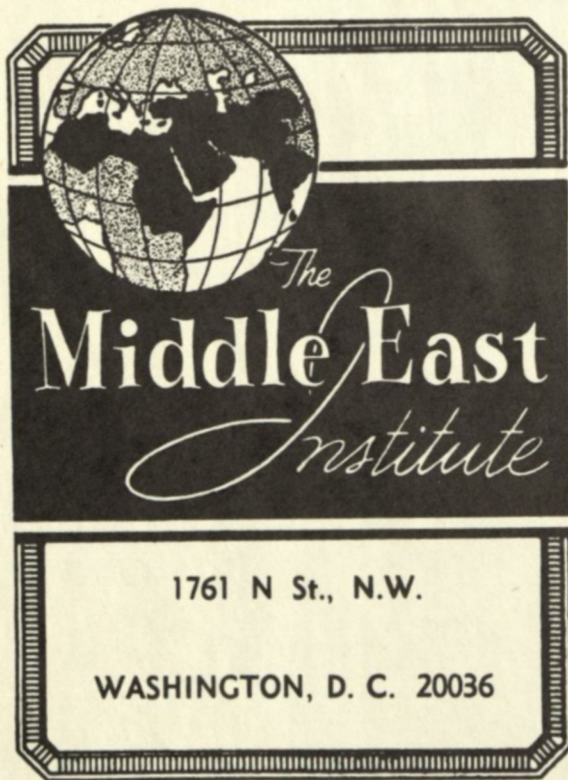


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U.S. Dept. of State, Div. of Near Eastern Affairs.

PUBLICATIONS OF THE DEPARTMENT OF STATE
NEAR EASTERN SERIES, No. 1

MANDATE FOR PALESTINE

PREPARED IN THE
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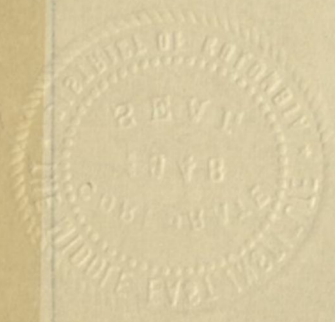
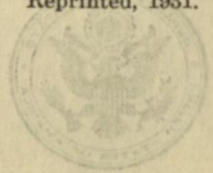
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PREFATORY NOTE

The object of this publication is to present a documented exposition of the position taken by the Government of the United States relative to "A" mandates, during the negotiations leading to the conclusion and exchange of ratifications of the American-British convention of December 3, 1924, whereby a definite understanding was reached with respect to the rights of the two Governments and their respective nationals in Palestine. The material is arranged in the following manner:

- I. Introduction, recapitulating the principal events and international agreements leading up to the conclusion of the convention, as follows: (1) Explanation of the term "Palestine"; (2) Palestine under the Turks; (3) Palestine during the World War; (4) political situation at the end of the war; (5) British military administration, 1917-1920; (6) the granting of the mandate; (7) British civil administration, 1920-1925; (8) the special situation in Trans-Jordan.
- II. Correspondence referring to economic rights in mandated territory, consisting of notes exchanged between the United States and British Governments during the year 1920 and between the Secretary of State and the Council of the League of Nations.
- III. Principal documents, consisting of relative memoranda and notes exchanged between the United States and British Governments during the years 1921-1925 resulting in the signature and exchange of ratifications of the convention.
- IV. Complete text of the American-British Palestine mandate convention of December 3, 1924.

Subsection (6), entitled "The granting of the mandate," is developed at considerably greater length than the other subsections of Section I, in the belief that a detailed presentation of the principal circumstances surrounding the granting of the mandate for Palestine is essential to a full understanding of the position taken by the United States Government in its negotiations with the British Government relating to that mandate.

Certain of the documents in Section II relate more directly to Mesopotamia, but, as many of the principles developed apply to mandated territory in general, it has been deemed wise to include this material in the publication.

CONTENTS

	Page
I. INTRODUCTION.....	1
1. Explanation of the term "Palestine".....	3
2. Palestine under the Turks.....	3
3. Palestine during the World War.....	4
4. Political situation at the end of the war.....	5
(a) British pledges to the Arabs.....	5
(b) Zionism and the Balfour Declaration.....	7
(c) Secret agreements between the Allies.....	8
5. British military administration, 1917-1920.....	9
6. The granting of the mandate.....	10
7. British civil administration, 1920-1925.....	21
8. The special situation in Trans-Jordan.....	23
II. CORRESPONDENCE REFERRING TO ECONOMIC RIGHTS IN MANDATED TERRITORY.....	25
Exchange of notes between the United States and British Govern- ments during the year 1920.....	27
1. The American Ambassador (Davis) to the British Secretary of State for Foreign Affairs (Curzon), May 12, 1920.....	27
2. The American Ambassador (Davis) to the British Secretary of State for Foreign Affairs (Curzon), July 28, 1920.....	30
3. The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Davis), August 9, 1920.....	32
4. The Secretary of State to the British Secretary of State for Foreign Affairs (Curzon), November 20, 1920.....	37
Exchange of notes between the Secretary of State and the Council of the League of Nations.....	42
5. The Secretary of State to the Council of the League of Nations, February 21, 1921 (excerpt).....	42
6. The President of the Council of the League of Nations (Da Cunha) to the Secretary of State, March 1, 1921.....	43
III. PRINCIPAL DOCUMENTS.....	50
1. The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey), August 1, 1921.....	49
2. The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon), August 24, 1921. Reply to (1).....	49
3. The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey), December 22, 1921. Preliminary reply to (2).....	53
4. The British Under Secretary of State for Foreign Affairs (Crowe) to the American Ambassador (Harvey), December 29, 1921. Supplementary reply to (2).....	55

III. PRINCIPAL DOCUMENTS—Continued.

	Page
5. Lord Balfour to the Secretary of State, January 13, 1922.....	58
6. The Secretary of State to Lord Balfour, January 27, 1922. Referring to (4).....	59
7. The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon), April 5, 1922. Reply to (3) and (4).....	61
8. The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey), April 29, 1922. Reply to (7).....	65
9. The Counselor of the American Embassy at London (Wheeler) to the British Secretary of State for Foreign Affairs (Curzon), May 10, 1922. Reply to (8).....	67
10. The British Foreign Office to the American Ambassador (Harvey), May 16, 1922. Reply to (9).....	69
11. The British Foreign Office to the American Ambassador (Harvey), June 20, 1922. Supplementing (10).....	70
12. The British Chargé d'Affaires (Chilton) to the Secretary of State, July 5, 1922. Confirming (11).....	72
13. The British Chargé d'Affaires (Chilton) to the Secretary of State, July 10, 1922.....	72
14. The Department of State to the British Embassy, July 12, 1922. Reply to (12).....	75
15. The American Ambassador (Harvey) to Lord Balfour, July 14, 1922. Transmitting copy of (14).....	77
16. The British Chargé d'Affaires (Chilton) to the Secretary of State, July 15, 1922.....	78
17. The British Foreign Office to the American Ambassador (Harvey), August 2, 1922. Commenting on (14).....	79
18. The Secretary of State to the British Chargé d'Affaires (Chil- ton), August 8, 1922. Reply to (16).....	80
19. The British Foreign Office to the Third Secretary of the Ameri- can Embassy (LeClereq), August 11, 1922.....	80
20. The Secretary of State to the British Ambassador (Geddes), August 18, 1922. Reply to (13).....	81
21. The British Ambassador (Geddes) to the Acting Secretary of State (Phillips), September 5, 1922. Preliminary reply to (18).....	81
22. The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey), October 2, 1922. Supplementing (17).....	82
23. The Department of State to the British Embassy, January 20, 1923. Reply to (22).....	86
24. The British Secretary of State for Foreign Affairs (Curzon) to the Counselor of the American Embassy (Wheeler), Novem- ber 29, 1923. Referring to (22).....	87
25. The American Ambassador (Kellogg) to the British Secretary of State for Foreign Affairs (MacDonald), April 30, 1924. Reply to (24).....	87
26. The British Secretary of State for Foreign Affairs (MacDonald) to the American Ambassador (Kellogg), July 17, 1924. Reply to (25).....	92

III. PRINCIPAL DOCUMENTS—Continued.

	Page
27. The American Ambassador (Kellogg) to the British Secretary of State for Foreign Affairs (MacDonald), September 2, 1924. Reply to (26)-----	93
28. The British Secretary of State for Foreign Affairs (Chamberlain) to the American Ambassador (Kellogg), November 10, 1924. Reply to (27)-----	95
29. The American Embassy to the British Foreign Office, May 4, 1925-----	96
30. The American Embassy to the British Foreign Office, July 3, 1925. Supplementing (29)-----	98
31. The British Foreign Office to the American Ambassador (Houghton), October 13, 1925. Reply to (29) and (30)----	101
32. The American Ambassador (Houghton) to the British Secretary of State for Foreign Affairs (Chamberlain), November 14, 1925. Reply to (31)-----	103
IV. AMERICAN-BRITISH PALESTINE MANDATE CONVENTION OF DECEMBER 3, 1924-----	105

INDEX

I. INTRODUCTION

I. INTRODUCTION

1. EXPLANATION OF THE TERM "PALESTINE"

The World War and subsequent international agreements have given to the term "Palestine" a new meaning. Formerly hardly more than a geographic name conventionally used in referring to that portion of the Ottoman Empire which included the ancient lands of the Hebrews and the coastal plain of Philistia, it now connotes an area which, but for an incompletely delimited eastern boundary, is of definite extent and is administered by Great Britain under a mandate from the League of Nations which entered into effect on September 29, 1923.

Even now, however, an explanation of the term "Palestine" is necessary, for, as used in the "Mandate for Palestine" and related documents, it connotes two territories, Palestine proper and Trans-Jordan. Though both are included in the single mandated territory and controlled by Great Britain through a single British High Commissioner for Palestine, they are administered in radically different fashion and present radically different problems of a racial, social, and administrative nature. Palestine proper and Trans-Jordan were in September, 1922, divided by "a line drawn from a point two miles west of the town of Akaba on the Gulf of that name up the centre of the Wady Araba, Dead Sea and River Jordan to its junction of the River Yarmuk; thence up the centre of that river to the Syrian Frontier." To the west of this line the terms of the mandate for Palestine apply *in toto*; to the east, only such terms of the mandate apply as do not relate to the establishment in Palestine of a Jewish national home.¹

2. PALESTINE UNDER THE TURKS

In 1517 Palestine was, by right of conquest, added to the possessions of the Ottoman Sultans. During the first three centuries of Ottoman dominion, however, but little direct control was exercised by the Sublime Porte over the numerous Pashas and Beys under whose immediate overlordship the population lived in a state closely resembling that which existed in Europe under the feudal system; and it was only during the early years of the nineteenth century,

¹ See Sec. I(8), *post*, pp. 23-24.

during the reign of Sultan Mahmud, sometimes called "The Reformer," that the beginnings of a centralized administration were established. The power of the local feudal chieftains was largely broken during the period of the occupation (1831-1840) of Mohammed Ali, the semi-independent Pasha of Egypt; and the highly centralized rule of Abd-ul-Hamid II (1876-1909), although marked by numerous oppressive measures, resulted in the definite establishment of an organized local administration under the direct control of a governor appointed and controlled by the Sublime Porte.

In 1914 the territory which is now Palestine supported an estimated population of 700,000, including something over 500,000 Mohammedans, some 80,000 to 90,000 Jews, and an approximately equal number of native Christians. Foreign enterprise was prominent in commerce and foreign capital in a limited number of public works and investments of a commercial character, as well as in the extensive establishments maintained by foreign missions. But in the eyes of the world it was then, as it is to-day, primarily known as the land in which Judaism and Christianity had their source and which had played an important rôle in the development of Mohammedanism, the last of the three great Semitic religions.¹

3. PALESTINE DURING THE WORLD WAR

Following the Allies' declaration of war against the Ottoman Empire on November 5, 1914, Allied warships blockaded the coast of Syria and Palestine, while by the Turks Palestine was used as a base for operations against Egypt (declared a British protectorate on December 18, 1914). Unsuccessful Turkish attacks were launched against the Suez Canal in January, 1915, and July, 1916.

During the latter half of 1916, following the second of these attacks, the British forces in Egypt began preparations for the invasion of Palestine. A railway and a pipe line for water were pushed rapidly forward across the intervening desert. In December, 1916, the Turkish forces were obliged to evacuate El Arish, the northern border post on the Sinai-Palestine frontier, and by October, 1917, General Allenby was in a position to launch the first of his main attacks against the Turkish forces in Palestine.

Meanwhile, as a result of an exchange of correspondence during 1915 between the British High Commissioner in Egypt and Sherif Hussein of Mecca² and the activities of British intelligence agents in

¹ An excellent recapitulation of the economic situation in Palestine following the World War may be found in Special Consular Report No. 83, entitled *Palestine: Its Commercial Resources with Particular Reference to American Trade*, by Minister Resident and Consul General (then Consul) Addison E. Southard, published by the Department of Commerce, Washington, in 1922.

² See *infra.*, 4 (a).

the Hedjaz, a considerable portion of the Arab tribes of northwestern Arabia had been brought to a point where they were prepared to proclaim their independence of Turkish rule. In June, 1916, the Arab revolutionaries under the leadership of Sherif Hussein captured the Turkish garrisons at Mecca and Jedda; and during the ensuing British campaign in western Palestine, flying columns of Arab levies harrassed the left flank of the Turkish forces.

The main British advance began in October, 1917, Gaza falling on November 7 after a series of severe engagements. Jerusalem surrendered on December 9, and by February, 1918, the whole of southern Palestine west of the Dead Sea was brought under British control. Northern Palestine and Syria were occupied in September and October of the same year. In this final offensive, the Arab forces, under the guidance of British officers and with the help of British technical units, played an important rôle in eastern Palestine and Syria.

4. POLITICAL SITUATION AT THE END OF THE WAR

Before passing to a discussion of the situation in Palestine as it developed after the Turkish defeat and the armistice signed between the Allies and Turkey at Mudros on October 30, 1918, it is well to consider the principal political factors affecting that situation. These may be grouped under three heads: (a) The so-called British pledges to the Arabs; (b) Zionism and the Balfour Declaration; and (c) the secret agreements relating to the Near East entered into during the war by certain of the Allied powers. A brief discussion of each of these factors follows.

(a) *British pledges to the Arabs*

As indicated in the foregoing section, negotiations were entered into during 1915 between the British High Commissioner in Egypt, on behalf of the British Government, and Sherif Hussein of Mecca. From the Allied standpoint these negotiations had as their object the crystallization of Arab dissatisfaction with Turkish rule and the utilization of the resulting Arab movement as a weapon to counter Turkish efforts to incite the Mohammedan world to a Djihad, or Holy War, against the Allies. Hussein, on his part, when he had become convinced of the ultimate victory of the Allies, had as his object the obtaining of British support in Arab efforts to throw off the Turkish yoke and the recognition by the Allies of the right of the Arabs, once such independence should have been gained, to establish an independent empire which would embrace all the Arab lands, excepting Aden, from the southern mountains of Asia Minor to the Arabian Ocean. A request for the recognition of an Arab

caliphate was also advanced; and it is not to be doubted that, even in these early years of the war, Hussein was inspired by dreams of future imperial rank and caliphal dignity.

During the course of the discussions which followed, the British position with reference to these Arab aspirations was stated as follows in a communication addressed to Hussein by the British High Commission at Cairo under date of October 24, 1915:

The districts of Mersina and Alexandretta and the portions of Syria lying to the west of the districts of Damascus, Hama, Homs, and Aleppo cannot be said to be purely Arab, and should be excluded from the proposed limits and boundaries. With the above modification, and without prejudice to our existing treaties with Arab chiefs, we accept these limits and boundaries, and in regard to those portions of the territories therein in which Great Britain is free to act without detriment to the interest of her ally, France, I am empowered in the name of the Government of Great Britain to give the following assurance and make the following reply to your letter:

Subject to the above modifications, Great Britain is prepared to recognize and support the independence of the Arabs within the territories included in the limits and boundaries proposed by the Sherif of Mecca.

Great Britain will guarantee the Holy Places against all external aggression and will recognize their individuality.

When the situation admits, Great Britain will give to the Arabs her advice and will assist them to establish what may appear to be the most suitable forms of government in these various territories.

On the other hand, it is understood that the Arabs have decided to seek the advice and guidance of Great Britain only, and that such European advisers and officials as may be required for the formation of a sound form of administration will be British.

With regard to the vilayets of Baghdad and Basra, the Arabs will recognize that the established position and interests of Great Britain necessitate special measures of administrative control, in order to secure these territories from foreign aggression, to promote the welfare of the local populations, and to safeguard our mutual economic interests.¹

Hussein, however, would not agree to these proposed "modifications" of the territorial and other claims advanced by him on behalf of the Arabs. He objected particularly to those parts of the British proposals pointing to the establishment of French control in Syria and British ascendancy in Mesopotamia. The matter appears to have rested on a general assurance given by the British Government that "Great Britain has no intention of concluding any peace on terms of which the freedom of the Arab peoples from German and Turkish domination does not form an essential condition."²

¹ Loder's *Truth about Mesopotamia, Syria & Palestine*, p. 21. This text of the statement of how far the British Government was prepared to go in meeting Arab aspirations is believed to be official, as extensive quotations therefrom appear in official sources: e. g., on March 20, 1919, during the course of the Peace Conference at Paris, Mr. Lloyd George quoted the first two paragraphs of this communication and stated that "the whole of the agreement of 1916 (Sykes-Picot)" was based thereon. See *Woodrow Wilson and World Settlement*, by R. S. Baker.

² Loder, *ibid.*, p. 23.

It should be noted, also, that the independence of the Hedjaz was recognized formally by Great Britain, France, and Russia on December 10, 1916. A brief recapitulation of the circumstances surrounding this recognition is given in the following *aide mémoire* furnished the American Diplomatic Agency at Cairo by the Arab bureau of the British Residency under date of October 24, 1917:

The Sherif of Mecca revolted against the Turks on June 5, 1916.

On October 29, 1916, the British Agent at Jeddah received a telegram from the Under Secretary of State for Foreign Affairs at Mecca asking him to notify H. M. Government that the Sherif had been recognized by the Assembly of Ulema at Mecca as King of the Arab Nation. The same announcement was communicated by telegram from Mecca to Cairo, London, Paris and Petrograd.

The formal ceremony took place in Mecca on 6 November, 1916.

No representative of any foreign power attended.

After some discussion the Governments of Great Britain, France and Russia agreed to recognize the Sherif as lawful independent ruler of the Hedjaz and to use the title of "King of the Hedjaz" when addressing him, and a note to this effect was handed to him on December 10, 1916.

(b) *Zionism and the Balfour Declaration*

Zionism is a movement of return; in particular it is the movement of an organized body of modern Jewry for the establishment in Palestine of a national home for the Jews. In its broader aspect it dates from the final destruction (135 A. D.) of the Jewish Kingdom and the resulting edict of Rome which denied to the Jews further access to Palestine; for, scattered throughout the world, the Jewish people have ever held tenaciously to the ideal of reestablishment in their ancient homeland. In its modern sense, Zionism may be said to date from the beginnings of Jewish recolonization in Palestine in 1880 following persecutions in eastern European countries, and from the summoning in 1897 at Basle of a Congress of Jews which defined the meaning of Zionism as the effort to win "a legally secured, publicly recognized Home for the Jewish People in Palestine."

The original program of the Zionist organization was to obtain, with the approval of the powers, a charter from the Ottoman Government authorizing the realization of its aim. Failing in this, its leaders concentrated their efforts on colonization projects and on fostering in the minds of Jews throughout the world the idea of the creation in Palestine of what was termed "a home for the Jewish spirit." With the advent of the World War, however, a new opportunity was offered to the Zionist leaders to press for the recognition and support of their original program. Their overtures finally met with success in London, where on November 2, 1917, Mr. Balfour, then His Majesty's Principal Secretary of State for Foreign Affairs,

issued what has since come to be known as "the Balfour Declaration," reading as follows:

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by the Jews in any other country.

This declaration was endorsed by the principal Allied powers, and the statement of principle embodied therein played an important part in the definition of the terms of the mandate for Palestine and the resulting administration in that territory. In 1922 it received recognition in the United States through joint resolution¹ reading as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States of America favors the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of Christian and all other non-Jewish communities in Palestine, and that the holy places and religious buildings and sites in Palestine shall be adequately protected.

(c) Secret agreements between certain of the Allies

Of the various secret agreements entered into during the war by certain of the Allied powers, four related directly to the Near East. These were:

First: The Constantinople agreement of 1915 between Great Britain, France, and Russia regarding the future of Constantinople, the Straits, other parts of the Ottoman Empire, and Persia. A memorandum embodying the understanding of the Russian Government with respect to these matters was handed to the British and French Ambassadors at Petrograd on March 4, 1915, by the Russian Minister for Foreign Affairs. One of the clauses of this memorandum recognized British and French rights in Asiatic Turkey and provided that these rights should be defined by a special agreement between Great Britain, France, and Russia. The Sykes-Picot agreement, referred to below, was reached in pursuance of the provisions of this clause.

Secondly: The Pact of London, signed by the representatives of Great Britain, France, Russia, and Italy on April 26, 1915, setting forth the bases on which Italy agreed to participate in the war on the side of the Allied powers.

Article 9 of this agreement, referring to the British and French claims in Asiatic Turkey mentioned above, recognized Italy's interest in "the maintenance of the balance of power in the Mediterranean"; and in Article 12 "Italy declares that she

¹ Public No. 73, 67th Congress, signed by the President on September 21, 1922.

associates herself in the declaration made by France, Great Britain, and Russia to the effect that Arabia and the Moslem Holy Places in Arabia shall be left under the authority of an independent Moslem power."

Thirdly: The Sykes-Picot agreement effected by an exchange of notes between the French and British Governments, dated, respectively, May 9 and 16, 1916, defining their respective interests and claims in the Asiatic provinces of the Ottoman Empire.

Article 3 of this agreement provided for the establishment in that part of Palestine lying to the west of the Jordan River and exclusive of a small district including the ports of Haifa and Acre, of "an international administration of which the form shall be determined after consultation with Russia, and later in agreement with the other Allies and with representatives of the Sherif of Mecca." In general the agreement recognized French claims to Syria (as far east as the anti-Lebanon), Cilicia, a portion of Asia Minor, and a sphere of influence in eastern Syria; and British claims to Mesopotamia, a small district on the Mediterranean including the ports of Haifa and Acre, and a sphere of influence in the intervening territory between Mesopotamia and Palestine. In their respective spheres of influence the eventual establishment of Arab sovereignty was envisaged, and Article 11 provided that "the negotiations with the Arabs in regard to the frontiers of the Arab state or confederation of states shall proceed in the same way as before, in the name of the two powers."

Fourthly: The St. Jean de Maurienne agreement reached between representatives of France, Great Britain, and Italy and communicated by the Italian Ambassador in Paris to the Quai d'Orsay in a memorandum dated April 20, 1917.

The general object of this agreement was to define, "subject to the assent of the Russian Government," the territorial and economic gains in Asiatic Turkey which should accrue to Italy under the pertinent provisions of the Pact of London. With regard to Palestine it was set forth in Article 3 that "the form of international administration . . . will be decided upon in agreement with Italy"; and, with certain other similar reservations, Italy expressed her adherence to the Sykes-Picot agreement. Although Russian assent to this agreement was never given, its influence survived in subsequent discussions between the Allies and in their negotiations with Turkey and with the Arabs regarding the final disposition of the territories in question.

5. BRITISH MILITARY ADMINISTRATION, 1917-1920

Following the occupation of southern Palestine in the fall of 1917 and spring of the following year,¹ a military administration was established under which the occupied territory was divided into five administrative districts. The principles on which this administration

¹ See *ante*, p. 5.

was founded were set forth by General Allenby in the following proclamation which, on December 11, 1917, the date of his official entry into the city of Jerusalem, he caused to be read to the people in English, French, Italian, Arabic, and Hebrew :

To the inhabitants of Jerusalem the Blessed and the people dwelling in the vicinity.

The defeat inflicted upon the Turks by the troops under my command has resulted in the occupation of your city by my forces. I, therefore, here and now proclaim it to be under martial law, under which form of administration it will remain so long as military considerations make necessary. However, lest any of you should be alarmed by reason of your experience at the hands of the enemy who has retired, I hereby inform you that it is my desire that every person should pursue his lawful business without fear of interruption.

Furthermore, since your city is regarded with affection by the adherents of three of the great religions of mankind, and its soil has been consecrated by the prayers and pilgrimages of multitudes of devout people of these three religions for many centuries, therefore do I make known to you that every sacred building, monument, holy spot, shrine, traditional site, endowment, pious bequest, or customary place of prayer, of whatsoever form of the three religions, will be maintained and protected according to the existing customs and beliefs of those to whose faiths they are sacred.

