adjournment was taken by the tribunal from June 1 to June 6, when the oral argument was commenced.

By agreement between the agents and senior counsel on both sides, it was arranged that Great Britain should have the opening argument and the United States the closing argument, and that counsel on each side should speak alternately. Accordingly, Sir Robert Finlay opened for Great Britain, and the Hon. George Turner opened for the United States, followed by Sir James Winter for Great Britain, Charles B. Warren, Esq., for the United States, Hon. John S. Ewart for Great Britain, Hon. Samuel J. Elder for the United States, Sir William Robson closing for Great Britain, and the Hon. Elihu Root making the closing argument for the United States.

Forty sessions in all were consumed in the oral argument, which ended on August 12, 1910, four days in each week having been devoted to such sessions, the daily sittings of the tribunal continuing for about four or four and one-half hours, the intervening time being required for the preparation of the arguments and for the other business involved in carrying through proceedings of such an extensive and voluminous character. By agreement of the parties the meetings of the tribunal were open to the public.

On the close of the oral argument the case was taken under consideration by the tribunal, and on Wednesday, September 7, 1910, the award of the tribunal was announced.

Before proceeding to a consideration of the provisions and effect of the award, it is desirable that the situation existing before resort was had to arbitration should be briefly reviewed.

Throughout the entire history of this controversy, which extends back almost to the time when the treaty of 1818 was entered into, there has been a wide divergence of view between the United States and Great Britain as to the meaning and effect of Article I of that treaty. With the exception of the first 20 years after the treaty was entered into there has hardly been a time throughout the entire existence of this treaty when the United States and Great Britain have not had under consideration some question arising out of their different views as to the meaning of its provisions, and these questions have involved not only the extent of the rights and obligations of American fishermen in the Canadian and Newfoundland waters affected by the treaty, but also the extent of the treaty waters themselves.

In all of these discussions the interpretation insisted upon by the colonial authorities has been such as to exclude the American fishermen from the enjoyment of the treaty liberties claimed for them by the United States, or to so limit and restrict such liberties as to render them worthless; and the admitted purpose of the colonial authorities throughout the controversy has been to compel the United States to grant trade concessions as the price of the uninterrupted enjoyment of privileges claimed by the United States as a matter of right under the treaty.

The reciprocal agreements entered into by the two Governments in 1854 and 1871, in which the fishery privileges of the treaty of 1818 were merged and more extensive fishery privileges were secured in exchange for trade concessions, proved unsatisfactory to the United States and were short-lived.

The experience afforded by these treaties and by other unsuccessful attempts to dispose of this controversy by similar means long since demonstrated to the satisfaction of both Governments that a permanent settlement of this dispute by such means was a practical impossibility.

The proposed Blaine-Bond treaty of 1892, adjusting the differences between the United States and Newfoundland, failed of ratification on account of opposition on the part of Canada, and the Hay-Bond treaty, negotiated in 1902, by which an adjustment with Newfoundland was again attempted, also failed of ratification.

During the period between the Blaine-Bond treaty and the rejection of the Hay-Bond treaty Newfoundland refrained from any attempts to enforce any objectionable local regulations against American fishermen exercising their treaty rights in Newfoundland waters. The friendly attitude of the Newfoundland Government during that period was publicly admitted by governmental authorities to be due to the fact that the United States having demonstrated its willingness to adjust the matters in dispute with Newfoundland by entering into the Blaine-Bond treaty, the American fishermen were entitled to the treatment which they would have received under that treaty if its ratification had not been defeated by the opposition of Canada.

In 1905, however, upon the failure of the United States to ratify the Hay-Bond treaty, the Newfoundland Government completely reversed its former attitude toward the American fishing interests and proceeded, as shown by the case of the United States in this arbitration, by legislative and executive action to terminate all commercial privileges which for many years prior to that time had been extended to American fishing vessels both on the treaty coasts and on the other coasts of Newfoundland. This new policy of the Newfoundland Government, as was frankly admitted by leading officials of that Government, was intended to force the Government of the United States to open the American markets to Newfoundland fish and fishery products free of duty in exchange for more extensive fishing and commercial privileges on the Newfoundland coasts.

Such, briefly, was the situation when Mr. Root became Secretary of State in 1905, and, as it soon became evident that the Newfoundland Government in carrying out its new policy would undertake to impose upon American fishermen in the exercise of their treaty liberties certain limitations and restraints which were regarded by the United States as in conflict with such liberties, the Secretary of State at once proceeded to take up with Great Britain the question of defining the rights of American fishermen under the treaty of 1818 and restraining the colonial governments from interfering with such rights.

In the diplomatic correspondence which ensued the views of both Governments on these questions were fully and ably presented. It appeared, however, as stated by the British secretary of state for foreign affairs in his note of August 14, 1906, "that the wide diver-

gence of view between the two Governments, which is disclosed by the correspondence, makes it hopeless to expect an immediate settlement of the various questions at issue." A *modus vivendi* for that year accordingly was entered into, but upon a renewal of the discussion the following year it became evident, on account of the conflict of views between the two Governments, that it would be impossible to find a basis for an agreement for the permanent adjustment of the question in dispute. It was accordingly recognized on both sides that recourse must be had to arbitration, and after the general arbitration treaty of April 4, 1908, was entered into, negotiations were undertaken for the arbitration of the questions at issue in this controversy, with the result that the special agreement of January 27, 1909, was concluded, submitting seven questions to arbitration.

These questions covered all the unsettled matter of difference growing out of the fisheries provisions of the treaty of 1818, many of which had been under discussion almost continuously for more than half a century.

On one of the issues under discussion, which was ultimately presented as the first question submitted for decision, several points of agreement had been reached by the parties in the negotiations which led up to the special agreement under which the arbitration was held. This question related to the enforcement by Great Britain or her colonies of fisheries regulations against American fishermen exercising their treaty rights of fishing in British territorial waters. Great Britain had originally contended that under the language of the treaty, which secured to American fishermen a "liberty in common with British fishermen to take fish," American fishermen were subject, when fishing under the treaty in British waters, to all fishing regulations and restrictions imposed by British law upon British fishermen. In formulating this question for submission to arbitration, however, the United States succeeded in securing from Great Britain a modification of this position, and it was admitted by Great Britain in presenting its contention in this question that no fishing regulations could be enforced against American fishermen in British waters under the treaty unless they were appropriate and necessary for the protection and preservation of the fisheries, and reasonable in themselves, and not so framed as to give the local fishermen an unfair advantage over the American fishermen. To this extent the contentions of the two parties coincided. Great Britain further contended, however, that the United States was not entitled to be consulted with regard to the enforcement of any such regulations, and that Great Britain alone must be the sole judge as to their appropriateness, necessity, reasonableness, and fairness; and this was the issue between the two Governments presented in the first question.

As a result of this arbitration, therefore, British regulations limiting the time, manner, and implements of fishing can no longer be enforced against American fishermen exercising their fishing liberties on the treaty coasts unless such regulations are reasonable, appropriate, necessary, and fair, as defined in question 1. In the award on this question it was further decided that in case the United States raises the question of the reasonableness, etc., of any regulation hereafter adopted, Great Britain can not be the judge of that question, which now must be decided by a special commission of experts constituting an impartial tribunal according to a mode of procedure

established by the award, the enforcement of any such regulations being suspended pending the decision of such special commission. Furthermore, a series of legislative provisions of Newfoundland and Canada which the United States had objected to as unreasonable and under Article II of the special agreement had called to the attention of the tribunal on the ground that they were inconsistent with the true interpretation of the treaty of 1818, were referred, at the request of the United States, in accordance with Article III of the special agreement, to a commission of experts for examination and report as to their reasonableness, appropriateness, necessity, and fairness. This commission has not yet reported on the questions so referred to it.

It is evident, therefore, that as a result of the award no regulations limiting the time, manner, and implements of fishing can hereafter be imposed upon American fishermen exercising their treaty liberties in Newfoundland and Canadian waters if any objection has been raised to them by the United States unless their reasonableness, necessity, and fairness has been approved by an impartial commission or tribunal.

The result thus obtained is one which the United States Government would have been willing to agree to at any time during the history of this controversy. Secretaries of State Marcy, Fish, Evarts, and Root have each in turn specifically stated that the United States was willing that the American fishermen on the treaty coasts should be subjected to just and reasonable regulations, but they all insisted that Great Britain and her colonies could not be permitted to be the sole judge of the justness and reasonableness of such regulations.

The only feature of the contention of the United States on question 1 which was not sustained by the tribunal was the extreme position taken in the argument of counsel that the treaty established an international servitude in favor of the United States, exempting American fishermen absolutely from obedience to British fishing regulations. This contention was based upon a principle of international law, supported by the great majority of international publicists, but which was regarded by the tribunal as antiquated and not suited to modern conditions although the treaty under consideration was equally antiquated, having been entered into in the early part of the last century. Nevertheless, the decision in practical effect secures the same measure of protection against unfair and arbitrary regulation of the fisheries which this contention of the United States was designed to secure, and the strength of the contention of the United States on this point unquestionably had a very effective influence in obtaining for the United States the large measure of advantage which is secured to its fishermen by the award.

An alternative line of argument which was relied on by the United States, and which finally prevailed, was that under the obligations imposed by the treaty and by the interpretation of it adopted by both parties in their subsequent governmental actions and particularly by the limitations accepted under the special agreement submitting the question to arbitration, the exercise of British sovereignty had been limited with respect to the matters under consideration even if British sovereignty itself was not limited; and the award has sustained this contention of the United States.

Although British sovereign rights over the fisheries in British waters are affirmed in the decision, nevertheless the exercise of such rights is effectively limited by the award to the extent above indicated.

On question 2 the tribunal has decided in favor of the contention of the United States that the inhabitants of the United States while exercising their treaty liberties of fishing have a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States, thus overruling the British contention that the liberty of fishing, which the treaty secures "to inhabitants of the United States," gave them only the right to exercise themselves the manual act of taking fish and did not permit them to employ persons who were not inhabitants of the United States to assist them in exercising that right. It is pointed out in the award, however, that the persons so employed derive no benefit or immunity from the treaty in their own right.

The third and fourth questions deal with the contentions always maintained by Great Britain that American fishermen exercising their fishing liberties on the treaty coasts and the special privileges reserved to them on the nontreaty coasts, might be subjected to the same customhouse regulations which were imposed upon vessels enjoying trading privileges on those coasts, and also to the payment of light and harbor dues and other exactions of a similar character, although the local fishermen were exempt from such requirements.

The United States, on the other hand, although admitting that American fishing vessels exercising their treaty liberties or privileges in British waters might properly be called upon to notify the local authorities of their presence there and exhibit their credentials if convenient opportunity was afforded, has always contended that American fishing vessels could not be subjected to the customs regulations imposed upon other vessels, or required to pay light, harbor, or other dues not imposed upon local fishing vessels. The contentions of the United States on these questions have been fully sustained by the award. It holds, under question 3, with reference to the treaty coasts that "the exercise of the fishing liberty by the inhabitants of the United States should not be subjected to the purely commercial formalities of report, entry, and clearance at a customhouse, nor to light, harbor, or other dues not imposed upon Newfoundland fishermen" and that American fishing vessels should not be required even to report their presence on the coast "unless there be reasonably convenient opportunity afforded to report in person or by telegraph, either at a customhouse or to a customs official."

So, also, under question 4, with reference to the exercise of the treaty privilege of entering bays or harbors on the nontreaty coast for the four purposes specified in the treaty, the award decides that "to impose restrictions making the exercise of such privileges conditional upon the payment of light, harbor, or other dues, or entering and reporting at customhouses, or any similar conditions would be inconsistent with the grounds upon which such privileges rest, and therefore is not permissible." It declares, however, in the case of fishermen who remain more than 48 hours in such bays and harbors in the exercise of their treaty privileges, that it would not be unreasonable to require them, "if thought necessary by Great Britain or the Colonial Government, to report either in person or by telegraph at a customhouse or to a customs official if reasonably convenient opportunity therefor is afforded."

Question 5, which was introduced into the arbitration by Great Britain, deals with the historic contention of the British Government that the renunciation by the United States in the treaty of 1818 of the liberty of fishing on or within 3 miles of any bays on the nontreaty coasts must be interpreted as excluding American fishermen from fishing in any of the indentations of the coast which might properly be defined as bays, regardless of their size. The position of the United States on this question has always been that inasmuch as the language of the treaty is "bays of His Britannic Majesty's dominions" the bays referred to were only such bays as were included within the usual 3-mile limit of territorial jurisdiction bordering the coast, and that the right to fish in the larger bays was, therefore, not renounced by the treaty.

As appears from the opinion, the tribunal determined that the renunciation of the right to fish "on or within 3 marine miles of any bays," etc., must be interpreted as applying only to geographical bays, the tribunal declaring that it is "unable to understand the term bays in the renunciatory clause in other than its geographical sense." The award on this question is as follows:

In case of bays the 3 marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the 3 marine miles are to be measured following the sinuosities of the coast.

Great Britain's contention did not rest upon the assertion of territorial jurisdiction over such bays, and the award does not go to the extent of holding that Great Britain has territorial jurisdiction over the large bays, although the United States has renounced for its fishermen the right to fish therein.

The award, therefore, still leaves American fishermen in such bays subject to American and not British law, and confers upon Great Britain or the British colonies no right to seize or interfere with American fishing vessels beyond the 3-mile limit from shore in such bays, such vessels being in a similar situation to British vessels violating their obligation under the fur-seal award, which excludes them from fishing in certain portions of the high seas.

The award of the tribunal on this question does not define what is a bay, holding merely that the 3-mile limit of exclusion must be measured from a "line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay." This answer leaves open the question of where such line is to be drawn in each particular case and also the question of whether any particular body of water has the "configuration and characteristics of a bay." The tribunal recognized this difficulty, and in order to "render the decision more practicable and to remove the danger of future differences" the award contains a further provision recommending the adoption of the rule approved and accepted by Great Britain in many treaties that "only bays of 10-mile width should be considered as those where the fishing is reserved to nationals," extending this rule, however, to include certain larger bays as exceptions to it. These recommendations are substantially in accordance with the agreement adopted by the unratified Bayard-Chamberlain treaty of 1888, with certain considerable modifications in favor of the United States.

The Bay of Fundy, which is the only large bay where the American fishermen now fish or have fished to any extent within recent years, is expressly excepted from the application of the award on this question.

The strength of the position of the United States on this question is shown by the very able argument presented in the dissenting opinion by Dr. Drago and by the fact that the British contention was not fully sustained, and that this was the only question of the seven submitted upon which the decision of the tribunal was not unanimous.

The sixth question deals with the contention of Great Britain, advanced for the first time in recent years, that the treaty did not secure to American fishermen the liberty of fishing in the bays on the southern and western coasts of Newfoundland and on the Magdalen Islands. This contention rested on the argument that the liberties secured by the treaty to fish on the southern and western coasts of Newfoundland and on the shores of the Magdalen Islands did not extend to the bays on those coasts, inasmuch as the treaty does not mention bays in connection with those coasts, and does expressly mention them in connection with the coast of Labrador, which forms part of the treaty coast. The United States, on the other hand, contended that the liberty secured by the treaty to fish on those coasts necessarily extended to the bays of such coasts, and that this interpretation must be adopted, not only because it was supported by the language of the treaty read in the light of the evident intention of the parties in entering into it, but also because usage and custom and the action of both Governments subsequent to the treaty had combined to give the treaty that interpretation in actual practice for the entire period since the treaty was entered into.

The award of the tribunal sustained fully and without qualification the contention of the United States on this question.

In many respects this was the most important question submitted for decision. The bait fish, which are procured in immense quantities in the bays of Newfoundland and of the Magdalen Islands, are a very important factor in the successful prosecution of the exceedingly valuable cod fishery on the Grand Bank and on the other banks in the North Atlantic; and this situation discloses the real importance of this question. If the contention of the Newfoundland Government had been sustained, and American fishermen deprived of the opportunity of taking bait for themselves in these bays, it was the admitted intention of the Newfoundland Government to threaten the entire cod-fishing industry on the banks by prohibiting the Newfoundland fishermen from selling bait to the American fishermen, in order to compel the United States to yield to Newfoundland's demand for the free entry of Newfoundland fish and fish products and for other commercial concessions in exchange for the privilege of procuring bait. Furthermore, the very important and profitable winter herring fishing was also dependent upon the decision of this question, inasmuch as it is carried on by the American fishermen wholly in the bays on the west coast of Newfoundland.

The decision of this question in favor of the United States also disposes of a claim for a very large amount of damages which the Newfoundland Government was preparing to present against the United States for the value of all the fish taken by American vessels in



these bays during the 90 years since the treaty was entered into, on the ground that American fishermen under the treaty had no right to fish in such bays.

The seventh question called upon the tribunal to determine whether or not the inhabitants of the United States, whose vessels resorted to the treaty coasts for the purpose of exercising their treaty liberties of fishing, were entitled to use the same vessels, when duly authorized by the United States, in the exercise of such commercial privileges on the treaty coasts as were accorded by agreement or otherwise to American trading vessels generally. The position of the United States on this question was that fishing vessels exercising commercial privileges necessarily subjected themselves to all the requirements and conditions imposed upon commercial vessels generally, but that the use of a vessel by inhabitants of the United States in the exercise of their fishing rights did not disqualify such vessel from being used for commercial purposes after it had completed its fishing operations, and, conversely, that a commercial vessel might be used for fishing purposes as soon as its use for commercial purposes ceased.

The award of the tribunal fully sustains the contentions of the United States on this question, holding that—

The inhabitants of the United States are so entitled, in so far as concerns this treaty, there being nothing in its provisions to disentitle them, provided the treaty liberty of fishing and the commercial privileges are not exercised concurrently.

The provisions of Articles II and III of the special agreement and the proceedings already taken and to be taken pursuant thereto form an important part of the award on question 1, and require brief examination.

Pursuant to the provisions of Article II of the special agreement, the United States called the attention of the tribunal upon the oral argument to certain acts of Newfoundland and Canada which had already been specified by the United States to Great Britain within the period required for such specification, and called upon the tribunal "to express in its award its opinion upon such acts, and to point out in what respects, if any, they were inconsistent with the principles laid down in the award." The objection of the United States to such acts was based on the grounds that in their application to American fishermen on the treaty coasts they were not appropriate, and necessary, and reasonable, and fair as defined in question 1.