With the occupation of northern Palestine and Syria, following the brilliant advance of September, 1918, a first endeavor was made to meet the various political claims discussed in the preceding section of this report. Under the supreme command of General Allenby as commander in chief, France assumed administrative responsibility in Syria from the coast to the anti-Lebanon, an Arab administration was set up in Damascus and the hinterland, and British control was extended over all of Palestine west of the Jordan. This tentative division of control was confirmed in the Franco-British military convention of September 15, 1919, which, at the same time, abolished the office of the commander in chief.

The final status of Palestine, complicated as it was by Arab pretensions, Zionist aspirations, and Allied agreements pointing to an eventual international control, became a subject of Allied discussions at the Peace Conference which had met in Paris in December, 1918. There the theory of the mandatory system was evolved, and it was believed that, in the application of this theory to the Arab provinces of the Ottoman Empire, a solution of the problem would be found.

Meanwhile in Palestine, under British military administration considerable progress was made towards the creation of a stable form of government and the rehabilitation of the economic life of the country.

6. THE GRANTING OF THE MANDATE

The mandate theory, as discussed and understood by the Allied peace delegations at Paris, was given definite form in the drafting

of Article 22 of the Covenant of the League of Nations. As finally adopted this article read as follows:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

The League Covenant entered into effect on January 10, 1920, the date of the *procès-verbal* drawn up by the French Government setting forth the deposit of ratifications of the treaty of Versailles by Germany and by three of the principal Allied powers. On this date,

therefore, the League of Nations came into being and the Allied powers proceeded to deal with the "colonies and territories" referred to in Article 22 which were to be placed under the "tutelage" of "advanced nations," "exercised by them as Mandatories on behalf of the League." In the case of the territories formerly a part of the Ottoman Empire (known as "A" mandates, in contradistinction to the "B" and "C" mandates exercised over the less advanced communities of the overseas possessions lost to Germany in Africa and the Pacific Islands), although no treaty with Turkey whereby that state renounced sovereignty to such territories had come into effect, the Allies were in effective occupation; and on April 25, 1920, at the Allied Conference of San Remo, the allocation of the "A" mandates was made, Great Britain receiving the mandate for Palestine.

As early as June, 1919, the Supreme Council in Paris had entrusted the drafting of the projected mandates to a commission under Lord Milner. Although in the absence of a treaty of peace with Turkey, this commission abandoned its work on "A" mandate drafts, an exchange of views with reference to such drafts continued between the interested governments, a discussion in which the United States Government participated;¹ and on December 6, 1920, Mr. Balfour addressed the following letter to the League:

In accordance with instructions received from my Government, I have the honour to transmit herewith copies of the texts of the Mandates for Mesopotamia and Palestine as drawn up by His Majesty's Government, and to request that you will be so good as to lay them before the Council of the League of Nations.

His Majesty's Government have prepared the terms of these Mandates in conformity with the spirit of Article 22 of the Covenant of the League of Nations, and have throughout been in consultation with the French Government with whom they are in complete agreement on the subject.

His Majesty's Government venture to hope that an examination of these documents will satisfy the Council that they are in compliance with Article 22 of the Pact, and that the Council will be prepared to approve them.

I should add that, in the interests of the native inhabitants of Mesopotamia and Palestine and with the object of conferring upon them with the least possible delay the benefits of a system based on the stipulations of the Pact, His Majesty's Government desire to draw the attention of the Council to the advisability of bringing to an early close the temporary arrangements at present in force.

The draft mandate for Palestine, submitted with the above letter, was as follows:

THE COUNCIL OF THE LEAGUE OF NATIONS,

WHEREAS by Article 132 of the Treaty of Peace signed at Sèvres on the tenth day of August, 1920, Turkey renounced in favour of the Principal Allied Powers all rights and title over Palestine; and

WHEREAS by Article 95 of the said Treaty the High Contracting Parties agreed to entrust, by application of the provisions of Article 22, the administration of

¹ See Sec. II, *post*, p. 42.

Palestine, within such boundaries as might be determined by the said Powers; and

WHEREAS by the same Article the High Contracting Parties further agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights and political status enjoyed by Jews in any other country; and

WHEREAS recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

WHEREAS the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and

WHEREAS the terms of the Mandate in respect of Palestine have been formulated in the following terms and submitted to the Council of the League for approval; and

WHEREAS His Britannic Majesty has accepted the Mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions;

Hereby approves the terms of the said Mandate as follows:

ARTICLE 1

His Britannic Majesty shall have the right to exercise as Mandatory all the powers inherent in the Government of a sovereign State, save as they may be limited by the terms of the present Mandate.

ARTICLE 2

The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the Preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

ARTICLE 3

The Mandatory shall encourage the whole measure of self-government for localities consistent with the prevailing conditions.

ARTICLE 4

An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and cooperating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part, in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the cooperation of all Jews who are willing to assist in the establishment of the Jewish national home.

ARTICLE 5

The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the Government of any foreign Power.

ARTICLE 6

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage in co-operation with the Jewish agency referred to in Article 4 close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

ARTICLE 7

The Administration of Palestine will be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

ARTICLE 8

The immunities and privileges of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, are definitely abrogated in Palestine.

ARTICLE 9

The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall safeguard (a) the interests of foreigners; (b) the law, and (to the extent deemed expedient) the jurisdiction now existing in Palestine with regard to questions arising out of the religious beliefs of certain communities (such as the laws of Wakf and personal status). In particular the Mandatory agrees that the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

ARTICLE 10

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and foreign powers shall apply to Palestine.

ARTICLE 11

The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country and, subject to Article 311 of the Treaty of Peace with Turkey, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangement shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

ARTICLE 12

The Mandatory shall be entrusted with the control of the foreign relations of Palestine, and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limit.

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ARTICLE 13

All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights, of securing free access to the Holy Places, religious buildings or sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who will be responsible solely to the League of Nations in all matters connected therewith, provided that nothing in this Article shall prevent the Mandatory from entering into such arrangement as he may deem reasonable with the Administration for the purpose of carrying the provisions of this Article into effect; and provided also that nothing in this Mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

ARTICLE 14

In accordance with Article 95 of the Treaty of Peace with Turkey, the Mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of this Commission the religious interests concerned will be taken into account. The chairman of the Commission will be appointed by the Council of the League of Nations. It will be the duty of this Commission to ensure that certain Holy Places, religious buildings or sites, regarded with special veneration by the adherents of one particular religion, are entrusted to the permanent control of suitable bodies representing the adherents of the religion concerned.

The selection of the Holy Places, religious buildings or sites so to be entrusted shall be made by the Commission, subject to the approval of the Mandatory.

In all cases dealt with under this Article, however, the right and duty of the Mandatory to maintain order and decorum in the place concerned shall not be affected, and the buildings and sites will be subject to the provisions of such laws relating to public monuments as may be enacted in Palestine with the approval of the Mandatory.

The rights of control conferred under this Article will be guaranteed by the League of Nations.

ARTICLE 15

The Mandatory will see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, is ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language (while conforming to such educational requirements of a general nature as the Administration may impose) shall not be denied or impaired.

ARTICLE 16

The Mandatory shall be responsible for exercising such supervision over missionary enterprise in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with such enterprise or to discriminate against any missionary on the ground of his religion or nationality.

ARTICLE 17

The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also the defence of the country, subject, however, to the supervision of the Mandatory, who shall not use them for purposes other than those above specified save with the consent of the Administration of Palestine, and except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this Article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of forces maintained by the Mandatory in Palestine.

The Mandatory shall be entitled at all time to use the roads, railways and ports of Palestine for the movement of troops and the carriage of fuel and supplies.

ARTICLE 18

The Mandatory must see that there is no discrimination in Palestine against the nationals of any of the States, Members of the League of Nations (including companies incorporated under their laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce, or navigation, the exercise of industries or professions, or in the treatment of ships or aircrafts. Similarly there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this Mandate the Administration of Palestine may on the advice of the Mandatory impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population.

Nothing in this Article shall prevent the Government of Palestine on the advice of the Mandatory from concluding a special customs agreement with any State, the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

ARTICLE 19

The Mandatory will adhere on behalf of the Administration to any general international conventions already existing or that may be concluded hereafter with the approval of the League of Nations respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

ARTICLE 20

The Mandatory will co-operate on behalf of the Administration of Palestine so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

ARTICLE 21

The Mandatory will secure, within twelve months from the date of the coming into force of this Mandate, the enactment and will ensure the execution, of a Law of Antiquities based on the provisions of Article 421, Part XIII, of the Treaty of Peace with Turkey. This law shall replace the former Ottoman

Law of Antiquities, and shall ensure equality of treatment in the matter of archæological research to the nationals of all States Members of the League of Nations.

ARTICLE 22

English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscriptions in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscriptions in Hebrew shall be repeated in Arabic.

ARTICLE 23

The Administration of Palestine shall recognise the Holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

ARTICLE 24

The Mandatory shall make to the Council of the League of Nations an annual report as to the measures taken during the year to carry out the provisions of the Mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

ARTICLE 25

[Translation ; communicated in French text only]

In the event that a dispute between the members of the League of Nations relating to the interpretation or the application of these provisions cannot be settled by negotiation, this difference shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant.

ARTICLE 26

The consent of the Council of the League of Nations is required for any modification of the terms of the present Mandate, provided that in the case of any modification proposed by the Mandatory such consent may be given by a majority of the council.

ARTICLE 27

In the event of the termination of the Mandate conferred upon the Mandatory by this declaration, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14, and for securing under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the Mandate.

The Present copy shall be deposited in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Turkey.

Made at..... the day of

This letter with the enclosed draft mandates was circulated for the consideration of the members of the Council of the League, and further discussion as to certain of the articles of the draft mandates followed. The extent of the changes suggested and adopted by the British Government as a result of such further discussions is shown in a so-called "final draft" of the Palestine mandate which was presented to the British Parliament by command of His Majesty in

August, 1921. There follows a comparison of those articles of the 1920 and 1921 drafts of the Palestine mandate in which changes in phraseology or substance were made.

DRAFT OF 1920

PREAMBLE

WHEREAS by Article 132 of the Treaty of Peace signed at Sévres on the tenth day of August, 1920, Turkey renounced in favour of the Principal Allied Powers all rights and title over Palestine; and

WHEREAS by Article 95 of the said Treaty the High Contracting Parties agreed to entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as might be determined by the said Powers; and

WHEREAS by the same Article the High Contracting Parties further agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights and political status enjoyed by Jews in any other country; and

ARTICLE 3

The Mandatory shall encourage the whole measure of self-government for localities consistent with the prevailing conditions.

ARTICLE 10

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and foreign powers shall apply to Palestine.

DRAFT OF 1921

PREAMBLE

WHEREAS by Article 132 of the Treaty of Peace signed at Sévres on the tenth day of August, 1920, Turkey renounced in favour of the Principal Allied Powers all rights and title over Palestine; and

WHEREAS by Article 95 of the said treaty the High Contracting Parties agreed to entrust, by application of the provisions of Article 22, the Administration of Palestine, within such boundaries as might be determined by the *Principal Allied Powers*, to a Mandatory to be selected by the said Powers; and

WHEREAS by the same article the High Contracting Parties further agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood *that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine*, or the rights and political status enjoyed by Jews in any other country;¹ and

ARTICLE 3

The Mandatory shall encourage the *widest* measure of self-government for localities consistent with the prevailing conditions.

ARTICLE 10

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and *other* foreign Powers shall apply to Palestine.

¹ This version is merely a more faithful rendering of the French version of 1920.

ARTICLE 12

The Mandatory shall be entrusted with the control of the foreign relations of Palestine, and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limit.

ARTICLE 16

The Mandatory shall be responsible for exercising such supervision over missionary enterprise in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with such enterprise or to discriminate against any missionary on the ground of his religion or nationality.

ARTICLE 17

The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also the defence of the country, subject, however, to the supervision of the Mandatory, who shall not use them for purposes other than those above specified save with the consent of the Administration of Palestine, and except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this Article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of forces maintained by the Mandatory in Palestine.

The Mandatory shall be entitled at all time to use the roads, railways and ports of Palestine for the movement of troops and the carriage of fuel and supplies.

ARTICLE 12

The Mandatory shall be entrusted with the control of the foreign relations of Palestine, and the right to issue exequaturs to consuls appointed by foreign Powers. It shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

ARTICLE 16

The Mandatory shall be responsible for exercising such supervision over religious or *eleemosynary bodies of all faiths in Palestine* as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any *representative or member of them* on the ground of his religion or nationality.

ARTICLE 17

The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, *but* shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of forces maintained by the Mandatory.

The Mandatory shall be entitled at all time to use the roads, railways and ports of Palestine for the movement of *armed forces* and the carriage of fuel and supplies.

ARTICLE 18

(First paragraph)

The Mandatory must see that there is no discrimination in Palestine against the nationals of any of the States, Members of the League of Nations (including companies incorporated under their laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce, or navigation, the exercise of industries or professions, or in the treatment of ships or aircrafts. Similarly there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

[Not in 1920 draft]

Articles 25, 26 and 27.

It was on the basis of this so-called "final draft" of the Palestine mandate that negotiations¹ ensued between the United States and British Governments, negotiations which resulted in substantial modifications in the draft of the mandate and which were concluded by the signature and exchange of ratifications of the British-American Palestine mandate convention of December 3, 1924.

The final form of the Palestine mandate, as adopted by the Council of the League of Nations at London on July 24, 1922, is quoted on pages 107-113.² It may be noted in this connection that the French mandate for Syria and the Lebanon was approved on the same date

ARTICLE 18

(First paragraph)

The Mandatory must see that there is no discrimination in Palestine against the nationals of any of the States members of the League of Nations (including companies incorporated under their laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of *merchant vessels* or *civil* aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

ARTICLE 25

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled to postpone or withhold application of such provisions of this Mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided no action shall be taken which is inconsistent with the provisions of Articles 15, 16, and 18.

Renumbered as 26, 27 and 28.

¹ See Sec. III, "Principal Documents," *post*, pp. 49-104.

² In the preamble to the American-British convention of December 3, 1924.

and that, in taking this action, the following supplementary declaration also was approved by the Council.

The mandates will enter into force automatically and at the same time, as soon as the Governments of France and Italy have notified the President of the Council of the League of Nations that they have reached an agreement on certain particular points in regard to the latter of these mandates (Syria and the Lebanon).

In the course of its meeting, on September 29, 1923, the Council was duly informed by the representatives of France and Italy that the negotiations in question had resulted in a final agreement, and it took note of the fact that the mandates for Syria and the Lebanon and for Palestine had thereby automatically and simultaneously entered into force.¹

The nature of this final agreement with respect to Syria was the same as that already reached in principle between the Italian and British Governments with respect to Palestine. These agreements are of importance to the United States Government for the reason that the assurances therein given by the British and French Governments to the Italian Government were, as a result of later exchanges of notes with the British and French Governments, extended to include the United States Government and its nationals.²

It should be noted in this connection also that the Council's decision of September 29, 1923, providing for the entry into force on that date of the mandate for Palestine, presumably became effective as regards all states which on that date were members of the League of Nations. Under Article 155 of the treaty of Versailles this decision was binding upon Germany; and Turkey, under Article 16 of the treaty of Lausanne which entered into force on August 6, 1924, has recognized the status of Palestine as defined in the mandate.

7. BRITISH CIVIL ADMINISTRATION, 1920-1925

Following the allocation to Great Britain of the mandate for Palestine at San Remo on April 25, 1920, arrangements were made by the British Government to the end that the British military administration in that country should be superseded by a civil administration. This transfer of authority was effected on July 1, 1920, and Sir Herbert Samuel, a well-known figure in British Empire politics, entered upon the performance of his duties as His Majesty's

¹ See League of Nations publication C.L.101.1923.VI.

² For the exchange of notes on this subject between the British and United States Governments, see *post*, pp. 80, 87-90, and 93-95. Under date of April 20, 1926, the Department of State received from the American Ambassador in London the following telegram: "Exchange of notes with the Italian Government has not yet taken place, but Foreign Office expects to be in a position to make this exchange shortly."

High Commissioner for Palestine. During the five years of his incumbency effective progress has been made in the development of the country in accordance with the principles set forth in Article 22 of the Covenant of the League of Nations and the Balfour Declaration as embodied in the terms of the mandate.

In October, 1920, as a first step in the realization of a policy having as its aim the progressive participation of the inhabitants of Palestine in the control of the administration of their public affairs, there was established a nominated Advisory Council consisting of ten British officials holding office under the Government of Palestine and ten representative Palestinians (seven Arabs—four Moslems and three Christians—and three Jews). In Sir Herbert Samuel's interesting *Report of the High Commissioner on the Administration of Palestine, 1920-1925*, issued by the British Colonial Office,¹ the work of the Advisory Council is described as follows:

This Council sat for two years; all legislation was submitted to it; any subject of public importance could be raised by any of the members. The Council rendered useful service, and it was a fortunate fact that, although criticism was frequent, on no occasion did the Government find itself unable to accept the considered opinion of the non-official members.

Following the action of the Council of the League of Nations in adopting, on July 24, 1922, the final form of the mandate for Palestine, a second step in this direction was taken by the British Government in the promulgation of "The Palestine Order in Council, 1922" which entered into effect on September 1 of that year. This order set forth the powers and duties of the executive, regulated the acts of the judiciary, and, among other things, provided for the creation of a Legislative Council which was to supersede the Advisory Council referred to above. The Legislative Council was to consist of ten official members and twelve Palestinian members (eight Moslems, two Jews, and two Christians) to be elected by popular suffrage; it was to have the usual powers of a legislative body. Objection to the carrying out of this provision was, however, raised by the Arab leaders in Palestine, who, maintaining that they represented almost 90 per cent of the population, insisted that the Council should consist only of elected members or, if including official members, that the Arab members should outnumber the official members.

Extensive negotiations followed, but no agreement was reached providing an acceptable basis for Arab cooperation. In the absence thereof, the method of government since 1922 has been prescribed by the High Commissioner, who, in 1925, described the resulting system of administration as follows:

The present system is that ordinances are considered first by the Executive Council, which consists of the High Commissioner and his three principal

(Colonial No. 15, 1925.

officials, the Chief Secretary, the Attorney-General and the Treasurer. They are then submitted to the Advisory Council, which consists of the four members of the Executive Council, together with five heads of Departments and one of the District Governors. They have also to receive the provisional approval of the Secretary of State for the Colonies. They are then published in the *Official Gazette*, in the three languages, and, except in rare cases of special urgency, they are not finally enacted until a month has elapsed after publication. During that time public opinion can express itself if need be, and suggestions from interests concerned may be received. If useful amendments are suggested to an ordinance, the matter can be again considered. On several occasions alterations have been made in ordinances after publication in the *Gazette* and before enactment.

8. THE SPECIAL SITUATION IN TRANS-JORDAN

With his report on the administration of Palestine during the years 1920 to 1925, the High Commissioner included the following record of events in Trans-Jordan since the expulsion of the Turkish forces:

When the war ended, Trans-Jordan found itself within the administrative area which had been entrusted to His Highness the Amir Faisal, the third son of King Husain of the Hijaz; his capital was at Damascus. In July, 1920, the Amir came into conflict with the French authorities, who exercised the mandate for Syria, and left the country. At that moment Trans-Jordan was left politically derelict. The frontier between the two mandatory zones, as agreed between Great Britain and France, cut it off from Syria, but no authority had been exercised from Palestine. The establishment of a direct British Administration was not possible, since Trans-Jordan was part of the extensive area within which the British Government had promised in 1915, in the course of negotiations with the Hijaz, to recognise and support the independence of the Arabs. Nor would His Majesty's Government have been prepared in any case to send armed forces to maintain an administration. These conditions having arisen soon after my arrival in Palestine, I proceeded to Trans-Jordan in August, 1920. I held a meeting with the leading inhabitants, and, as no centralised government was at that time possible, I took steps to establish Local Councils in the three districts into which the country is divided by its natural features. These Councils assumed the administration of affairs, with the assistance of a small number of British officers who were sent from Palestine for the purpose.

A few months later, His Highness the Amir Abdulla, the second son of King Husain, arrived in Trans-Jordan from the Hijaz. He had with him a small force, and he expressed hostile intentions with regard to the French authorities in Syria. The Secretary of State, Mr. Churchill, was at that time in Palestine. A conference with the Amir was held at Jerusalem, and an agreement made, under which the Mandatory Power recognised him, for a period, as administrator of Trans-Jordan, with the condition that any action hostile to Syria must be abandoned. In 1922 the Amir visited London, the arrangement was confirmed, and in April, 1923, I was authorised to make the following announcement, at Amman, the capital of the territory: "Subject to the approval of the League of Nations, His Majesty's Government will recognise the existence of an independent Government in Trans-Jordan under the rule of His Highness the Amir Abdulla, provided that such Government is constitutional and places His

Britannic Majesty's Government in a position to fulfil its international obligations in respect of the territory by means of an agreement to be concluded between the two Governments." Owing to various causes, the discussion of the terms of such an agreement has been postponed from time to time, and has not yet been undertaken. The Government of the Amir has continued, however, to receive recognition and support.

In pursuance of this policy, an annex to the Mandate for Palestine was presented to the Council of the League of Nations in September, 1922, and approved by them, making it clear that the articles that related to the establishment of a Jewish national home did not apply to Trans-Jordan.

The territory is now governed by His Highness the Amir, through a small Council of Ministers. A British representative resides at Amman and advises the Government in the conduct of its affairs, acting under the direction of the High Commissioner for Palestine. The relations which have been maintained with the Amir and his ministers are, and have been throughout, close and friendly.

The annex to the mandate for Palestine referred to in the penultimate paragraph of the foregoing quotation is to be found in a note by the Secretary-General of the League of Nations, dated Geneva, September 23, 1922, addressed to the Members of the League. The decision of the Council quoted therein provides that, in compliance with the terms of Article 25 of the mandate, "the following provisions of the Mandate for Palestine are not applicable in the territory known as Trans-Jordan." The provisions in question are the following:

- Recitals 2 and 3 of the preamble and Articles 2 and 4 of the mandate, regarding the establishment in Palestine of a national home for the Jews.
- Article 6, providing for the facilitation of Jewish immigration and land settlement.
- Article 7 (2d sentence), regarding citizenship facilities to be accorded to Jewish settlers.
- Article 11 (2d sentence of 1st paragraph and all of 2d paragraph), regarding Jewish acquisition of land, development of resources, and operation of public utilities, etc.
- Articles 13 and 14, regarding the administration of the Holy Places.
- Article 22, recognizing English, Arabic, and Hebrew as "the official languages of Palestine."
- Article 23, recognizing the holy days of the respective communities as "legal days of rest" for their members.

II. CORRESPONDENCE
REFERRING TO ECONOMIC RIGHTS IN
MANDATED TERRITORY

II. CORRESPONDENCE REFERRING TO ECONOMIC RIGHTS IN MANDATED TERRITORY

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND BRITISH GOVERNMENTS DURING THE YEAR 1920¹

1

The American Ambassador (Davis) to the British Secretary of State for Foreign Affairs (Curzon)

No. 317 EMBASSY OF THE UNITED STATES OF AMERICA,
London, May 12, 1920.

MY LORD: Pursuant to the instructions of my Government, I have the honour to inform your Lordship that the Government of the United States has been officially informed that the mandates for Mesopotamia and Palestine have been assigned to Great Britain; the mandate for Mesopotamia being given subject to friendly arrangement with the Italian Government regarding economic rights.

The Government of the United States desires to point out that during the peace negotiations at Paris leading up to the treaty of Versailles, it consistently took the position that the future peace of the world required that as a general principle any alien territory which should be acquired pursuant to the treaties of peace with the Central powers must be held and governed in such a way as to assure equal treatment in law and in fact to the commerce of all nations. It was on account of, and subject to this understanding that the United States felt itself able and willing to agree that the acquisition of certain enemy territory by the victorious powers would be consistent with the best interests of the world. The representatives of the principal Allied powers, in the discussion of the mandate principles, expressed in no indefinite manner their recognition of the

¹ The correspondence herein contained was continued in 1921 with particular respect to the application of the principles set forth therein to the development of the oil resources of Mesopotamia. Particular mention may be made in this connection of the following two notes: (1) The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Davis), February 28, 1921 (published by the British Government, together with the four notes here listed, as "Miscellaneous No. 10, 1921; Cmd. 1226"); and (2) the American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon), November 17, 1921 (published by the Senate of the United States in Document No. 97, 68th Cong., 1st sess., entitled *Oil Concessions in Foreign Countries*).

justice and far-sightedness of such a principle and agreed to its application to the mandates over Turkish territory.