The United States further requested that, in case the character of the award should require the determination of the reasonableness, etc., of the acts specified, the tribunal should refer to a commission of expert specialists for action thereon, in accordance with Article III of the special agreement, such of the acts specified as required an examination of the practical effect thereof in relation to the conditions surrounding the exercise of the liberty of fishing, or required expert information about the fisheries themselves. In reply to this application on the part of the United States, Great Britain filed an answer submitting that the acts referred to were reasonable in themselves and that the United States had not sufficiently stated the grounds of objection to the various acts referred to, and had laid no ground for the request that certain of these acts should be referred to a commission of expert specialists. The proceedings thus taken were set forth in a printed statement on behalf of the United States,

and a printed answer on behalf of Great Britain, both of which were filed with the tribunal, and copies of which are included in the appendix to the printed record of the proceedings of the tribunal, which forms part of this report. The issues thus raised were discussed in written communications exchanged between the agents of both parties and the tribunal, copies of which also are included in the appendix to the printed record of the proceedings of the tribunal.

The position taken by the United States was sustained by the award of the tribunal under question 1, whereby it was held that—

The decision of the reasonableness of these regulations requires expert information about the fisheries themselves, and an examination of the practical effect of a great number of these provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States as contemplated in Article III.

The tribunal accordingly referred the regulations objected to by the United States to a commission of experts, as provided for in Article III of the special agreement, for action in accordance therewith, and called upon the parties to designate, within one month from the date of the award, their respective representatives on such commission. Dr. P. P. C. Hoek, scientific adviser for the fisheries of the Netherlands, was designated in the award as the nonnational member of this commission. Dr. Hugh M. Smith, Deputy Fish Commissioner of the United States, was designated within the period fixed by the award as the commissioner on the part of the United States. Hon. Donald Morison, minister of justice of Newfoundland, has been designated as the commissioner on the part of Great Britain.

In the course of the oral argument before the tribunal, the position was taken by counsel on both sides that in determining the rights of the parties under question 1, the tribunal should take into consideration the provisions of Article IV of the special agreement submitting this case to arbitration. By this article it was agreed that unless the parties should adopt some alternative method of procedure, any differences arising in the future relating to the interpretation of the treaty of 1818, or to the effect or application of the award of the tribunal, should be referred informally to the Permanent Court at The Hague "for decision by the summary procedure provided for in chapter 4 of The Hague convention of the 18th of October, 1907." In view, however, of the fact that this special agreement was entered into under the general treaty of arbitration concluded between the United States and Great Britain on the 4th day of April, 1908, the duration of which, by its own terms, was limited to a period of five years, it seemed desirable to the agent and counsel on the part of the United States that the view which was entertained by both court and counsel and formed part of the basis upon which the case was considered should be declared beyond the possibility of future question to the effect that the provisions of Article IV of the special agreement continued with the fisheries provisions of the treaty of 1818, and did not terminate with the general arbitration treaty of 1908. This subject was, therefore, brought up for consideration at the session of the tribunal on Friday, August 5, 1910, and it was then stated by counsel on behalf of the United States and of Great Britain, respectively, that the provisions of Article IV were regarded as constituting, in effect, a new treaty which would survive the termination of the general treaty of arbitration, and that Article IV of the special agree-

ment was not limited by any term, but related to the future generally, and therefore was not a determinable article so far as affects its subject matter. The same view was expressed on the part of the tribunal; and in the award on question 1, the tribunal held that—

Article IV of the agreement is, as stated by counsel of the respective parties at the argument, permanent in its effect and not determinable by the expiration of the general arbitration treaty of 1908 between Great Britain and the United States.

The foregoing examination of the award and of Articles II, III, and IV of the special agreement makes it evident that the wise and farsighted provisions of that agreement entered very largely into the satisfactory outcome of this arbitration, and both countries are to be congratulated that a permanent and expeditious method is now provided for settling future differences, if any should arise, in regard to the fisheries under the treaty of 1818.

The duplicate original of the award, signed by the members of the tribunal, and also of the dissenting opinion of Dr. Drago on question 5, which were delivered to the agent of the United States when the award was announced, are transmitted herewith, and a copy of the award and of Dr. Drago's opinion are hereto annexed as part of this report.

The very important services rendered by counsel in the presentation of the oral arguments on behalf of the United States and otherwise in the course of the proceedings are too well understood and appreciated to require special mention in this report further than to say that Mr. Turner's opening of the case was a very strong and able argument and exhibited the results of great industry and research, and the same is true of the arguments of Mr. Elder and Mr. Warren on the particular questions dealt with by them, and that Mr. Root's argument in closing was a masterly presentation of the entire case of the United States. It is appropriate that the agent should express his obligation to the counsel of the United States for the very cordial and loyal support which they have given him throughout the entire course of these proceedings; also that mention should be made of the fact that the distinguished services rendered by Senator Root in this case as senior counsel have been rendered by him without compensation. Such services, in addition to the responsibilities attendant upon the duties of chief counsel in a case of such magnitude and importance, involved also the necessity of spending, at the expense of his summer vacation, more than three months away from home and, from June 1 to August 12, in almost daily attendance at the sessions of the tribunal, and the preparation and delivery of the closing argument, which consumed six sessions of the tribunal, summing up the entire case for the United States. The acceptance of the position of chief counsel was urged upon Mr. Root by the President and the Secretary of State and the agent and the other counsel for the United States in this case, and he gave his services freely to the Government without the expectation of receiving compensation, and to him, as chief counsel, the United States is indebted in large measure for the successful outcome of the arbitration.

It is also appropriate that acknowledgment should be made of the obligation of the agent and counsel to the Department of State for the hearty and effective cooperation and assistance rendered to them by the department throughout the entire period covered by the arbitration proceedings. Valuable assistance was also rendered in these

proceedings by Dr. Hugh M. Smith, Deputy Fish Commissioner of the United States, who acted as expert adviser on practical and technical questions relating to the regulations of the fisheries, and has now been designated as the member on the part of the United States of the special commission of experts; and by Messrs. Alvin B. Alexander, Carl C. Young, and Arthur L. Millet, attached to the agency as fisheries experts; and by Mr. Otis T. Cartwright, secretary of the agency and special disbursing officer, Department of State; Mr. Edwin M. Borchardt, expert on international law; and Messrs. Wallace J. Young, James B. Davies, Charles Jenkinson, and John D. Johnson, who were attached to the agency as members of the clerical staff.

I am, sir, very respectfully, your obedient servant,

CHANDLER P. ANDERSON,  
*Agent of the United States in the North  
 Atlantic Coast Fisheries Arbitration.*

**DECLARATIONS BY THE UNITED STATES AND GREAT BRITAIN  
 EXEMPTING COMMERCIAL TRAVELERS' SAMPLES FROM CUS-  
 TOMS INSPECTION.**

*Signed at Washington, December 3 and 8, 1910.*

*Effective, January 1, 1911.*

**DECLARATION.**

In order to facilitate the clearance through the customs department of the United Kingdom of Great Britain and Ireland of samples brought into the territory of that country by commercial travelers of the United States of America, such samples being for use as models or patterns for the purpose of obtaining orders and not for sale, the undersigned Alfred Mitchell Innes, His Britannic Majesty's chargé d'affaires at Washington, duly authorized thereto, and in virtue of a similar declaration made by Philander C. Knox, Secretary of State of the United States, does hereby declare that, from and after the 1st day of January, 1911, and until the expiration of one month after the day on which either the United Kingdom or the United States shall give notice of the withdrawal of said declaration, the officially attested list of such samples, containing a full description thereof issued at the time of exportation by the British consular authorities established in the United States, shall be accepted by the customs officials of the United Kingdom as establishing their character as samples and exempting them from inspection on importation except in so far as may be necessary in order to comply with the law of the United Kingdom.

A. MITCHELL INNES,  
*His Britannic Majesty's Chargé d' Affaires.*

WASHINGTON, *December 3, 1910.*

**DECLARATION.**

In order to facilitate the clearance through the customs department of the United States of America of samples brought into the territory of that country by commercial travelers of the United Kingdom of Great Britain and Ireland, such samples being for use

as models or patterns for the purpose of obtaining orders and not for sale, the undersigned Philander C. Knox, Secretary of State of the United States, duly authorized thereto, and in virtue of a similar declaration made by Alfred Mitchell Innes, His Britannic Majesty's chargé d'affaires at Washington, does hereby declare that, from and after January 1, 1911, and until the expiration of one month after the day on which either the United States or the United Kingdom shall give notice of the withdrawal of said declaration, the officially attested list of such samples containing a full description thereof, issued at the time of exportation by the American consular authorities established in the United Kingdom, shall be accepted by the customs officials of the United States as establishing their character as samples and exempting them from inspection on importation except in so far as may be necessary in order to comply with the law of the United States.

P. C. KNOX,  
*Secretary of State of the United States.*

WASHINGTON, December 8, 1910.

#### TAKING OF TESTIMONY BY CONSULAR OFFICERS.

File No. 24203.

*Ambassador Bryce to the Secretary of State.*

No. 54.]

BRITISH EMBASSY,  
*Washington, March 26, 1910.*

SIR: His Majesty's Government are anxious to obtain information regarding the examination of witnesses under oath by consular officers in the United States. It is the practice of the English courts to issue from time to time commissions by which the person or persons named in the writ of commission are empowered to examine witnesses on oath, affirmation, or otherwise, in order to obtain evidence abroad for the purposes of civil proceedings pending before the courts of this country.

On some occasions British consular officers are intrusted with this duty if they are personally willing to undertake it. They are not, however, under any obligations to do so, nor does it form any part of their official consular attributes. Furthermore, all such evidence is tendered voluntarily and witnesses can not be compelled to give it should they be unwilling to do so.

His Majesty's Government presume there can at least be no objection to this practice in cases in which the persons whose testimony is required are British subjects, but they nevertheless wish to obtain an official pronouncement on the subject.

I have accordingly the honor to request that you will be so good as to furnish me, if possible, with replies to the following specific questions:

1. Is there any objection to evidence being taken in this manner from United States citizens if they are willing to give it?
2. The same question as to subjects or citizens of other States when within the limits of the United States.
3. The same question as to British subjects similarly placed.

Thanking you in anticipation, I have, etc.,

JAMES BRYCE.

File No. 24203.

*The Secretary of State to the British Ambassador.*

No. 897.]

DEPARTMENT OF STATE,  
Washington, May 19, 1910.

EXCELLENCY: The department has received your note of March 26, 1910, in which you inquire whether there is any objection to British consular officers taking evidence in the United States (1) of American citizens; (2) of subjects or citizens of other States when within the limits of the United States; and (3) of British subjects within the limits of the United States.

It is understood by this department that an American consular officer in British dominions may take evidence of American citizens within his consular district either in his ordinary consular capacity or by virtue of a commission issued to him by an American court. If this understanding is correct, this Government is entirely agreeable, subject to any special legislation of the States, to the exercise of similar functions by British consular officers in the United States in respect to taking testimony of British subjects, provided, of course, that the testimony be given voluntarily. This Government, subject to special state legislation and the other conditions already mentioned, is equally ready to accord to British consular officers in the United States the privilege of taking testimony of American citizens and of subjects or citizens of other nations residing within the territory of the United States, upon assurance that American consular officers are authorized to take testimony of British subjects and foreign subjects or citizens residing in British dominions.

I have, etc.,

P. C. KNOX.

File No. 24203/1.

*The British Ambassador to the Secretary of State.*

No. 115.]

BRITISH EMBASSY,  
Dublin, N. H., June 27, 1910.

SIR: In your note No. 897 of the 19th ultimo you were good enough to inform me for the information of my Government of the attitude of the United States Government with request to the examination of witnesses by consular officers in the United States. This information I communicated to my Government.

I am now in receipt of a further communication from His Majesty's principal secretary of state for foreign affairs asking me to explain to you that the taking of evidence under commission is not confined to His Majesty's consul officers, but includes any person in whose favor such commission may be issued, and to inform you that His Majesty's Government would be glad to learn whether the reply of the United States Government may be deemed to imply assent in these cases also.

I am further instructed to add that His Majesty's Government would offer no opposition to the examination of witnesses in this country by any person duly authorized by the United States courts.

I have, etc.,

JAMES BRYCE.

24203/1.

*The Acting Secretary of State to the British Ambassador.*

No. 936.]

DEPARTMENT OF STATE,  
Washington, July 15, 1910.

EXCELLENCY: The department has received your note of the 27th ultimo, in which you refer to the department's note of May 19 last, relative to the examination of witnesses by consular officers in the United States, and state that you are in receipt of a further communication from the British Foreign Office instructing you to explain that, the taking of evidence under commission is not confined to His Majesty's consular officers, but includes any person in whose favor such commission may be issued, and that you are instructed to inform this Government that His Majesty's Government would be glad to learn whether the reply of the United States Government may be deemed to imply assent in those cases also; and that you are further instructed to add that His Majesty's Government would offer no objection to the examination of witnesses in this country by any person duly authorized by the United States courts.

In reply I have the honor to say that this Government, subject to the reservation indicated in the department's note of May 19th last, is agreeable to the taking of testimony in the United States by persons other than British consular officers, duly authorized by British Courts.

I have, etc.,

HUNTINGTON WILSON.

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**COMPULSORY IMMIGRATION—CASE OF ALFRED LUMB.**

File No. 23814/2.

*The Acting Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, March 12, 1910.

Mr. Wilson instructs Mr. Reid to consult Consul General Griffiths regarding reported deportation of Alfred Lumb, a British subject convicted in England of counterfeiting, to the United States; to make careful investigation, and, if facts are found to be as reported by Mr. Griffiths, and, if order of deportation to the United States has been issued to bring the matter to the attention of the British Foreign Office, calling attention to Section 2 of Immigration Act of February 20, 1907, 34 Statutes at Large, 898. Mr. Reid is informed that the attitude of this Government regarding compulsory or assisted emigration is set forth in 4 Moore's Int. S. Dig. sections 560 and 565, and he is directed to inform the British Government of this attitude, and to say that the Government of the United States feels confident that when the action of the local officers at Leeds has been called to the attention of the British Government steps will be taken to prevent the consummation of the order of deportation.

File No. 23814/11.

*Ambassador Reid to the Secretary of State.*

No. 1216.]

AMERICAN EMBASSY,  
*London, March 18, 1910.*

SIR: On receipt of your cable instruction of the 13th instant I immediately took steps to investigate whether the commissioner of assize at Leeds had taken the course reported to you through the American consul general in London.

The first information which I received from the consul at Leeds, which was confirmed by the press reports, led me to believe that the commissioner of assize had merely withheld sentence on the ground that Alfred Lumb should leave the country within a certain period and that the court itself had made no reference to the prisoner's going to the United States.

On receipt, however, of a copy of the transcript of the court records it became evident that the commissioner, in addressing the prisoner, said, "Are you ready, if I let you go, to be bound over to go to America?" to which the prisoner replied, "Yes," and thereupon the commissioner stated that he was prepared to release prisoner on his recognizance and his brother's for the sum of £50 each.

I have accordingly to-day addressed a note to the foreign office in which, after bringing the facts to the attention of Sir Edward Grey, I request him to take such steps as may be necessary to prevent the consummation of the order.

I have, etc.,

WHITELAW REID.

[Inclosure.]

*Ambassador Reid to the Minister for Foreign Affairs.*AMERICAN EMBASSY,  
*London, March 16, 1910.*

SIR: My attention has been called to reports published in the Yorkshire Evening Post of the 8th and 9th instant to the effect that one Alfred Lumb, a British subject, has been indicted for uttering counterfeit coin and for silvering with a certain liquid pennies and a halfpenny so that they would resemble current silver coins, to which indictment the prisoner pleaded guilty.

It appears that having asked prisoner whether in the event of his discharge being granted he would be ready to be bound over to leave the country and to go to America, and the prisoner having answered in the affirmative, the commissioner announced that prisoner would be released upon entering into a recognizance of £50 to leave the country within one month, the prisoner's brother entering into a like recognizance that the prisoner would go within the stated period.

If the reports that have appeared in the Yorkshire Evening Post are not incorrect, it would appear that the commissioner of assize was unaware of the provisions of the United States immigration act of 1875, section 3, providing that "it shall be unlawful for aliens of the following classes, namely \* \* \* whose sentence has been remitted on condition of their emigration"—this provision being intended to put a stop to a practice in certain countries, whereby, on sending such persons to the United States, the authorities were able to avoid the trouble and expense of taking care of their own criminals.

The immigration act of February 22, 1907, provides that persons inter alios who have been convicted of or admit having committed a felony shall be excluded from admission to the United States. Lumb would therefore, if his identity were discovered, not only be denied admission but would, on his arrival, be deported.

In bringing the matter to your attention, I wish to point out, in order to avoid similar cases in the future, what will, I think, have occurred to you, that the commissioner of



assize, in postponing a sentence upon the express condition that the prisoner should go to America, was unwittingly violating international comity, in requiring by his sentence that the prisoner before him should attempt to violate the laws of the United States.

My Government feels confident that if the facts of the case prove to be as stated you will take such steps as may be necessary to prevent the consummation of the commissioner's order.

I have, etc.,

WHITELAW REID.

File No. 23814/11.

*The Secretary of State to Ambassador Reid.*

No. 1261.]

DEPARTMENT OF STATE,  
Washington, March 30, 1910.

SIR: The department has received your No. 1216 of the 18th instant, in regard to the anticipated emigration to the United States of the British subject Alfred Lumb, a confessed counterfeiter.

The department approves your note to the foreign office on the subject.

I am, etc.,

(For Mr. KNOX.)

HUNTINGTON WILSON.

*The British Ambassador to the Secretary of State.*

No. 1322.]

AMERICAN EMBASSY,  
London, June 22, 1910.

SIR: With reference to my dispatch 1216 of the 18th of March last, transmitting a copy of my note to the foreign office dated the 16th of that month respecting the case of Alfred Lumb, a British subject, who was convicted of uttering counterfeit coin and was released upon condition of leaving the United Kingdom and proceeding to the United States, I have the honor to inclose herewith copy of the foreign office reply dated June 17, in which it is stated that the commissioner of assize who heard the case acted in the matter in ignorance of the United States law bearing upon this subject.

The secretary of state for the home department has addressed a circular to all the judges of the high court, recorders of boroughs, and chairmen of quarter sessions calling their attention to the provisions of United States law bearing upon the immigration of convicted offenders.

I have, etc.,

WHITELAW REID.

[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*

FOREIGN OFFICE,  
London, June 17, 1910.