The administration of Palestine and Mesopotamia during the interim period of military occupation has given rise to several communications between the United States Government and that of Great Britain relative to matters that had created the unfortunate impression in the minds of the American public that the authorities of His Majesty's Government in the occupied region had given advantage to British oil interests which were not accorded to American companies and further that Great Britain had been preparing quietly for exclusive control of the oil resources in this region. The impression referred to has it is believed been due in large part to reports of authoritative statements regarding the general oil policy of Great Britain and of actual work such as the construction of pipe lines, railways and refineries, the operations of certain oil wells, the acquisitions of dockyards, cotton investigations, and permitted researches by certain individuals whose activities, though stated to be solely in behalf of the civil administration, were attended by circumstances which created the impression that some benefit at least would accrue to British oil interests.

Certain of the occurrences above referred to have been explained by His Majesty's Government as due to military necessity, and certain others as due to laxity on the part of local authorities. It must be realized, however, that it has been difficult for the American people to reconcile all of these reports with the assurance of His Majesty's Government that "the provisional character of the military occupation does not warrant the taking of decisions by the occupying power in matters concerning the future economic development of the country," and that the invitation of new undertakings and the exercise of rights under concessions would be prohibited. The United States Government has confidence in the good faith of His Majesty's Government in attempting to carry out the assurances given by His Majesty's Foreign Office, but desires to point out that the considerations above referred to indicate the difficulty in insuring the local execution of such undertakings and the necessity for careful measures to guarantee the practical fulfillment of the principles expressed and agreed to during the peace negotiations at Paris.

With this thought in mind, the Government of the United States ventures to suggest the following propositions, which embody or illustrate the principles which the United States Government would be pleased to see applied in the occupied or mandated regions and which are submitted as furnishing a reasonable basis for discussions. In the event of such discussions it would be assumed that the legal situation as regards economic resources in the occupied or mandated regions would remain *in statu quo* pending an agreement:

- (1) That the mandatory power strictly adhere and conform to the principles expressed and agreed to during the peace negotiations at Paris and to the principles embodied in mandate "A" prepared in London for adoption by the League of Nations by the Commission on Mandatories.
- (2) That there be guaranteed to the nationals or subjects of all nations treatment equal in law and in fact to that accorded nationals or subjects of the mandatory power with respect to taxation or other matters affecting residence, business profession, concessions, freedom of transit for persons and goods, freedom of communication, trade, navigation, commerce, industrial property, and other economic rights or commercial activities.
- (3) That no exclusive economic concessions covering the whole of any mandated region or sufficiently large to be virtually exclusive shall be granted and that no monopolistic concessions relating to any commodity or to any economic privilege subsidiary and essential to the production, development, or exploitation of such commodity shall be granted.
- (4) That reasonable provision shall be made for publicity of applications for concessions and of governmental acts or regulations relating to the economic resources of the mandated territories; and that in general regulations or legislation regarding the granting of concessions relating to exploring or exploiting economic resources, or regarding other privileges in connection with these, shall not have the effect of placing American citizens or companies, or those of other nations or companies controlled by American citizens or nationals of other countries, at a disadvantage compared with the nationals or companies of the mandate nation or companies controlled by nationals of the mandate nation or others.

The fact that certain concessions were granted in the mandated regions by the Turkish Government is, of course, an important factor which must be given practical consideration. The United States Government believes that it is entitled to participate in any discussions relating to the status of such concessions not only because of existing vested rights of American citizens, but also because the equitable treatment of such concessions is essential to the initiation and application of the general principles in which the United States Government is interested.

No direct mention has been made herein of the question of establishment of monopolies directly or indirectly by or in behalf of the mandatory Government. It is believed, however, that the establishment of monopolies by or in behalf of the mandatory Government would not be consistent with the principles of trusteeship inherent in the mandatory idea. His Majesty's Government has stated its conception of the necessity for the control of oil production in these

territories in time of national emergency. The Government of the United States does not intend at present to suggest arrangements that shall extend to any consideration not included in an enlightened interpretation of what constitutes its legitimate commercial interests. The question of control in times of national emergencies of supplies which may be deemed essential by Great Britain is a subject which the United States Government deems a matter for separate discussion.

The Government of the United States realizes the heavy financial obligations which will arise in connection with the administration of the mandatory. It believes, however, that any attempt toward reimbursement by the adoption of a policy of monopolization or of exclusive concessions and special favours to its own nationals, besides being a repudiation of the principles already agreed to would prove to be unwise even from the point of view of expediency both on economic and political grounds. It also believes that the interests of the world, as well as that of the two respective countries, can best be served by a friendly cooperation or a friendly and equal competition between the citizens of the two countries and citizens of other nationalities.

The Government of the United States would be glad to receive an early expression of the views of His Majesty's Government, especially in order to reassure public opinion in the United States.

I have the honour further to acquaint Your Lordship that this note is not designed by way of reply to the Allied note from San Remo, which will be answered separately.

I have [etc.]

JOHN W. DAVIS

2

The American Ambassador (Davis) to the British Secretary of State for Foreign Affairs (Curzon)

EMBASSY OF THE UNITED STATES OF AMERICA,

London, July 28, 1920.

MY LORD: Pursuant to the instructions of my Government, I have the honor to recall to Your Lordship the statement in my note of the 12th May, 1920, that the Government of the United States would be glad to receive an early expression of the views of His Majesty's Government with respect to its economic policy in the mandate regions of the Near East.

2. The Government of the United States appreciates that, with respect to the inauguration of the administration of the mandate territories, His Majesty's Government will consider it necessary to proceed with due deliberation. His Majesty's Government will recall, however, that the Government of the United States is pri-

marily interested in the effective application to these territories of general principles, already clearly recognized and adhered to during the peace negotiations at Paris, that such territories should be held and governed in such a way as to assure equal treatment in law and in fact to the commerce of all nations.

3. It is the opinion of the Government of the United States that the treatment of the economic resources of the regions which will be held under mandate by Great Britain or other nations involves a question of principle transcending in importance questions relating merely to the commercial competition of private interests or to control for strategic purposes of any particular raw material. The Government of the United States in its note of the 12th May, 1920, suggested certain considerations that indicate the necessity for careful measures to guarantee the practical application of the principles expressed and agreed to during the peace negotiations at Paris. Unfortunately, occurrences subsequent to the submission of this note have not served to clarify the situation or to diminish the concern felt by the Government and people of the United States.

4. The Government of the United States has noted the publication of an agreement between His Majesty's Government and the French Government making certain provisions for the disposition of petroleum produced in Mesopotamia, and giving to France preferential treatment in regard thereto. It is not clear to the Government of the United States how such an agreement can be consistent with the principles of equality of treatment understood and accepted during the peace negotiations at Paris.

5. The Government of the United States desires to record its views that such an agreement, in light of the position the British Government appears to have assumed toward Mesopotamia and its economic resources, will, as a practical matter, result in a grave infringement of the mandate principle which was formulated for the purpose of removing in the future some of the principal causes of international differences.

6. In the interests of a frank discussion of the whole subject the Government of the United States desires further to call the attention of His Majesty's Government to the existence of reports to the effect that the officials charged with the administration of Tanganyika territory have accorded privileges to British nationals that have not been accorded to the nationals of other countries.

7. The Government of the United States desires to express anew the hope that in an early reply to the note of the 12th May, 1920, His Majesty's Government will find it possible to elucidate fully its policy regarding the mandated territory of the Near East and other regions.

I have [etc.]

JOHN W. DAVIS

3

*The British Secretary of State for Foreign Affairs (Curzon) to
the American Ambassador (Davis)*

FOREIGN OFFICE,
London, August 9, 1920.

YOUR EXCELLENCY: I have the honour to refer to the notes dated the 12th May and 28th ultimo which you were good enough to address to me and in which Your Excellency, referring to the mandates assigned to Great Britain, had occasion to point out the general principles stated to be advocated by the United States Government and agreed to by the Allied powers which should be adopted and applied to the mandates over former Turkish treaty [territory].

2. You at the same time drew my attention to the existing vested rights of the United States citizens in this territory and to the impression which had arisen in the minds of the American people that the authorities of His Majesty's Government in the occupied territory of Mesopotamia had given advantages to British oil interests which were not granted to American companies and that His Majesty's Government were taking steps calculated eventually to bring the oil resources of Mesopotamia under their exclusive control. Instances of activities in various directions were quoted which had led to such conclusions. In view of this impression and of the necessity for the adoption of careful measures which would ensure the practical fulfilment of the principles enunciated, you put forward certain proposals which the United States Government would be glad to see applied in the mandated territories and explained the necessity for giving practical consideration to certain concessions in those regions granted by the Turkish Government, in some of which United States citizens claimed vested rights.

3. The various points and suggestions which have formed the subject of your note have had the careful consideration of His Majesty's Government and I desire to furnish you in regard to them with the following observations:

4. I would wish at the outset to refer to the last sentence of the first paragraph of your note of the 12th May to the effect that the assignment to Great Britain of the mandate for Mesopotamia was made subject to a friendly arrangement with the Italian Government regarding economic rights, and to state categorically that the assignment of the mandate has been made and accepted subject to no friendly arrangement whatever with any Government regarding economic rights.

5. I will next deal with the alleged action of the authorities of His Majesty's Government in the occupied territories in giving facili-

ties to British oil interests which, it is contended, were denied to United States companies. The matter, as you will recollect, has formed the subject of previous communications between us, and the hope was entertained that whatever doubts had existed in regard to the attitude of His Majesty's Government in the matter had been satisfactorily dispelled. The authoritative statements to which you have alluded in the third paragraph of your note of the 12th May, and which would appear to be the basis for the reports that actual work has been undertaken in Mesopotamia, are not founded on fact. Such reports would lead to the assumption that the development of the oil fields has already been taken in hand which is not the case. No pipe lines or refineries for dealing with Mesopotamian oil have been constructed. In fact the only existing work of this nature is a small refinery now in course of erection at Bagdad which was started for purely military requirements and is intended to deal with oil obtained from the Persian oil fields.

6. The difficulty and cost of conveying supplies of oil by river from the base at Basra to military stations situated north of Bagdad and in the Mosul region have compelled the military authorities in that region to consider the problem of securing sufficient supplies locally, and have led to the working of an oil well which had been partially developed by the Turkish authorities previous to and during the war. The operations at this well have been conducted for purely military purposes under the immediate supervision of the army authorities and at army expense, and no private interests whatever are in any way involved.

7. In regard to the building of railways and dockyards, I need hardly dwell upon the imperative necessity for providing every possible means of transport during the period of military operations and facilities of every kind at the ports for the landing of troops and stores. The construction of railways in a country utterly destitute of any properly organised means of communication has, throughout the period of the war and since the cessation of hostilities, been of paramount importance from the military as well as from the administrative point of view.

8. The suggestion that Great Britain during the period of military occupation of the mandatory territories has been preparing for exclusive control of their oil resources is equally devoid of foundation, and the claims of British commercial interests in those regions, whatever they may be, are today no stronger, as they are no weaker, than they were at the outbreak of war.

9. I would like, I beg to say, to make a passing reference to the very mistaken impressions which appear to be current in the United States in regard to the oil policy of His Majesty's Government.

The output of oil within the British Empire is only about 2½ per cent of the world's production, and if the production of Persia be included, in virtue of certain oil fields in that country being owned by a British company, the total amounts to about 4½ per cent. Against this small percentage the United States produces some 70 per cent of the world's output, besides which United States companies, who own at least three fourths of the Mexican output, are estimated to produce a further 12 per cent of the world's output. This overwhelming proportion, over 80 per cent of the petroleum production of the world, is under American control, and the predominance of the United States in regard to oil production is assured for many years to come. There is, in any case, no justification for supposing that Great Britain, whose present oil resources are altogether insignificant in comparison, can seriously threaten American supremacy and any prophecies as to the oil-bearing resources of countries, at present unexplored and quite undeveloped, must be accepted with reserve.

10. The nervousness of American opinion, concerning the alleged grasping activities of British oil interests, appears singularly unfortunate in view of these facts. And yet it is notable that the United States, notwithstanding their assured supremacy, have taken powers to reserve for American interests the right to drill for oil on United States domain lands and have, on various occasions, used their influence in territories amenable to their control with a view to securing cancellation of oil concessions previously and legitimately obtained by British persons or companies. Thus, on the occupation of Haiti by United States forces in 1913, the United States administration refused to confirm an oil concession which had been approved by the Haitian Government and Legislature and for which the caution money had been deposited in the Republic, and more recently the United States representatives at San José urged the present Costa Rican Government to cancel all concessions granted by the previous Government, the only concession in question being an oil concession granted to a British subject.

11. Very different has been the attitude of the British Government. In assuming the administration of the occupied Turkish territories they have remained fully alive to their obligation, as a temporary occupant, to protect not only the natural resources of the country against indiscriminate exploitation, but also the absolute freedom of action which the authority to be created eventually for administering those regions would have rightly expected to enjoy.

12. Mindful of this obligation, His Majesty's Government have found it necessary to suspend, during the period of occupation, the grant of facilities and opportunities to British as well as to other

private interests to investigate the natural resources of the country with the view of acquiring new claims or strengthening old ones, and there is no reason for assuming that the administration either of Mesopotamia or of Palestine has at any time failed to carry out the policy which has been laid down by His Majesty's Government.

13. I will now refer to the propositions enumerated by you on which discussion is invited, and which have been put forward with the object of guaranteeing to the commerce of all nations the practical fulfilment in the mandated regions of the principles of equal treatment in law and in fact. Reference is made in this connection to the desirability of the adherence of the mandatory power to the principles expressed and agreed to during the peace negotiations in Paris, as well as to principles embodied in mandate "A," prepared in London by the Commission on Mandates, for adoption by the League of Nations.

14. I would first point out that, in consequence of a divergence of views, the Commission on Mandates proceeded no further with the draft of the mandate form, "A," which was consequently abandoned.

15. The draft mandates for Mesopotamia and for Palestine, which have been prepared with a view to secure equality of treatment and opportunity for the commerce, citizens and subjects of all states who are members of the League of Nations, will, when approved by the Allied powers interested, be communicated to the Council of the League of Nations. In these circumstances, His Majesty's Government, while fully appreciating the suggestion for discussing with the United States Government the various propositions mentioned by you, with which they are in full sympathy, are none the less of the opinion that the terms of the mandates can only properly be discussed at the Council of the League of Nations by the signatories of the Covenant.

16. In the matter of concessions granted in the mandated territories by the Turkish Government His Majesty's Government fully agree with the views of the United States Government that due consideration must be given to all rights legally acquired before the outbreak of hostilities. Provision for the consideration and recognition under certain conditions of concessions situated in territories detached from the Turkish Empire has, moreover, as you no doubt know, been made in the treaty of peace with Turkey. His Majesty's Government are aware that certain rights were acquired in Palestine before the war by American citizens, while British interests, such as the Turkish Petroleum Co. and other groups, claim similar rights either in Mesopotamia or in Palestine. These claims will naturally have to be given practical consideration and receive equitable treatment consistent with the interests of the mandated territory.

17. As part of the administrative arrangements under the treaty of peace with Turkey and the mandate, the oil deposits in Mesopotamia will be secured to the future Arab state, but it is far from the intention of the mandatory power to establish on its own behalf any kind of monopoly.

18. In view of long-standing interests which the French Government possessed in the Mosul district, arrangements were made whereby the French Government should, on renouncing those interests, be assured of a certain participation in the Mesopotamian oil production. It was accordingly decided that in the event of the Mesopotamian oil fields being developed by the state, France should be entitled to purchase 25 per cent of the oil production at ordinary market rates or, in the alternative of the oil fields being developed by private enterprise, that French participation should not be less than 25 per cent in the shareholdings, while provision was made that the Mesopotamian administration should likewise have a certain share.

19. In consideration for such participation, the French Government agreed to permit the laying of a pipe line from the Mesopotamian oil fields through Syria, besides providing for other facilities. These arrangements, including others for mutual cooperation in other countries, were embodied in an agreement which has been published. The practical outcome of the arrangement, so far as Mesopotamia is concerned, is that, while France secures a share in the output of oil at ordinary market rates, the Mesopotamian state is afforded, in return, facilities for placing the production of the oil fields within easy reach of the world's markets. The agreement aims at no monopoly. It does not exclude other interests and gives no exclusive right to the mandatory power, while the Mesopotamian state is free to develop the oil fields in any way it may judge advisable, consistent with the interests of the country.

20. I feel bound to observe that, even if any special privileges were assigned to France under this agreement, such a proceeding would be consistent with the interpretation consistently placed by the United States Government on most-favoured-nation clauses in treaties, namely, that special privileges conceded to particular countries in return for specific concessions cannot, in virtue of such a clause, be claimed by other countries not offering such concessions. The United States Government have indeed recently taken a further step in the case of the "Jones" Act and have taken powers actually to withdraw treatment secured by treaties which in some cases contain no provision for denunciation.

21. As regards the alleged action of the administration of Tanganyika territory referred to in the penultimate paragraph of your

note of the 28th ultimo, I should be obliged if you would furnish me with the names of any persons who have been refused privileges granted to British subjects and the dates of their applications.

I have [etc.]

CURZON OF KEDLESTON

4

The Secretary of State to the British Secretary of State for Foreign Affairs (Curzon)

DEPARTMENT OF STATE,

Washington, November 20, 1920.

MY LORD: I have the honor to refer to your note of August 9 regarding the application of the principle of equality of treatment to the territories of the Near East to be placed under mandates, and specifically to the petroleum resources of those territories as affected by that principle.

Before considering the observations of His Majesty's Government on the general principles advocated by the United States, and agreed to by the Allied powers, for application to the mandates over former Turkish territory, as outlined in the notes of May 12, and July 28, addressed to you on behalf of this Government, I think it will clarify the discussion to indicate certain of your statements and assurances which this Government has been pleased to receive. Thus, I note that the assignment to Great Britain of the mandate for Mesopotamia was made and accepted subject to no friendly arrangement whatever with any third Government regarding economic rights, which, of course, would have been wholly at variance with the purpose and contemplation of any mandate.

It is also gratifying to learn that His Majesty's Government is in full sympathy with the several propositions formulated in the note of May 12, above referred to, which embody or illustrate the principles which this Government believes should be applied in the mandated regions, and which are essential to the practical realization of equality of treatment.

The statements of your note, to the effect that the British Government has refrained from exploiting the petroleum resources of the mandated territories in question; that the operations referred to have been conducted for purely military purposes under the immediate supervision of the army authorities and at army expense; and that no private interests whatever are in any way involved, are accepted with a full sense of the good faith of the British Government.

The Government of the United States notes that His Majesty's Government has found it necessary to suspend, during the period of occupation, the grant of facilities and opportunities to British

as well as to other private interests to investigate the natural resources of the country, either for the purpose of acquiring new claims or strengthening old ones, and that there is no reason for assuming that the administration either of Mesopotamia or of Palestine has at any time failed to carry out the assurances of His Majesty's Government.

This Government welcomes your pledges to the effect that the natural resources of Mesopotamia are to be secured to the people of Mesopotamia and to the future Arab state to be established in that region, and that it is the purpose of the British Government, fully alive to its obligation as a temporary occupant, not only to secure those resources to the Mesopotamian state, but also its absolute freedom of action in the control thereof, and in particular that it is far from the intention of the mandatory power to establish any kind of monopoly or preferred position in its own interest.

The Government of the United States appreciates, likewise, the concurrence with its view that the merits of all claims to rights alleged to have been acquired in the mandated territories before the outbreak of hostilities must be duly established before recognition of such claims will be accorded.

Adverting, at this point, to the views of His Majesty's Government regarding the nature of the responsibilities of mandatory powers under the League of Nations, I desire to call to the attention of His Majesty's Government, the fact that, while the draft mandate, Form "A," was not adopted at Paris, it was the understanding of the American representatives, there present, that the British Government entertained and had expressed convictions favorable to said form, and that, presumably, its representatives would exercise their influence in conformity with those convictions.

I need hardly refer again to the fact that the Government of the United States has consistently urged that it is of the utmost importance to the future peace of the world that alien territory transferred as a result of the war with the Central powers should be held and administered in such a way as to assure equal treatment to the commerce and to the citizens of all nations. Indeed, it was in reliance upon an understanding to this effect, and expressly in contemplation thereof, that the United States was persuaded that the acquisition under mandate of certain enemy territory by the victorious powers would be consistent with the best interests of the world.

It is assumed, accordingly, that your statements with reference to mandate "A," together with the statement that the draft mandates for Mesopotamia and Palestine have been prepared with a view to secure equality of treatment for the commerce and citizens of all states which are members of the League of Nations, do not indicate a

supposition on your part that the United States can be excluded from the benefits of the principle of equality of treatment.

This Government is pleased to find that His Majesty's Government is in full sympathy with the principles formulated in its communications of May 12 and of July 28. But it is unable to concur in the view, contained in paragraph 15 of your note, that the terms of the mandates can properly be discussed only in the Council of the League of Nations and by the signatories of the Covenant. Such powers as the Allied and Associated nations may enjoy or wield, in the determination of the governmental status of the mandated areas, accrued to them as a direct result of the war against the Central powers. The United States, as a participant in that conflict and as a contributor to its successful issue, cannot consider any of the Associated powers, the smallest not less than itself, debarred from the discussion of any of its consequences, or from participation in the rights and privileges secured under the mandates provided for in the treaties of peace.

This Government notes with interest your statement that the draft mandates for Mesopotamia and for Palestine, which have been prepared with a view to secure equality of treatment and opportunity for the commerce, citizens and subjects of all states which are members of the League of Nations, will, when approved by the interested Allied powers, be communicated to the Council of the League of Nations. The United States is, undoubtedly, one of the powers directly interested in the terms of the mandates, and I therefore request that the draft mandate forms be communicated to this Government for its consideration before their submission to the Council of the League. It is believed that His Majesty's Government will be the more ready to acquiesce in this request, in view of your assurance that His Majesty's Government is in full sympathy with the various principles contained in the two previous notes of this Government upon this subject.

The establishment of the mandate principle, a new principle in international relations, and one in which the public opinion of the world is taking a special interest, would seem to require the frankest discussion from all pertinent points of view. It would seem essential that suitable publicity should be given to the drafts of mandates which it is the intention to submit to the Council, in order that the fullest opportunity may be afforded to consider their terms in relation to the obligations assumed by the mandatory power and the respective interests of all Governments which are or deem themselves concerned or affected.

The fact cannot be ignored that the reported resources of Mesopotamia have interested public opinion of the United States, Great Britain, and other countries as a potential subject of economic strife.

Because of that fact they become an outstanding illustration of the kind of economic question with reference to which the mandate principle was especially designed, and indeed a peculiarly critical test of the good faith of the nations which have given their adherence to the principle. This principle was accepted in the hope of obviating in the future those international differences that grow out of a desire for the exclusive control of the resources and markets of annexed territories. To cite a single example: because of the shortage of petroleum, its constantly increasing commercial importance, and the continuing necessity of replenishing the world's supply by drawing upon the latent resources of undeveloped regions, it is of the highest importance to apply to the petroleum industry the most enlightened principles recognized by nations as appropriate for the peaceful ordering of their economic relations.

This Government finds difficulty in reconciling the special arrangement referred to in paragraphs 18 and 19 of your note, and set forth in the so-called San Remo petroleum agreement, with your statement that the petroleum resources of Mesopotamia, and freedom of action in regard thereto, will be secured to the future Arab state, as yet unorganized. Furthermore, it is difficult to harmonize that special arrangement with your statement that concessionary claims relating to those resources still remain in their pre-war position, and have yet to receive, with the establishment of the Arab state, the equitable consideration promised by His Majesty's Government.

This Government has noted in this connection a public statement of His Majesty's Minister in charge of petroleum affairs to the effect that the San Remo agreement was based on the principle that the concessions granted by the former Turkish Government must be honored. It would be reluctant to assume that His Majesty's Government has already undertaken to pass judgment upon the validity of concessionary claims in the regions concerned, and to concede validity to certain of those claims which cover, apparently, the entire Mesopotamian area. Indeed, this Government understands your note to deny having taken, and to deny the intention to take, any such *ex parte* and premature action. In this connection, I might observe that such information as this Government has received indicates that, prior to the war, the Turkish Petroleum Co., to make specific reference, possessed in Mesopotamia no rights to petroleum concessions or to the exploitation of oil; and in view of your assurance that it is not the intention of the mandatory power to establish on its own behalf any kind of monopoly, I am at some loss to understand how to construe the provision of the San Remo agreement that any private petroleum company which may develop the Mesopotamian oil fields "shall be under permanent British control."

Your Lordship contrasts the present production of petroleum in the United States with that of Great Britain and some allusion is made to American supremacy in the petroleum industry. I should regret any assumption by His Majesty's Government or any other friendly power, that the views of this Government as to the true character of a mandate are dictated in any degree by considerations of the domestic need or production of petroleum, or any other commodity.

I may be permitted to say, however, for the purpose of correcting a misapprehension which your note reflects, that the United States possesses only one-twelfth approximately of the petroleum resources of the world. The oil resources of no other nation have been so largely drawn upon for foreign needs, and Your Lordship's statement, that any prophecies as to the oil-bearing resources of unexplored and undeveloped countries must be accepted with reserve, hardly disposes of the scientific calculation upon which, despite their problematical elements, the policies of states and the anticipations of world production are apparently proceeding. The Government of the United States assumes that there is a general recognition of the fact that the requirements for petroleum are in excess of production and it believes that opportunity to explore and develop the petroleum resources of the world, wherever found, should without discrimination be freely extended, as only by the unhampered development of such resources can the needs of the world be met.

But it is not these aspects of oil production and supply, in so far as they are of domestic interest to the United States, with which I am concerned in this discussion. I have alluded to them in order to correct confusing inferences, liable to arise from certain departures, which I believe I discern in Your Lordship's communication, from the underlying principles of a mandate, as evolved and sought to be applied by the Allied and Associated powers to the territories brought under their temporary dominion by their joint struggle and common victory. This dominion will be wholly misconceived, not to say abused, if there is even the slightest deviation from the spirit and the exclusive purpose of a trusteeship as strict as it is comprehensive.

Accept [etc.]

BAINBRIDGE COLBY

Secretary of State of the United States of America

EXCHANGE OF NOTES BETWEEN THE SECRETARY OF STATE AND THE
COUNCIL OF THE LEAGUE OF NATIONS

5

The Secretary of State to the Council of the League of Nations

[Excerpt]

WASHINGTON, *February 21, 1921.*TO THE PRESIDENT AND MEMBERS OF THE COUNCIL OF THE LEAGUE OF
NATIONS:

1. The Government of the United States has received information that the Council of the League of Nations, at its meeting which is to be held in Paris on this date, proposes to consider at length the subject of mandates, including their terms, provisions, and allocation, and accordingly takes this opportunity to deliver to the Council of the League of Nations a copy of its note addressed under date of November 20, 1920, to His Excellency Lord Curzon of Kedleston, the British Secretary of State for Foreign Affairs, in which the views of the United States are quite fully set forth regarding the nature of the responsibilities of mandatory powers.

The attention of the Council of the League of Nations is particularly invited to the request therein made on behalf of this Government that the draft mandate forms intended to be submitted to the League of Nations be communicated to this Government for its consideration before submission to the Council of the League, in order that the Council might thus have before it an expression of the opinion of the Government of the United States on the form of such mandates, and a clear indication of the basis upon which the approval of this Government, which is essential to the validity of any determinations which may be reached, might be anticipated and received. It was furthermore stated in said note that the establishment of the mandate principle, a new principle in international relations and one in which the public opinion of the world is taking especial interest, would seem to require the frankest discussion from all pertinent points of view, and the opinion was expressed that suitable publicity should be given to the drafts of mandates which it is the intention to submit to the Council in order that the fullest opportunity might be afforded to consider their terms in relation to the obligations assumed by the mandatory powers and the respective interests of all governments who deem themselves concerned or affected.

A copy of this note was transmitted to the Governments of France and Italy requesting an interpretation by each Government of the provisions of the agreement between Great Britain, Italy, and France

signed at Sèvres on August 10, 1920, relating to the creation of spheres of special interests in Anatolia, in the light of this Government's note to the British Government, of November 20, 1920. A reply has thus far been received only from the French Government, in which attention is directed to Article 10 of the so-called Sèvres treaty,¹ which provides, in favor of nationals of third powers, for all economic purposes, free access to the so-called zones of special interest.

[The note continues by presenting a detailed discussion of the United States Government's views in the matter of the mandate accorded to Japan for the Island of Yap. The note then concludes with the following general statement of principle.]

As one of the principal Allied and Associated powers, the United States has an equal concern and an inseparable interest with the other principal Allied and Associated powers in the overseas possessions of Germany, and concededly an equal voice in their disposition, which it is respectfully submitted cannot be undertaken or effectuated without its assent. The Government of the United States therefore respectfully states that it cannot regard itself as bound by the terms and provisions of said mandate and desires to record its protest against the reported decision of December 17, last, of the Council of the League of Nations in relation thereto, and at the same time to request that the Council, having obviously acted under a misapprehension of the facts, should reopen the question for the further consideration which the proper settlement of it clearly requires.

BAINBRIDGE COLBY

Secretary of State of the United States

6

*The President of the Council of the League of Nations (Da Cunha)
to the Secretary of State*

TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA :

I am directed by the Council of the League of Nations to acknowledge the receipt of your communication of February 21 on certain matters connected with the mandates which, under the provisions of the Covenant, will define the responsibilities and limit the powers of the Governments entrusted with the administration of various territories, outside Europe, formerly in the possession of Germany and Turkey.

The main points brought out in the American note, if I may be permitted to summarise them, are that the United States must be

¹This should have read "tripartite agreement."

consulted before any mandates are allotted or defined, and that the frankest discussion from all pertinent points of view should be encouraged. In the "A" mandates, exception is taken to the possible limitation of commercial opportunity as regards oil in Mesopotamia and in the "C" mandates, to the allocation of the Island of Yap to Japan.

The Council wishes to express its deep satisfaction at the interest shown by your Government in this question, which the Council has long felt to be among the most important assigned to the League. Undoubtedly, also, it is one of the most difficult, and the Council not only welcomes but feels justified in claiming the sympathy and support of the Governments which devised the scheme which the Council is required to administer.

The most fundamental contention brought forward by the American note is that the "approval of the United States of America is essential to the validity of any determination which may be reached" respecting the mandates which have been, or may be, submitted to the judgment of the Council. The United States was one of the leading actors, both in the war and in the negotiations for peace. The rights which it acquired are not likely to be challenged in any quarter. But the American Government will itself recognise that the situation is complicated by the fact that the United States, for reasons which the Council would be the last to question, has so far abstained from ratifying the peace treaty and has not taken her seat on the Council of the League of Nations.

The Council might easily have dwelt on the controversial aspects of the American note. But this procedure would ill represent their true attitude. They prefer to examine the subject from the broad basis of international cooperation and friendship, in the belief that this course will appeal to the spirit of justice of the Government and people of the United States.

The Council has taken several important decisions with regard to mandates which it confidently hopes will commend themselves to the American Government.

The Council had already determined on February 21 before the receipt of the American note, to postpone the consideration of the "A" mandates for former Turkish possessions, including Mesopotamia. No conclusions will therefore be reached with regard to "A" mandates until the United States Government has had an opportunity to express its views.

The Council had expected to approve finally at the session now being held the "B" mandates for the former Central African Colonies for Germany.

In view of the desire expressed by the United States, the Council is, however, deferring its consideration of these mandates until its

next session, which will probably take place in May or June. It is hoped that the delay will not hamper the administrative progress of these territories.

The Council invites the United States to take part in the discussions at its forthcoming meeting, when the final decisions as to the "A" and "B" mandates will, it is hoped, be taken. A problem so intricate and involved as that of mandates can hardly be handled by the interchange of formal notes. It can only be satisfactorily solved by personal contact and by direct exchange of opinion.

Not only do such direct negotiations, which correspond to the true spirit of the League of Nations, effect an increase of freedom, flexibility, and speed, but they create a spirit of mutual good will and cooperation among people meeting around the same table.

Regarding the third type of mandates, the "C" group of former German possessions in South Africa and the Pacific, the Council has not the advantage of the same liberty of action as in the "A" and "B" types. The "C" mandates were defined by the Council at its meeting in Geneva on December 17, 1920. The main American objection in this case, it is understood from Your Excellency's note, is to the effect that the Island of Yap was included by the Council in the mandate given to Japan, whereas Your Excellency states that the United States has on several occasions refused to agree to the allocation of this island to any one state.

The Council of the League of Nations would remind Your Excellency that the allocation of all the mandated territories is a function of the Supreme Council and not of the Council of the League. The League is concerned not with the allocation, but with the administration of these territories. Having been notified in the name of the Allied and Associated powers that all the islands north of the equator had been allocated to Japan, the Council of the League merely fulfilled its responsibility of defining the terms of the mandate.

Consequently, if a misunderstanding exists as to the allocation of the Island of Yap, that misunderstanding would seem to be between the United States and the principal Allied powers rather than between the United States and the League. However, in view of the American contention the Council of the League has hastened to forward the American note to the Governments of France, Great Britain, Italy, and Japan.

The Council hopes that these explanations will prove satisfactory to the United States Government and that reciprocal good-will will find a solution in harmony with the generous spirit which inspired the principle of the mandates.

GASTAO DA CUNHA

President of the Council of the League of Nations

PARIS, March 1, 1921.

THE PRINCIPAL DOCUMENTS

*Letter of the Secretary of State (Clemens) to the
Ambassador in London (Barry)*

Foreign Office, S. W. 1.
London, August 4, 1914.

Dear Ambassador: You will remember that I have been
pleased to see the interest of the British members, and later
of the French, in the movement of the Commission on the
Government's side, and to desire to state
that I have been glad to supply it with a positive
reply.

III. PRINCIPAL DOCUMENTS

The Commission having formally stated its views, they
cannot be held to have already formulated its opinions.

*Memorandum (Barry) to the British Secretary of
State for Foreign Affairs (Clemens)*

AMERICAN LEGATION
London, August 21, 1914.

MEMORANDUM

TO THE GOVERNMENT OF THE UNITED STATES THROUGH
MAYNARD

The Government of the United States having welcomed the
views of Lord Curzon that there should be a discussion of the
subject at the meeting of the Commission on the Government's
side, and the British Government having expressed the
opinion that it would be desirable to discuss the matter
in connection with the subject of the Commission on the
Government's side.

III. PRINCIPAL DOCUMENTS

1

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)

FOREIGN OFFICE, S. W. 1,

London, August 1, 1921.

MY DEAR AMBASSADOR: You will remember that I have twice mentioned to you the subject of the Asiatic mandates, and have sought to obtain from you a statement of the criticisms or objections which your Government is understood to desire to raise.

Again on Friday last I sent to enquire if you were in a position to see me on the subject. I received a negative reply.

The matter is one of some urgency since the Council of the League of Nations has pressed us to give them an answer before the meeting of the Assembly at the beginning of September. On the other hand, your Government having formally placed on record its protest, may be assumed to have already formulated its objections.

I am [etc.]

CURZON

2

The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon)

AMERICAN EMBASSY,

London, August 24, 1921.

MEMORANDUM

POSITION OF THE GOVERNMENT OF THE UNITED STATES CONCERNING MANDATES

The Government of the United States having welcomed the suggestion of Lord Curzon that there should be a discussion of the question of mandates, Mr. Harvey improves this opportunity to communicate to him the following views of his Government thereon—as it is thought best to restate the general principles which are deemed to be involved before proceeding to the consideration of the precise terms of draft mandates.

1. The Government of the United States adheres to the position already stated that the right to dispose of the overseas possessions of Germany was acquired only through the victory of the Allied and Associated powers, and that there can be no valid or effective disposition of these territories without the assent of the United States as one of the participants in that victory.

2. This position of the United States is not opposed, but is confirmed, by the treaty of Versailles by which Germany renounced in favor of the principal Allied and Associated powers, of which the United States was designated to be one, all her rights and titles over her overseas possessions. It may be observed that in providing, as stated in Article 440, for the coming into force of that treaty when it had been ratified by Germany and three of the principal Allied and Associated powers it was manifestly not the intention that on such ratification by three powers there should still remain in Germany any undivided share of title or sovereignty in the overseas possessions described. It would seem to be clear that the renunciation set forth in Article 119 of the treaty was not intended to be divisible.

In the light of all the pertinent considerations this Government perceives no possible basis for a claim that the other principal Allied and Associated powers would be entitled to exclude the United States from full participation and the United States does not understand that any such claim is made.

3. The right of the United States in the territories in question could not be made the subject of such disposition as is proposed without its assent, and under its constitutional system the giving of this assent is not exclusively within the authority of the President. It is thought, however, that there would be no difficulty in negotiating an appropriate treaty if the terms of the mandate were defined in the line of the following suggestions. It is not the intention of the Government of the United States to raise objection to allocation or terms of mandates for the purpose of seeking additional territory or for any other purpose than to safeguard the interests of the United States and the fair and equal opportunities which it is believed the United States should enjoy in common with the other powers.

4. With respect to mandated¹ territories other than those which were formerly possessions of Germany, while it is true that the United States did not declare war against Turkey, still the opportunity of the Allied powers to secure the allocation of mandates

¹ "Mandated" appears in the telegraphic instruction from the Department of State to the Ambassador in Great Britain. However, the copy of the note which the Ambassador stated he submitted to the Foreign Office reads "Mandate 'D.'"

and the administration of territories formerly under Turkish rule was made possible only through the victory over Germany, and the United States assumes that, by reason of its relation to that victory and of the fundamental principles recognized by the British Government as applicable to the administration of mandated¹ territories, there would be no disposition in relation to any of these territories to discriminate against the United States or to refuse to safeguard equality of commercial opportunity.

5. With this understanding, and without attempting to restate the general principles governing mandates which have been the subject of previous correspondence between the two Governments, the Government of the United States desires to submit the following special observations as to the form of mandates which have been proposed:

Draft "A" Mandates²

(a) Capitulatory rights. In the draft for Syria and Lebanon there is a provision in Article 5 not found in the mandates for Mesopotamia and Palestine, to the effect that foreign consular tribunals shall continue to perform their duties until the described new legal organization is set up. It is desired that there should be a similar provision in the mandate for Mesopotamia, and that in the mandate for Palestine it should be provided that capitulatory rights shall be continued until adequate courts are established. Provision should also be made in all "A" mandates for the revival of capitulatory rights in the event of the termination of the mandate régime.

(b) Provisions against discrimination. The limitation of protection in Articles 11 and 14 of the mandates for Syria and Lebanon and Mesopotamia and of Articles 18 and 21 of the mandate for Palestine to states that are members of the League of Nations should be removed and the protection extended so as to embrace the United States. This could be effected by referring to any state mentioned in the annex to the Covenant of the League of Nations. The reference to incorporated companies in Article 11 [of the mandate for Mesopotamia and in Article 18²] of the mandate for Palestine is too narrow and should be broadened to embrace societies and associations (see Article 11 of mandate for Syria and Lebanon).

It is desired that there should also be provision against discrimination in concessions. British "B" mandate for East Africa, Article 7, provides as follows: "Concessions for the development of natural resources of the territory shall be granted by the Mandatory without

¹ See footnote p. 50.

² Appears in the telegram from the Department transmitting this note to the Ambassador in Great Britain, but is omitted from the copy which the Ambassador stated he presented to the Foreign Office.

distinction on grounds of nationality between the nationals of all states members of the League of Nations but on such conditions as will maintain intact the authority of the local Government." Similar provision should be inserted in "A" mandates and broadened to embrace the United States.

There should also be appropriate provision against the granting of monopolistic concessions or the monopolizing of natural resources by the mandatory itself.

(c) Missionaries. In the mandate for Syria and Lebanon protection is accorded provided activities are confined "to the domain of religion." It would appear as if the intention were to restrict, if not to eliminate [, educational and charitable missionaries¹]. (See Franco-British convention, Article 9, signed at Paris, December 23, 1920.) It is desired that present and future activities, both religious and educational, of our missionaries who are nationals of the United States should be fully protected, and it is suggested that provisions similar to Article 8 of the British "B" mandate for German East Africa be incorporated in all "A" mandates.

(d) It will be understood that the consent of the United States shall be necessary to any modification of the mandate after it has been agreed to.

[Here follow similar observations with respect to the form of "B" and "C" mandates; and the memorandum concludes with the following additional observations regarding "A" mandates.]

6. In connection with the question of "A" mandates the following additional points should be noted:

(a) In the note of His Majesty's Government of February 28, 1921, relating to the application of the principle of equality of treatment to former Turkish territories, it was observed that by Article 1 of the Philippine Petroleum Act, approved August 31, 1920, participation in the working of public lands in the Philippine Islands containing petroleum is confined to citizens or corporations of the United States or of the Philippines. The enactment was mentioned as inconsistent with the general principles announced by this Government.

To avoid misapprehension upon this point it should be stated that shortly after the enactment in question the Government of the United States recommended that it should be so amended as to conform to the reciprocity provision of the United States general leasing law of February 25, 1920. At the last session of the Philippine Legislature an amending bill was passed, the object of which was to relax substantially the restrictions embodied in the original act; nevertheless in the opinion of the Government of the United States the proposed amendment did not sufficiently meet the situa-

¹ See footnote 2, p. 51.

tion and it is the intention of the Government of the United States to take all appropriate steps with a view to bringing about at the next session of the Philippine Legislature in October a further amendment so that it may conform to the reciprocity provision above described.

(b) In the same note of His Majesty's Government reference is made to a concession said to have been granted before the war by the Turkish Government to the Turkish Petroleum Co. The Government of the United States has already pointed out in its note of November 20, 1920, that such information as it then had indicated that, prior to the war, the Turkish Petroleum Co. possessed in Mesopotamia no rights to petroleum concessions or to the exploitation of oil. The information possessed at present by the Government of the United States confirms this view. The Government of the United States is unable to conclude that any concession was ever granted by the Turkish Government to the Turkish Petroleum Co., and will shortly take up the considerations advanced by His Majesty's Government upon this subject. It is desired that if the claim of the Turkish Petroleum Co. continues to be asserted, appropriate provision be made for the determination of this claim by suitable arbitration.

3

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)

[Excerpt]

No. W 13209/1149/98

FOREIGN OFFICE,
London, December 22, 1921.

YOUR EXCELLENCY: The memorandum of the 24th August, 1921, containing the views of the Government of the United States concerning the mandates for certain territories which, under the terms of the treaties of peace, ceased to be under the sovereignty of the enemy powers, has received the fullest consideration of the British Government in concert with the Governments of the Allied powers to whom those views were also communicated.

The Government of the United States claims the right to take part in the disposition of these territories and raises, in this connection, various points in regard to the consequences of the non-ratification by the United States of the treaty of Versailles and of their non-participation in the war with Turkey.

In furtherance of the general principles governing the mandates, as set out in the previous correspondence between the two Governments, the Government of the United States now submits for the

consideration of His Majesty's Government certain modifications which it considers should be made in the texts of the British mandates.

His Majesty's Government have the honour to state that they have never desired to deprive the United States of the fruits of a victory to which it contributed so generously.

They are quite willing to meet the wishes of the United States as regards the British mandates, and it does not, therefore, seem necessary to enter into a detailed consideration of the general considerations contained in the American note.

The cooperation of the United States in the making of peace was a necessary corollary of their cooperation in the war and in the victory. The treaty of Versailles was the outcome of the cooperation. It was entered into by the Allied powers upon the assumption that it represented the common views of all those who had taken part in its preparation after their combined effort to achieve the victory. It was upon the faith of this assumption that the Allied powers undertook obligations not only towards Germany, but also towards each other, and from which it is now impossible for them to escape.

The decision of one of the Allied and Associated powers not to ratify the treaty does not modify the obligations which that treaty imposed upon those who have ratified it, nor release them from the pledges it contains; nor can they now enter into new engagements which would be inconsistent with its terms.

What is said above is preeminently true with regard to the overseas territories which formerly belonged to Germany. By the treaty of Versailles Germany renounced all her sovereignty over them; that renunciation was intended, as pointed out in the American note, to be indivisible; no part of that sovereignty remains to Germany to-day. But Germany parted with her sovereignty upon the terms laid down in the treaty. Among the conditions so laid down was the assurance that these territories would in future be administered by mandatories on behalf of, and subject to, the general control of the League of Nations. By that engagement the Allied powers are bound to stand; they are pledged not only to Germany but to their own peoples to recognise and to accept the special rôle and function of the League of Nations in connection with the mandates over these territories; they can consent to no arrangement with any power which is inconsistent with the pledges they have given.

In these circumstances His Majesty's Government put forward the following suggestions as calculated to meet the American proposals concerning the British mandates in Central Africa. As regards the mandates for territories in the Middle East, the position

of such territories being still legally undefined, His Majesty's Government will make them the subject of a later note :

[The balance of this communication deals only with questions pertaining to " B " and " C " mandates.]

I have [etc.]

CURZON OF KEDLESTON

4

*The British Under Secretary of State for Foreign Affairs (Crowe)
to the American Ambassador (Harvey)*

No. E 14259/37/88

FOREIGN OFFICE, S. W. 1,

Urgent

London, December 29, 1921.

YOUR EXCELLENCY: In my note of December 22, I explained the suggestions put forward by His Majesty's Government to meet the American proposals, concerning the British mandates in Africa, contained in Your Excellency's memorandum of August 24, 1921, and reserved for the subject of a later note a reply to the proposals in that memorandum relating to the territories under mandate in the Middle East, their position still being legally undefined.

2. The position with regard to these territories has not materially changed. A state of peace with Turkey does not yet exist, and the Council of the League has not yet formally approved the provisions of the draft mandates. The consequent delay and uncertainty causes His Majesty's Government considerable anxiety in Palestine. In these circumstances the peculiar religious and racial problems in that country and the particular conditions which attach to His Majesty's Government's acceptance of the mandate as set out in the draft provisions are daily rendering more onerous the task which His Majesty's Government have assumed. For these reasons His Majesty's Government intend to invite the Council of the League of Nations at the forthcoming session on January 10, formally to express their approval of the terms of the mandate for Palestine as drafted in spite of the dependence of the final legalisation of the status of the mandatory upon the entry into force of a treaty of peace with Turkey. It is with this object in view, and in the confident hope that your Government will find it possible forthwith to withdraw any objection that they may still entertain to the provisions of the mandate for Palestine that I now have the honour to furnish you with the following observations upon paragraphs 4 and 5 of your note of August 24, in so far as they concern those provisions.

3. Paragraph 4. His Majesty's Government have no desire to challenge the statement of the United States Government that the victory over Turkey was bound up with the victory of the Allied and

Associated powers over Germany to which the United States so generously contributed. In particular, His Majesty's Government emphatically disclaim any intention on their part to discriminate against United States nationals and companies or refuse them full equality of commercial opportunity. His Majesty's Government have already explained in the case of the African mandates why they find it difficult to provide in the articles of the mandates, which deal with these questions, for reference to any states, other than those of the League of Nations, whether by name or by collective definition, but they repeat the assurance given in my note of December 22, to embody an undertaking with regard to the equal treatment of United States citizens and companies in an exchange of notes between our two Governments.

Paragraph 5. (a) The difference in this respect between the mandate for Palestine on the one hand, and the mandate for Syria on the other, is due, not to any difference of policy but to the fact that whereas in Syria, which was taken over at the time of the armistice, the native administration was found to be exercising its functions, the complete collapse of the Turkish administration in Palestine had compelled His Majesty's Government to set up courts which in themselves provided, for the time being, such safeguards as are referred to in Article 9 of the Palestine mandate. No foreign tribunals exercise functions in Palestine at present and there is therefore no question of their continuing to perform their duties. In that country adequate courts have already been established, and under the constitutional proposals that are now under consideration for Palestine, His Majesty's Government have inserted a provision in virtue of which foreign nationals, including of course citizens of the United States, shall have the right to be tried by a court with a majority of British judges, except in trivial cases where this provision would lead to administrative inconvenience: in these cases foreign nationals will have the special right to appeal to a court composed with a majority of British judges. For the rest, His Majesty's Government are prepared to recommend to the League of Nations the extension of the provisions of Article 28 of the mandate for Palestine so as to ensure that in the event of the termination of the mandatory régime suitable arrangements are made to safeguard the rights secured by Article 6 of the mandate.

(b) I have already dealt above with the question of possible discrimination against United States nationals and the undertakings which His Majesty's Government are prepared to give. The wording of Article 18 of the mandate for Palestine was very carefully considered, and I wish especially to point out that the explanation of the difference between the wording of the Syrian mandate and that of the Palestine mandate is to be found in the dif-

ference between French and British law: in the latter the word "company" embraces all bodies which would properly be entitled to the protection of the article in question. His Majesty's Government feel sure that the United States Government, in the light of this explanation, will rest satisfied with the present wording of this article.