YOUR EXCELLENCY: I did not fail to refer to the proper department of His Majesty's Government the note which your excellency addressed to me on the 16th of March last, respecting the case of Alfred Lumb, a British subject, who was recently convicted of uttering counterfeit coin and was released on condition of leaving the United King-

dom and proceeding to the United States, and I now have the honor to inform your excellency that the commissioner of assize who heard the case acted in the matter in ignorance of the United States statutes bearing upon the immigration of convicted offenders.

With the object of avoiding any possible recurrence of such a case the secretary of state for the home department has addressed to all judges of the high court, recorders of boroughs, and chairmen of quarter sessions, a circular calling their attention to the provisions of United States law on this subject.

I have, etc.

(For Sir E. Grey):  
W. LANGLEY.

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**PROPOSED ALTERNATIVE PROCEDURE FOR THE INTERNATIONAL PRIZE COURT AND THE INVESTMENT OF THE INTERNATIONAL PRIZE COURT WITH THE FUNCTIONS OF A COURT OF ARBITRAL JUSTICE.**

*The Secretary of State to Chargé Rives.*

DEPARTMENT OF STATE,  
Washington, November 3, 1909.

SIR: Referring to the department's cable of March 5, 1909 (see p. 603), proposing alternative procedure for the international prize court and the investment of this tribunal with the functions of a court of arbitral justice, a copy of which was transmitted to the Austro-Hungarian foreign office and to the foreign offices of the countries represented at the recent naval conference at London, the department desires you to transmit immediately to the minister of foreign affairs the inclosed identic circular note, to express to him the great interest which your Government takes in the acceptance of the proposals contained in the identic circular note and to request as early action as the importance of the proposals will permit.

These instructions have been sent, *mutatis mutandis*, to diplomatic representatives of the United States at Berlin, Paris, London, Rome, Tokyo, St. Petersburg, The Hague, and Madrid.

I am, etc.,

P. C. KNOX.

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*Identic circular note of the Secretary of State of the United States proposing alternative procedure for the international prize court and the investment of the international prize court with the functions of a court of arbitral justice.*

The convention of October 18, 1907, for the establishment of an international court of prize, was signed *ad referendum* by the delegates of the United States to the Second Hague Peace Conference, as by the law of this country treaties and conventions require the approval of the Senate before binding the Government and before ratifications can be exchanged with the contracting parties.

The convention appeals strongly to the sense of justice by which this Government is animated, as the establishment of the prize court would substitute, for a national decision, a judgment of an international and disinterested tribunal, composed of a majority of judges selected from neutral countries and thus able and desirous to safeguard neutral rights and protect neutral property. The interest this Government takes in the establishment of the international prize court and the benefits to be derived from its successful operation are

evidenced by the following passage from President Roosevelt's annual message to Congress, dated December 3, 1907:

A further agreement of the first importance was that for the creation of an international prize court. The constitution, organization, and procedure of such a tribunal were provided for in detail. Anyone who recalls the injustices under which this country suffered as a neutral power during the early part of the last century can not fail to see in this provision for an international prize court the great advance which the world is making toward the substitution of the rule of reason and justice in place of simple force. Not only will the international prize court be the means of protecting the interests of neutrals, but it is in itself a step toward the creation of the more general court for the hearing of international controversies to which reference has just been made. The organization and action of such a prize court can not fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice.

Action upon the prize convention has been postponed owing to the dissatisfaction expressed by several powers concerning the status of the law to be administered by the court by virtue of article 7 of the convention, which dissatisfaction culminated in a formal invitation by Great Britain to Germany, the United States, Austria-Hungary, Spain, France, Italy, Japan, the Netherlands, and Russia, to meet in December, 1908, in order to reach an agreement upon the law to be administered by the court in the absence of special conventions or universally recognized principles of international law. Pursuant to this invitation, the representatives of the powers assembled at London and remained in session until February 26, 1909,<sup>1</sup> when a comprehensive, progressive, and satisfactory declaration on maritime law was unanimously approved by the conference and recommended for adoption by the nonparticipating powers.

The objection to the prize court convention made by several powers at the Second Hague Peace Conference has, therefore, ceased to exist, and it is gratifying to the United States to learn that these powers are prepared to ratify the convention and to participate in the labors of the court when established. The delegation of the United States signed the declaration of London, formulated at the conference of London, and its action has been approved by the Department of State, although the Senate of the United States has not as yet had opportunity to take formal action, as it seems desirable to this Government to consider at one and the same time the convention for the establishment of the international prize court and the declaration of London.

Although the London conference has removed the international objection to the approval of the convention for the establishment of the prize court, there is, on the part of this Government, shared, it is believed, by various signatories of the convention, a constitutional and, therefore, a national and internal difficulty which requires patience and no little good will to overcome. There is a deep-rooted objection, based upon constitutional reasons, which it is therefore unnecessary to set forth in detail, to the allowance of an appeal from a national judgment, as contemplated by the convention, which may result in the reversal of a national judgment by an international tribunal. Therefore, the United States instructed its delegates to the London conference to propose—

An additional article or protocol for the consideration of and eventual acceptance by the conference, by which each signatory of the convention of October 18, 1907,

<sup>1</sup>See Foreign Relations, 1909, p. 294.

shall possess the option, in accordance with local legislation, either to submit the general question of the rightfulness of any capture to the determination of the international prize court, or to permit an appeal from the judgment of a national court in a specific case direct to the international prize court, as contemplated by the convention of October 18, 1907.<sup>1</sup>

The American delegation acted as directed, and after a careful and conscientious discussion of the proposal and the difficulties it was meant to obviate, the conference adopted unanimously the following voeu:

The delegates of the powers represented at the naval conference which have signed or expressed the intention of signing the convention of The Hague of the 18th October, 1907, for the establishment of an international prize court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that convention in its present form, agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the international prize court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said convention, either to individuals or to their Governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention.<sup>2</sup>

Upon receipt of the text of the voeu this Government, on March 5, 1909, cabled to its diplomatic agents accredited to the powers represented at the conference its intention to—

Send an identic circular note to each of the participating powers, setting forth at length the reasons which influence the United States to request a rehearing de novo of a question involved in a national prize decision, and the means whereby this change of procedure may be effected without interfering with the rights of Governments or individuals under the prize court convention.

In pursuance, therefore, of this express notice and of the deep and abiding interest the United States takes in the establishment of the international prize court, the Department of State has the honor to submit to your considerate examination the following observations:

The court contemplated by the prize convention of October 18, 1907, is preeminently a court of appeal, with full power to review the decision of a national court of justice, both as to facts and as to the law applied, and, in the exercise of its judicial discretion, not only to affirm or reverse, in whole or in part, the national decision from which the appeal is lodged, but also to certify its judgment to the national court for proceedings in accordance therewith. The international prize court, therefore, is an ultimate court of appeal of which, by the convention, national courts are intermediate instances. The purpose of the convention and of the conference which adopted it undoubtedly was and is to secure determination by an international tribunal of a controversy affecting neutral rights and property arising from capture and confiscation in war and by a series of well-considered judgments to establish by international decisions the principles of international prize law. The Government of the United States is in hearty accord with this purpose and desires to cooperate in its realization, but is, however, of the opinion that the end in view may be effectuated without violating the spirit of the convention and, indeed, without amending it, so that, for those countries unable or unwilling to submit the judgments of their national courts to international review, a simple expedient may be devised by virtue of which the

<sup>1</sup>See Foreign Relations, 1909, p. 304.

<sup>2</sup>See Foreign Relations, 1909, p. 318.

question in controversy, instead of the actual judgment of the national court, may be submitted to the international court at The Hague for final determination without sacrificing substance to form, and without interfering with the practice of the United States in such matters. To illustrate this position by concrete examples taken from controversies with Great Britain arising out of the Civil War:

Questions involved in the following cases upon which decisions had been rendered by the Supreme Court of the United States were afterwards submitted to arbitration by the United States under the British-American Claims Convention, sitting under article 12 of the treaty of Washington, dated May 8, 1871, for decision "according to justice and equity":

1. Questions which the international tribunal decided adversely to the decision of the Supreme Court of the United States, which international decisions were obeyed by the United States: *The Hiawatha*, 2 Black, 635, 4 Moore's International Arbitrations, 3902; *The Circassian*, 2 Wallace, 135, 4 Moore, 3911; *The Springbok*, 5 Wallace, 1, 4 Moore, 3928; *The Sir William Peel*, 5 Wallace, 517, 4 Moore, 3935; *The Volant*, 5 Wallace, 179, 4 Moore, 3950; *The Science*, 5 Wallace, 178, 4 Moore, 3950.

2. Questions in which the decision of the international tribunal upheld the decision of the Supreme Court of the United States: *The Peterhoff*, 5 Wallace, 28, 4 Moore's International Arbitrations, 3838; *The Dashing Wave*, 5 Wallace, 170, 4 Moore, 3948; *The Georgia*, 7 Wallace, 32, 4 Moore, 3957; *The Isabella Thompson*, 3 Wallace, 155, 3 Moore, 3159; *The Pearl*, 5 Wallace, 574, 3 Moore, 3159; *The Adela*, 6 Wallace, 266, 3 Moore, 3159.

It is therefore evident that the demands of justice would be satisfied by submitting the question involved to impartial international determination, for although the controversy is based upon the decision of a national court of justice, the judgment of the international tribunal, while satisfying the claimant and settling the principle of international law involved, would not affect the validity of the national judgment within its jurisdiction. The national decision would remain in full force so far as the nation is concerned, in that it is not reversed by an international tribunal; but the international law properly applicable to the case would have been determined by an international tribunal, thus establishing for the community of nations the correct principle of international law.

The proposal of the United States leaves untouched and unquestioned the composition of the court, its jurisdiction and procedure, and only affects the question of appeal in its technical rather than its equitable sense, because dissatisfaction with the decision of a national court is the cause of the proceeding before the international tribunal, and the judgment of this august tribunal is binding upon the signatory powers by virtue of article 9. The advantage of the proposal lies in the fact that it does not bring national and international decisions into conflict, with a reversal of the former by the latter, and without wounding national susceptibility, leaves unaffected the constitutional law of the signatories.

The proposition of the United States is based upon the alternative remedy contained in the second sentence of the second paragraph of article 8 of the international prize court convention, combined with

the statements contained in the final paragraph of article 3 and article 42. For the sake of clearness, these provisions of the convention follow:

If the vessel or cargo have been sold or destroyed, the court shall determine the compensation to be given to the owner on this account. (Art. 8, second sentence of second paragraph.)

The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law. (Art. 3, final paragraph.)

The court takes into consideration in arriving at its decision all the facts, evidence, and oral statements. (Art. 42.)

Analyzing these articles, it is apparent that the convention assumes that the captured vessel or cargo may have been sold, destroyed, or otherwise be beyond the power of the captor, in which case only the question of liability with compensation in damages can be considered. In like manner the convention contemplates, in appropriate cases, the retrial of the controversy *de novo*, because the court is made competent not merely to consider the law, but also the facts involved in the case and to take evidence, by virtue of articles 27 and 35, either at the request of one of the parties or upon the court's initiative, and such evidence may be produced before the court itself or before one or more of its members (art. 36). It is thus seen that the convention not only permits evidence to be taken in order to ascertain the facts in controversy, but provides adequate machinery for its presentation, thus permitting a trial of the case *de novo* both as to the facts involved and the law to be applied.

Lest the alternative method contained in the proposal be considered to militate against the speedy determination of the controversy, and that the signatory powers, their subjects and citizens, may seem to be deprived of their right of presenting the controversy to an international court within the time and in the manner prescribed by the convention, the department states specifically that the rights secured under the convention, both as to parties and to the periods within which the proceedings shall begin, are expressly recognized by the United States.

This Government therefore proposes that in the instrument of ratification of the international prize court convention each of its signatories specify, on account of the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of the convention for the establishment of the international prize court, signed October 18, 1907, that any signatory may insert a reservation to the effect that resort to the international prize court in respect of decisions of its national tribunals shall take the form of a direct claim for compensation; that the proceedings thereupon to be taken shall be in the nature of a trial *de novo* of the question at issue; that the judgment of the court shall consist of compensation for the illegal capture, irrespective of the decision of the national court whose judgment is thus called in question, although a certified copy of the national judgment may be submitted to the international prize court for its consideration and information; provided, however, that the effect of this reservation shall not be such as to impair the other rights secured under the said convention either to individuals or to their Governments, including the periods within which resort to the international prize court shall be made.

The acceptance of this proposal might be expressed in the following manner:

Whereas objections of a constitutional nature in certain signatory States render the ratification of the convention for the establishment of an international prize court, signed at The Hague October 18, 1907, difficult or impossible; and

Whereas it is highly desirable that all the powers represented at the Second Hague Peace Conference may be enabled to ratify the convention and cooperate in the labors of the international prize court:

Therefore, the Government of \_\_\_\_\_, for itself and as far as the signatories of the international prize court are concerned, agrees that any signatory of the aforesaid convention may insert in the act of ratification thereof a reservation to the effect that resort to the international prize court in questions affecting judgments of its national tribunals may take the form of a direct claim for compensation, as provided in article 8, second paragraph, last sentence, of the said convention; that the proceedings thereupon to be had shall be in the nature of a trial de novo of the question of liability involved in the alleged illegal act of the captor; that the judgments of the international prize court shall thereupon, in accordance with article 8 of the aforesaid convention, decree compensation for the illegal capture, irrespective of the decision of the national court involved, although a certified copy of the national judgment and the records of the case shall be submitted upon request to the international prize court for its consideration and information; and that each signatory consenting to the exercise of this optional and alternative procedure, under article 8 of the aforesaid convention, for States with the constitutional difficulties aforementioned, shall specify its consent to such optional and alternative procedure in the instrument of ratification of the international prize court convention:

*Provided, however,* That the effect of this reservation shall not impair the other rights secured under the aforesaid convention either to governments, their subjects or citizens, or the periods within which resort to the international prize court shall be made.

The Department of State assures the signatories of the convention of October 18, 1907, for the establishment of an international prize court, that the acceptance of this or a substantially similar protocol and its incorporation in the instrument of ratification will remove the constitutional objection to the establishment of the proposed court and will enable the United States to participate in its highly beneficent labors.

The Department of State considers the adoption of the alternative method of procedure for the international prize court as calculated to secure not only its definitive establishment, but, in addition, to render possible the composition of the court of arbitral justice. To bring this subject to the attention of the powers represented at the maritime conference at London, the Department of State on February 6, 1909, instructed its delegates as follows:

In order to confer upon the prize court the functions of an arbitral court contemplated in the first recommendation of the final act of the second conference, the department proposes the following article additional to the draft protocol concerning the prize court, next to the last paragraph of your instructions:

"And any signatory of the convention for the establishment of the prize court may provide further in the act of ratification thereof that the international court of prize shall be competent to accept jurisdiction of and decide any case arising between signatories of this proposed article submitted to it for arbitration, and the international prize court shall thereupon accept jurisdiction and adopt for its consideration and decision of the case the project of convention for the establishment of a court of arbitral justice adopted by the second Hague conference, the establishment of which was recommended by the powers through diplomatic channels.

"Any signatory of the convention for the establishment of the international court of prize may include in its ratification thereof the proposed articles and become entitled to the benefits thereof."

The department earnestly hopes and urges adoption of proposed articles.

The proposal was accordingly made by the American delegation, but it was deemed more advisable to prosecute through diplomatic

channels a matter of such magnitude. Therefore, on March 5, 1909, the department notified the countries represented at the maritime conference of its intention to prepare and transmit an identic circular note, showing—

The advisability of investing the prize court with the jurisdiction and functions of a court of arbitral justice in order that international law may be administered and justice done in peace as well as in war by a permanent international tribunal; that this close connection between the two courts was contemplated by the framers of the arbitral court as appears from article 16 of the draft convention by virtue of which the judges of the arbitral court might exercise the functions of judges in the prize court. The failure to constitute the arbitral court, although the method of appointing judges was substantially the same for both courts, renders this provision ineffective, but it is possible to carry out the intent of the proposers in this and to constitute the arbitral court by investing the prize court with the functions of an arbitral court and to prescribe the draft convention of the arbitral court as a code of procedure when so acting.

It is not the intention of this Government to use pressure of any kind to secure the acceptance of its views, but the United States feels that the constitution of the arbitral court as a branch or chamber of the prize court for the nations voluntarily consenting thereto would not only enhance the dignity of the prize court, but by creating a permanent court of arbitration would contribute in the greatest possible manner to the cause of judicial, and therefore peaceable, settlement of international difficulties.

Pursuant to this notification the Department of State has the honor to make the following observations:

It has been a subject of profound regret to the Government and people of the United States that a court of arbitral justice, composed of permanent judges and acting under a sense of judicial responsibility, representing the various judicial systems of the world and capable of insuring continuity in arbitral jurisprudence, was not established at the Second Hague Peace Conference, and the United States likewise regrets that the composition of the proposed court of arbitral justice has not yet been effected through diplomatic channels, in accordance with the following recommendation of the conference:

The conference recommends to the signatory powers the adoption of the project, herunto annexed, of a convention for the establishment of a court of arbitral justice and its putting into effect as soon as an agreement shall have been reached as to the choice of the judges and the constitution of the court.

A careful consideration of the project and of the difficulties preventing the constitution of the court, owing to the shortness of time at the disposal of the conference, has led the Government of the United States to the conclusion that it is necessary in the interest of arbitration and the peaceful settlement of international disputes to take up the question of the establishment of the court as recommended by the recent conference at The Hague and secure through diplomatic channels its institution.

The necessary and close connection between the international prize court and the proposed court of arbitral justice was indicated in article 16 of the draft convention of the court of arbitral justice, as follows:

The judges and deputy judges, members of the judicial arbitration court, can also exercise the functions of judge and deputy judge in the international prize court.

The reason which existed in 1907 and led to the formulation of the article still continues. It has therefore occurred to the United States that the difficulty in the way of reaching an agreement upon the composition of the court would be obviated by giving practical effect to article 16 by an international agreement by virtue of which the judges of the international prize court should be competent to sit as judges



of the court of arbitral justice for such nations as may freely consent thereto, and that when so sitting the judges of the international prize court shall entertain jurisdiction of any case of arbitration submitted by a signatory for their determination and decide the same in accordance with the procedure prescribed in the draft convention. In proposing to invest the international prize court with the jurisdiction and functions of the proposed court of arbitral justice the United States is actuated by the desire to establish a court of arbitration permanently in session at The Hague for the peaceful solution of controversies arising in time of peace between the nations accepting and applying in their foreign relations the principles of an enlightened and progressive international law.

It is a truism that it is easier to enlarge the jurisdiction of an existing institution than to call a new one into being, and as the judges and deputy judges of the international prize court must be thoroughly versed in international law and of the highest moral reputation, there can be no logical or inherent objection to enlarging their sphere of beneficent influence in vesting them with the quality of judges of the proposed court of arbitral justice.

The proposal of the United States does not involve the modification either of the letter or spirit of the draft convention, nor would it require a change in wording of any of its articles. It would, however, secure the establishment of the court of arbitral justice as a chamber of the world's first international judiciary and thus complete through diplomatic channels the work of the Second Hague Conference by giving full effect to its first recommendation.

In proposing this solution of the difficulty the United States is influenced by daily practice and procedure in its national courts of justice, where one and the same judge administers law and equity, admiralty and prize, which, under its system of procedure, are different systems of law. The United States therefore proposes that in the instrument of ratification of the International Prize Court Convention, signed at The Hague October 18, 1907, any of its signatories consenting to invest the international prize court with the powers of a court of arbitral justice shall signify its assent thereto in the following form:

Whereas it is highly desirable that the Court of Arbitral Justice, approved and recommended by the Second Hague Peace Conference, be established through diplomatic channels; and

Whereas investing the International Prize Court with the duties and functions of the proposed Court of Arbitral Justice would constitute for the consenting powers the said Court of Arbitral Justice, as recommended by the first voeu of the final act of the said conference;

Therefore, the Government of \_\_\_\_\_ agrees that the International Court of Prize, established by the convention signed at The Hague October 18, 1907, and the judges thereof, shall be competent to entertain and decide any case of arbitration presented to it by a signatory of the international court of prize, and that when sitting as a court of arbitral justice the said international court of prize shall conduct its proceedings in accordance with the Draft Convention for the establishment of a court of arbitral justice, approved and recommended by the Second Hague Peace Conference on October 18, 1907.

The United States is not without precedent in suggesting a modification of a convention of The Hague Peace Conference, for it is common knowledge that article 10 of the Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Conven-

tion of August 22, 1864, was by agreement through diplomatic channels omitted from the ratification of the convention. Germany, the United States, Great Britain, and Turkey objected to article 10 and, on signing, excepted it from the convention. Therefore, M. de Beaufort, minister for foreign affairs of the Netherlands, addressed an identic circular note, dated January 29, 1900, to the signatory powers, in which he said:

This obligation, which the above-mentioned powers did not feel warranted in accepting, as is especially the case with regard to Great Britain, would not be in conformity with the legislation of certain other powers, and, therefore, would meet with opposition in the Parliaments which would have to give their approval in this matter.

Under the circumstances, and also by reason of the desirability that there should be a uniformity established in the respective obligations resulting from this convention for the contracting powers, a uniformity which would be endangered by the reservations made by four of them, the Government of Her Majesty the Queen of the Netherlands deems there should be a means of excluding the ratification of the said article 10, which of itself otherwise is only of secondary interest.

It is to be hoped that if this proposition is accepted—and I am happy to be able to inform you that the Imperial Russian Government entirely agrees with us in our views on this, the subject of the exclusion of the above-mentioned article—the ratification would not meet with any other difficulty of internal form in the different countries, and it could be effected with little delay, which would be highly desirable.

As the result of an exchange of views, the minister of the Netherlands, at Washington, informed the Department of State on April 30, 1900, that:

The former proposition of the Government of the Queen, which formed the subject of Mr. de Beaufort's communication No. 1109, of January 29 last, addressed to Mr. Stanford Newel, suggesting the exclusion of the ratification of article 10 of the convention for the adaptation to maritime warfare of the principles of the Geneva convention, has received the consent of all the States which up to the present have made known their views.

These powers being in the majority, and the adoption of the proposition by the other interested States being probable, it is important that, with a view of expediting the filing of these acts of ratification, a uniform method for emphasizing this exclusion should be established now.

The cabinet of St. Petersburg has suggested, for this purpose, a combination which consists in inserting in the act of ratification a copy of the convention in which the text of article 10 would be replaced by the word "exclu" (excluded) while still preserving the proper numbering of the articles.

Copies prepared in conformity with the method above indicated will be placed at the disposal of those Governments who wish them.

In thus proposing an alternative method for the decision of prize cases submitted to the international prize court and urging the creation of a court of arbitral justice by an apt clause in the instrument of ratification of the convention for the establishment of the international prize court, the United States is influenced by the sincere desire not merely to render its cooperation in the matter of the prize court possible and to secure the constitution of the court of arbitral justice, but is endeavoring in a thoroughly disinterested manner to advance the cause of international justice and peace.

As the Department of State desires to submit the prize court convention as thus understood and explained and the draft convention for the creation of the court of arbitral justice to the approaching session of the Senate for approval and ratification, an early reply to this circular note is earnestly requested.

P. C. KNOX.

*Ambassador Hill to the Secretary of State.*

No. 570.]

AMERICAN EMBASSY,  
*Berlin, January 14, 1910.*

SIR: Referring to your instruction of November 3, 1909, and the confidential identic circular note proposing alternative procedure for the international prize court and the investment of the international prize court with the functions of a court of arbitral justice, I have the honor to report that I had to-day a long interview with Geheimrat Dr. Kriege, who has been charged by the German imperial secretary of state for foreign affairs with preparing the answer of the German Imperial Government.

Geheimrat Kriege informed me that his Government accepts very heartily the proposal of the United States regarding the alternative procedure, but felt doubtful regarding the expediency and the effectiveness of the method proposed for obtaining the sanction of the other powers. His position is that the reservation desired is too important and the conditions rendering it necessary are too complicated to be adequately formulated and duly agreed to without a separate protocol, and he has kindly furnished the text of a form which he considers more likely to be readily accepted by the signatories of the convention for the establishment of an international prize court. After going over the ground very carefully with him, I am of the opinion that his view is perhaps correct, and in any case I think his suggestion is worthy of serious consideration. I see no objection to the form he has proposed, and I believe it would be advantageous to accept the collaboration of the German Government, which has from the beginning been closely associated with the United States in accomplishing the ends set forth in the identic circular note. I am also of the opinion that the other foreign offices, while they might not decline to adopt the method proposed in the identic circular note, would find the form proposed by Geheimrat Kriege more in conformity with their own conceptions and usages in such cases. If the latter is considered by you adequate for our purposes, it would secure us not only the prompt acceptance but the earnest support of the German Imperial Government.

With regard to the extension of the jurisdiction of the prize court so as to include or, more exactly, to constitute an international court of arbitral justice, the German Imperial Government is in substantial accord with the views expressed by you and will continue to cooperate in accomplishing its establishment.

There are, however, some matters of detail which have been pointed out by Geheimrat Kriege which are worthy of serious consideration. One of these turns upon the compensation of the judges, for in case some but not all of the signatories of the prize court convention should accept this extension of jurisdiction, those not favoring the court of arbitral justice, if there should be any, would not unreasonably object to having their judges occupied with its business at their expense and might not wish them to be so employed at all. The complete success of the proposal upon the lines laid down in the identic circular note therefore depends upon the absolute unanimity and good will of the signatories of the prize court convention.

To meet this difficulty and to assure the formation of the court of arbitral justice, Geheimrat Kriege proposed a supplementary convention, the form of which he has kindly supplied, by which the court can be formed, even if unanimity is not at first secured, by the association of a sufficient number of powers disposed to sign it, to which others may be subsequently added.

Another point to which Geheimrat Kriege attaches much importance is the possibility that some of the powers may appoint as judges in the prize court persons who are specialists in maritime law, with little acquaintance with the broader and more general aspects of international law, and who would therefore be less qualified to act as judges in the wide range of questions that might come before the court of arbitral justice. If this for any reason should be the case, the court of arbitral justice would not be satisfactorily constituted, and this fact would militate against its highest usefulness. Another consideration of importance is that if any power for any reason were disposed to object to the proposal to extend the jurisdiction of the prize court, this fact could be urged by it as an objection to the plan.

Geheimrat Kriege has proposed to meet this point by providing for the substitution of other judges, if found advisable, for the specialists who might have been appointed to the prize court, and this appears to me a valuable suggestion both for the efficiency of the court of arbitral justice and for meeting any objection under this head which might be raised against it.

There remains one other point of practical importance, namely, the brevity of the time yet remaining before the signature of the agreements should be concluded. It is evident that if pursued in the ordinary way by correspondence it would require a long time to receive, compare, and harmonize the answers of the powers to the identic circular note. Geheimrat Kriege, therefore, suggests that it would greatly facilitate the consummation of the wishes of our Government if a representative of the United States duly authorized could as soon as possible meet at some convenient point representatives of Germany, Great Britain, and France, explain the matter to them, and obtain their acceptance of the protocol and supplementary convention. With this accomplished the other signatories of the prize court could be requested to follow upon the same lines. Geheimrat Kriege would no doubt be designated for this purpose by his Government, and thus we could avail ourselves of his valuable assistance in reaching a conclusion.

I need hardly add that if a meeting with representatives of the three powers mentioned above should seem to you desirable it should be of an informal and confidential nature, with no public announcement regarding it, to the end that no other power could feel slighted. It could very conveniently, Geheimrat Kriege suggests, take place in Paris, which would not excite attention.

I inclose herewith in duplicate the forms proposed by Geheimrat Kriege and await your further instructions.<sup>1</sup>

I have, etc.,

DAVID J. HILL.

<sup>1</sup> Not printed.

*Ambassador Reid to the Secretary of State.*

No. 1180.]

AMERICAN EMBASSY,  
*London, February 19, 1910.*

SIR: Referring to the department's identic circular note of the 3d of November last on the subject of alternative procedure for the international prize court and the investment of this tribunal with the functions of a court of arbitral justice, which I had the pleasure of communicating to the British Government on November 18, 1909, I now have the honor of inclosing herewith the reply of Sir Edward Grey to the proposal of the United States, the substance of which I have cabled to you in brief to-day.

I have, etc.,

WHITELAW REID.

[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*FOREIGN OFFICE,  
*London, February 18, 1910.*

YOUR EXCELLENCY: His Majesty's Government have given their most careful attention to the proposals contained in the circular note of the Secretary of State of the United States, which your excellency communicated to me in your note of the 18th November last. I regret that owing to the many matters of urgent political importance which have been of late claiming the attention of His Majesty's Government I am only to-day in a position to reply to that communication.

2. The proposals of the United States Government have reference to two distinct matters. As regards, in the first place, the question of providing for an alternative method of procedure in cases brought before the international prize court which is to be set up at The Hague, I have pleasure in informing your excellency that His Majesty's Government, attaching as they do the greatest possible weight to the inclusion of the United States in the number of countries accepting the jurisdiction of that court and recognizing the fundamental nature of the constitutional difficulty in which the United States might find themselves placed by the acceptance en bloc of the stipulations of the prize court convention of The Hague of 1907, are ready, on their part, to cooperate for the purpose of removing that difficulty.

3. It is perhaps a question whether the particular method of proceeding by way of a reservation to be introduced into the ratifications of the prize court convention might not give rise to some practical difficulties. A reservation of this kind would admittedly require the assent of the signatory powers to the rights therein stipulated for, and it seems to His Majesty's Government that such assent might with advantage be recorded in a more direct and conventional form. Apart from this question of form, there are some minor yet not unimportant points respecting which it would seem desirable to make more specific provision than is done in the reservation as worded in the circular note, such, for instance, as the exact manner in which, under the alternative scheme, the reference of individual cases to the international court at the proper moment, and an automatic transfer of the records, shall be guaranteed.

4. Having regard to the eminently beneficial results of the former cooperation in this matter between the four powers which at the second peace conference jointly put forward the proposals eventually adopted for the establishment of the international prize court, I venture to suggest, for the favorable consideration of the United States Government, whether a meeting could not be arranged between representatives of the United States, France, Germany, and Great Britain with a view to their jointly considering the wording of the proposed reservation or declaration. The United States Government will no doubt agree that a personal conference between experts would be likely to lead to a satisfactory result more easily, more quickly, and more surely than would an attempt to settle a text by the more cumbersome method of diplomatic correspondence.

5. A matter of greater complexity is raised by the second proposal put forward in the circular note. The proposal is definitely to establish the judicial arbitration court which formed the subject of a vœu of the second peace conference, and to do so

by means of a declaration of reservation, which the powers who so desire may include in their ratification of the prize court convention, authorizing the international prize court to transform itself into and act as a judicial arbitration court, in accordance with the provisions of and with due observance of the procedure laid down in the draft convention for the establishment of such court annexed to the *vœu*.

6. The United States Government will not, I believe, require of me any fresh assurances as to the genuine and active interest which His Majesty's Government have taken, and continue to take, in the plan of setting up a really permanent and definitely constituted tribunal for the adjustment of international differences. They share the belief of the United States Government that the principal nations of the world are beginning to feel the want of a true international law court that is of a jurisdiction to which disputes can be submitted without the preliminary difficulty of constituting the tribunal in each case and agreeing upon its attributes, composition, and procedure. Holding this view, they are, as they have been in the past, not merely willing but anxious to cooperate to the best of their ability to the end of creating such a court. The British delegates at the second peace conference were unremitting in their efforts to secure the general adoption of a scheme in whose elaboration, indeed, they had, under the instructions of their Government, taken an honorable part side by side with their colleagues of the United States, France, and Germany. The scheme, as is well known, only failed because no acceptable solution could be found of the difficulty caused by the claim of the overwhelming majority of the powers that all independent States should be equally represented on the bench of judges.

7. It will be remembered that a similar difficulty very nearly wrecked the convention for the establishment of an international prize court. I need not recapitulate the prolonged negotiations and discussions which were needed to secure its acceptance by The Hague conference. The chief consideration, there is no doubt, which finally prevailed, and by which the assent of the less favored nations was gained to a scheme departing in a measure from the principle of equality of representation, was the direct and important advantage to every power to obtain that effective means of protection for its interests as a neutral which flows from the right to carry before an international court of the highest integrity and impartiality appeals from the national courts of belligerents. Whilst gaining this clear advantage, it was recognized that States not possessing large naval forces, though equally interested in the protection of their commerce when neutral, were less likely to have their belligerent actions affected by the authority of an extra-national tribunal. It was, moreover, found possible substantially to redress in practice the unavoidable element of inequality by providing that in the event of a power not at the moment represented on the bench of judges being a party, as a belligerent, to a case before the court such power should, for the time and purpose of the proceedings in that case, invariably have its own judge on the bench of the tribunal.

8. These considerations were successful in overcoming the reluctance at first felt by many of the powers to accept the prize court convention, but they were not of a nature to influence their attitude of opposition to the convention for the establishment of a judicial arbitration court, because in this case the circumstances were seen to be essentially dissimilar. There was in fact no particular inducement to the majority of the powers to submit in all those matters of a general character which may properly become the subject of international arbitration to the jurisdiction of a court the composition of which was held by them to be derogatory to their dignity. In all such matters it was felt that each one State had as much to lose as another, and the preponderance of the great powers on the bench of the court, to which objection was taken, appeared to be set off by no countervailing special advantages rendering such an arrangement acceptable on grounds of political expediency. An effort was made by the subcommittee which prepared the draft convention to devise a scheme of proportional representation which, since it did not need, as in the case of the prize court of appeal, to take into account the comparative maritime standing of the respective States, could apportion the degree of representation of each more closely to its relative general position in the community of nations. But although His Majesty's Government on their part see no reason to call in question the essential justice and fairness with which this embarrassing and ungrateful task was carried through by the subcommittee, the difficulty of securing general acceptance for any classification, however reasonable, of the powers according to their degree of importance proved at the time insuperable.

9. The impression derived by His Majesty's Government from the record of the discussions at The Hague was that unless in some way not at present clear to them the principle of equality of representation could yet be introduced into the scheme

of the judicial arbitration court, that scheme would continue to meet with the same hostility; nor has any information since reached His Majesty's Government tending to indicate any change of disposition on the part of the powers in this respect.

10. This difficulty the United States now propose to get over by adopting for the judicial arbitration court the particular system of proportional representation which is to prevail in the international prize court. Having regard to the fact that this system was only reluctantly, and not without a number of reservations, agreed to in respect to the latter court for special reasons, which do not apply to the case of a general arbitration tribunal, and seeing, moreover, that it is in many respects actually less favorable to the large and important proportion of the powers which declined to accept even the more advantageous plan of representation of the original draft convention for the establishment of a judicial arbitration court, His Majesty's Government can not but apprehend that the proposal in its present shape is likely to encounter opposition in the same quarters.

11. The United States Government appear to anticipate that this opposition may be effectively disarmed by the fact that their proposal "does not involve the modification either of the letter or the spirit of the draft convention, nor would it require a change in wording of any of its articles." This is no doubt correct, but it is equally true that without some additional stipulations in the place of the clauses which, in the original draft, regulated the composition of the court, the convention recommended by the second peace conference could not become operative, as is indeed explicitly said in the words of the *vœu* of that conference. This position of the case is to some extent veiled, but is not really altered by proposing to relegate such complementary provisions to a different instrument not formally connected with this particular convention, namely the ratification of another and altogether distinct convention, treating of a court to be established for an entirely and specifically different purpose. When it is realized that the provisions to be so introduced are in principle the same as those which had to be excised from the original scheme as the price for agreement on the remainder, it seems to His Majesty's Government difficult to feel assured that the powers which refused every plan of proportional representation at The Hague will now be found ready to accept a less favorable version or it without raising further difficulties.

12. His Majesty's Government earnestly hope that should such difficulties arise they may be overcome by further diplomatic negotiation with the powers concerned. But so long as there is uncertainty as to the immediate success of such efforts they doubt whether it would be politic to link together too markedly and too closely the scheme of a judicial arbitration court with the prize-court convention. It appears to them that there would be a serious danger of thereby alienating the sympathies of a number of important powers from the international prize court itself, which they might be led to look upon as an instrument for forcing upon them the definite relinquishment of their claim to be treated on a footing of general equality with all the other members of the community of nations. Allusion has already been made to the extreme reluctance with which they agreed to waive this claim in respect to the particular case of representation on the international prize court. If a suspicion should be engendered in their minds that the concession which they were ready to make for an exceptional and strictly defined purpose is to be extended so as to become a rule of more or less general application and a precedent for the abandonment of the cherished principle of equality on other occasions and in more far-reaching questions, they might be impelled to reconsider their attitude in regard to the prize court convention and rather to forego the advantages which its establishment would confer than to suffer what they would regard as a derogation from their national dignity.