His Majesty's Government regret that they can not see their way to adopt the suggested introduction into the Palestine mandate of the provision of Article 7 of the "B" mandate for East Africa on the subject of concessions quoted in your memorandum of August 21. The suggestion appears to His Majesty's Government to overlook the peculiar conditions existing in Palestine and especially the great difference in the natures of the tasks assumed in that country and undertaken by them in East Africa. So far as Palestine is concerned, Article 11 of the mandate expressly provides that the administration may arrange with the Jewish agency, mentioned in Article 4, to develop any of the natural resources of the country in so far as these matters are not directly undertaken by the administration. The reason for this is that, in order that the policy of establishing in Palestine a national home for the Jewish people should be successfully carried out, it is impracticable to guarantee that equal facilities for developing the natural resources of the country should be granted to persons or bodies who may be actuated by other motives. The general spirit of the Palestine mandate in the view of His Majesty's Government, seems to render unnecessary the insertion of an especial provision preventing the Mandatory from developing the natural resources of the country for his own benefit.

(c) His Majesty's Government are well aware of the great benefits which all the countries of the Near and Middle East have received from the unremitting and self-sacrificing efforts of American missionaries and educationalists. They have therefore carefully considered the proposal of the United States Government that safeguards for missionary enterprises in the Palestine mandate should be expanded to render them equivalent to those accorded by Article 8 of the British "B" mandate for German East Africa. His Majesty's Government would however point out that the intention of Article 9 of the Franco-British convention of December 23, 1920, was, so far as His Majesty's Government was concerned, in no way to restrict the extension of missionary enterprise in Palestine. The particular article in question was designed by the French Government to satisfy religious opinion in France regarding the future of the large French ecclesiastical and educational interests already established in Palestine and Mesopotamia.

For the rest, His Majesty's Government feel convinced that the religious and educational activities of the nationals of the United States are adequately safeguarded by the provision of Article 16 of the mandate for Palestine. This article is in fact identical in substance with Article 8 of the British mandate for German East Africa. Should, however, the United States Government still desire some further guarantee, His Majesty's Government would be prepared to make a declaration in suitable terms regarding the rights of United States missionaries as suggested in paragraph 2 of my note of December 22, regarding the African mandates.

(d) I have already dealt in paragraph 4 of my note of 22d December with the suggestion of your Government that the consent of the United States Government should be obtained as to any modification of a mandate once agreed upon and I can only repeat in this note the same offer with regard to the modification of the "A" mandates.

4. I reserve to myself a still further memorandum to Your Excellency regarding the mandate for Mesopotamia.¹ The position of His Majesty's Government in that country is peculiar. The course of events since the grant of the mandate, and in particular the coronation of King Feisal and the appointment of the Arab Cabinet for that country, make it necessary for His Majesty's Government carefully to consider the manner in which they can best fulfil the obligations undertaken by them in the draft mandate. They are therefore forced to examine very carefully what, if any, modification of, or addition to, those obligations they are in a position to assume. I hope however to be in a position at an early date to give you the fullest assurance on this matter.

I have [etc.]

EYRE A. CROWE

5

Lord Balfour to the Secretary of State

WASHINGTON, *January 13, 1922.*

MY DEAR MR. HUGHES: You will remember that some days ago I mentioned my great anxiety to get the agreements in regard to the mandate for Palestine advanced a stage in order that the Council of the League of Nations might give it their blessing at the meeting which is now, I think, going on at Geneva. We have all been so busy that you have not been able to find a moment in which to discuss this matter with me, at which I am by no means surprised; but as it is pressing I venture again to trouble you about it.

¹ No such further memorandum has been received.

The task which the British Government have undertaken in Palestine is one of extreme difficulty and delicacy. At Paris I always warmly advocated that it should be undertaken, not by Britain, but by the U. S. A.; and though subsequent events have shewn me that such a policy would never have commended itself to the American people I still think that, so far as the Middle East is concerned, it would have been the best. However this may be, the duty has devolved upon Great Britain; and I hope the American Government will do what they can to lighten the load.

Your Ambassador in London will have forwarded you the official note upon the subject. Let me add to what Lord Curzon has said one or two further remarks.

If such a situation is to be dealt with successfully by the civilian Government, the position of that Government must not only be secure, but must seem secure in the eyes of the populations concerned. Without this it cannot possess the necessary prestige, or exercise the necessary influence. Now it cannot be doubted that the long delay in settling this mandate question—partly due to the fact that peace has not yet been signed by Turkey and the Allied powers, partly to the fact that the mandate has not yet been approved, and partly to the fact that, owing to these circumstances, military administration has not yet been wholly replaced by a civilian system—has made the task, which would in any case be difficult, almost impossible. I am sure the United States Government regret this as much as we do; and it is for that reason, and that reason alone, that I venture to ask your special attention to the problem which has been already brought to your notice through more formal channels.

Yours [etc.]

A. JAMES BALFOUR

6

The Secretary of State to Lord Balfour

WASHINGTON, January 27, 1922.

MY DEAR MR. BALFOUR: Referring to our informal conversation of yesterday afternoon with regard to the mandate for Palestine, I venture to confirm what I then said that it would not be possible to deal with the question by a mere exchange of notes on account of the reasons set forth in the American memorandum of August last. You will recall my pointing out that we enjoyed capitulatory rights by virtue of a provision in the treaty with the Ottoman Empire and that consequently these rights could be modified or abrogated only by a treaty, hence for this reason alone a treaty would be necessary

apart from the general considerations mentioned in the August memorandum, which, in themselves, would make a treaty desirable.

The assurances given in the British note of December 29 regarding the establishment of adequate courts and the insertion of a provision in the proposed Constitution of Palestine, in virtue of which nationals of the United States shall have the right to be tried by a court with a majority of British judges, except in trivial cases where this provision would lead to administrative inconvenience when United States nationals will have the special right to appeal to a court composed of a majority of British judges, may be considered satisfactory, in view of Anglo-Saxon traditions of law. On the other hand, the suggestion with regard to the question of the revival of the capitulations, as set forth in the British note above mentioned, is not satisfactory and it will be necessary to provide for the revival of our original rights in that respect upon the termination of the mandate régime. Even in case a Jewish state should survive, it would still be necessary for the United States to reach a decision for itself on the question at that time.

With regard to provisions against discriminations, it would be sufficient to recite the terms of the mandate in the treaty, to which I have referred above, and provide for the extension to the United States and its nationals of the same privileges enjoyed by members and by nationals of members of the League of Nations.

In view of the paucity of the resources of Palestine, and particularly in view of the special conditions there prevailing, to which reference is made in the British note of December 29, it is not my intention to insist on the proposals put forth in the American memorandum of August last for the inclusion of appropriate provisions against the granting of monopolistic concessions. We will be satisfied with the assurances that your Government proposes to give us with regard to the equal treatment of United States citizens and companies. I should, however, make it clear and repeat my statement of yesterday that in withdrawing from the position heretofore taken in this regard, it is fully understood that this action is without prejudice to the contentions in this regard which have been made and which are still being made in connection with other mandate territories.

The amplification of the provisions of the mandate with a view to safeguarding more effectively the present and future activities, both religious and educational, of American missionaries, as has been proposed by your Government, can, it is believed, be readily arranged.

An undertaking on the part of the British Government that it will not propose nor accept any modifications in the terms of the mandate without previous consultation with the Government of the

United States would not, I fear, adequately meet the wish expressed in the memorandum of August last that the consent of the United States shall be obtained before any alteration is made in the text of the mandates.

As I informed you yesterday, Japan has agreed to furnish a duplicate, not a copy, of their annual report to the League of Nations. A provision to this effect is incorporated in the treaty with Japan relating to the mandated islands north of the Pacific and the same provisions should be included in the treaty relating to Palestine, inasmuch as Japan has been promised that the same undertaking would be secured in the case of other mandate forms.

To sum up briefly:

For the reasons already stated it is necessary to have a treaty, in which the mandate will be recited in full and which will make the provisions as to privileges accorded to members and nationals of members of the League of Nations run to the United States and nationals of the United States and also include the other provisions, to which reference is made above.

Lastly, permit me to recall once again our understanding that our conversation of yesterday and this letter will be considered as entirely informal and personal between us, in view of the fact, as I explained yesterday, that I have not had an opportunity for consultation on the subject with the Chairman of the Foreign Relations Committee of the Senate which I should desire to have before expressing any views formally in the matter.

Yours [etc.]

CHARLES E. HUGHES

7

The American Ambassador (Harvey) to the British Secretary of State for Foreign Affairs (Curzon)

No. 151

AMERICAN EMBASSY,
London, April 5, 1922.

MY LORD: I have the honour to refer to Your Lordship's communications of December 22, 1921, and December 29, 1921, on the subject of mandates. The suggestions of the Government of the United States regarding the terms of the various mandates were set forth in my memorandum of August 24, 1921. The position of my Government must necessarily remain as thus stated since the views advanced were confined to the purpose of safeguarding the interests of the United States and the fair and equal opportunities which it was believed the United States should enjoy in common with the other powers.

In the communication of December 29, 1921, Your Lordship drew particular attention to the situation in Palestine. A state of peace between the Allied powers and Turkey does not yet exist. Nevertheless the United States appreciates the desire of His Majesty's Government to remove the existing uncertainties regarding the terms of the mandate for Palestine in order that a legalized civil administration may be established as early as possible. The Government of the United States is gratified to note Your Lordship's cordial expression with respect to the relation of the victory over Turkey to the victory of the Allied and Associated powers over Germany and the contribution thereto by the United States and especially the emphatic disclaimer of His Majesty's Government of any intention on their part to discriminate against the United States or to refuse to its nationals and companies full equality of commercial opportunity. My Government had entertained no doubt that this was the attitude of His Majesty's Government.

In view of these assurances, my Government is convinced that there will be no difficulty or delay in the negotiation of a treaty embodying the assent, upon appropriate conditions, of the United States to the terms of the draft mandate for Palestine. The capitulatory rights which the United States possesses in Turkey in common with other powers rest upon the provisions of a treaty; and consequently these rights can be modified or abrogated only by a treaty. For this reason alone a treaty would be desirable, apart from the general considerations mentioned in my memorandum of August 24. Such a treaty could recite the mandate in full and should contain appropriate undertakings on the part of His Majesty's Government for the suitable protection of the rights and interests of the United States. In this view, taking up the various points to which Your Lordship refers, it may be observed:

(1) *Capitulatory rights*

The assurances given in the note of December 29 regarding the establishment of adequate courts and the insertion of a provision in the proposed constitution of Palestine by virtue of which nationals of the United States shall have the right to be tried by a court with a majority of British judges, except in trivial cases where this provision would lead to administrative inconvenience, when United States nationals will have the special right to appeal to a court composed of a majority of British judges, may be considered satisfactory in view of Anglo-Saxon traditions of law.

It does not seem possible to accept, however, the suggestion which Your Lordship made with regard to the question of the revival of the American capitulatory rights in the event of the termination of

the mandate régime. As my Government now possesses these capitulatory rights, it should be provided that, in the event of the termination of the British administration under the mandate, there should be an immediate and complete revival of these rights. If the circumstances then justify their modification or suspension, the matter could readily be made the subject of suitable agreement.

(2) *Discrimination*

I have already alluded to the assurance upon this point contained in Your Lordship's note. My Government do not desire to insist that the terms of the mandate itself, in its reference to the states, members of the League of Nations, and their nationals, should be altered. It will be sufficient to have an undertaking as suggested by Your Lordship with regard to the equal treatment of the United States, its nationals and companies, and this undertaking may be set out in the proposed treaty. In other words, it should be provided that His Britannic Majesty will guarantee to the United States and its nationals the same freedom from discrimination that Article 18 of the mandate gives to the states, members of the League of Nations, and their nationals.

The treaty should contain a general provision that the United States and its nationals should have and enjoy the benefit of all the engagements of His Britannic Majesty defined in the mandate, notwithstanding the fact that the United States is not a member of the League of Nations.

With respect to the matter of concessions, my Government has carefully noted the suggestions made by Your Lordship with respect to the peculiar conditions existing in Palestine and, in view of these conditions, it is not the intention of my Government to insist on the inclusion of a provision in this mandate against the granting of monopolistic concessions, as it is recognized that these may be justified to a certain extent for appropriate local development. The Government of the United States will be satisfied with the assurances which His Majesty's Government proposes to give in regard to equality of commercial opportunity. It should be clearly understood, however, that this position is taken by my Government solely in recognition of the special situation in Palestine and is not to be considered as prejudicial in any respect to the contentions which have been made, and which are still being made, in connection with other mandate territories. It is also to be understood, of course, that the existing legal rights of American citizens or companies in Palestine are to be fully respected and safeguarded and that the treaty will contain a suitable provision to this effect.

(3) *Missionaries and religious freedom*

My Government has noted the provision of Article 2 of the proposed mandate for Palestine to the effect that the Mandatory shall be responsible "for safeguarding the Civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."

And also the provisions of Article 15, as follows :

The Mandatory will see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, is ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

And also the following provision of Article 16 :

The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies, or to discriminate against any representative or member of them on the ground of his religion or nationality.

Also that the Mandatory accepts "all responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights, or securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while insuring the requirements of public order and decorum."

In addition, my Government has noted the statement of Your Lordship that His Majesty's Government would be prepared to make a declaration in suitable terms regarding the rights of United States missionaries, that is, that they "shall have the right to acquire and possess property, to erect buildings for religious purposes and to open schools, providing that they conform to the local law."

My Government is satisfied with these stipulations and assurances on the assumption, as already stated, that there will be a general provision in the proposed treaty giving to the United States the benefits, rights and privileges which, under the proposed mandate, are to accrue to the states which are members of the League of Nations.

(4) *Modification of mandate*

My Government has observed the statement of Your Lordship in your note of December 22, to which you refer in your note of December 29, that it would be difficult to insert in the mandate itself a provision that the consent of the United States should be obtained

before any alteration is made in the text of the mandate. My Government does not believe such an insertion to be necessary, in view of the fact, to which Your Lordship adverts, that there is "nothing to prevent the Mandatory giving a separate undertaking to this effect." Such an undertaking may be embodied in the proposed treaty. It would not, however, be deemed by my Government to be sufficient to provide merely for consultation with the United States.

(5) As His Majesty's Government is aware, the Japanese Government has agreed to furnish a duplicate, not a copy, of its annual report which is to be submitted to the League of Nations on the administration of mandate territories. A provision to this effect is incorporated in the treaty between the United States and Japan relating to the mandated islands in the Pacific north of the equator and it is desired that a similar provision should be included in the treaty relating to the mandate for Palestine.

(6) My Government assumes that any provisions which may be agreed upon as necessary to safeguard the rights and interests of the United States will apply to the territories mentioned in Article 25 of the mandate.

If His Majesty's Government is willing to meet the wishes of the United States with reference to the matters upon which concurrence has not already been indicated, the Government of the United States is prepared to enter immediately upon the negotiation of the necessary treaty.

In conclusion I beg to convey additional information regarding the Philippine Petroleum Act, which was referred to in Your Lordship's note of February 28, 1921, and in my memorandum of August 24, 1921. The Governor General of the Philippines has reported that the act was amended at the last session of the Philippine Legislature so that it now permits equality of treatment in accordance with the principle of reciprocity embodied in the United States general leasing law.

I have [etc.]

GEORGE HARVEY

8

The British Secretary of State for Foreign Affairs (Curzon) to the American Ambassador (Harvey)

No. E
Urgent

FOREIGN OFFICE, S. W. 1,
London, April 29, 1922.

YOUR EXCELLENCY: His Majesty's Government have had under careful consideration the note (No. 151) which you were good enough to address to me on April 5 respecting the mandate for Palestine,

and I desire to express their appreciation of the very friendly manner in which the Government of the United States has dealt with this question.

2. The proposals now made by the Government of the United States are acceptable to His Majesty's Government who will be prepared to enter without delay into negotiations for the conclusion of a treaty on the lines proposed.

3. I gather from Your Excellency's note that the Government of the United States do not now desire to suggest any alterations in the text of the draft mandate, with the possible exception of Article 8, dealing with the capitulations. His Majesty's Government agree that, in so far as the United States are concerned, the capitulations should only be suspended during the period of the British mandate, it being left to the United States on the termination of the mandate to deal with the matter by negotiation with the authorities concerned. His Majesty's Government are at present disposed to consider that the most convenient means of providing for this would be to leave the text of Article 8 unaltered, but to provide in the treaty that the United States do not accept the definite abrogation of their capitulatory rights, but consent to their suspension during the continuance of the mandate. I should, however, be glad to know the views of the Government of the United States on this point.

4. I desire to inform you that a suggestion has been made that Article 28 should be modified so as to ensure that, on the termination of the mandate, adequate provision should be made to safeguard the interests in judicial matters of foreigners whose capitulatory rights are abrogated by Article 8 as at present drafted. If this suggestion were adopted the article would read as follows:

In the event of the termination of the mandate conferred upon the Mandatory by this declaration, the Council of the League of Nations shall make such arrangements as may be deemed necessary for protecting the interests of foreigners in judicial matters, and also for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14 and for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations, legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

This alteration would not, if the course suggested in paragraph 3 is adopted, affect in any way the interests of the United States, who would be free to make their own arrangements on the termination of the mandate and the consequent revival of their capitulatory rights, but I should be glad to learn that Your Excellency's Government would raise no objection to this amendment.

5. Inasmuch as the terms of the Palestine mandate are to be recited in the treaty, it is necessary that those terms should be definitely

settled before the treaty can be negotiated and signed. His Majesty's Government are, therefore, extremely anxious to obtain the approval of the Council of the League of Nations to the terms of the mandate at their meeting on May 11, even if the mandate cannot be actually issued at present, and for this purpose they desire, with the consent of the United States Government, to lay the correspondence between Your Excellency and myself before the Council of the League as showing that agreement between the two Governments has now been reached. I have, therefore, the honour to request the assent of the Government of the United States to this course being adopted, in which case the negotiation for the treaty will be entered into as soon as the terms of the mandate have been approved by the Council of the League.

Your Excellency will observe that the period before the meeting of the Council is short, and I should, therefore, be grateful if the views of Your Excellency's Government on the proposals made in this note could be communicated to me at the earliest possible date.

I have [etc.]

(In the absence of the Secretary of State)

LANCELOT OLIPHANT

9

The Counselor of the American Embassy (Wheeler) to the British Secretary of State for Foreign Affairs (Curzon)

No. 218

Urgent

AMERICAN EMBASSY,

London, May 10, 1922.

MY LORD: With reference to Your Lordship's note of April 29 last in regard to the mandate for Palestine, I have the honor to convey to Your Lordship my Government's appreciation of the cordial spirit with which the suggestions regarding this mandate have been received by His Majesty's Government. The Government of the United States is gratified to note that its views, as set forth in my memorandum of April 5, 1922, with respect to the various subjects which have been under discussion, have been accepted by His Majesty's Government, which states its readiness to enter without delay into negotiations for the conclusion of a treaty on the lines proposed.

With reference to the safeguarding of the capitulatory rights of the United States in Palestine, my Government is pleased to note that His Majesty's Government is willing to provide in the proposed treaty that the United States does not accept the definite abrogation of its capitulatory rights, but consents to their suspension during the continuance of the mandate. In the light of the understanding as to the appropriate preservation of the capitulatory rights of the

United States my Government would prefer that the mandate itself should not undertake to provide for the abrogation of capitulatory rights and accordingly desires that the provisions of Article 8 of the draft mandate should be altered so as to read:

The immunities and privileges of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, are suspended in Palestine, but shall be revived immediately and completely upon the termination of the mandate régime.

It is understood, of course, that the assurances given in paragraph 5 (a) of your note of December 29, 1921, will be suitably embodied in the constitution of Palestine; that is to say that the assurances regarding the establishment of adequate courts and the insertion of a provision by virtue of which nationals of the United States shall have the right to be tried by a court with a majority of British judges, except in trivial cases where this provision would lead to administrative inconvenience, when United States nationals will have the special right to appeal to a court composed of a majority of British judges, which my Government considers satisfactory in view of Anglo-Saxon traditions of law.

The Government of the United States will raise no objection to the suggested amendment of Article 28 of the draft mandate, as set forth in paragraph 4 of your note, with the understanding, of course, that any arrangements made by the League of Nations relating to the interests of foreigners in judicial matters would not impair any of the rights and interests of the United States and would be ineffective without the consent of the United States. It would seem, however, that, if Article 8 is amended as proposed, there would be no necessity for the suggested amendment to Article 28.

The Government of the United States appreciates the desire of His Majesty's Government to lay the terms of the draft mandate before the Council of the League of Nations at its forthcoming meeting, and has no objection to the procedure suggested in paragraph 5 of Your Lordship's note; provided that it is understood that the approval of the mandate given by the Council of the League shall not be deemed to be binding upon the United States but shall be subject to the assent of the United States upon the terms and conditions which have been set forth in our correspondence upon this subject. With regard to the suggestion that the correspondence between Your Lordship and myself on the subject of the Palestine mandate should be laid before the Council of the League of Nations, my Government would like to accede to the wishes of His Majesty's Government, but does not desire that the correspondence be made public until, in the due course of the negotiation of the proposed treaty, it can be made public in the United States. My Government puts forward its pref-

erence upon this point upon the assumption that His Majesty's Government will be able in a convenient manner to inform the Council of the points which have been discussed and upon which the two Governments are in preliminary agreement.

It is my pleasure to convey again the assurance that the Government of the United States is prepared to facilitate in every way the negotiation of an appropriate treaty in accordance with the views that have been expressed.

I have [etc.]

POST WHEELER

10

The British Foreign Office to the American Ambassador (Harvey)

No. E 4860/78/65

FOREIGN OFFICE, S. W. 1,
London, May 16, 1922.

YOUR EXCELLENCY: With reference to your note of the 10th instant regarding the Palestine mandate, I have the honour to convey to Your Excellency the appreciation felt by His Majesty's Government of the friendly manner in which the Government of the United States has collaborated with them in their efforts to secure an early settlement of this question.

2. In view of the desire expressed by the Government of the United States, His Majesty's Government agree that Article 8 of the draft mandate should be modified and they agree that any amendment of Article 28 is consequently unnecessary.

3. In view, however, of the intimation contained in the note which you addressed to me on the 5th April that the modification or suspension of American capitulatory rights in Palestine could, if circumstances then justified it, readily be made the subject of a suitable agreement, I suggest that it would be convenient to add to the text of Article 8 as now proposed by the Government of the United States the words "unless the powers whose nationals were entitled on August 1, 1914, to such rights should agree or have agreed by treaty to their suspension or modification." This wording has been communicated to the British representative on the Council of the League, and it is hoped that the Council will be prepared to accept it.

4. His Majesty's Government have taken note of the desire of the Department of State that the correspondence which has passed on this subject should not be made public and have instructed their representative on the Council accordingly.

5. I shall not fail to address a communication to you regarding the negotiation of the treaty as soon as the Council of the League of Nations shall have approved the terms of the mandate.

I have [etc.]

LANCELOT OLIPHANT

The British Foreign Office to the American Ambassador (Harvey)

No. E 5858/78/65

FOREIGN OFFICE, S. W. 1,
London, June 20, 1922.

YOUR EXCELLENCY: With reference to my note of the 16th ultimo, I have the honour to transmit to Your Excellency, herewith, a copy of the draft treaty regarding the Palestine mandate.

2. Copies of the draft have been sent to His Majesty's Ambassador at Washington who has been instructed to open the negotiations at once with the Department of State at Washington, so that the treaty may be concluded as soon as the terms of the mandate have been approved by the Council of the League of Nations.

I have [etc.]

LANCELOT OLIPHANT

[Enclosure]

DRAFT TREATY WITH THE UNITED STATES OF AMERICA
PALESTINE

WHEREAS by the treaty of peace with Turkey, Turkey renounces all her rights and titles over Palestine, and

WHEREAS Article 22 of the Covenant of the League of Nations in the treaty of Versailles provides that in the case of certain territories which as a consequence of the late war ceased to be under the sovereignty of the states which formerly governed them mandates should be issued and that the terms of the mandate should be explicitly defined in each case by the Council of the League, and

WHEREAS by Article 95 of the treaty of peace with Turkey the High Contracting Parties agreed to entrust, by application of the provisions of the said Article 22, the administration of Palestine, within such boundaries as might be determined by the Principal Allied powers, to a mandatory to be selected by the said powers and further agreed that the mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the British Government and adopted by the other Allied powers in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil or religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country, and

WHEREAS the Principal Allied powers have agreed to entrust the mandate for Palestine to His Britannic Majesty, and

WHEREAS the terms of the said mandate have been defined by the Council of the League of Nations as follows:

(Terms of mandate) and

WHEREAS the mandate in the above terms will be issued on the coming into force of the treaty of peace with Turkey, and

WHEREAS the United States of America by participating in the war against Germany contributed to the defeat of her and her allies and to the renunciation of the rights and titles of her allies in the territory transferred by them,

but has not ratified the Covenant of the League of Nations embodied in the treaty of Versailles, and

WHEREAS the President of the United States is desirous of concurring in the British mandate for Palestine, and

WHEREAS His Britannic Majesty as mandatory for Palestine is desirous of ensuring to the United States of America and its citizens the same rights in Palestine as they would enjoy if the United States were a member of the League of Nations,

His Britannic Majesty and the President of the United States of America have decided to conclude a convention to this effect and have nominated as their plenipotentiaries

Who . . . have agreed as follows:

ARTICLE 1

Subject to the provisions of the present convention, the United States concurs in the British mandate for Palestine, including the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, and in the British administration of Palestine pursuant to the terms of the said mandate.