13. The ratification of the prize-court convention by as many powers as possible is a matter to which His Majesty's Government attach the very greatest importance, and they venture to think that the general acceptance of the jurisdiction of the international prize court would for the United States Government also have a value out of all proportion to the risk of losing the adherence of a large number of states—a risk which would attend any attempt to set up the judicial arbitration court on the basis proposed before the prize-court convention had been actually ratified by a substantial proportion of the countries whose representatives accepted it at The Hague in 1907.

14. No doubt the great naval powers, with perhaps the support of a few others which may feel satisfied with the degree of representation allotted to them in the international prize court, would be able between them to set up the judicial arbitration court on the lines proposed by the United States Government, but this might involve the indefinite, if not permanent, exclusion of most of the other powers. His Majesty's Government are not unmindful of the fact that the court might, by the reduction in the number of judges, gain in strength and efficiency what it would lose in representative character and in geographical extent of jurisdiction, and they do not wish to be understood absolutely to reject such a plan. But before proceeding to adopt a course which appears to

them only too likely to preclude the participation of a large majority of states, they would have liked to feel assured that there was in fact no other means of attaining the desired end, and that every effort had been made to arrive at an understanding. They are somewhat reluctant to admit that every possibility of devising a method of constituting the court that should find favor with all the powers has as yet been exhausted, and that the last word has been said on the subject. Hoping as they do that a new plan might yet be discovered, answering to the acknowledged requirements without running counter to principles largely held to be vital, they feel that now to take up a scheme which does not command general assent may be considered by a majority of nations to prejudice any chance of a more satisfactory result being attained at a third peace conference.

15. I can not conceal from your excellency that for these reasons His Majesty's Government would have preferred that the several powers should, in anticipation of such a conference, endeavor to think out and submit to the practical test of elaboration in detail schemes which they themselves would be willing to accept, in the expectation that a comparison, or perhaps a partial fusion, of such schemes might help to bring in sight a workable general agreement. His Majesty's Government were the more disposed to favor this course because further consideration of the draft convention recommended by the second peace conference, combined with a study of recent political developments within the British Empire, has induced a doubt whether the requirements of this country could be quite suitably met by a scheme which makes it impossible to take account of the special position of the British self-governing colonies and possessions in cases of arbitration where the subject-matter in dispute affects important colonial interests.

16. Seeing, however, the value which the United States Government clearly attach to a more speedy realization of the scheme for setting up a permanent arbitration tribunal, and their confidence in the possibility of successfully meeting the difficulties involved, His Majesty's Government do not wish to stand in the way of any effort to carry out the recommendation of the second peace conference on the lines favored by the United States, so long as the general ratification of the prize-court convention is not thereby jeopardized, and so long as no other solution presents itself. I need not reiterate the objection which, from this point of view, militates against using the instrument of ratification of that convention as the means of setting in motion the machinery of the judicial arbitration court. Independently of that objection it would also, in the opinion of His Majesty's Government, be necessary to make separate provision in regard to a number of points in respect to which the analogy of the corresponding stipulations in the prize-court convention is not sufficiently precise, and on which, accordingly, the articles of the draft convention for the establishment of a judicial arbitration court would require to be supplemented. This is the case, for instance, as regards the representation on the bench of judges, as a matter of course, of any power that may be a party to a dispute brought before the court.

17. It seems to His Majesty's Government that the most satisfactory method of dealing with these technical matters of form might well be discussed in the first instance by the expert representatives of the four powers which were responsible for the preparation of the original scheme. Should the suggestion which I have made in section 4 of the present note for an informal conference of this nature recommend itself to the United States Government, I have every confidence that the experts would be able to settle upon the most appropriate method of attacking the problem of the judicial arbitration court. I may add that I have ascertained, by inquiry at Paris and Berlin, that a proposal for such a conference would meet with no opposition on the part of the French and German Governments.

I have, etc.,

E. GREY.

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*Ambassador Bacon to the Secretary of State.*

No. 47.]

AMERICAN EMBASSY,  
*Paris, February 25, 1910.*

SIR: I have the honor to send herewith a copy of the note<sup>1</sup> dated November 23, which Mr. Bailly-Blanchard addressed to the minister of foreign affairs in compliance with your instructions of November 3 last, in transmitting the identic circular note with reference to the international prize court and its investment with the functions of a

<sup>1</sup>Not printed.



court of arbitral justice. I also inclose the copy and translation of the communication received from Mr. Pichon, in reply, under date of February 15.

I have, etc.,

ROBERT BACON.

[Inclosure—Translation.]

*The Minister for Foreign Affairs to Ambassador Bacon.*

MINISTRY FOR FOREIGN AFFAIRS,  
Paris, February 15, 1910.

MR. AMBASSADOR: By a letter dated November 23, 1909, Mr. Bailly-Blanchard, chargé d'affaires of the United States at Paris, transmitted to me in behalf of Mr. P. C. Knox, Secretary of State, the identic circular note No. 15, dated October 18, 1909.

I have examined with particular attention the contents of this document, which has for object the proposal of means for bringing definitely into force two institutions created by the second peace conference—*i. e.*, the prize court and the court of arbitral justice.

I am happy to inform your excellency that the Government of the Republic is entirely in favor of the initiative taken by the American Government to bring into the domain of practice the two jurisdictions instituted in 1907 at The Hague.

As regards the two particular points of the American proposition, the following are the reflections which their statement has suggested to me:

1. *International prize court.*—It is of capital interest that this international court, generally regarded as one of the most important results of the conference of 1907, should act. This is of consequence especially to the United States and France, who, with Germany and Great Britain, have taken the initiative of the project of the prize court. The present proposition of the United States is a sequel of the *vœu* adopted by the naval conference of London on the report of the French delegate. I can not, therefore, be otherwise than favorable to the American suggestion, and I have no objection to the basis.

As regards the definitive form to give to the reserves which appear to be imposed upon certain States by their constitutions, it would seem to me opportune to draw up on this subject a "complementary convention" of the 1907 convention on the prize court, "complementary convention" to which each power would be at liberty to refer in ratifying and which would reproduce the substance itself of the American proposition.

If the Government of the United States were favorable to this method, which would do justice to its observations with more clearness than a simple reserve and would realize the vote of the conference of London, the terms of the "complementary convention" could be elaborated by a technical committee composed of the representatives of the four powers which have taken the initiative of the prize court. This text once drawn up, the four powers could unite their efforts to have it accepted by the other signatory powers of the convention on the prize court.

In case this view should meet, in principle, with the approbation of the United States Government, it is urgent that this committee be assembled, because the delay accorded for the ratification of the convention on the prize court expires June 30, 1910. Hence it would be opportune to fix before Easter the terms of the "complementary convention."

2. *Court of arbitral justice.*—On this question, as on the preceding one, the efforts of the French Government have been joined to those of the United States Government at the time of the second Hague conference, to bring to a conclusion the project for the permanent court of justice. I can only therefore be favorable in principle to the initiative taken by Mr. Knox, who was the first to raise the question of the realization of the vote of the second peace conference relative to the court of arbitral justice.

As to the definitive solution to be given, there is reason to inquire whether a distinct connection was not rather indicated than a simple reserve inserted in an act of ratification, to give to the court of arbitral justice the means it still lacks.

Another reason militates in this direction. It does not seem, in fact, possible to limit oneself to saying that the international prize court will act as a court of arbitral justice; for all the powers which will accept the first may not accept the second, and the prize court could not be adapted to an object other than its own without the unanimous consent of the powers which have established, on the one hand, the prize court; on the other, the court of justice.

But there is here above all a question of form to examine, and none could be more competent in this respect than the technical committee to which I have alluded. It could make an exchange of views as to the best solution to offer in order to come to an understanding, first, between the four powers represented and afterwards between all the signatory powers.

When your excellency shall have been informed of the dispositions of the Government at Washington in these matters, I shall be extremely obliged if you will be so good as to let me know at once, so that all measures may be taken not to allow the period of delay for ratification to expire before a solution has been arrived at.

Accept, etc.,

S. PICHON.

File No. 12655/408.

*The Secretary of State to Ambassador Reid.<sup>1</sup>*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, March 3, 1910.*

Mr. Knox refers to Mr. Reid's dispatch No. 1180 of the 19th ultimo, and states that Sir Edward Grey's proposal for a conference of the four interested powers be held at Paris is accepted by this Government. Mr. Knox says that Dr. James Brown Scott, technical delegate to The Hague conference, has been instructed to meet the duly authorized representatives of Great Britain, France, and Germany in Paris on the 18th instant in order to discuss the modification of the prize court convention and the establishment of a court of arbitral justice, and to draw up documents necessary for both upon the general lines suggested in the identic circular note.

Mr. Knox adds that the Government of the United States hopes that a satisfactory agreement may be reached at the coming conference for the simultaneous establishment in the immediate future of both institutions.

*Ambassador Hill to the Secretary of State.*

[Telegram—Paraphrase.]

AMERICAN EMBASSY,  
*Berlin, March 26, 1910.*

Mr. Hill reports that the foreign office has requested him to telegraph the following to the department:

BERLIN, *March 25, 1910.*

The undersigned has the honor to confidentially inform his excellency, Mr. David Jayne Hill, ambassador of the United States of America, in supplement to his note of the 10th instant, that the discussion in Paris between representatives of the United States, Germany, France, and Great Britain has resulted in the adoption of the two inclosed proposals of a supplementary protocol to the prize court convention and a convention for the establishment of the arbitration convention proposed at the Second Hague Peace Conference, which are to be submitted by the said representatives to their Governments for their approval.

The Imperial Government assents to these proposals and to the procedure also recommended by the representatives. According to this the United States Government, in case the four powers agree, is first to submit the supplementary protocol to the prize court convention to the Government of the Netherlands with the request that it be communicated to the other signatory powers to this agreement; this request would be

<sup>1</sup>Mutatis mutandis to Ambassador Hill at Berlin, referring to dispatch No. 570, of Jan. 14.

supported by the ministers of Germany, France, and Great Britain accredited to The Hague. When the supplementary protocol shall have been signed, and upon the subsequent ratification of the convention, the good offices of the Government of the Netherlands are similarly to be requested with a view to having the proposal of an arbitration convention laid before the powers represented at the Second Hague Peace Conference. There would, however, take place previous to such action, probably in June, a further discussion between the representatives of the four powers for the purpose of reaching a definite agreement respecting article 8, which was only provisionally accepted by the representatives of the United States and Great Britain, and of making such minor textual changes as may be necessary.

*The Secretary of State to Ambassador Hill.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, March 29, 1910.

Mr. Knox refers to Mr. Hill's telegram of March 26 and directs him to express the gratification of the department over the results of the conference of representatives of the United States, Germany, France, and England at their recent meeting in Paris, called at the happy suggestion of the German foreign office for the consideration of the projects proposed in department's note of October 18, 1909. Mr. Knox says that this Government is pleased to signify its assent to the proposals as to the additional protocol modifying the prize court convention, and only waits the assent of the Governments of England and France before bringing the matter to the attention of the Netherlands Government in accordance with the procedure agreed upon at the Paris conference, and adds that the department, with peculiar interest and sympathy, now but awaits the receipt of the full French text of the convention for the establishment of the court of arbitral justice, in order to be in a position to signify its formal assent to the articles of the convention on this important subject so far as agreed upon at Paris.

File No. 12655/434.

*Ambassador Reid to the Secretary of State.*

[Extract.]

No. 1229.]

AMERICAN EMBASSY,  
London, March 30, 1910.

SIR: With reference to previous correspondence in regard to the informal negotiations which have been taking place at Paris between the delegates of the Governments of the United States of America, France, Germany, and Great Britain respecting the proposals put forward in the department's identic circular note of October 18 last, I have the honor to inform you that I am to-day in receipt of a note from the foreign office, dated March 29 (copy inclosed), stating that the British Government has received a most satisfactory report of the result of these informal negotiations.

I have, etc.,

WHITELAW REID.

[Inclosure.]

*The Minister for Foreign Affairs to Ambassador Reid.*FOREIGN OFFICE,  
London, March 29, 1910.

YOUR EXCELLENCY: With reference to my note of the 9th instant I have great pleasure in informing your excellency that I have received a most satisfactory report of the result of the informal negotiations which have taken place at Paris between the delegates of the Governments of the United States of America, France, Germany, and Great Britain respecting the proposals put forward in Mr. Secretary Knox's identic circular note of October 18 last.

The delegates were able to adopt "ad referendum" (1) a draft additional protocol making provision for the adoption of an alternative procedure in the international prize court and (2) a draft convention for the establishment of a judicial arbitration court. It was an essential condition of their agreement that the existence of the draft convention should be kept strictly secret until the additional protocol has been signed by all the powers signatory of the prize court convention of October 18, 1907, and ratified by a sufficient number of them to allow of the nomination of nine judges and nine deputy judges.

Subject to this proviso I have the now the honor to state that His Majesty's Government accept the text of the two above instruments as settled by the four delegates at Paris, of which copies are annexed hereto. They are, furthermore, ready, should this course recommend itself to the three other Governments, to instruct His Majesty's minister at The Hague to support a request to be addressed by his United States colleague to the Netherlands Government that they should, as soon as may be, submit the additional protocol to the signatory powers of the prize court convention for their acceptance.

In requesting your excellency to bring the above to the notice of your Government as soon as possible, I beg you to express to them the gratification of His Majesty's Government at the success of this cordial cooperation between them in a cause which they both have so much at heart.

I have, etc.,

(For the Secretary of State.)  
W. LANGLEY.

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*Minister Beaupré to the Secretary of State.*

No. 331.]

AMERICAN LEGATION,  
The Hague, March 31, 1910.

SIR: I have the honor to refer to the department's unnumbered dispatch of the 3d of November last, directing the legation to transmit immediately to the minister for foreign affairs of the Netherlands the printed identic note which was inclosed therewith, and to express to the minister the great interest which our Government takes in the acceptance of the proposals contained in the identic circular note, and to request as early action thereon as the importance of the proposals would permit. In response to this dispatch, I now have the honor to forward to the department herewith copy and translation of the reply of the minister for foreign affairs, under today's date, to the identic note in question.

I have, etc.,

A. M. BEAUPRÉ.

[Inclosure—Translation.]

*The Minister for Foreign Affairs to Minister Beaupré.*GOVERNMENT OF FOREIGN AFFAIRS,  
*The Hague, March 31, 1910.*

SIR: In your letter of the 18th November last your excellency kindly inclosed a circular note containing two proposals on the part of the Government of the United States, one regarding the removal of difficulties of a constitutional nature which prevent the ratification by the above-mentioned Government of the convention for the establishment of an international court of prize, the other looking to the end of investing the international court of prize with the authority of the international court of justice proposed at the second peace conference.

As to the first of these proposals, the Queen's Government, attaching great importance to the ratification by the United States of the convention for the establishment of an international court of prize, is quite ready to act in agreement with the above-mentioned Government to find a solution of the difficulties. The Government of the United States believes that the desired end will be attained if the powers have the authority to treat the claims before the international court of prize as simple requests for indemnity following capture, and not as appeals from the decisions of the national courts of prize. For this purpose, the Government of the United States proposes to insert a reservation in the act of ratification of the above-mentioned convention.

The Government of the Netherlands, desirous of obtaining the esteemed concurrence of the United States in the convention of London, after a careful examination of the proposal, desires to express the opinion that this procedure would not indicate precisely enough the modifications introduced in the existing provisions of the convention relating to the establishment of an international court of prize. For this reason, the conclusion of an additional convention appears preferable.

The Government of the Queen, therefore, is in accord with the suggestion, expressed by several other powers, of submitting the preparation of an additional convention to a committee composed of representatives of the four powers who assumed the initiative of the court of prize—namely, Germany, the United States, France, and Great Britain.

As to the second proposal of the Government of the United States relating to a court of arbitral justice, the Government of the Queen fears that an attempt to carry into effect this proposal concurrently with the first will cause regrettable delays in the ratification of the prize convention; on the other hand, there appears to be nothing to prevent a preliminary examination of this proposal by the above-mentioned committee, the result of which examination to serve as a basis for an exchange of ulterior views on the question.

Accept, etc.,

R. DE MAREES VAN SWINDEREN.

*The Acting Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, March 31, 1910.*

Mr. Wilson directs Mr. Reid to express the gratification of the State Department over the results of the conference of the representatives of the United States, England, Germany, and France at their recent meeting in Paris, suggested by the other Governments concerned, for the consideration of the projects proposed in Department's note of October 18, 1909. Mr. Wilson says that this Government is pleased to signify its assent to the proposals as to the additional protocol modifying the prize court convention, and as the Governments of England and Germany have now assented, this Government only waits the assent of the Government of France before bringing the matter to the attention of the Netherlands Government in accordance with the procedure agreed upon at the Paris conference. Mr. Wilson adds that the department, with peculiar interest and sym-

pathy, now but awaits the receipt of the full French text of the convention for the establishment of the Court of Arbitral Justice in order to be in a position to signify its formal assent to the articles of the convention on this important subject so far as agreed upon at Paris.

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*The Secretary of State to Ambassador Reid.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,

*Washington, April 15, 1910.*

Mr. Knox instructs Mr. Reid to inform the foreign office that the department accepts both projects and procedure recommended by the Paris conference to modify the prize court and to establish a court of arbitral justice; that while the department prefers the consent of 15 instead of 18 to establish the arbitral court and regards consent of 15 as giving sufficient international character to the proposed court, it nevertheless defers to the judgment of its associates and accepts the arbitral court project as recommended by the Paris conference without modification or reserve.

Mr. Knox says that the acceptance of Germany of both projects and procedure has been received but the department anxiously awaits the approval of France in order to give necessary instructions to the American minister at the Hague. Mr. Knox adds that upon acceptance by France the necessary instructions will be given in the form agreed upon by the conference.

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*The Secretary of State to Ambassador Hill.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,

*Washington, April 15, 1910.*

Mr. Knox instructs Mr. Hill to inform the foreign office that the department accepts both projects and procedure recommended by the Paris conference to modify the prize court and to establish a court of arbitral justice; that while the department prefers the consent of 15 instead of 18 to establish the arbitral court and regards consent of 15 as giving sufficient international character to the proposed court, it nevertheless defers to the judgment of its associates and accepts the arbitral court project as recommended by the Paris conference without modification or reserve.

Mr. Knox says that the acceptance of Great Britain of both projects and procedure has been received, but the department anxiously awaits the approval of France in order to give necessary instructions to the American minister at The Hague. Mr. Knox adds that upon acceptance by France the necessary instructions will be given in the form agreed upon by the conference.