ARTICLE 2

The United States and its nationals shall have and enjoy the benefit of all the engagements of His Britannic Majesty defined in the mandate, including therein equality as regards commercial opportunity, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in Palestine shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the mandatory under Article 24 of the mandate shall be furnished to the United States.

ARTICLE 5

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above unless such modification shall have been assented to by the United States.

ARTICLE 6

The present convention shall be ratified in accordance with the respective constitutional methods of the high contracting parties. The ratifications shall be exchanged in London as soon as practicable. It shall take effect on the date of the exchange of the ratifications. If at the date when the convention takes effect the mandate has not yet been issued by the Council of the League of Nations, His Britannic Majesty agrees to apply the convention so far as may be possible in the provisional administration of Palestine which he is now conducting at the request of the Council of the League.

In witness whereof, the respective plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate at _____, this _____ day of _____

12

The British Chargé d'Affaires (Chilton) to the Secretary of State

No. 512

BRITISH EMBASSY,
Washington, July 5, 1922.

SIR: With reference to previous communications with regard to the mandate for Palestine, I have the honour to transmit herewith, by direction of my Government, a copy of the draft of the proposed treaty between the United States Government and His Majesty's Government regarding the Palestine mandate, which has been drawn up in consultation with the French Government.¹

In communicating a copy of this draft to you, I am directed to ascertain whether you agree to its terms, and if not, what modifications you consider desirable.

As the terms of the mandate are to be recited in the treaty, the latter cannot, of course, be finally concluded until the former have been approved by the Council of the League of Nations. His Majesty's Government are, however, not contemplating any modifications of substance in the text of the mandate except for the insertion in Article 25 of the phrase "with the consent of the League of Nations" between the words "be entitled" and "to postpone", and except for some modification of Article 14 as to which I am expecting a further communication.

You will observe that the operative clauses of the draft treaty are very similar to those in the draft treaty as to the African mandate, a copy of which I handed to you on the 29th ultimo.

I have [etc.]

H. G. CHILTON

13

The British Chargé d'Affaires (Chilton) to the Secretary of State

No. 524

Urgent

BRITISH EMBASSY,
Washington, July 10, 1922.

SIR: With reference to my note of the 5th instant (No. 512) I have the honour to inform you, on instructions from my Government, that His Majesty's Government are anxious to ensure that no religious community shall feel any apprehensions as to the position of its adherents in Palestine under the British mandate. They are conscious that Palestine is the centre of a variety of religious interests, each one of which, considered separately, is world wide. As a Christian power they are fully alive to the paramount necessity of ensuring

¹ Enclosure the same as that with Document No. 11.

to all Christian communities the consciousness that nothing will be done in Palestine which might be construed as negligence of, or indifference to, Christian sentiment.

In order to remove all possible ground for apprehension, His Majesty's Government have prepared an alternative draft of Article 14 of the draft mandate and I have the honour to transmit herewith a copy of this draft for the information of the United States Government. For the purpose of ensuring that the delicate task of deciding what are the existing rights in the Holy Places and religious buildings or sites which His Britannic Majesty, as mandatory for Palestine, is responsible for protecting, should be entrusted to a body whose impartiality is not open to question, His Majesty's Government now suggest, not only that the composition of the Commission shall be subject to the approval of the Council of the League of Nations, but that any report made by them shall also be laid before the Council of the League for confirmation.

As a further means towards ensuring absolute impartiality His Majesty's Government would be prepared, if the Council of the League approve this course, to select nominees for the commission from a panel put forward in the first place under some international procedure, whether by the Assembly or the Council of the League of Nations, or by the President of the Court of International Justice, while reserving to themselves the right to submit additional names for stated reasons to the Council of the League for approval. The panel should in their opinion be composed of persons of world-wide reputation, to be selected in such a way that the commission would be a thoroughly representative international body, on which none of the great powers interested in Palestine and none of the three confessions, namely, Christian, Mohammedan and Jew, would be without representation. His Majesty's Government will also invite the Council of the League to appoint one of the members of the commission as its first chairman by whatever procedure commends itself to the Council.

You will observe that His Majesty's Government do not propose, in the draft article which is now enclosed, to retain the obligation that the commission shall necessarily ensure that certain Holy Places, religious buildings or sites are entrusted to the permanent control of suitable bodies. Nor have they attempted to define the exact number of members of whom the commission shall be composed, beyond providing that the body shall be sufficiently large to ensure all interests being represented upon it.

The reason which has prompted His Majesty's Government to suggest that prospective nominees shall be recommended under some international procedure, rather than by political or hierarchical

authorities, is that it appears to them preferable that a body to which this responsible task is to be entrusted should not be composed of persons who might possibly be regarded as agents of a particular power or community whose interests might be directly concerned. Political interests are fully safeguarded by the provisions that the appointment of the commission shall be subject to the approval of the Council of the League of Nations, and that all reports presented by the commission shall require their confirmation. Religious interests are equally well protected by the provisions that the commission shall be in consultation with representatives of the confessions concerned, and that any religious confession which considers that the Mandatory is not giving effect to the provisions of the report may appeal to the Council of the League of Nations, who may require the Mandatory to reassemble the commission.

His Majesty's Government confidently expect that the great powers and confessions who are interested in Palestine, and who will, it is hoped, also be represented upon the commission, will realise that the traditional policy of His Majesty's Government, its application in Palestine, and the proposals now put forward for the Holy Places Commission are such as to dispel all legitimate apprehensions. They will invite the Council of the League to agree that no further political or religious safeguard is either necessary or practicable.

I have the honour to add that His Majesty's Government regard the United States as one of the great powers interested in Palestine which should not be without representation upon the commission. His Majesty's Government confidently assume that the United States Government will welcome these fresh proposals as likely to show more clearly the precise intention of Articles 13 and 14 of the Palestine mandate and to dispel the unfounded apprehensions which have been expressed in certain quarters on this subject.

I have [etc.]

H. G. CHILTON

[Enclosure]

ARTICLE 14

(1) In order to determine the existing rights in the Holy Places and religious buildings or sites in Palestine, which the mandatory is pledged under the preceding article to maintain, a commission consisting of not less than seven members shall be appointed by the mandatory subject to the approval of the Council of the League of Nations. The duty of the commission shall be to frame a report defining these rights, including rights of ownership, user and access. The report shall be laid before the Council of the League of Nations for confirmation and when confirmed shall be binding on the mandatory.

In the preparation of their report the commission will consider all conflicting claims to any of the Holy Places and religious buildings or sites, and will endeavour in consultation with representatives of the confessions concerned to

arrive at an agreed definition of existing rights. If no agreement can be arrived at within a period to be fixed in each case by the commission, the commission after hearing all parties shall decide judicially on the claims of which it has had notice and shall embody such decisions in their report.

(2) The report of the commission may also contain recommendations for ensuring that certain Holy Places, religious buildings or sites which the commission finds to be regarded with special veneration by the adherents of one particular religion are entrusted to the permanent control of suitable bodies representing the adherents of the religion concerned.

Such control will be guaranteed by the League of Nations.

(3) The commission will settle its own procedure, and shall appoint its own staff. Each member of the commission will in turn act as chairman of the commission. The expenses of the commission shall be defrayed by the League of Nations.

(4) In all cases dealt with under this article, the right and duty of the mandatory to maintain order and decorum in the place concerned shall not be affected, and the buildings and sites will be subject to the provisions of such laws relating to public monuments as may be enacted in Palestine with the approval of the mandatory.

(5) Any religious confession which considers that the mandatory is not giving effect to the provisions of the report may appeal to the Council of the League who may require the mandatory to reassemble the commission for the purpose of considering and reporting upon any such appeal. Such report shall be laid before the Council of the League of Nations for confirmation and when confirmed shall be binding on the mandatory.

14

The Department of State to the British Embassy

DEPARTMENT OF STATE,
Washington, July 12, 1922.

MEMORANDUM

The Department of State has received the British Chargé d'Affaires' note of July 5th respecting the mandate for Palestine, and an accompanying draft of a proposed convention between His Majesty's Government and the Government of the United States regarding the Palestine mandate which, it is stated, has been drawn up in consultation with the French Government.

In a memorandum of July 8th the Department of State in reply to His Britannic Majesty's Embassy in regard to the proposed mandates for territories in Africa, outlined the views of the Government of the United States concerning the form which it was desirable that the convention should take. Certain of the considerations presented in the memorandum are also pertinent to the subject of mandates over former Turkish territory, and it is deemed to be advisable that in so far as it is practicable the convention for Palestine should follow closely the form of other similar conventions respecting mandates.

Certain variations, however, are essential on account of the differences between former Turkish territory and former German territory in Africa and because of the fact that the United States was not a signatory power of the unratified treaty of Sèvres.

With respect to the preamble of the draft convention the following suggestions are submitted:

The third paragraph should be omitted. The paragraph does not appear to be explanatory of the reasons underlying the negotiation of the proposed convention and therefore seems to be unessential.

It is suggested that, as in the other conventions, merely the articles of the mandate and not the preamble should be recited.

A slight verbal change is suggested in the second paragraph of the preamble following the recital of the mandate.

As a substitute for the next two paragraphs a recital similar to that suggested with reference to the purpose of the other conventions is proposed.

With regard to the articles of the draft convention, the following suggestions are submitted:

It is considered to be advisable that Articles 1 and 2 should follow the general form of the same numbered articles in the draft convention accompanying the memorandum of July 8 delivered to the Embassy with respect to mandates for territories in Africa.

Having in mind the importance of American educational interests in Syria and in Palestine, it is deemed to be desirable that the conventions relating to mandates for each of these territories should include a provision with regard to the maintenance of American educational, philanthropic, and religious institutions. A proposal is being made respecting the insertion of such a provision in a convention to be concluded with respect to the mandate for Syria. And it is presumed that the British Government will not find objectionable a provision of this character in the convention under consideration, in view of the assurances contained in His Majesty's Government's note of December 29, last, with respect to the religious and educational activities of American citizens in Palestine. The following article is proposed:

Subject to the provisions of any local law for the maintenance of public order and public morals, the nationals of the United States will be permitted freely to establish and maintain educational, philanthropic, and religious institutions in the mandate territory, to receive voluntary applicants, and to teach in the English language.

It is evidently intended that the last sentence of Article 6 of the draft convention should deal with a contingency in which the convention shall have taken effect before the mandate has been issued. It is of course assumed that the mandate would not be effective before its issuance, and that the convention relating to the mandate would not sanction any action under the mandate prior to the issuance of

the mandate. However, it being assumed that the British provisional administration which is now in effect shall continue, it is suggested that, instead of the concluding sentence of Article 6, a provision might be substituted with regard to the protection of American interests under such administration, prior to the issuance of the mandate. Such a provision might read in substance as follows:

His Britannic Majesty agrees that in the conduct of any provisional administration of Palestine, pending the formal issuance of the mandate, the rights and privileges of nationals of the United States as defined by the present convention shall be fully respected. There shall be no suspension of capitulatory rights prior to the issuance of the mandate.

Touching the mandate, reference is made to the addition to Article 8 regarding the suspension of capitulatory rights in Palestine proposed in the British Government's note of May 16, which reads as follows:

The immunities and privileges of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, are suspended in Palestine, but shall be revived immediately and completely upon the termination of the mandate régime, unless the powers whose nationals were entitled on August 1, 1914, to such rights, should agree or have agreed by treaty to their suspension or modification.

The provision is not free from ambiguity, and with a view to remedying it as regards matters of form solely, the following substitute is proposed:

The immunities and privileges of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, are suspended in Palestine, but, unless the powers whose nationals were entitled on August 1, 1914, to such privileges and immunities shall have previously agreed to their abandonment or to their suspension for a further period, such privileges and immunities shall, immediately upon the termination of the mandate régime, be revived, either in full or subject to such modification if any as may have been agreed upon by the powers concerned.

A copy of a draft convention embodying the suggestions submitted in the memorandum is herewith enclosed.¹

15

The American Ambassador (Harvey) to Lord Balfour

AMERICAN EMBASSY,
London, July 14, 1922.

DEAR LORD BALFOUR: Supplementary to our conversation of the other day I beg to send the text of a memorandum handed by the

¹ Enclosure not printed as, subsequent to its submission, still further modifications were suggested and found to be mutually acceptable.

State Department to the British Chargé d'Affaires at Washington under date of July 12, concerning the mandate for Palestine, and an accompanying draft convention which incorporates the suggestions which my Government has made.¹ I am sending this to your hand by means of this note as I am loath, in the multiplicity of your labors, to ask you to grant me more of your valuable time than is absolutely necessary.

May I call to your attention in particular the proposal with respect to the maintenance of American educational institutions in Palestine? A provision of this kind in the convention respecting the mandate of Syria is extremely important and the Secretary of State does not feel that he can well press for its incorporation into that convention unless it is also inserted in the mandate for Palestine.

I would also call attention to the use of the word "consents" in Article 1 of the convention. As has been pointed out, while my Government desires to have that word used in the other conventions, it seems particularly appropriate that it should be used in the convention with respect to the mandate for Palestine, in view of the fact that my Government was not at war with Turkey but is interested in the disposition of former Ottoman territories because of its participation in the war against Germany which contributed to her defeat and the defeat of her allies.

I am [etc.]

GEORGE HARVEY

16

The British Chargé d'Affaires (Chilton) to the Secretary of State

No. 545

BRITISH EMBASSY,
Washington, July 15, 1922.

SIR: With reference to the memorandum which you were good enough to address to me on the 12th instant on the subject of the Palestine mandate, I have the honour to transmit herewith, by direction of my Government, copies of—

(a) The White Paper published on July 3 enumerating the amendments in the text of the Palestine mandate and containing the note which His Majesty's Government have addressed to the League of Nations in reply to Cardinal Gasparri's memorandum of May 15.²

(b) The draft of the Palestine mandate in its final form.³

I have [etc.]

H. G. CHILTON

¹ Enclosure the same as that with Document No. 14 (see footnote, p. 77).

² Enclosure (a) not printed.

³ Enclosure (b) is identical with the text of the mandate as recited in American-British convention, *post*, pp. 107-113.

17

The British Foreign Office to the American Ambassador (Harvey)

No. E 7111/78/65

FOREIGN OFFICE, S. W. 1,
London, August 2, 1922.

YOUR EXCELLENCY: With reference to your note of July 14, I have the honour to inform you that the memorandum of the State Department of July 12 regarding the convention between His Majesty's Government and the United States Government on the subject of the Palestine mandate is being carefully examined by the departments concerned, and I hope shortly to be in a position to submit to Your Excellency a counterdraft of the convention based on the State Department's draft.

2. It seems, however, to His Majesty's Government important that the analogous conventions which the French Government are negotiating with your Government regarding the French mandated territories should be as far as possible identical in form and substance with the Anglo-American conventions, and I am therefore anxious in the first instance to consult the French Government on certain points.

3. Meanwhile the final and formal approval of the terms of the Syrian and Palestine mandates by the Council of the League at their last session renders it desirable that I should offer at once the following explanation regarding Article 8 of the Palestine mandate. In the State Department's memorandum an alternative text to that given in my note of May 15 is suggested in order to make clearer the precise intention of this article. During the recent discussions at the Council of the League, His Majesty's Government learnt that the relevant sentences of the corresponding article (No. 5) in the Syrian mandate had been carefully prepared by the French Government to meet the wishes of the United States Government who had agreed to accept it; and that the wording of these sentences was identical with the alternative text now suggested by the State Department for Article 8 of the Palestine mandate, except for the substitution of the words "shall not be applicable" for the words "are suspended". In pursuance therefore of their consistent policy of keeping the texts of the "A" mandates as far as possible identical, His Majesty's Government invited the Council of the League to adopt for Article 8 of the Palestine mandate the wording of the corresponding sentences of Article 5 of the Syrian mandate. A copy of Article 8 of the Palestine mandate as finally approved by the council is enclosed herein.¹

I have [etc.]

(In the absence of the Earl of Balfour)

LANCELOT OLIPHANT

¹ Enclosure not printed; text of Article 8 may be referred to in final draft of mandate as recited in American-British convention, *post*, p. 108.

18

The Secretary of State to the British Chargé d'Affaires (Chilton)

DEPARTMENT OF STATE,
Washington, August 8, 1922.

The Secretary of State presents his compliments to the Chargé d'Affaires *ad interim* of Great Britain and begs to acknowledge with thanks the receipt of his note No. 545 of July 15, 1922, transmitting, by direction of His Majesty's Government, copies of a White Paper published on July 3 in connection with the proposed issue of the Palestine mandate, and a draft copy of that mandate.

The attention of His Britannic Majesty's Chargé is drawn to the fact that the draft copy of the Palestine mandate submitted on July 15 was prepared previous to the receipt of this Government's communication of July 12 suggesting certain modifications in the text of the mandate. It is presumed, therefore, that in stating that the text of the Palestine mandate as submitted on July 15 was in final form, it was not intended to indicate that the draft would not be susceptible of modification as a result of this Government's observations of the 12th ultimo.

19

The British Foreign Office to the Third Secretary of the American Embassy (LeClercq)

E 7948/78/65
Confidential

FOREIGN OFFICE, S. W. 1,
London, August 11, 1922.

DEAR LECLERCQ: In reply to your letter of August 8, I am sending you herewith a copy of a draft of the memorandum¹ setting forth the assurances to be given to Italy in respect of Palestine.

This memorandum, which we would ask your Government to treat as strictly confidential, is to be communicated to the Italian Government on the entry into force of the Palestine mandate.

The French Government has been informed confidentially that His Majesty's Government are prepared to give similar assurances to France.

No actual agreements regarding the mandates have as yet been reached with either France or Italy, except the Anglo-French convention of the 23rd December 1920, of which I enclose a copy.¹

Yours [etc.]

LANCELOT OLIPHANT

¹ Enclosure not printed.

20

The Secretary of State to the British Ambassador (Geddes)

DEPARTMENT OF STATE,
Washington, August 18, 1922.

EXCELLENCY: I have the honor to acknowledge the receipt of Mr. Chilton's communication No. 524 of July 10, in which he has outlined the measures proposed by His Britannic Majesty's Government for the protection of the Holy Places in Palestine and submitted for the information of this Government a revised draft of Article 14 of the mandate.

The United States has always taken a deep interest in Palestine and appreciates the courtesy of His Britannic Majesty's Government in keeping it fully informed in regard to the measures proposed to protect existing rights in the Holy Places. The expression of your Government's desire that the United States should not be without representation upon the commission provided under Article 14 of the mandate has been noted and this Government will be glad to give the matter consideration at the appropriate time.

Accept [etc.]

CHARLES E. HUGHES

21

*The British Ambassador (Geddes) to the Acting Secretary of State
(Phillips)*

No. 680

His Britannic Majesty's Ambassador presents his compliments to the Acting Secretary of State and, with reference to the memorandum which Mr. Hughes was so good as to address to him on August 8 last, has the honour to state he understands that it is the intention of His Majesty's Government to furnish the United States Ambassador in London at an early date with a counterdraft of the convention between His Majesty's Government and the United States Government relative to the Palestinian mandate, in which it is hoped that the various contentions advanced by the United States Government in their note of July 12 will be found to have been substantially taken into account.

Sir Auckland Geddes takes this opportunity of pointing out that, while Mr. Hughes' memorandum of August 8 refers to the "Palestine mandate," it is assumed that the real concern of the United States Government is with the convention referred to above, to which their note of July 12 relates. The terms of the mandate itself have now,

as Mr. Phillips will be aware, been formally approved by the Council of the League of Nations and cannot therefore be reconsidered.

BRITISH EMBASSY,

Washington, September 5, 1922.

22

*The British Secretary of State for Foreign Affairs (Curzon) to
the American Ambassador (Harvey)*

No. E 9865/78/65

FOREIGN OFFICE, S. W. 1,

London, October 2, 1922.

YOUR EXCELLENCY: With further reference to your note of July 14 to the Earl of Balfour transmitting a counterdraft from the State Department of the proposed convention between Great Britain and the United States regarding the Palestine mandate, I have the honour to inform Your Excellency that the terms of this convention have received the most careful consideration and His Majesty's Government are prepared substantially to accept the operative clauses of the convention now proposed by the State Department, subject to certain modifications explained below. At the same time they desire to suggest a somewhat different form to the preamble to the convention, as suggested by the United States Government.

2. His Majesty's Government are anxious if possible that the convention should contain a specific allusion to the policy of establishing a national home for the Jewish people in Palestine, having regard to the interest taken in this policy in the United States and the warm support which it has received in that country, of which the recent resolutions of both houses of Congress have afforded striking evidence. On this ground, and also because Article 2 of the mandate—which is in any case to be recited in the preamble to the convention—contains an explicit reference to the preamble to the mandate, His Majesty's Government hope that the United States Government will now be willing to agree to the insertion of the whole mandate, including the preamble, in the preamble to the convention. The United States Government will observe that the text of the preamble to the mandate, as now finally defined by the Council of the League at its recent session in London, a copy of which has already been furnished to you, contains no reference to the treaty of Sèvres or to the Turkish renunciation in favour of the principal Allied powers of all rights and title over Palestine, thus removing a difficulty to which the United States Government had previously drawn attention in their negotiations with His Majesty's Government on the question of this convention.

3. If the preamble to the mandate is thus to be recited together with the mandate in the preamble to the convention, His Majesty's Government would suggest that a shorter preamble might be adopted for the convention itself in the following sense:

WHEREAS for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations a mandate for the administration of Palestine, including therein the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, has been entrusted to His Britannic Majesty and

WHEREAS the terms of the mandate in respect of Palestine have been defined by the Council of the League of Nations as follows:

(Here insert terms of mandate in full) and

WHEREAS His Britannic Majesty has accepted the mandate in the above terms in respect of Palestine and has undertaken to exercise it on behalf of the League of Nations: and

WHEREAS the Government of His Britannic Majesty and the Government of the United States of America are desirous of reaching a definite understanding as to the rights of their respective countries and of their nationals in Palestine:

His Britannic Majesty and the President of the United States of America have decided to conclude a convention to this effect and have nominated as their plenipotentiaries . . . who . . . have agreed as follows:

4. This shortened preamble has been specially drafted with a view to avoid those difficulties to which the United States Government have drawn the attention of His Majesty's Government. With regard to the reference to the states by which the mandatory has been selected, it will be seen that the draft merely records that in fact His Britannic Majesty has been selected to be the mandatory for Palestine. As this selection has been accepted by all parties, specific reference to the powers who were actually present at the meeting where the selection was made, in the body of the preamble to the convention seems quite immaterial.

5. If the United States Government, however, still find difficulty in accepting the insertion of the preamble to the mandate in the preamble to the draft convention, and if they see any serious objection to the shortened form of the preamble given above, His Majesty's Government would reluctantly be prepared in the last resort to accept the draft of the preamble as suggested by the United States Government, provided, however, that, in order to meet the desire of His Majesty's Government, regarding a reference in the convention to the policy of establishing a national home for the Jews in Palestine, the United States Government would agree to insert an additional recital immediately after the third recital in the preamble to the United States draft of the convention in something like the following terms:

WHEREAS the Government of the United States have recognised the decision of the principal Allied powers that the mandatory should be responsible for

putting into effect the declaration originally made on the 2nd November 1917 by His Britannic Majesty's Government and adopted by the other Allied powers in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil or religious rights of non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country; and

6. As regards the operative clauses of the convention His Majesty's Government accept the word "consents" instead of "concur" in Article 1 of the convention, subject to the reservations already made on this point by His Majesty's representative at Washington in connection with the African mandates. As a draft alteration they would also suggest that, if the shortened form of the preamble suggested above is accepted by the United States Government, the words "as defined in the preamble hereto" might be substituted for the words "including the territories . . . as ultimately determined" in Article 1. If the shortened form of the preamble is not accepted, the American draft of Article 1 would stand. Subject to this reservation as regards Article 1, His Majesty's Government are prepared to accept the State Department's draft of the first four articles of the convention.