*The French Chargé to the Secretary of State.*

[Translation.]

FRENCH EMBASSY,  
Washington, April 17, 1910.

MR. SECRETARY OF STATE: The minister for foreign affairs has just forwarded to me a note relative to your excellency's propositions dated October 18, last, in regard to the court of arbitral justice.

By order of my Government I have the honor to transmit to your excellency the text of the said note:

In consequence of Mr. Knox's identic circular note of October 18, 1909, pourparlers took place in Paris between the delegates of France, Germany, the United States, and Great Britain concerning the prize court and the court of arbitral justice.

As regards the prize court a draft of additional protocol was proposed by the delegates to enable the Government of the United States to avoid constitutional difficulties. Desiring to facilitate the ratification of the prize court by the American Government, the Government of the Republic accepts the proposed protocol, although it has no intention to derive any advantage from its provisions, but stands on the convention of 1907, which vested the prize court with a truly supreme international jurisdiction. While instructing its representative at The Hague in that sense the Government of the Republic will make it known that it holds the prize-court question to be one that must be entered in the program of the third conference at The Hague, where all the powers will be permitted to discuss the modifications made in the convention of 1907 by the declaration of London or the additional protocol.

As regards the court of arbitral justice, the Government of the Republic likewise agrees with that of the United States on the necessity of putting the court into operation. It believes, however, that it is expedient, as decided by the committee of the four delegate powers, to establish a distinction between that and the prize court. When the convention governing the last-named court shall have been ratified by enough States to permit of its going into effect, the putting into operation of the court of arbitral justice ought to be immediately proposed. An additional exchange of views will be necessary on that point before framing the final text that will be submitted to all the powers concerned.

Accept, etc.,

PIERRE LEFÈVRE-PONTALIS.

*Ambassador Leishman to the Secretary of State.*

No. 212.]

AMERICAN EMBASSY,  
Rome, April 19, 1910.

SIR: Referring to the department's unnumbered instruction of November 3, 1909, and to the embassy's dispatch No. 136 of January 17, 1910, in regard to the alternative procedure for the international prize court and the investment of this tribunal with the functions of a court of arbitral justice, I have the honor to inclose herewith a copy of a note from the royal ministry of foreign affairs, together with a translation thereof.

I have, etc.,

JOHN G. A. LEISHMAN.

[Inclosure—Translation.]

*The Minister for Foreign Affairs to Ambassador Letshman.*MINISTRY FOR FOREIGN AFFAIRS,  
*Rome, April 14, 1910.*

MR. AMBASSADOR: On January 15 last my predecessor had the honor to declare to your excellency that the King's Government had received favorably, in the main, the two proposals formulated by the American Government in its circular of October 18, 1909 (attached to the embassy's note of November 24), in regard to the international prize court and the court of arbitral justice, reserving to itself, however, the right to state in a later reply their own understanding in regard to them.

In confirming these declarations, I have the honor, however, to complete them with the following information:

1. In regard to the first proposal, which concerns the manner of placing before the international prize court the questions which, according to the terms of the convention of 1907, should be carried up to it in the form of recourse from the sentences of the national judicial authorities, the King's Government has no substantial objections against the desire expressed by the American Government. The considerations proposed in the above-mentioned circular amply justify, in our opinion, the proposals formulated by it, without substantially impairing the efficacy of the agreement and the authority of the new jurisdiction which is to be instituted; they will serve to agree better with the laws in force in the single States, and, eliminating the difficulties which might prevent, on this proposal, the participation of some of them in the new institution, they will insure—as is the desire and wish of all—the full practical operation of the work of the second conference of The Hague in what constitutes the, perhaps, most notable result of its labors. The Government of the King was anxious to examine accurately to see if it would not be well to introduce some slight modification in the formulas suggested in the circular of October 18, 1909, for the full safeguarding of the rights and of the terms established in the convention of 1907, as, as a matter of fact, is declared in the final clause of the formulas referred to. It occurring to me, however, that new clauses and new suggestions might perhaps be added in accordance between the American Government and that of other countries, to the Governments of the States which subscribed to the conventions of The Hague, in regard to the manner most opportune of the proposal in question, I reserve the right to express in due time, also in regard to this proposition, the point of view of the King's Government.

2. In regard to the second proposal, which concerns the competency of the international prize court to act as a court of arbitral justice in whatever controversy which the contracting States should bring before it, according to the project of the convention which the second peace conference compiled and recommended for the institution of the latter, the King's Government would not have, in as far as it is concerned, motive to reject the proposals of the American Government. Mindful, however, of the difficulties with which the institution in question met on the part of not a few of the States which participated in the conference—difficulties which might to-day prevent the constitution of the same prize court or perhaps hinder the adhesion of the said States to the same if the ratification of the convention in question were subordinated or in any manner joined to the new agreements and to the declaration suggested in the circular of October 18—I should consider it more opportune that all further concrete negotiations on this subject should be postponed until the ratification of the convention relative to the prize court shall have taken place within the time agreed upon, which is now about to expire.

This, however, does not prevent an exchange of ideas from being useful in the meantime also in this respect between the States which received with the greatest interest the plan for the institution of both the courts.

A. DI SAN GIULIANO.



*Minister Beaupré to the Secretary of State.*

No. 350.]

AMERICAN LEGATION,  
*The Hague, April 23, 1910.*

SIR: I have the honor to refer to the department's telegram of yesterday's date and to my reply<sup>1</sup> of this afternoon in regard to the matter which was brought to my attention by the Hon. James Brown Scott on the 27th ultimo. In compliance with the department's instruction, I have this day presented the note, of which I inclose copy, to the minister for foreign affairs of the Netherlands, inclosing therewith the copy of the proposed additional protocol mentioned therein, which was left with me by Dr. Scott. As that proposed protocol is already in possession of the department, I do not inclose a copy herewith.

Immediately upon receipt of the department's telegram I communicated with the legations of Germany, France, and Great Britain at this capital to ascertain what, if any, instructions had been received by them in regard to approving the proposal of the United States to submit, to the powers signatory of the convention for the establishment of an international court of prize signed at The Hague October 18, 1907, an additional protocol proposing certain modifications, set forth therein, of the prize court convention to overcome difficulties of a constitutional nature preventing or rendering uncertain the ratification, in the present form, of the prize court convention by countries in which such constitutional difficulties may exist. I learned from His Britannic Majesty's minister that while he had been fully informed in regard to the matter in question, he had as yet received no instructions to take any definite action in the premises. The German minister had received no instructions. The French minister was in possession of all the facts in regard to the recent conference at Paris of the representatives of the four-powers, joint proposers of the prize court convention at the second peace conference, and had received from his Government not only a copy of the additional protocol, but instructions which direct him to support (appuyer) the proposal of the United States. I informed him that I had communicated to the Netherlands Government the intention of the United States to request that the Government of the Netherlands, as the intermediary of the Hague signatories, transmit, with its favorable recommendation, a circular note to the signatories of the prize court convention, as soon as the Governments of Germany, France, and Great Britain, joint proposers of the original prize court convention, should have signified their approval of the additional protocol and of the proposed method of procedure. It seemed best to him, however, for the time being, to await the arrival of instructions to the German and British ministers before taking any action, and to consult with them with a view to taking the same, or similar, action in the matter.

I have advised the department of these facts by cable.

I am, etc.,

A. M. BEAUPRÉ.

<sup>1</sup>Not printed.

[Inclosure.]

*Minister Beaupré to the Minister for Foreign Affairs.*AMERICAN LEGATION,  
*The Hague, April 23, 1910.*

SIR: I have the honor to recall to your excellency's attention the fact that in the month of November, 1909, the Government of the United States addressed to the powers signatory of the convention for the establishment of an international court of prize, signed at The Hague October 18, 1907, and represented at the recent naval conference at London (Dec. 4, 1908–Feb. 26, 1909), an identic circular note of the Secretary of State of the United States, dated October 18, 1909, proposing, as far as the present purpose is concerned, certain modifications of the prize court convention in order to overcome difficulties of a constitutional nature which either prevent or render uncertain the ratification in its present form of the prize court convention by countries in which such constitutional difficulties may exist, and which, unless overcome, may deprive such countries of participation in the beneficent results to be expected from the establishment and operation of the international court of prize. As a participant in the naval conference at London, your excellency's Government is aware that the delegates of the United States to this conference called attention to the constitutional difficulties which militate against the ratification of the prize court convention in its present form by the United States, and that the conference unanimously adopted the following vœu:

"The delegates of the powers represented at the naval conference which have signed, or expressed the intention of signing, the convention of The Hague of the 18th October, 1907, for the establishment of an international prize court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of the convention in its present form, agreed to call the attention of their respective governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the international prize court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation; provided, always, that the effect of this reservation shall not be such as to impair the rights secured under said convention, either to individuals or to their governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the powers signatory of that convention."<sup>1</sup>

Upon the receipt of the text of this vœu the Government of the United States, on March 5, 1909, cabled its diplomatic agents accredited to the powers represented at the naval conference its intention to "send an identic circular note to each of the participating powers, setting forth at length the reasons which influence the United States to request a rehearing de novo of a question involved in a national prize decision, and the means whereby this change of procedure may be effected without interfering with the rights of governments or individuals under the prize court convention."

The responses of the various powers to the identic circular note dated October 18, 1909, setting forth in detail the modifications to be made in the prize court convention in order to permit the United States and other powers, which may possess the same constitutional difficulties, to ratify the convention in a modified form, were so favorable in principle as to justify the United States in taking further action to secure through diplomatic channels the acceptance of the proposed modifications, so essential to the prompt and final establishment of the international court of prize. The United States, therefore, consulted the Governments of Germany, France, and Great Britain; as joint proposers with the United States of the prize court convention at the Second Hague Peace Conference, in order to prepare a text of an additional protocol to the original convention which, without violating its spirit and while preserving intact the rights guaranteed to its signatories, might nevertheless be calculated to enable the United States, and such other powers in which difficulties of a like constitutional nature may exist, to accept without delay the convention as modified and secure at the earliest possible moment the establishment of the international court of prize.

I have the pleasure and the honor to inform your excellency that the inclosed text of an additional protocol meets with the approval of the proposers of the original convention, and that, in their opinion, its acceptance seems calculated to obviate the constitutional difficulties which may exist in some countries without sacrificing any of the fundamental purposes of the convention and without prejudicing the rights secured to the signatory powers, their subjects or citizens. I therefore beg your excellency to give early attention to the inclosed copy of the additional protocol, in

<sup>1</sup>See Foreign Relations, 1909, p. 313.

order that the Government of the Netherlands may be enabled, as the intermediary of the Hague signatories, to transmit in the very near future and with the favorable recommendation of your excellency's Government a circular note to the signatories of the prize court convention, upon the request of the United States, as soon as the Governments of Germany, France, and Great Britain, joint proposers of the original prize court convention, shall have signified to your excellency's Government their approval of the additional protocol and of the proposed method of procedure.

Upon being informed that the Governments of Germany, France, and Great Britain have formally notified your excellency of their approval, both of the additional protocol and of the procedure to be followed, I shall present the formal request of my Government that your excellency transmit a circular note to the signatories of the prize court convention.

In informing your excellency of the desires of the United States and of the joint proposers of the prize court convention, I beg to assure your excellency that my Government is actuated solely by the sincere desire to secure the ratification of the prize court convention at the earliest possible moment and in such a form as to enable the United States and the other countries in which constitutional difficulties may exist regarding the acceptance of the original convention to participate in the labors of the international court of prize and the beneficent results so universally, so confidently and justly, expected from its establishment and successful operation.

I avail, etc.,

A. M. BEAUPRÉ.

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*The Secretary of State to the French Chargé.*

DEPARTMENT OF STATE,  
Washington, April 25, 1910.

SIR: I have the honor to acknowledge receipt of your note of the 17th instant, in which you quote an instruction received from your Government setting forth its views concerning this department's identic circular note of October 18, 1909, regarding the prize court and the court of arbitral justice.

The department is much gratified at the attitude of your Government and regards your note as a substantial acceptance of the additional protocol for the modification of the international prize court and the draft convention for the establishment of the court of arbitral justice, after the prize court has been ratified by a sufficient number of States to permit it to go into operation.

The department notes your Government's suggestion that a further exchange of notes be made with a view to prepare a definitive text of the convention for putting into effect the court of arbitral justice, and will at the proper time cooperate with the interested powers in the formulation of a definitive text.

Accept, etc.,

P. C. KNOX.

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*Minister Beaupré to the Secretary of State.*

[Extract.]

No. 353.]

AMERICAN LEGATION,  
The Hague, May 3, 1910.

SIR: Yesterday morning the representatives of the Governments of Germany, Great Britain, and France called upon me at the legation and acquainted me with the fact that they had each received instructions from their respective Governments to approve the proposal of the United States that the Government of the Netherlands be requested, as the intermediary of the Hague signatories, to transmit

to the powers signatory to the prize court convention a circular note embodying the additional protocol. The French minister, however, added that he had very definite instructions from his Government to divide his communication to the Netherlands Government into four heads, as follows: (1) To express the approval of the Government of France of the additional protocol; (2) to express the approval of the Government of France of the request that the Netherlands Government act as intermediary in presenting the additional protocol to the powers signatory of the prize court convention; (3) to declare that it is not the intention of the Government of France to avail itself of the provisions of the additional protocol; and (4) to declare the intention of the Government of France to refer both the convention of London and the matter of the additional protocol to the Third International Peace Conference. The German minister stated that his instructions were to convey to the minister for foreign affairs of the Netherlands the approval of his Government verbally (*mündlich*). The British minister also stated that he could not communicate the approval of his Government otherwise than verbally, save upon receipt of special instructions to that effect. It was, therefore, decided that the three ministers would wait upon the minister for foreign affairs at 3 o'clock yesterday afternoon and express verbally their approval of the protocol and the suggested procedure.

This was done. The minister for foreign affairs thereupon replied to my note of the 23d ultimo, a copy of which was forwarded to the department in my No. 350, in the note of which I inclose copy and translation. I thereupon immediately presented him with the note of which I append a copy, making the formal request that the Government of the Netherlands, as intermediary of the Hague signatories, communicate the additional protocol in a circular note addressed to the powers signatory to the prize court convention. On consideration of this note, the minister for foreign affairs has verbally asked to be informed whether it is the opinion of the Government of the United States that the remarks of the French Government as to its intentions not to avail itself of the provisions of the additional protocol and to refer both the convention of London and the additional protocol later to the third peace conference may be embodied in the circular note to be addressed to the powers signatory of the prize court convention. To this I stated that I would not venture to reply without instructions from my Government, which instructions I should immediately request by cable. I have just done this.

I am, etc.,

A. M. BEAUPRÉ.

[Inclosure 1.—Translation.]

*The Minister for Foreign Affairs to Minister Beaupré.*

MINISTRY FOR FOREIGN AFFAIRS,  
*The Hague, May, 2, 1910.*

SIR: In your letter of the 23d April last, No. 291, your excellency kindly sent me the project of a protocol, additional to the convention for the establishment of an international court of prize, designed to obviate the constitutional difficulties which prevent the ratification of the above-mentioned convention by the Government of the United States of America.

At the same time your excellency advised me of your intention to present a formal request to the end that the Government of the Queen be willing to communicate the text of this protocol to the powers signatory of the convention so soon as I should have informed your excellency that the Governments of Germany, Great Britain, and France have expressed their approbation of said text.

The representatives of the said powers having advised me that their respective Governments support the protocol in question, I hasten so to inform you.

I add that the Government of the French Republic has felt it necessary to remark, particularly, that it will not profit by the provisions of the additional protocol and that it proposes that both the convention of London and the additional protocol be submitted later to the third peace conference.

Kindly accept, etc.,

R. DE MAREES VAN SWINDEREN.

[Inclosure 2.]

*Minister Beaupré to the Minister for Foreign Affairs.*

AMERICAN LEGATION,  
The Hague, May 2, 1910.

SIR: I have the honor to inform your excellency that difficulties of a constitutional nature have hitherto prevented the Government of the United States from proceeding with the ratification of the convention for the establishment of the international court of prize signed at The Hague October 18, 1907. As these difficulties are of a purely internal nature, it is not necessary either to discuss them or to dwell upon them at length. From the international standpoint, it is proper to state that they concern merely the procedure before the international court of prize, and that they do not prevent the acceptance of said court, provided the procedure before it be modified in such a way, as far as the United States is concerned, so as to prevent the examination upon appeal of a judgment of United States courts, and to limit the international court of prize to an award of damages in the case of an illegal capture by the naval forces of the United States. The acceptance of such a modification would affect neither the rights of the signatory powers, their subjects or citizens, nor the duty assumed by the United States to indemnify the signatory powers, their subjects or citizens, in a proper case.

The Government of the United States, sincerely desirous to participate in the labors of the court, has, after much thought and reflection, come to the conclusion that the difficulties in the way of its ratification of the convention are not insuperable, and that a formal modification of the convention in matters of procedure would remove the obstacles in the way of ratification without affecting matters of substance. The Department of State has communicated its views to the Governments of Germany, France, and Great Britain, and I am happy to inform your excellency that these Governments, joint proposers with the United States of the original convention at the Second Hague Peace Conference, agree that the proposed modifications of the convention are entirely consistent with its spirit and in no ways violative of the substantial rights and duties created by it.

I have, therefore, the honor to transmit to your excellency an additional protocol, prepared in consultation with representatives of the powers above mentioned, and with the express approval of the said powers, notified to your excellency by their diplomatic agents accredited to your excellency's Government, and I am directed by my Government to request that your excellency's Government, as the intermediary of the Hague signatories, and in accordance with the procedure established in the year 1900, in reference to a proposed modification of the convention for the adaptation to marine warfare of the principles of the Geneva Convention of August 22, 1864, transmit the proposed additional protocol in a circular note to be addressed to signatories of the prize court convention of October 18, 1907. Your excellency will note that the additional protocol is to be ratified at one and the same time with the original convention and that the protocol is to form an integral part thereof. It is suggested that the diplomatic agents of the signatories of the original convention, accredited to your excellency's Government at The Hague, be duly authorized to sign the additional protocol at The Hague on or before June 25, 1910, so that the ratifications of both instruments may be deposited at The Hague on June 30, 1910, and the declaration to make use of the modified procedure provided by the additional protocol may be noted in the procès-verbal of the deposit of ratifications, in accordance with articles 1 and 8 of said protocol and of article 52, second paragraph, of the original convention

for the establishment of an international court of prize signed at The Hague October 18, 1907.