7. With regard to Article 5 of the American draft convention, I would refer you to the note which I addressed to you on the 30th ultimo regarding the B mandates. The considerations there set forth, relating to the necessity for United States persons and institutions in B mandate territories being subject to the restrictions required for the maintenance of good government, apply with equal force to Palestine. At the same time, His Majesty's Government desire to assure the United States Government that the use of the word "maintaining" in Article 15 of the mandate for Palestine is not intended to restrict the opening of new American schools in that country or to restrict the right of such schools to admit pupils of another community. They also wish to make it clear that the second clause of Article 16 of the mandate is intended to show that the supervision of the Mandatory will be strictly limited to that required for the maintenance of public order and good government. The fact that schools are not mentioned in Article 16, and that Article 15 merely provides that schools of local communities shall conform to such educational requirements of a general nature as the administration may impose, does not imply that schools in Palestine are to be free from the restrictions required for the maintenance of good government. In conclusion His Majesty's Government assure the United States Government that United States nationals will be perfectly free to teach in the English language in those educational, philanthropic and religious institutions which they may establish and maintain in Palestine. In the light of these explanations and

assurances His Majesty's Government feel sure that the United States Government will regard as unnecessary the insertion in the convention of any article dealing with these points and Article 5 of the American draft has accordingly been omitted in the British counter-draft of the convention.

8. Article 6 in the American draft is identical with that of Article 5 in the original British version, and His Majesty's Government have no desire to amend it. They are, however, anxious to substitute in the second paragraph of Article 7 of the American draft the expression "coming into force" for the words "formal issue" and "issue."

9. The minutes of the July meeting of the Council of the League of Nations, relating to the mandates for Palestine and Syria, read as follows:

The Council decided that the mandate for Palestine was approved . . . and that the mandate for Syria would come automatically into force as soon as the negotiations between the French and Italian Governments have resulted in a final agreement. It was further understood that the two mandates should come into force simultaneously.

10. In these circumstances His Majesty's Government are anxious that nothing in the proposed convention should give rise to the impression that the suspension of capitulatory rights in Palestine should not take place until the conclusion of peace between the Allied powers and Turkey and the consequent formal issue of the mandate. In their view the mandatory régime has now received formal sanction and will come automatically into force in the manner described in the minutes of the Council of the League, to which reference is made above, and they trust that the United States Government will agree that in these circumstances the provisions of Article 8 of the mandate fully safeguard the legitimate interests of American citizens in Palestine.

11. With reference to Article 10 of the mandate His Majesty's Government have inserted in the convention a new Article 5 as follows: "The extradition treaties and conventions in force between the United States and the United Kingdom shall apply to Palestine." His Majesty's Government trust that the United States Government will see no objection to such an article but they would of course be prepared to accept in its place an assurance from the United States Government that they regard the words "foreign powers" in Article 10 of the mandate as applying to the United States.

12. I transmit, herewith, for convenience of reference copies of the Anglo-American convention amended in accordance with the suggestions set forth above.¹

I have [etc.]

CURZON OF KEDLESTON

¹Enclosure not printed, as still further modifications were later agreed upon.

23

The Department of State to the British Embassy

DEPARTMENT OF STATE,
Washington, January 20, 1923.

MEMORANDUM

Under date of October 2 a communication was received by the American Embassy in London from the British Foreign Office suggesting certain changes in previous drafts of the proposed convention relating to the mandate for Palestine.

While the Department is not adverse to proceeding with the consideration of this question, it has been felt that in view of the Lausanne Conference it might be agreeable to the British Foreign Office to await the termination of the present negotiations with Turkey before continuing the correspondence for the conclusion of the Palestine mandate convention.

[NOTE: As indicated in the memorandum last quoted above and in view of subsequent developments in the Near East which resulted in the Lausanne Conference between the Allied powers and Turkey, the conclusion of the Palestine mandate convention with Great Britain was postponed until after the termination of these negotiations with Turkey.

In the interim, the situation of American nationals in Palestine was complicated by the issuance of the Palestine Order in Council, 1922, which, following the approval on July 24, 1922, by the Council of the League of Nations of the terms of the Palestine mandate, entered into effect on September 1, 1922. This order contained provisions for jurisdiction over foreigners in Palestine which the United States Government could not accept as applicable to its nationals, in that the capitulatory rights of the United States were disregarded. A temporary *modus vivendi* was arrived at between the American Consul in Jerusalem and the Legal Secretary of the Palestine Government and was approved by the Department of State, but during the ensuing year difficulties arose due to the fact that the judicial authorities in Palestine declined to consider themselves bound by the agreement in question. The concluding paragraph of an instruction, dated October 4, 1923, from the Department of State to the American Ambassador in London, dealing with the question of these judicial rights, reads as follows:

You may add that in view of the recent conclusion of a treaty of peace between the Allied powers and Turkey, this Government is quite prepared to take up for early consideration, in case the British Government deems the moment opportune, the correspondence with regard to the recognition by treaty of the British mandate in Palestine.

Negotiations for the conclusion of the proposed convention were therefore resumed in London.]

24

*The British Secretary of State for Foreign Affairs (Curzon) to the
Counselor of the American Embassy (Wheeler)*

No. E 11386/1899/65

FOREIGN OFFICE, S. W. 1,
London, November 29, 1923.

SIR: With reference to the last paragraph of your note No. 1069 of the 20th ultimo I have the honour to state, for the information of your Government, that His Majesty's Government are most anxious to conclude the treaty for the recognition by the United States of America of the British mandate in Palestine as soon as possible. The last correspondence which was exchanged on this subject was in October, 1922, when a note, a copy of which is enclosed¹ for your information, was addressed to Mr. Harvey.

2. I have the honour to request that the views of the United States Government on the amendments which were introduced into the text of the treaty to meet the wishes of the State Department, may be ascertained with a view to the early conclusion of this instrument.

I have [etc.]

CURZON OF KEDLESTON

25

*The American Ambassador (Kellogg) to the British Secretary of
State for Foreign Affairs (MacDonald)*

No. 187

AMERICAN EMBASSY,
London, April 30, 1924.

SIR: I have the honor to acknowledge the receipt of the communication of His Majesty's Government of November 29, 1923, proposing the conclusion of the convention with respect to the British mandate in Palestine which was the subject of a communication from the Embassy to the Foreign Office of July 14, 1922, and of a communication addressed by Lord Curzon to my predecessor under date of October 2, 1922. There was also received under date of November 29, 1923, a second communication from the Foreign Office which adverted to certain difficulties resulting from the exercise of extraterritorial jurisdiction by the American Consular Court, and suggests that the early conclusion of a convention for the recognition of the British mandate over Palestine would provide the most satisfactory solution of the difficulties in question.

Under instructions I take pleasure in informing you that my Government concurs in the desirability of an early conclusion of the convention with respect to Palestine and has authorized me

¹ See *ante*, p. 82.

to submit to you for your confidential information a copy of the convention recently signed with the Government of France relating to the mandate for Syria and the Lebanon, and also to communicate to you copies of certain correspondence exchanged with the French Government in connection with this convention.

In view of the fact that the subject matter to be dealt with in the case of the Palestine convention is similar to that involved in the negotiations in the case of the Syrian mandate, there would appear to be obvious advantages in preparing conventions in the two cases as nearly alike as possible.

My Government, however, has not overlooked the fact that three previous drafts of the Palestine mandate convention have already been prepared, namely that submitted with the communication of the British Foreign Office of June 20, 1922; a second draft communicated to the Foreign Office by this Embassy under date of July 14, 1922; and a third draft of October 2, 1922, to which reference was made in Lord Curzon's communication of November 29, 1923. The convention recently concluded with France with respect to Syria and the Lebanon follows on essential points the proposals which were considered in July 1922, and taking this convention as a basis for negotiations would not involve any material divergence from the earlier proposals.

With respect to the preamble to the convention, I am instructed to express the hope of my Government that objection will not be raised to the formula which has already been adopted in the case of the convention relating to Syria and the Lebanon. If this result would be facilitated by my Government's concurrence in incorporating not only the text of the mandate but also the preamble to the mandate in the preamble to the convention, my Government is prepared to accept this modification.

As you will note, my Government suggested to the French Government the inclusion in the convention with respect to Syria of a provision extending to Syria and the Lebanon the provisions of the existing extradition and consular treaties and conventions between France and the United States. For reasons which appear in the annexed correspondence¹ the French Government, while quite willing to extend to the United States the privileges of these treaties, preferred to effect this by an exchange of notes rather than by the addition of an article in the convention itself. It is suggested that in the Palestine convention express provision be made for the application to Palestine of the extradition treaties in force between the two countries along the lines proposed in the British draft of Octo-

¹ Not printed.

ber 2, 1922. The first paragraph of Article 6 of the draft convention contains appropriate provision to this effect.

With regard to the privileges and immunities of consuls in the mandated territory, your attention is directed to the assurances in this respect which have been given by the French Government in its correspondence with regard to Syria and the Lebanon. Under the capitulatory régime in Palestine the position of consular officers and the prerogatives of their offices were safeguarded. As it is contemplated that in view of the terms of the mandate capitulatory rights should be suspended, it will be particularly important to my Government that the British Government give assurances that American consular officers in the mandated territory would enjoy all the immunities and privileges accorded by international law and custom, or as may be granted to the consuls of any other power by treaty or otherwise. In view of the insufficiency of the existing treaty provisions with Great Britain relating to consular rights, a stipulation to this effect, as well as for the application to the mandated territory of the provisions of any treaties in force between the two countries which relate to consular rights, is contained in the proposed Article 6.

The text of Article 6 which my Government proposes would read as follows:

The extradition treaties and conventions in force between the United States and Great Britain, and the provision of any treaties in force between the two countries which relate to extradition or consular rights, shall apply to the mandated territory.

American consular officers shall enjoy in the mandated territory all the rights, privileges and immunities now accorded or hereafter to be accorded by treaty or otherwise to the consular officers of any other country.

You will note that the eight articles of the convention of which I enclose a draft are substantially those proposed in the British Foreign Office draft of October 2, 1922, with the exception of the article given above and Article 5 with regard to the establishment and maintenance of American educational and philanthropic institutions in the mandated territory. It is hoped that the British Government will not raise objection to the provisions of Article 5 which have already been accepted by the French Government with regard to Syria and the Lebanon.

My Government's attention has been called to a note of the Secretary General of the League of Nations dated September 23, 1922 (C667 M396.1922 V.I.), relating to Article 25 of the Palestine mandate, which indicated that the Council of the League of Nations had approved a memorandum submitted by the British representative outlining the provisions of the mandate for Palestine which are not

to be applicable to the territory known as Trans-Jordan, as therein defined. In this memorandum it is stated that His Majesty's Government accept full responsibility as mandatory for Trans-Jordan, and that such provision as may be made for the administration of that territory in accordance with Article 25 of the mandate shall be in no way inconsistent with those provisions of the mandate which are not by the resolution declared inapplicable.

Upon the conclusion of the convention between the United States and Great Britain with respect to Palestine, it is my Government's understanding that the convention will be applicable to such territory as may be under British mandate to the east, as well as to the west of the River Jordan, and that, in view of the provisions of Article 7 as proposed, no further change will be made with respect to the conditions of the British administration of the territory known as Trans-Jordan without the previous assent of my Government. I am instructed to inquire whether the British Government is in accord with this view.

In a communication of August 11, 1922, the Foreign Office brought to the attention of the Embassy a communication of the British Government to the Italian Government outlining the privileges which the British Government indicated its willingness to extend to Italy in respect of Palestine. You will note in the enclosures hereto annexed¹ the views which my Government has expressed to the French Government with respect to the somewhat similar assurances given to Italy by France with respect to Syria. It will also be noted that the French Government has undertaken in this correspondence to assure my Government most-favored-nation treatment with respect to the agreement between France and Italy and any other agreement relating to Syria and the Lebanon which may be entered into by France with any other Government. In concluding an agreement with respect to Palestine, my Government trusts that the British Government will be prepared likewise to give in an exchange of notes the assurance of most-favored-nation treatment with respect to the agreement reached by Great Britain with Italy, or any other agreements relating to Palestine which have been or may in the future be reached affecting the mandate territory.

I have [etc.]

FRANK B. KELLOGG

[Enclosure]

DRAFT CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND GREAT BRITAIN REGARDING THE MANDATE FOR PALESTINE

WHEREAS by the Treaty of Peace concluded with the Allied Powers, Turkey renounces all her rights and titles over Palestine, and

¹ Enclosures not printed, except the draft convention, *infra*.

WHEREAS Article 22 of the Covenant of the League of Nations in the Treaty of Versailles provides that in the case of certain territories which as a consequence of the late war ceased to be under the sovereignty of the states which formerly governed them, mandates should be issued and that the terms of the mandate should be explicitly defined in each case by the Council of the League, and,

WHEREAS the Principal Allied Powers have agreed to entrust the mandate for Palestine to His Britannic Majesty, and,

WHEREAS the terms of the said mandate have been defined by the Council of the League of Nations as follows:

(Terms of mandate) and,

WHEREAS the mandate in the above terms came into force on September 29, 1923, and,

WHEREAS the United States of America by participating in the war against Germany contributed to her defeat and the defeat of her Allies and to the renunciation of the rights and titles of her Allies in the territory transferred by them but has not ratified the Covenant of the League of Nations embodied in the Treaty of Versailles, and

WHEREAS the Government of the United States and the Government of His Britannic Majesty desire to reach a definite understanding with respect to the rights of the two Governments and their respective nationals in Palestine: His Britannic Majesty and the President of the United States of America have decided to conclude a convention to this effect and have nominated as their Plenipotentiaries who have agreed as follows:

ARTICLE 1

Subject to the provisions of the present convention the United States consents to the administration by His Britannic Majesty, pursuant to the aforesaid mandate, of Palestine as defined in the mandate recited above.

ARTICLE 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the mandatory under Article 24 of the mandate shall be furnished to the United States.

ARTICLE 5

Subject to the provisions of any local laws for the maintenance of public order and public morals, the nationals of the United States will be permitted freely to establish and maintain educational, philanthropic and religious institutions in the mandated territory, to receive voluntary applicants and to teach in the English language.

ARTICLE 6

The extradition treaties and conventions in force between the United States and Great Britain and the provisions of any treaties in force between the two

countries which relate to extradition or consular rights shall apply to the mandated territory.

American consular officers shall enjoy in the mandated territory all the rights, privileges and immunities now accorded or hereafter to be accorded by treaty or otherwise to the consular officers of any other country.

ARTICLE 7

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate, as recited above, unless such modification shall have been assented to by the United States.

ARTICLE 8

The present convention shall be ratified in accordance with the respective constitutional methods of the high contracting parties. The ratifications shall be exchanged in London as soon as practicable. It shall take effect on the date of the exchange of ratifications.

In witness whereof

Done in duplicate at this day of 1924.

26

*The British Secretary of State for Foreign Affairs (MacDonald)
to the American Ambassador (Kellogg)*

No. E 5825/1354/65

FOREIGN OFFICE, S. W. 1,

London, July 17, 1924.

YOUR EXCELLENCY: His Majesty's Government have given their attentive and sympathetic consideration to the draft convention respecting the British mandate in Palestine enclosed in Your Excellency's note No. 187 of the 30th of April, and I am now happy to inform you that they accept, subject to certain minor textual amendments, the United States Government's draft of the convention, with the exception of the second half of Article 6, dealing with the privileges to be accorded to United States consular officers in Palestine. His Majesty's Government regret that they do not see the necessity for the insertion in the convention of any such stipulation as that proposed, since the Palestine administration have every intention of treating United States consular officers in as favorable a manner as the consular representatives of other states.

2. As regards the remainder of the draft, I beg leave to suggest certain slight alterations in the wording to avoid all risk of ambiguity. It would be preferable that the second paragraph of the preamble should be amended to read ". . . Covenant of the League of Nations *in* the treaty of Versailles." Article 1 would also be clearer if it were worded "subject to the provisions of the present convention the United States consent to the administration of Palestine by His Britannic Majesty, pursuant to the mandate recited

above." The first half of Article 6 might with advantage be altered to ". . . and conventions *which are or may be* in force between the United States and Great Britain and the provisions of any treaties *which are or may be* in force . . ." Lastly I suggest that the final sentence of Article 8 should begin "*The present convention shall take effect . . .*"

3. As regards the penultimate paragraph of your note, His Majesty's Government agree that the present convention shall be applicable to such territory as may be under British mandate to the east as well as to the west of the River Jordan. They regret, however, that they can not concur in the interpretation put by the United States Government on Article 7 of the draft convention as regards changes in the administration of Trans-Jordania, as it is essential that they be allowed latitude to make changes in the administration of that territory in such manner as may appear necessary, provided that such action does not conflict with the terms of the mandate.

4. The concluding paragraph of your note dealt with the question of most-favoured-nation treatment. I desire to assure the United States Government that American nationals in Palestine will receive most-favoured-nation treatment, but as no exchange of notes has yet taken place as regards the proposed assurances to be given to the Italian Government I regret that His Majesty's Government are not in a position to give the specific assurance asked for in the last sentence of your note.

I have [etc.]

J. RAMSAY MACDONALD

27

The American Ambassador (Kellogg) to the British Secretary of State for Foreign Affairs (MacDonald)

No. 415

AMERICAN EMBASSY,
London, September 2, 1924.

SIR: My Government has instructed me to acknowledge the receipt of your communication of July 17, with regard to the convention respecting the British mandate in Palestine. In this communication it is indicated that, subject to certain minor textual changes and subject to the omission of the second paragraph of Article 6, His Majesty's Government is prepared to accept the draft convention communicated in my note of April 30.

(2) In view of the assurances contained in the first paragraph of your note that the Palestine administration have every intention of treating American consular officers in as favorable a manner as the consular representatives of other states, my Government does not consider that the retention of the second paragraph of Article 6 is

essential. Further, my Government assents to the minor textual amendments suggested in the second paragraph of your note, save that the phrase "the United States consent" should read "the United States consents", since my Government regards the term "United States" as singular and not plural.

(3) With regard to the third paragraph of your communication which relates to the territory of Trans-Jordania, I desire to make it clear that it was not my Government's intention to suggest the necessity of consultation in matters relating to minor administrative changes in Trans-Jordania. Its attention, however, had been called to the communication of the League of Nations of September 23, 1922, which indicated that His Majesty's Government, after a consultation with the states represented on the Council of the League of Nations, had reached an agreement as to the articles of the mandate in addition to Articles 15, 16 and 18 mentioned in Article 25, which are in any case applicable, which would control the character of the British administration of Trans-Jordania. It is my Government's view, as briefly set forth in my communication of April 30 last, that it would be entirely consistent with the general policy which is followed by states enjoying mandatory administration over territories relinquished by the Central powers as a result of the late war to consult with this Government as well as with the states represented on the Council of the League of Nations in connection with any general changes in the form of the mandatory administration of Trans-Jordania.

(4) My Government had, however, noted the statement contained in your communication that the Palestine convention shall be applicable to territory under British mandate to the east as well as to the west of the River Jordan and the further statement that the changes which may be made in the administration of the territory will not be of a character to conflict with the terms of the mandate. My Government is not therefore disposed to delay the conclusion of the Palestine convention for the purpose of entering into a further discussion of the questions relating to Trans-Jordania, since the essential points in which my Government is interested, appear to be safeguarded by the assurances already given, which are understood also to embody the undertaking that the changes which may be made in the administration of the territory will not be of such a character as to conflict with the terms of the convention.

(5) I am further instructed to inform you that my Government is gratified to note the assurance contained in your communication of July 17 that American nationals in Palestine will receive most-favored-nation treatment. This assurance satisfactorily meets the point raised in my note of April 30 with respect to agreements which

the Mandatory might reach with other powers if my Government's understanding is correct that the benefits of any agreements, such for example as that outlined in the communication from His Majesty's Foreign Office of August 15, 1922, would, if definitely concluded, automatically be extended to the United States and its nationals in the mandate territory of Palestine.

(6) In view of the fact that full agreement has now been reached as to the provision of the convention to be concluded with respect to Palestine and in the event that my Government's understanding of His Majesty's Government's position, as outlined in paragraphs 2 to 5, is correct, I am happy to state that my Government is prepared to proceed promptly to the signature of the convention and will send me full powers for this purpose.

I have [etc.]

For the Ambassador:

FREDERICK A. STERLING

Counselor of Embassy

28

*The British Secretary of State for Foreign Affairs (Chamberlain)
to the American Ambassador (Kellogg)*

No. E 9780/1354/65

FOREIGN OFFICE, S. W. 1,

London, November 10, 1924.

YOUR EXCELLENCY: I have the honour to refer to the note No. 415 which Your Excellency was so good as to address to my predecessor on the 2d September regarding the proposed convention between the United States Government and His Majesty's Government respecting the British mandate in Palestine. I am happy to note that the United States Government is prepared to proceed promptly to the signature of the convention and will send you full powers for that purpose.

2. In that note you state that the United States Government desire an assurance that His Majesty's Government will consult them, as well as the powers represented on the Council of the League of Nations, regarding any alteration in the administration of Trans-Jordania for which His Majesty's Government may decide to seek the approval of the Council: this assurance His Majesty's Government have no hesitation in giving. With regard to paragraph 5 of your note, I am happy to state that the interpretation placed by the United States Government on paragraph 4 of my predecessor's note of July 17 is correct, and that any special privileges granted to the subjects of any other power will automatically be acquired by United States citizens in Palestine.

3. A proof of the proposed convention in form suitable for signature has now been printed and a copy is enclosed herein for examination by you.¹ I shall be glad to learn in due course on what date it will be convenient for you to sign the convention.

I have [etc.]

(For the Secretary of State)

D. G. OSBORNE

[NOTE: On November 25, 1924, the Department of State telegraphed to the American Ambassador in London full powers to sign the text of the convention, providing certain minor corrections were made in the text accompanying Document No. 28. These corrections were made and the convention was signed at London on December 3, 1924. Following this act, under date of December 10, 1924, the British Foreign Office addressed a communication to the Embassy at London inquiring whether, in view of the signature of the convention, the American Government desired to pursue further the questions to which reference is made above in the note following Document No. 23. On December 19, 1924, in compliance with the Department's instructions, the Embassy replied that as the Palestine mandate convention enters into effect only upon the exchange of ratifications thereof, its signature had created no change in the status of the rights of the United States and its nationals in Palestine. Following the action of the United States Senate in advising and consenting to the ratification of the convention on February 20, 1925, this question was again made the subject of correspondence with the British Government as shown in the following documentation.]

29

The American Embassy to the British Foreign Office

MEMORANDUM

The American Embassy refers to a note dated December 10, 1924, from His Majesty's Secretary of State for Foreign Affairs, and to the Embassy's reply dated December 19, 1924, relative to the question of the jurisdiction of the Palestinian authorities over United States citizens, and to the desirability of a continuance of the discussions relating to this subject since the conclusion of the Palestine convention signed on December 3, 1924, between the United States and Great Britain. Reference is also made to an informal inquiry of the Foreign Office as to whether the United States Government is prepared to proceed to the exchange of ratifications of the convention.

In particular this correspondence raises again (1) the status of certain cases, involving American citizens or interests, adjudicated by the Palestine courts in contravention of the capitulatory rights of

¹ Enclosure not printed, as, except for minor textual corrections, it is the same as the final form of convention, *post*, pp. 107-113.

the United States and in disregard of the provisional arrangement, made in 1922 and 1923 between the American Consul at Jerusalem and the Legal Secretary of the Palestine Government, as to the procedure to be followed in civil and criminal cases arising in Palestine in which American citizens or interests should be defendants, and (2) the necessity of this Government's assent to the imposition upon American citizens or interests of any dues or taxes not contemplated by the capitulatory régime or to the collection from its nationals or interests of any increase in such dues or taxes.

The Embassy learns that in disregard of the agreement between the American Consul at Jerusalem and the Legal Secretary eight judgments against American citizens or interests have been rendered by the Palestine courts, that two of such judgments have been executed without the assistance of the Consulate, and that there is now pending in a Palestine court one case wherein an American citizen is named as defendant. In each of the cases referred to the Consulate has lodged a written protest against the action of the Palestine authorities.

In making such protests the Consul has based his action on the following considerations: Article 8 of the convention of December 3, 1924, provides that it shall enter into effect only upon the exchange of ratifications by the contracting parties; Article 8 of the mandate for Palestine (incorporated in the preamble to the convention) provides that, during the period of the mandate, "the privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire shall not be applicable in Palestine"; and the United States Government has consistently maintained the position that the privileges and immunities in question could be relinquished only by treaty agreement.

The conclusion logically to be drawn from the foregoing considerations is that, pending the exchange of ratifications of the convention of December 3, 1924, the Consul at Jerusalem should continue to exercise extraterritorial jurisdiction in cases, involving American citizens, which, under the capitulatory régime, were properly within the jurisdiction of the American consular court. And this view the United States Government maintains. That this conclusion was accepted in principle is shown by the above-mentioned agreement concluded in 1922 and 1923 between the Consulate and the Legal Secretary of the Palestine Government.

Before proceeding to the exchange of ratifications of the convention of December 3, 1924, the American Embassy, under the instructions of its Government, is therefore desirous of ascertaining whether His Majesty's Government is prepared to give assurances in the following sense:

- (1) That the pending case will be dropped;
- (2) That the two judgments, already rendered by the Palestine courts and executed in disregard of the provisional agreement, will be cancelled and that sums collected from American citizens without the assistance of the Consulate will be refunded; and
- (3) That the six judgments, already rendered but not as yet executed, will not be executed after the exchange of ratifications.

The American Embassy adds that, after the entering into effect of the convention of December 3, 1924, the United States Government would, of course, have no objection to the retrial of the nine cases in question. A further reason for desiring these assurances is that in some, if not all, of the cases in question, judgment was rendered *in absentia*, the American defendant having absented himself from the court of trial upon the advice of the American Consulate and as a protest against the assumption of jurisdiction by the Palestine court.

The question of the imposition upon American nationals of the increased Palestine import duties which have not received the assent of the United States Government is reserved for further discussion.

AMERICAN EMBASSY,

London, May 4, 1925.

30

The American Embassy to the British Foreign Office.

MEMORANDUM

The American Embassy refers to the memorandum, dated May 4, 1925, and handed to the Foreign Office, concerning the question of the jurisdiction of the Palestinian authorities over United States citizens pending the entrance into force of the Palestine mandate convention signed on December 3, 1924, between the United States and Great Britain; and particularly to the last paragraph of that memorandum which reserves for further discussion the question of the imposition upon American nationals of the increased Palestine import duties which have not received the assent of the United States Government.

The imposition of the increased import duties referred to in this reservation was the subject of a general protest made by the American Consul at Jerusalem upon the occasion of the announcement of the increased duties. The only specific case in which a formal protest has been made to the Palestine Government is, however, that of Elimelech Sachs, which was the subject of note No. 452 dated September 16, 1924, addressed by the American Ambassador to His

Majesty's Secretary of State for Foreign Affairs. It is reported by the American Consul at Jerusalem that apparently no objection has been raised by other American importers in Palestine to the payment of the increased duties affecting their importations. The duties affecting such importations are understood to have been increased by only three per cent *ad valorem*, whereas the increase affecting the importation of matches by Mr. Sachs was approximately two thousand per cent.

The pertinent facts in the case of Mr. Sachs are as follows:

On August 15, 1924, there was published in the *Official Gazette* of the Palestine Government the text of an ordinance, entitled "The Customs Duties Amendment Ordinance 1924," providing for certain changes in the Palestine tariff. One of the changes thus set forth increased the duty on matches from 11 per cent *ad valorem* to P. T. 20 per gross boxes, not exceeding 10,000 matches, an increase approximately from P. T. 75 to P. T. 1,000 per shipping case of matches. The collection of duties under this ordinance was begun on August 16. Sometime previous to the promulgation of this ordinance (it is stated, "in July") Mr. Elimelech Sachs, an American citizen, had ordered a quantity (350 shipping cases or 17,500 gross boxes) of matches. His shipment arrived in Palestine on August 18, and duty was assessed thereon in the amount of L. E. 3,500 under the new tariff instead of L. E. 180 under the old tariff. The difference L. E. 3,320 was equivalent to slightly over \$15,000 at the then prevailing rate of exchange. Mr. Sachs declined to pay the increased duty and protested to the Consul at Jerusalem. The Consul addressed a formal protest to the Palestine Government and informed the Department of State, which, through the Embassy at London, brought the matter to the attention of the British Foreign Office. On December 10 the Foreign Office inquired through the Embassy whether, in view of the signature of the Palestine mandate convention, it was desired to pursue further, amongst others, this matter. In reply the Embassy, under instructions from the Department of State, informed the Foreign Office, under date of December 19, in part:

The American Government's position regarding the indispensability of its assent to any dues or taxes to be imposed upon Americans in Palestine prior to the coming into effect of the mandate convention has not been changed by the signature of that convention. Meanwhile, however, my Government would be disposed to give favorable consideration to any reasonable request of the mandatory power that the United States assent to the collection of increased duties or taxes from Americans in Palestine as from the date of the communication of its assent to the British Government. A similar procedure was followed with respect to a contemplated increase of customs dues in Syria shortly after the signature of the Syrian mandate convention between the United States and France.

Apparently no further action has been taken in this matter by the British Foreign Office, other than in its informal inquiry of March 6, 1925, through the Embassy, whether the United States Government was prepared to proceed to an exchange of ratifications of the Palestine mandate convention.

From a report dated March 4, 1925, from the American Consul at Jerusalem it would appear that, pending a decision as to the admissibility of this consignment under the previously prevailing duty, it has been refused entry except upon payment of the increased duty and has been held in the customs bonded warehouse at the port of Jaffa, where it has become subject to considerable storage charges. It appears to be clearly established that this shipment was such as might reasonably have been made to Mr. Sachs in the normal course of his dealings in matches and that his order therefor was not placed with any knowledge of or in anticipation of the subsequent increase in the Palestine import duty as affecting this commodity. Nor does there appear to be any doubt that, should he now be required to enter this shipment at the new rate of duty, he would sustain a considerable actual pecuniary loss. From a further report from the Consul at Jerusalem, dated June 17, 1925, it appears that such actual loss "would be 1400 Egyptian pounds besides accrued interest and storage charges."

It will be obvious to the British Government that under the circumstances Mr. Sachs was entitled to have his shipment of matches enter at the former rate of duty which would have amounted to L. E. 180, instead of at the new rate which amounted to L. E. 3500. It is realized, however, that this would have allowed him a considerable advantage over competitors paying the new rate of duty by permitting him to undersell his competitors and still obtain a very large percentage of profit. While the United States Government does not desire to take advantage of the situation by insisting, as it might well do, that the matches should be entered at the duty obtaining at the time the purchase was made, it does consider that it can rightfully support the claim of Mr. Sachs against loss. It has been suggested that this might be accomplished were the Palestine authorities who are now detaining Mr. Sachs's matches to take over the shipment *in toto* and pay to him an amount which would reimburse him for his outlay and allow a reasonable profit, or were they to release the goods to him under such circumstances as will make such result possible. Should this second course be followed it would seem fair that (1) accrued storage dues on the shipment of matches to Mr. Sachs should be remitted, (2) he should be indemnified for the difference between the market value in Palestine of the shipment and its original cost plus the present customs duty thereon, (3) he

should be relieved of any loss of accrued interest he may have sustained, and (4) he should receive an amount equal to such reasonable profit as might have accrued on the sale of this shipment had the new duty not been put into effect.

In this connection it should be pointed out that the Department of State, in again raising this question at this time, does not desire in any way to place any unnecessary difficulties in the way of the coming into effect of the convention at the earliest possible moment, and that it is not disposed to make an issue of the omission of the British Government to seek and obtain the assent of the United States Government to the increase of the Palestine tariff affecting the shipment of Mr. Sachs. It is, however, the Department's opinion, an opinion in which it is believed the British Government will readily concur, that, in the circumstances of the case of Mr. Sachs, adequate provision should be made to obviate the possibility of his sustaining any loss as a result of the application to his shipment of matches of the increased tariff of August 15, 1924.

AMERICAN EMBASSY,

London, July 3, 1925.

31

The British Foreign Office to the American Ambassador (Houghton)

No. E 4182/214/65

FOREIGN OFFICE, S. W. 1,

London, October 13, 1925.

YOUR EXCELLENCY: I have the honour to inform you that His Majesty's Government have considered sympathetically the various questions dealt with in Your Excellency's note of December 19, 1924,¹ and memoranda of May 4 and July 3 last, relative to the position of United States citizens in Palestine prior to and pending the entry into force of the Anglo-American Palestine mandate convention of December 3, 1924. His Majesty's Government understand that the United States Government desire to reach a friendly settlement of the outstanding cases that have arisen in connection with this subject, before the convention concerned is actually brought into force by the formal exchange of the ratifications which have already taken place. As from the date of this exchange the position will of course be fully regularised, and no further cases of this type can arise. It is therefore desirable from every point of view that the exchange of ratifications should take place with the least possible delay.

2. The particular cases of which a settlement is desired fall into two main categories—administrative and legal. As regards the for-

¹ Not printed.

mer, His Majesty's Government fully understand the position taken up by the Government of the United States, that their prior assent is indispensable to the imposition of any dues or taxes upon United States citizens in Palestine pending the entry into force of the convention. His Majesty's Government realize, moreover, that this position has not been changed by the mere signature of the convention. It appears, however, that only one case in this category—that of Mr. Sachs—has formed the subject of protest by the United States authorities. I understand from your memorandum of July 3 last that the views of your Government in this matter could be satisfactorily met by the remittance of the accrued storage dues on the shipment of matches to Mr. Sachs; by his indemnification for the difference between the market value in Palestine of the shipment and its original cost, together with the present customs duty thereon; by Mr. Sachs being relieved of any loss of accrued interest which he may have sustained as a result of the action of the Palestine authorities in this matter; and by his receiving an amount equal to such reasonable profit as might have accrued on the sale of this shipment, had the new duty not been put into effect. His Majesty's Government while adhering to their own views in regard to the questions of principle involved, which, as you are aware, are in conflict with those held by your Government, are willing to undertake, on behalf of the Palestine Government, that the steps suggested above as regards the particular case of Mr. Sachs's shipment of matches will be taken by the Palestine Government immediately after the entry into force of the convention. As regards the question of principle, His Majesty's Government consider now that adequate provision has been made for the future, the situation will be adequately met if each Government takes formal note of the view held by the other, while at the same time expressing its regret that it is unable on grounds of principle to conform thereto.

3. With regard to the Skora case and other cases involving the question of jurisdiction over American citizens prior to the entry into force of the Palestine mandate convention, His Majesty's Government notice with satisfaction that the United States Government have no objection to the retrial by the Palestinian courts of the cases concerned, but regret that it is not possible for them to take the measures suggested in your notes under reply. Such measures would involve *ex post facto* legislation of the kind which is as contrary to British as to United States constitutional practice. Here again it appears that the only solution is that suggested above; that is, for each Government to take formal note of the view held by the other, while expressing its regret that it is unable on principle to conform to it.

4. If there is any civil case, however, in which a United States citizen has refused to appear in the Palestinian courts, relying upon his rights under the former capitulatory system, and where he alleges that he had a good defence and that, had he appeared, the judgment would therefore not have been entered against him, the Palestine Government will be prepared to request the Chief Justice, or some other responsible officer, to investigate the case. Should this officer, as a result of his investigations, form the opinion that the defence, which would have been put forward by the American citizen had he appeared, would have succeeded, His Majesty's Government will undertake that the Palestine Government will offer fair compensation to the United States citizen concerned as an act of diplomatic courtesy not affecting the question of principle involved.

5. It does not appear to His Majesty's Government that any useful purpose would be served by a further discussion of the complicated legal position arising out of the abolition of the capitulations prior to the entry into force of the convention. It is apparent that the views held by His Majesty's Government, as Mandatory for Palestine, and those held by the United States Government on this matter cannot be reconciled, and, in view of the conclusion of the mandate convention, further attempts to reconcile these views appear unnecessary. His Majesty's Government have, however, no desire to obtain from the Government of the United States any formal abandonment of the capitulatory rights of United States citizens in Palestine prior to the entry into force of the convention. On the contrary, they readily take formal note of the fact that the claim to these rights was not abandoned by the United States Government. At the same time they feel convinced that the United States Government will equally appreciate the position of His Majesty's Government, and will as a friendly act refrain from pressing them to recede therefrom.

I have [etc.]

(In the absence of the Secretary of State)

LANCELOT OLIPHANT.

32

The American Ambassador (Houghton) to the British Secretary of State for Foreign Affairs (Chamberlain)

No. 372

AMERICAN EMBASSY,

London, November 14, 1925.

SIR: I have the honor to acknowledge the receipt of your note No. E 4182/214/65 of October 13, 1925, in reply to the Embassy's note of December 19, 1924, and memoranda of May 4 and July 3 last, relative

to the position of American nationals in Palestine prior to the entering into force of the Palestine mandate convention, signed December 3, 1924.

In reply I am directed to inform you of the satisfaction with which my Government has noted the sympathetic consideration which has been accorded the communications which I had the honor to address to you on this subject, with a view to finding a mutually satisfactory basis for the settlement of the questions at issue. I take pleasure in informing you that my Government has authorized me to convey to you its acquiescence in the suggestion that as regards the questions of principle which have arisen with respect to the status of the capitulatory rights of American citizens in the mandated territory of Palestine pending the coming into force of the convention each Government should take note of the view held by the other. Further consideration of this question is rendered unnecessary, as far as Palestine is concerned, in view of the practical steps which His Majesty's Government, on behalf of the Palestine Government, has indicated its readiness to take in the individual cases which the Embassy has had the honor to bring to your attention. Upon the exchange of ratifications of the convention the situation will be automatically regularized.

In conclusion, I am directed by my Government to inform you that, as a result of the present exchange of notes, I shall be pleased, at your convenience, to proceed to the ratification of the Palestine mandate convention of December 3, 1924.

I have [etc.]

For the Ambassador:

RAY ATHERTON

First Secretary of Embassy

[NOTE: Following the presentation of the foregoing note, arrangements were made for the exchange of ratifications of the convention, which act took place at London on December 3, 1925, i. e., one year to a day after the signature of the convention.]

AMERICAN-BRITISH PALESTINE
CONVENTION OF DECEMBER 3, 1924

IV. AMERICAN-BRITISH PALESTINE MANDATE
CONVENTION OF DECEMBER 3, 1924

IV. AMERICAN-BRITISH PALESTINE MANDATE CONVENTION OF DECEMBER 3, 1924

[Complete text]

WHEREAS by the Treaty of Peace concluded with the Allied Powers, Turkey renounces all her rights and titles over Palestine; and

WHEREAS article 22 of the Covenant of the League of Nations in the Treaty of Versailles provides that in the case of certain territories which, as a consequence of the late war, ceased to be under the sovereignty of the States which formerly governed them, mandates should be issued, and that the terms of the mandate should be explicitly defined in each case by the Council of the League; and

WHEREAS the Principal Allied Powers have agreed to entrust the mandate for Palestine to His Britannic Majesty; and

WHEREAS the terms of the said mandate have been defined by the Council of the League of Nations, as follows:

The Council of the League of Nations:

WHEREAS the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

WHEREAS the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on the 2nd November, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

WHEREAS recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

WHEREAS the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and

WHEREAS the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and

WHEREAS His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

WHEREAS by the aforementioned article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by

the Mandatory, not having been previously agreed upon by the members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

ARTICLE 1

The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

ARTICLE 2

The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

ARTICLE 3

The Mandatory shall, so far as circumstances permit, encourage local autonomy.

ARTICLE 4

An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

ARTICLE 5

The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

ARTICLE 6

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

ARTICLE 7

The Administration of Palestine shall be responsible for enacting a national law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

ARTICLE 8

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

Unless the Powers whose nationals enjoyed the aforementioned privileges and immunities on the 1st August, 1914, shall have previously renounced the

right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

ARTICLE 9

The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights.

Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

ARTICLE 10

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.

ARTICLE 11

The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The Administration may arrange with the Jewish agency mentioned in article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

ARTICLE 12

The Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

ARTICLE 13

All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that

nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

ARTICLE 14

A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

ARTICLE 15

The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

ARTICLE 16

The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measure shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

ARTICLE 17

The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine.

The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

ARTICLE 18

The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine

against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this mandate the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

ARTICLE 19

The Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

ARTICLE 20

The Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

ARTICLE 21

The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nationals of all States members of the League of Nations.

(1)

"Antiquity" means any construction or any product of human activity earlier than the year A. D. 1700.

(2)

The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

(3)

No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

(4)

Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5)

No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Department.

(6)

Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest.

(7)

Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archaeological experience. The Administration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds.

(8)

The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

ARTICLE 22

English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic.

ARTICLE 23

The Administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

ARTICLE 24

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

ARTICLE 25

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of articles 15, 16 and 18.

ARTICLE 26

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the Covenant of the League of Nations.

ARTICLE 27

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 28

In the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

The present instrument shall be deposited in original in the archives of the League of Nations, and certified copies shall be forwarded by the Secretary-General of the League of Nations to all members of the League.

Done at London, the 24th day of July, 1922; and

WHEREAS the mandate in the above terms came into force on the 29th September, 1923; and

WHEREAS the United States of America, by participating in the war against Germany, contributed to her defeat and the defeat of her Allies, and to the renunciation of the rights and titles of her Allies in the territory transferred by them but has not ratified the Covenant of the League of Nations embodied in the Treaty of Versailles; and

WHEREAS the Government of the United States and the Government of His Britannic Majesty desire to reach a definite understanding with respect to the rights of the two Governments and their respective nationals in Palestine;

The President of the United States of America and His Britannic Majesty have decided to conclude a convention to this effect, and have named as their plenipotentiaries:

The President of the United States of America:

His Excellency the Honourable Frank B. Kellogg, Ambassador Extraordinary and Plenipotentiary of the United States at London:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

The Right Honourable Joseph Austen Chamberlain, M. P., His Majesty's Principal Secretary of State for Foreign Affairs: who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE 1

Subject to the provisions of the present convention the United States consents to the administration of Palestine by His Britannic Majesty, pursuant to the mandate recited above.

ARTICLE 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the Mandatory under article 24 of the mandate shall be furnished to the United States.

ARTICLE 5

Subject to the provisions of any local laws for the maintenance of public order and public morals, the nationals of the United States will be permitted freely to establish and maintain educational, philanthropic and religious institutions in the mandated territory, to receive voluntary applicants and to teach in the English language.

ARTICLE 6

The extradition treaties and conventions which are, or may be, in force between the United States and Great Britain, and the provisions of any treaties which are, or may be, in force between the two countries which relate to extradition or consular rights shall apply to the mandated territory.

ARTICLE 7

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate, as recited above, unless such modification shall have been assented to by the United States.

ARTICLE 8

The present convention shall be ratified in accordance with the respective constitutional methods of the High Contracting Parties. The ratifications shall be exchanged in London as soon as practicable. The present convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the undersigned have signed the present convention, and have thereunto affixed their seals.

Done in duplicate at London, this 3rd day of December, 1924.

[SEAL]

FRANK B. KELLOGG

[SEAL]

AUSTEN CHAMBERLAIN

Ratification advised by the Senate of the United States, February 20, 1925.

Ratified by the President of the United States, March 2, 1925.

Ratified by His Majesty the King, March 18, 1925.

Ratifications exchanged at London, December 3, 1925.

Proclaimed by the President of the United States, December 5, 1925.

PUBLICATIONS OF THE DEPARTMENT OF STATE

All requests for publications of the Department of State should be addressed to the Superintendent of Documents, Government Printing Office, Washington, D. C. The Superintendent of Documents will accept deposits against which the cost of publications ordered may be charged, and will notify the depositor when the deposit is exhausted. The cost to depositors of a complete set of the publications of the Department for a year will probably be somewhat in excess of \$10. However, anyone may place orders with the Superintendent of Documents for a single series as well as for single publications.

PERIODICALS

- Diplomatic List.** [Monthly list of Embassies and Legations in Washington.] Subscription, 50¢ a year; single copy, 5¢.
- Foreign Service List.** [Quarterly.] Subscription, 50¢ a year; single copy, 15¢.
- Press Releases.** [Weekly printings of mimeographed releases issued to the press.] Subscription, \$1.50 a year; single copy, 5¢. Indexed semiannually.
- Register of the Department of State.** [Annual; issued early in the calendar year.] Issue of January 1, 1930. Publication No. 60. viii+392 pages. \$1 (paper cover).
- Treaty Information.** [Monthly.] Subscription, 50¢ a year; single copy, 5¢.

OTHER PUBLICATIONS

Publications of the Department which appear at irregular intervals are grouped and numbered in well-defined series, where possible. These series, the titles of which indicate their general content, include the following: Arbitration Series, Conference Series, Executive Agreement Series, Latin American Series, Western European Series, Passport Series, Treaty Series,¹ and Papers Relating to the Foreign Relations of the United States. Recent numbers in these series include the following:

- Conference Series, No. 2.** London Naval Treaty of 1930: Text of the Treaty Signed at London, April 22, 1930, Invitation to the London Naval Conference, Reply of the United States, and Joint Statement of the President of the United States and the British Prime Minister. Publication No. 66. iii+23 pages. 10¢.
- Conference Series, No. 3.** London Naval Conference: Speeches and Press Statements by Members of the American Delegation, January 20-April 29, 1930. Publication No. 67. iv+68 pages. 15¢.
- Conference Series, No. 4.** London Naval Conference: Digest of the London Naval Treaty of 1930, with Fleet-Tonnage Tables. Publication No. 85. v+12 pages. 5¢.
- Conference Series, No. 5.** International Technical Consulting Committee on Radio Communications, First Meeting, The Hague, September 18-October 2, 1929: Report of the Delegation of the United States of America, and Appended Documents. Publication No. 105. viii+532 pages. 90¢.
- Latin American Series, No. 1.** Commission of Inquiry and Conciliation, Bolivia and Paraguay: Report of the Chairman Submitted to the Secretary of State of the United States of America September 21, 1929, for Transmission to the American Governments Not Represented on the Commission, and Appended Documents. (Spanish and English texts.) Publication No. 5. vi+63 pages. 55¢.

¹ Exclusive of postal conventions, which are published by the Post Office Department.

PUBLICATIONS OF THE DEPARTMENT OF STATE

- Latin American Series, No. 2.** Report of the President's Commission for the Study and Review of Conditions in the Republic of Haiti, March 26, 1930. Publication No. 56. vii+45 pages. 15¢.
- Latin American Series, No. 3.** Eighth Annual Report of the American High Commissioner at Port au Prince, Haiti, to the Secretary of State: 1929. Publication No. 76. vii+110 pages. 15¢.
- Passport Series, No. 1.** Passports for American Citizens in Foreign Countries. Revised to July 10, 1930. Publication No. 126. 12 pages. 5¢.
- Passport Series, No. 2.** Notice to Bearers of Passports. Revised to October 1, 1930. Publication No. 123. 39 pages. Free.

In addition to the foregoing, miscellaneous publications such as the following are issued from time to time:

- Consular Offices of the United States.** October 1, 1929. [A mailing list for business houses.] Publication No. 3. 17 pages. Free.
- The Immigration Work of the Department of State and Its Consular Officers.** Publication No. 22. iii+49 pages. 10¢.
- Unclaimed Estates in the British Isles.** Publication No. 32. 4 pages. 5¢.
- Memorandum on the Monroe Doctrine.** Prepared by J. Reuben Clark, December 17, 1928. Publication No. 37. xxv+236 pages. 40¢.
- Trail Smelter Reference: Statement on Behalf of the Government of the United States before the International Joint Commission, Based upon the Testimony, Given at the Hearing Beginning January 22, 1930, Washington, D. C., with the Applicable Law.** Publication No. 43. 65 pages. 15¢.
- The United States and the Permanent Court of International Justice: Documents Relating to the Question of American Accession to the Court.** Publication No. 44. iii+55 pages. 10¢.
- Trail Smelter Reference: Brief for the Government of the United States Submitted to the International Joint Commission.** Publication No. 71. 100 pages. 15¢.
- London Naval Treaty: Radio Address by the Honorable Henry L. Stimson, Secretary of State, June 12, 1930.** Publication No. 79. 13 pages. Free.
- The American Foreign Service: General Information for Applicants and Sample Entrance Examination Questions.** Publication No. 95. iv+76 pages. Free.
- Trail Smelter Reference: Reply Brief for the Government of the United States Submitted to the International Joint Commission.** Publication No. 114. 60 pages. 15¢.
- Report of the International Commission of Inquiry into the Existence of Slavery and Forced Labor in the Republic of Liberia, Monrovia, Liberia, September 8, 1930.** Publication No. 147. vi+227 pages. 35¢.

The slip laws, session laws, and Statutes at Large, as well as proclamations and Executive orders, are also published by the Department of State and may be purchased from the Superintendent of Documents.

Laws, Executive orders, and proclamations are issued in separate series and are numbered within each series in the order in which they are signed. Treaties are numbered in the order in which they are proclaimed. All other publications of the Department, since October 1, 1929, are numbered serially as a group, in the order in which they are sent to press, each with a publication number on the verso of its title page. This group is also subdivided into series according to general subject, as indicated above.

The Superintendent of Documents has for free distribution the following price lists which may be of interest: Foreign Relations of the United States; American History and Biography; Insular Possessions; Laws; and Publications of the Bureau of Foreign and Domestic Commerce.



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