The Government of the United States believes that there can be no serious objection to the proposed additional protocol, especially as it meets with the express approval of the proposers of the original convention, and expresses the hope that your excellency's Government will transmit the said protocol, with the approval of your excellency's Government, to the signatories of the original convention with the least delay consistent with a matter of such magnitude and international importance.

I avail, etc.,

A. M. BEAUPRÉ.

*Ambassador O'Brien to the Secretary of State.*

No. 1160.]

AMERICAN EMBASSY,  
Tokyo, May 10, 1910.

SIR: Referring to your unnumbered instruction of November 3, 1909, inclosing copies of an identic circular note relative to the proposed alternative procedure for the international prize court, I have the honor to inform you that I am to-day in receipt of a memorandum from the imperial foreign office, a copy of which I beg to inclose herewith. From this memorandum it will be seen that the Japanese Government agrees to the alternative procedure in the international prize court, but makes the suggestion that the establishment of the court of arbitral justice should be considered in a separate convention, apart from the question of the ratification of the prize court convention.

I have, etc.,

T. J. O'BRIEN.

[Inclosure.]

MEMORANDUM.

DEPARTMENT FOR FOREIGN AFFAIRS,  
Tokyo, May 9, 1910.

The Imperial Government, desiring to cooperate with the other powers in giving full effect to the labors of the second peace conference, are happy to agree to the alternative procedure in the international prize court, suggested by the honorable the Secretary of State of the United States in his identic circular note of the 18th of October, 1909. It is, however, it seems to them, highly desirable that all the powers signatories of the prize court convention should in all that concerns the jurisdiction and procedure of the court be placed upon precisely the same footing. The Imperial Government accordingly recommend that the suggestion under consideration be modified so as to enable any of those powers, in their discretion and independently of any constitutional question, to make use of the proposed reservation.

The Imperial Government would prefer to have the proposed alteration in the prize court procedure effected by means of a separate act, rather than by the insertion of a clause in the instrument of a ratification of the prize court convention. But if the suggested method is deemed sufficient, the Imperial Government will waive their preference and accept the proposed protocol, provided it is amended in the sense they have recommended.

The Imperial Government also concur in principle in the proposition contained in the same note to invest the international prize court with the duties and functions of the proposed court of arbitral justice. But they are apprehensive that the plan suggested by the United States for giving effect to that proposition would leave several important questions, especially in the matter of organization and administration, entirely unprovided for. It is also greatly to be feared that the ratification of the prize court convention may be endangered if the proposed clause regarding the court of arbitral justice is inserted in that process.

In these circumstances the Imperial Government think it very desirable, if not actually essential, that the matter of the establishment of the court of arbitral justice should be considered in a separate convention, apart from the question of the ratification of the prize court convention.

*Minister Beaupré to the Secretary of State.*

No. 366.]

AMERICAN LEGATION,  
*The Hague, May 13, 1910.*

SIR: I have the honor to refer to my cipher telegram of last evening, as well as to my No. 353, of the 3d instant, on the matter of the proposed protocol additional to the convention relative to the establishment of an international court of prize signed at The Hague October 18, 1907, and to report that on receipt of the department's cable of the 7th instant<sup>1</sup> I communicated verbally the department's attitude in regard to the remarks of the French Government, in respect of its approval of the additional protocol, to the minister for foreign affairs of the Netherlands. At the same time I informed him that I had learned from the French minister that his Government did not insist upon the inclusion of its remarks in the circular note which the Netherlands Government had been requested, by my note of the 2d instant, to forward to the powers signatory of the prize court convention. This appeared to satisfy the minister on that point and he informed me that the circular note was in course of preparation.

Yesterday morning, however, I received the note of which I inclose a copy and translation, dated the 10th instant, which states, in brief, that the Government of the Netherlands, while not admitting the analogy of the precedent of its action in 1900 in the matter of the modification of the convention for the adaptation of the Geneva convention of 1864 to war at sea, since this proposal had its origin with the Netherlands Government, is willing, if the Government of the United States thinks best, to become the intermediary in this present matter; but that the Government of the Netherlands believes it scarcely possible to set so early a date as the 25th of June next for signing the additional protocol, and, further, that the Netherlands Government will not be in a position to propose the ratification of the additional protocol before the 30th of June next, since it will not, itself, have been able to ratify the additional protocol by that date, and believes that such will be the case with a number of the other powers concerned. The note continues, therefore, by suggesting that the United States transmit their proposal to the signatory powers and that a date be set for the signature of the additional protocol after September 15 next, the date for the deposit of the ratifications being set at some subsequent time, not later than June 30, 1911. The note concludes by expressing the unqualified approval, on the part of the Netherlands Government, of the additional protocol.

That morning the minister for foreign affairs called at the legation on a personal matter, but, discussing incidentally the contents of his note of the 10th instant, made it clear that the Netherlands Government would be willing to act as intermediary in the matter of submitting the additional protocol to the powers signatory of the prize court convention as well as that his Government was perfectly willing to sign that instrument now, the difficulties existing being purely of a practical nature, as regards the time necessary for ratification.

I am, etc.,

A. M. BEAUPRÉ.

<sup>1</sup>Not printed. Stated that department had no objection to inclusion of remarks of French Government in circular note.

[Inclosure—Translation.]

*The Minister for Foreign Affairs to Minister Beaupré.*MINISTRY FOR FOREIGN AFFAIRS,  
*The Hague, May 10, 1910.*

MR. MINISTER: I have had the honor to receive your excellency's note of May 2 last, No. 298, in which you kindly send me the text of a proposed protocol additional to the convention relating to the establishment of an international prize court, destined to remove difficulties of a constitutional nature that oppose the ratification of said convention by the United States of America.

At the same time your excellency has kindly informed me of your Government's desire that the above-mentioned protocol should be transmitted by Her Majesty's Government to the powers signatory to the prize court convention, to be signed by them at The Hague on the 25th of June next, or at an earlier date, so that the deposit of ratifications may take place before the 30th of June following, simultaneously with the deposit of the ratifications of the prize court convention. This method of procedure, in the opinion of the Government of the United States, would be in conformance with the procedure followed in 1900 in regard to the adaptation of the principles of the Geneva convention of 1864 to war at sea.

Although the analogy that might exist between the two cases appears to be open to question, since the proposal of 1900 originated with the Queen's Government itself, and although, indeed, the Royal Government deems that it is much preferable and in no way objectionable that such proposals be made by that Government itself whence they emanate to the powers concerned, Her Majesty's Government would not raise any absolute objection to transmitting the proposals of the Government of the United States in regard to a modification of the convention relating to the prize court to the powers signatory to that convention. Nevertheless, Her Majesty's Government believes that it is scarcely possible to fix for the signature of the additional protocol a date so early as the 25th of June next, owing to the great number and the distance away of the powers having to pronounce upon it.

Besides, the Netherlands Government would not be able to propose the ratification of the protocol before the 30th of June, since it can not, itself, ratify the protocol without the prior consent of Parliament thereto, and since it is not possible to obtain this approbation before the above-mentioned date, and since it is to be expected that such will be the case with several of the other powers.

Under these circumstances, and if the Government of the United States insists that its proposal be transmitted by Her Majesty's Government, it would be better to propose for the signature of the additional protocol a date subsequent to the 15th of September next, and to postpone the deposit of the ratifications of this act, as well as of the convention relating to the prize court, to a date to be fixed subsequently, in any case not later than the 30th of June, 1911.

Nevertheless, Her Majesty's Government considers it preferable that the proposal in question be transmitted to the other powers by the Government of the United States, without the intervention of the Royal Government.

In conclusion I am pleased to add that the additional protocol, rendering it possible for the United States to ratify the convention relating to the international prize court, meets with the entire approbation of the Royal Government.

Accept, etc.,

R. DE MAREES VAN SWINDEREN.

*The Secretary of State to Minister Beaupré.*

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, May 14, 1910.*

Mr. Knox informs Mr. Beaupré that the United States requests the Government of the Netherlands to transmit the additional protocol, and that September 15 is satisfactory for its signature. Mr. Knox says that the United States prefers an early date for the deposit of ratifications, so that the prize court can go into operation during the coming year, and adds that while the department suggests January or February, it will defer to preferences of the Netherlands Government.



*Minister Beaupré to the Secretary of State.*

No. 370.]

AMERICAN LEGATION,  
*The Hague, May 16, 1910.*

SIR: In reference to the Department's telegraphic instruction of the 14th instant, and to my No. 366, of the 13th instant, in regard to the circular note, to the powers signatory to the international prize court convention of October 18, 1907, which the department desires this Government to send, I have the honor to report that, upon receipt of the department's telegram, yesterday, I addressed to the minister for foreign affairs of the Netherlands the note of which I enclose copy, embodying the purport of your telegram.

I am, etc.,

A. M. BEAUPRÉ.

[Inclosure.]

*Minister Beaupré to the Minister for Foreign Affairs.*AMERICA LEGATION,  
*The Hague, May 15, 1910.*

SIR: I have the honor to acknowledge the receipt of your excellency's courteous note of the 10th instant, directions du protocole et politique No. 9197, in reply to my No. 298, of the 2d instant, in which your excellency has expressed the approval of the Netherlands Government of the proposed protocol additional to the convention relative to the establishment of an international court of prize signed at The Hague October 18, 1907. At the same time, your excellency states that the Queen's Government finds it preferable that this proposed protocol be submitted to the powers signatory of the prize court convention by the Government of the United States of America, without the intermediation of the Government of the Netherlands, although the latter Government has no objections, if the United States think best, to acting as intermediary. Your excellency also makes clear to me that it would scarcely be materially possible to set, as the date for the signing of the proposed protocol, a date so early as the 25th proximo, and suggests that, in view of the fact that the Netherlands Government itself would be unable to ratify the protocol before the 30th of June, the date tentatively mentioned in my note, a day after the 15th of next September be set for the signing of the protocol, and that the deposit of the ratifications, both of the protocol and of the convention relative to the establishment of an international court of prize, be postponed to a date to be fixed later; in any case, however, before June 30, 1911.

I have to advise your excellency that I at once communicated both the contents of this note and the purport of my conversation with your excellency of the 12th instant to my Government by telegraph. I am now instructed by my Government to modify my note of the 2d instant in the following particulars: The Government of the United States desires to reiterate its request that the Queen's Government transmit the proposed additional protocol, a copy of which was inclosed in my No. 298 of the 2d instant, to the signatories of the convention relative to the establishment of an international court of prize, together with an appropriate circular note addressed to the powers concerned. A date suggested by your excellency for the signature of the additional protocol, either the 15th of next September or a day near that date, would be entirely satisfactory to my Government. While my Government prefers an early date for the deposit of the ratifications, that the prize court may be enabled to go into operation during the coming year, and while my Government hopes that some day in January or, at latest, February of next year may be set for the deposit of the ratifications, I am instructed to defer wholly to the preferences of the Queen's Government in the matter of the date to be agreed upon for the deposit of the ratifications of the additional protocol and of the convention relative to the establishment of an international court of prize. I only venture to suggest to your excellency that it might serve a practical purpose to name, at least tentatively, in the circular note a date which may seem appropriate to your excellency for the deposit of the ratifications of the two instruments. In other respects my note of the 2d instant requires no modifications to meet the views of your excellency's Government.

With the hope that this arrangement of time may be pleasing to your excellency, and that the Government of the Queen may be willing to serve as intermediary in this matter, I avail, etc.,

A. M. BEAUPRÉ.

*Chargé Wheeler to the Secretary of State.*

No. 176.]

AMERICAN EMBASSY,  
*St. Petersburg, May 31, 1910.*

SIR: With reference to the department's telegraphic instruction dated March 5, 1909, proposing alternative procedure for the international prize court and the investment of this tribunal with the functions of a court of arbitral justice, and to its unnumbered instruction of November 3, 1909, inclosing an identic circular note on the subject for transmission to the minister of foreign affairs, I have the honor herewith to transmit a note, received today from the foreign office, with translation in English.

I have, etc.,

POST WHEELER.

[Inclosure—Translation.]

*The Minister for Foreign Affairs to Chargé Wheeler.*

MINISTRY FOR FOREIGN AFFAIRS,  
*May 17-30, 1910.*

MONSIEUR LE CHARGÉ D'AFFAIRES: In reply to the note of November 9, 1909, I have the honor to inform you that the minister imperial did not fail to submit to a thorough examination at the hands of a special commission the proposal of the Cabinet at Washington concerning the signing and ratification of The Hague convention of October 18, 1907, relative to the establishment of an international court of prize.

The American plan has been received with the strongest sympathy by the said ministerial commission, which fully recognizes the high practical value of the proposal of Mr. Secretary of State Knox as being able to facilitate the acceptance by all the powers of the above-mentioned convention concerning the establishment of an International Prize Court. However, considering the fact that the actual text of two additional protocols relating thereto, actually proposed by the American Government, should be first established by common consent by all the powers interested, and that on the other hand the project of the convention relative to the establishment of a court of arbitral justice—whose effective institution occupies so predominant a place in Mr. Knox's plans—has not even been signed at The Hague, and would require, furthermore, to be amplified and modified in conformity with the American proposals, the ministerial commission is of the opinion that it would be difficult, if not impossible, to decide these questions—so complex, so important, and at the same time interesting all the powers signatory to the conventions of The Hague—by means of ordinary diplomatic correspondence. They could, on the other hand, be handled effectively only by an international conference—inasmuch as these questions would require, perhaps, the revision, from the standpoint of form and even, should such be the case, of their content, of the two conventions of The Hague which are contemplated in the new proposal of the Government of the United States of America.

Accept, etc.,

IWSOLSKY.

*Minister Beaupré to the Secretary of State.*

No. 378.]

AMERICAN LEGATION,  
*The Hague, May 31, 1910.*

SIR: With reference to previous correspondence, and particularly to the Department's telegraphic instruction of the 14th instant and to my cable of this afternoon, I have the honor to inclose herewith copy and translation of a note received to-day from the ministry for foreign affairs, advising me that the circular note to the powers

signatory to the convention for the establishment of an international court of prize signed at The Hague October 18, 1907, was sent out under date of the 24th instant, following my request of the 2d instant, reported in my despatch No. 353 of the day following. A copy of the circular note with its inclosures is appended to this communication and I am requested to forward them to my Government. I inclose the copy of the circular note herewith, accompanied by a translation thereof. I also transmit the printed copies of my note of the 2d instant and of the proposed additional protocol, which are inclosed in the circular note as sent out to the various powers concerned.

I am, etc.,

A. M. BEAUPRÉ.

[Inclosure 1.—Translation.]

*Mr. Hannema (Secretary-General of the Foreign Office) to Minister Beaupré.*

MINISTRY FOR FOREIGN AFFAIRS,  
*The Hague, May 30, 1910.*

MR. MINISTER: In referring to the note of your excellency of the 15th of May last, No. 303, relating to the signature of a protocol additional to the convention relative to the international court of prize, I have the honor to hand to your excellency herewith a copy of the circular, with two inclosures, which I sent under date of the 24th instant, to the powers signatory to this convention, with the exception of the United States of America, as proposer of the modifications in question.

I avail myself of your excellency's usual kindness to request that your excellency will have the goodness to transmit these documents to the Government of the United States.

In requesting your excellency to accept my thanks in anticipation, I take this opportunity, etc.,

HANNEMA.

[Inclosure 2.—Translation.]

*Circular note addressed by the Government of the Netherlands to the Signatory Powers.*

MINISTRY FOR FOREIGN AFFAIRS,  
*The Hague, May 24, 1910.*

Difficulties of a constitutional nature preventing the United States of America from ratifying, in its present form, the convention relative to the establishment of an international court of prize signed at The Hague on October 18, 1907, in the midst of the second peace conference, the Government of the United States has charged its representative at The Hague to invite the Government of the Queen to propose, to the powers signatory to this convention, to make certain modifications thereof, which may tend to remove the difficulties which prevent ratification by the United States.

These modifications, which refer the procedure before the international court of prize, are the object of an additional protocol, of which I have the honor herewith to inclose the text. A copy of the letter of the minister of the United States at The Hague, dated the 2d of May last, No. 298, is also inclosed.

The additional protocol, which has already received the approval of Germany, France, and Great Britain, and which has also the entire approval of the Government of the Queen, will, in case of approval by the other powers signatory to the convention relative to the prize court, be signed at The Hague by the representatives of the powers interested. The Government of Holland proposes the 15th of September next for this signature. The powers which may be unable to take part in this signature of the protocol will be permitted to adhere thereto. In such case those powers will give notice of their adherence to the Netherlands Government.

It is also to be noted that in accordance with the proposal of the United States the additional protocol shall be considered as forming an integral part of the convention relative to the prize court and shall be ratified at the same time as the latter. The date for the deposit of the ratifications will be decided later. The Government of the Queen trusts that the deposit will take place during the month of February, 1911.

Kindly bring the foregoing to the attention of (the Government) (the Governments), at the same time transmitting (it) (them) a copy of the above-mentioned documents, requesting (it) (them) to declare, as soon as may be, the action to be taken upon the proposals mentioned in this note:

I beg you also to acknowledge the receipt of this note.

R. DE MAREES VAN SWINDEREN.

[Inclosure 3.—Translation.]

*Additional protocol to the convention relative to the establishment of an International Court of Prize.*

Germany, the United States of America, the Argentine Republic, Austria-Hungary, etc., powers signatory to The Hague convention dated October 18, 1907, for the establishment of an international court of prize, considering that for some of these powers difficulties of a constitutional nature prevent the acceptance of the said convention, in its present form, have deemed it expedient to agree upon an additional protocol taking into account these difficulties without jeopardizing any legitimate interest and have, to that end, appointed as their plenipotentiaries, to wit:

\* \* \* \* \*

Who, after depositing their full powers, found to be in good and due form, have agreed upon the following:

ARTICLE 1. The powers signatory or adhering to The Hague convention of October 18, 1907, relative to establishment of an international court of prize, which are prevented by difficulties of a constitutional nature from accepting the said convention in its present form, have the right to declare in the instrument of ratification or adherence that in prize cases, whereof their national courts have jurisdiction, recourse to the international court of prize can only be exercised against them in the form of an action in damages for the injury caused by the capture.

ART. 2. In the case of recourse to the international court of prize, in the form of an action for damages, article 8 of the convention is not applicable; it is not for the court to pass upon the validity or the nullity of the capture, nor to reverse or affirm the decision of the national tribunals.

If the capture is considered illegal, the court determines the amount of damages to be allowed, if any, to the claimants.

ART. 3. The conditions to which recourse to the international court of prize is subject by the convention are applicable to the action in damages.

ART. 4. Under reserve of the provisions hereinafter stated the rules of procedure established by the convention for recourse to the international court of prize shall be observed in the action in damages.

ART. 5. In derogation of article 28, paragraph 1, of the convention, the suit for damages can only be brought before the international court of prize by means of a written declaration addressed to the International Bureau of the Permanent Court of Arbitration; the case may even be brought before the bureau by telegram.

ART. 6. In derogation of article 29 of the convention the international bureaus shall notify directly, and if possible by telegram, the Government of the belligerent captor of the declaration of action brought before it.

The Government of the belligerent captor, without considering whether the prescribed periods of time have been observed, shall, within seven days of the receipt of the notification, transmit to the international bureau the case, appending thereto a certified copy of the decision, if any, rendered by the national tribunal.

ART. 7. In derogation of article 45, paragraph 2, of the convention the court rendering its decision and notifying it to the parties to the suit shall send directly to the Government of the belligerent captor the record of the case submitted to it, appending thereto a copy of the various intervening decisions as well as a copy of the minutes of the preliminary proceedings.

ART. 8. The present additional protocol shall be considered as forming an integral part of and shall be ratified at the same time as the convention.

If the declaration provided for in article 1 hereinabove is made in the instrument of the ratification, a certified copy thereof shall be inserted in the procès verbal of the deposit of ratifications referred to in article 52, paragraph 3, of the convention.

ART. 9. Adherence to the convention is subordinated to adherence to the present additional protocol.

*The Acting Secretary of State to Ambassador O'Brien.*

No. 444.]

DEPARTMENT OF STATE,  
*Washington, July 6, 1910.*

SIR: Referring to your dispatch No. 1160, of May 10, 1910, transmitting copy of a memorandum dated May 9, from the Japanese foreign office, relative to the proposed alternative procedure for the international prize court, I have to inclose herewith draft of a memorandum on the same subject which you are instructed to present to the Government of Japan.

I am, sir,

HUNTINGTON WILSON.

[Inclosure.]

*Memorandum reply of Department of State.*

The Government of the United States notes with great satisfaction that the views of the Imperial Japanese Government relative to the proposed alternative procedure for the international prize court expressed in its memorandum of May 9, 1910, are in such general accord with the propositions of the identic circular note of the Department of State of October 18, 1909.

The Government of the United States recognizes most fully the value of the suggestions upon the subject made by the Imperial Japanese Government, and it believes that these suggestions will be found to have been met by the provisions of the additional protocol which is being brought to the attention of the various powers signatory to the convention for the establishment of the international court of prize by the circular note of the Government of the Netherlands of May 24.

In view of the assent of the Imperial Japanese Government to the principle of the alternative procedure suggested by the identic note of the Government of the United States of October 18, 1909, and what is believed to be the complete compliance of the additional protocol with the suggestions of the Imperial Japanese Government, the Government of the United States entertains the liveliest hope that the additional protocol will meet with the approval of the Imperial Japanese Government.

*Minister Beaupré to the Secretary of State.*

No. 399.]

AMERICAN LEGATION,  
*The Hague, July 14, 1910.*

SIR: Referring to my No. 378, of May 21 last, in regard to the circular note sent by the Netherlands Government to the powers signatory to the convention for the establishment of an international court of prize, proposing a protocol additional thereto, I have the honor to report that, with a view of obtaining any information possible concerning the progress of the negotiations looking to the adoption of this protocol, I called upon the minister for foreign affairs this afternoon and approached the subject. In response to my inquiry the minister said that up to the present time the information which had been furnished him in regard to the reception of the proposed additional protocol was of the most satisfactory and favorable nature; that nothing in any way unfavorable to the proposal had come to him from any source, and that he was thoroughly of opinion that no serious difficulties in the way of the adoption of the proposed protocol would arise. He added that should anything occur which it might seem important for me to know he would

inform me thereof at once; and that in a short time he would furnish me with more definite particulars in respect to the information which he had been able to obtain as to the reception of the proposal in question.

I am, etc.,

A. M. BEAUPRÉ.

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*Ambassador O'Brien to the Secretary of State.*

[Telegram.]

AMERICAN EMBASSY,  
Tokyo, August 19, 1910.

See memorandum with my 1160, May 10 last. Japanese Government unable to reconcile additional protocol with their recommendation. Do you understand that under it and independently of constitutional difficulties Japan has the right to limit recourse against her in international court to action for damages? Right of reservation seems not to be general.

O'BRIEN.

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*The Acting Secretary of State to Ambassador O'Brien.*

[Telegram.]

DEPARTMENT OF STATE,  
Washington, August 24, 1910.

Your August 19, 1 p. m. As indicated in department's memorandum forwarded to you July 6 department hoped that Japanese suggestions of May 10, which were based upon American propositions set forth in identic circular note of November last, would be fully met by draft additional protocol which was submitted to the Japanese Government by the Netherlands Government on May 24 last or two weeks after the delivery to you of the Japanese memorandum. It will be observed that proposed additional protocol does not differ in sense from the *vœu* recommended by the delegates of Japan and other powers assembled at the London Maritime Conference, it being then understood that the *vœu* was satisfactory to Japan. Proposed protocol applies in terms to all powers laboring under constitutional difficulties similar to those existing in the United States. France, while approving proposed protocol, announces she does not intend to take advantage of it. Should the contemplated constitutional difficulties exist in Japan, obviously that Government may take advantage of provision of protocol as now drafted. However, this Government would deprecate proposal to alter present protocol because it believes that discussion of any proposed modification would almost of necessity delay ratification of prize court convention as amended by proposed protocol. Therefore, this Government is sincerely of the hope that the Government of Japan will be able to approve amended protocol as now proposed.

HUNTINGTON WILSON.

*The Secretary of State to Chargé Garrett.*<sup>1</sup>

DEPARTMENT OF STATE,  
*Washington, October 26, 1910.*

SIR: On October 18, 1909, the Secretary of State transmitted an identic circular note to the powers participating in the London Naval Conference proposing that the prize court convention be modified in such a way as to remove the constitutional objection to it on the part of the United States. Briefly stated, the objection to the convention in its actual form consisted in the fact that an appeal might be taken from a decision of the Supreme Court of the United States, and that the judgment of the Supreme Court might be modified or reversed on appeal. The department was willing to submit the question involved in the judicial determination to the examination of the international prize court and to give effect to its findings provided the findings were in the form of an award of damages leaving untouched or unaffected the validity of the judgment within the jurisdiction of the United States. The proposal of the United States was that the proceeding before the prize court should be de novo, and that the question involved in the controversy should be tried and determined both as to the law and the fact without reference to the national judgment.

As a result of negotiations, particularly with the original proposers of the prize court convention, it was determined to draw up an additional protocol to be signed by the signatories of the original convention, to be ratified by them, and the ratifications of the additional protocol and the original convention to be deposited at one and the same time at The Hague. The additional protocol was to form an integral part of the original convention and the convention was to be modified in accordance with the provisions of the additional protocol. As modified, the department believed that this Government could accept the prize court and participate in its beneficent operations.

On May 24, 1910, the Netherlands minister of foreign affairs transmitted the additional protocol to the signatories of the original convention with the request that their diplomatic representatives accredited to The Hague should be instructed to sign the protocol during the month of September, and on September 19, 1910, the protocol was signed by the United States, Germany, Argentina, Austria-Hungary, Denmark, Spain, France, Great Britain, Japan, Norway, Netherlands, and Sweden, and the Netherlands minister of foreign affairs stated that Bulgaria, Ecuador, and Salvador had expressed their intention to adhere thereto. The Dutch minister of foreign affairs also stated that he had received no intimation of any objection to the additional protocol and he believed that it would be approved by the various signatories of the original convention during the course of the year.

The department, however, is unwilling to transmit the additional protocol to the Senate or to request the approval of the original convention unless informed that all the signatories of the original convention have either approved the protocol or have expressed

<sup>1</sup> Sent, mutatis mutandis, also to the following embassies and legations: Embassies: Mexico, Turkey. Legations: Belgium, Bolivia, Chile, Colombia, Cuba, Ecuador, Guatemala, Haiti, Panama, Paraguay, Persia, Peru, Portugal, Salvador, Siam, Switzerland, Uruguay.

their intention to do so in the very near future, as the ratification of the protocol and the original convention, as well as the declaration of London which supplements the original prize court convention, would fail of their purpose unless the protocol were ratified by the signatories to the original convention. The department is, however, exceedingly anxious to cooperate in the establishment and operation of the international court of prize, but feels that it must be assured of the acceptance of its proposed modification as set forth in the additional protocol before it can take any steps toward securing the approval of the instruments by the Senate.

You are, therefore, instructed to lay these views before the Government to which you are accredited and to state the great and abiding interest which the United States takes in the establishment of the prize court and the peculiar importance which it attaches to the acceptance of the additional protocol which will render the cooperation of the United States possible. The department will inform the Governments of Germany, France, and Great Britain of the contents of this instruction, and before taking the matter up with the Government to which you are accredited you will confer with the diplomatic representatives of Germany, France, and Great Britain in order to ascertain their own views and to have them make a concurrent, although not joint, representation of the importance of early favorable action upon the additional protocol.

I transmit for your information a copy of the identic circular note of the Dutch minister of foreign affairs, dated May 24, 1910, and a copy of the draft of the additional protocol as thereby transmitted by the Netherlands Government to the signatory governments of the international prize court convention of The Hague.

I am, etc.,

P. C. KNOX.

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*The Secretary of State to Ambassador Reid.*<sup>1</sup>

No. 1409.]

DEPARTMENT OF STATE,  
Washington, October 26, 1910.

SIR: You have been officially informed that an agreement of the original proposers of the international prize court was reached at Paris in March of the current year to modify the provisions of the original convention for the prize court in such a way as to render the cooperation of the United States possible, and that the agreement of the four powers has since been transmitted in the form of an additional protocol by the Dutch Government to the various signatories of the prize court convention. On September 19, 1910, the additional protocol was signed by representatives of the four proposers of the original convention (the United States, Great Britain, France, and Germany), and in addition to these by representatives of the Argentine Republic, Austria-Hungary, Denmark, Spain, Japan, Norway, the Netherlands, and Sweden. Furthermore, at the time of the signing of the protocol the Dutch minister for foreign affairs stated that Bulgaria, Ecuador, and San Salvador had expressed their intention to adhere thereto.

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<sup>1</sup> Same, *mutatis mutandis*, to the American embassies at Paris and Berlin.



As the original convention for the establishment of an international prize court was adopted by thirty-four countries represented at the Second Hague Conference and is therefore a joint agreement of those thirty-four countries, it is necessary that the instrument modifying it be ratified by each of the signatories in order that it may bind each signatory to the original convention and modify the original document in the manner desired by the United States.

This Government is very desirous to cooperate in the establishment of the prize court and to participate in its operation, but in order to meet constitutional objections the original convention should be modified as proposed by the additional protocol. As this Government is not in a position to accept the prize court in its original form, and as the ratification of the additional protocol without its acceptance by the other powers to the original convention would be useless, the department does not feel that it can request the Senate to approve the original convention, submit the protocol to the Senate, or take any official steps in the matter until it is assured that the additional protocol modifying the original convention has been accepted by the signatories of the prize court, or that the acceptance of the additional protocol is so reasonably certain as to preclude any doubt as to its approval by all the parties to the original convention.

I desire to submit the original convention, the declaration of London supplementing it, and the additional protocol modifying it to the Senate at its approaching session, in order that the three instruments may be ratified at the earliest possible moment, but I am unwilling to take any action in the premises until assured of the acceptance of the protocol upon which the fate of the instruments depends as far as the United States is concerned.

A circular instruction,<sup>1</sup> a copy of which is inclosed for your information, has been sent to American diplomatic officers accredited to the various States which signed the original convention of October 18, 1907, and which have not signed the additional protocol, directing them to request that early and favorable consideration be given to the protocol by those Governments which had not as yet ratified it or expressed an intention to ratify in the immediate future. It is highly desirable that the proposers of the original convention should act in harmony and that they should use their influence concurrently, if not jointly, with the various Governments which have not heretofore signed the additional protocol. It is obvious that a request for its early acceptance made by each of the original proposers would facilitate matters and that the manifestation of a common interest in the prize court and a desire to see it established at the earliest moment through the acceptance of the additional protocol would count for much. In the informal negotiation of the protocol the representatives of the proposers suggested concurrent or joint action in order to secure its prompt acceptance. The department, therefore, feels that the time has come to lay the matter before the Government to which you are accredited and to request its assistance in the matter of the protocol.

In discussing the subject with the secreatry of state for foreign affairs you should state that the department has already instructed

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<sup>1</sup> *Supra*.

its diplomatic officers to request an early and favorable consideration of the protocol, that this Government would much appreciate the cooperation of each of the original proposers, and therefore asks that appropriate instructions be given by the Governments of Germany, France, and Great Britain to its diplomatic officers in support of the initiative already taken by the United States. In your interview with the secretary of state for foreign affairs you will assure him of the deep interest that the United States takes in the prompt establishment of the prize court, and that this proposed action is based upon the belief that the cooperation of the original proposers will be able to secure the establishment of this much-needed and long-delayed international institution. You may lay stress upon the fact that the department considers the acceptance of the declaration of London as well as the additional protocol as essential to the establishment and the successful working of the tribunal. You will also call attention to the fact, as a means to secure prompt and hearty cooperation, that the proposers of the original convention can not well expect the nations to accept the convention and put it into effect if the sponsors do not agree upon the form which it should take.

I am, etc.,

P. C. KNOX.

*The Secretary of State to Chargé Schwyler.*

No. 466.]

DEPARTMENT OF STATE,  
Washington, October 26, 1910.

SIR: The department learned with sincere pleasure, by Mr. O'Brien's telegram of the 9th ultimo<sup>1</sup> and his dispatch No. 1221,<sup>1</sup> of the same day's date, that the Japanese Government had instructed its representative at The Hague to sign the additional protocol of the international prize court convention without reservation of any kind.

In regard to the Japanese memorandum dated May 9, 1910,<sup>2</sup> transmitted by Mr. O'Brien in his dispatch No. 1160 of May 10, 1910,<sup>1</sup> and referred to by the Japanese note dated July 29, 1910,<sup>1</sup> inclosed in his No. 1221 under acknowledgment, the department feels that the language of the protocol is sufficiently broad to meet the desires of the Japanese Government, because the existence of constitutional difficulties is a matter of internal relations into which international law does not ordinarily inquire, and the official statement that such difficulties exist and that the Government desires to avail itself of the alternative procedure contained in the additional protocol would be final and binding.

In the next place, the expression of constitutional difficulties is very broad and relates not merely to provisions of a constitution, but also to the internal organization, whether it depends upon a constitution or the laws or practice of a country. From this point of view constitutional convenience or inconvenience would be determinative, and a preference for the alternative procedure proposed by the additional protocol and based upon convenience or inconvenience would be a sufficient justification of the determination of the Government in

<sup>1</sup> Not printed.

<sup>2</sup>Supra.

favor of the alternative procedure stipulated for in the protocol. In any event, the question is one for the decision of the Government wishing to avail itself of the alternative procedure. This view of the matter is understood to be the view of the Netherlands Government, and the department understands that that Government, as transmitter of the additional protocol, will make a formal statement to this effect.

You will present these views to the Japanese Government and inform the minister of foreign affairs that the department appreciates the motives of the Japanese Government, shares in them, and believes that the purpose of the Japanese memorandum dated May 9, 1910, will be realized in practice without the necessity of formal amendment or interpretation of the protocol.

You will take an early opportunity to express to the Japanese Government the department's high appreciation of its acceptance in principle of the proposition of the United States as laid down in the identic circular note of October 18, 1909, to invest the prize court with the functions and jurisdiction of the court of arbitral justice. In doing so the Japanese Government states that it believes it advisable to proceed to the establishment of the prize court and to delay any action regarding the establishment of the court of arbitral justice until such time as the prize court has been established. The Department of State concurs in this view and will defer international consideration of the project to establish the court of arbitral justice until the prize court is instituted, so as not in any way to jeopardize the establishment of the latter institution.

I am, etc.,

(For Mr. Knox.)

ALVEY A. ADEE.

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*The Acting Secretary of State to Chargé Hibben.*

DEPARTMENT OF STATE,  
Washington, November 10, 1910.

SIR: I inclose herewith for the legation's information a copy of an identic instruction sent to the American diplomatic officers accredited to the Governments signatory of The Hague International Prize Court Convention who did not sign the additional protocol thereto at The Hague on September 19 last, or who did not at that time express their intention to adhere to the protocol.

I am, etc.,

ALVEY A. ADEE.

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*The Secretary of State to Chargé Benson.<sup>1</sup>*

DEPARTMENT OF STATE,  
Washington, December 17, 1910.

SIR: In view of the fact that the Government of the Netherlands has no diplomatic representative at La Paz, and also in view of a suggestion made by the Netherlands minister for foreign affairs to the American Legation at The Hague, you are instructed to act as the agent of the Government of the Netherlands to present officially

<sup>1</sup> Same, mutatis mutandis, to the following legations: Colombia, Cuba, Ecuador, Guatemala, Haiti, Peru, Salvador.

to the Government of Bolivia the additional protocol<sup>1</sup> (signed September 19, 1910) to the convention providing for the creation of an international prize court, and urge the early ratification by the Government of Bolivia both of the additional protocol and of the original prize-court convention.

A copy of the draft of the additional protocol in the French language is forwarded herewith in order that you may carry out this instruction.

The authenticated copies of the additional protocol have not yet been furnished by the Government of the Netherlands.

I am, etc.,

P. C. KNOX.

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*The Secretary of State to Chargé Hibben.*

No. 174.]

DEPARTMENT OF STATE,  
Washington, December 17, 1910.

SIR: In reply to your No. 446<sup>2</sup> of November 21 last, the department desires you to inform the Netherlands minister of foreign affairs that this department will, as requested by him, use its good offices with the Governments of the Latin-American countries which signed the international prize-court convention and in which the Government of the Netherlands has no diplomatic representatives, with a view to obtaining the early ratification of the additional protocol as well as of the international prize-court convention.

Instructions have been sent to our diplomatic representatives accredited to those Governments for the purpose above mentioned.

I am, etc.,

P. C. KNOX.

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<sup>1</sup> See p. 631.

<sup>2</sup> Supra.