Von einem solchen Irrtume kann jedoch im gegebenen Falle nicht die Rede sein. Die Partei hat in ihrer Berufung in keiner Weise dargetan, daß sie sich in ihrer Erklärung bei der Angabe des Wertes der Liegenschaften zum 1. Jönner 1914 geirrt habe, daß sie nämlich etwas anderes angab, als sie damals hatte angeben wollen. Der Beschwerdeführer hat einfach in seiner Berufung den strittigen Wert höher angegeben als in seiner Erklärung. Daß er sich hierbei auf einen Irrtum berief, ist belanglos, wenn er diesen Irrtum keineswegs nachgewiesen hat; es liegt somit die Annahme nahe, daß es sich nicht um einen Irrtum, sondern um eine Änderung in der Bewertung der Liegenschaft handelte. Es wurde aber oben bereits ausgeführt, daß die Behörde eine derartige Änderung nicht berücksichtigen kann. Wenn die Beschwerde weiter einwendet, daß die Behörde sicherlich den Irrtum in der Erklärung über den Wert erkannt hätte, wenn sie diesbezügliche Erhebungen gepflogen hätte, kann die Beschwerde auch in diesem Punkte nicht als begründet erkannt werden, da die Behörde zu solchen Erhebungen nicht verpflichtet ist und weil ihr die Erklärung der Partei keinen Anlaß zur Vermutung gab, daß die Angabe der Partei bezüglich des Erwerbswertes nicht ihrem tatsächlichen Willen entspreche. Mit Recht konnte daher die Behörde gemäß § 17 Abs. 2 der Abgabevorschriften die in der Abgabeerklärung enthaltenen Angaben der Partei bezüglich des Erwerbswertes der Abgabebemessung zu Grunde legen und war nicht verpflichtet, die in der Berufung vorgebrachten, abweichenden Angaben zu berücksichtigen.

Vereinigte Staaten von Amerika

Bericht

Streitigkeiten über die auswärtige Gewalt in den Vereinigten Staaten von Amerika aus Anlaß des Londoner Flottenvertrages und des Hoover-Moratoriums

A.

1. Brief des Staatssekretärs Stimson an Senator Borah vom 6. Juni 1930 [1])

THE SECRETARY OF STATE.

Washington, June 6, 1930.

DEAR SENATOR BORAH: I am in receipt of your letter of June 3, requesting on behalf of the Committee on Foreign Relations certain papers relative to the Geneva conference of 1927. I am also in receipt of your favors of June 3 and June 4, transmitting copies of letters of Senator Johnson of the same dates, respectively, in which he makes

[1]) Congressional Record vol. 73, p. 27; U. S. Daily, June 7, 1930, p. 1, 2.

certain inquiries and also asks for certain confidential telegrams of the department and also for "all letters, papers, documents, telegrams, dispatches, and communications of every sort leading up to or relating to the London conference and London treaty".

I am sending you by hand a set of all of the records of the conference for the limitation of naval armament, held at Geneva in 1927, which have been made public. I am also sending you a confidential memorandum which will answer as far as possible the questions contained in Senator Johnson's letter of June 3. Respecting the other papers called for, I am directed by the President to say that their production would not, in his opinion, be compatible with the public interest. These requests call for the production and possible publication of informal and confidential conversations, communications, and tentative suggestions of a kind which are common to almost every negotiation and without which such negotiations can not successfully be carried on. If the confidence in which they were made to the American delegation in London is broken, it would materially impair the possibility of future successful negotiations between this Government and other nations. The necessity of preserving such confidences was made clear by President Washington at the very beginning of this Government. In reply to a resolution of the House of Representatives of March 24, 1796, he said:

"The nature of foreign negotiations requires caution and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers."

Both the Secretary otf the Navy and I have been before your committee and have been examined at length. Officers of the Navy have also freely given their views to your committee. Moreover, two members of your committee were members of the American delegation at London and are familiar with every phase of the negotiations from beginning to end, and stand ready to make their knowledge available to interested members of your committee. The question whether this treaty is or is not in the interest of the United States and should or should not be ratified by the Senate must in the last event be determined from the language of the document itself and not from extraneous matter. There have been no concealed understandings in this matter, nor are there any commitments whatever except as appear in the treaty itself and the interpretive exchange of notes recently suggested by your committee, all of which are now in the hands of the Senate.

Very respectfully,

HENRY L. STIMSON.

The Hon. WILLIAM E. BORAH,

United States Senate.

2. Erklärung des Senators Johnson vom 7. Juni 1930 [2])

The power of the President to negotiate treaties is derived from the Constitution, which says:

"He shall have power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur."

In the making of treaties, therefore, the duty of the Senate is as important and solemn as that of the President. Apparently this is forgotten in the present discussion. The Secretary of State goes back to the famous Washington message of 1796 and quotes it as follows:

"The nature of foreign negotiations requires caution and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or comptemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers."

This message was to the House of Representatives, not to the Senate. The point then at issue has been misunderstood by the Secretary of State and his quotation by a singular oversight stops short of what makes plain Washington's meaning. Immediately following the quotation, Washington's message proceeds:

"The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand and to have as a matter of course all the papers respecting a negotiation with a foreign power would be to establish a dangerous precedent."

. . . . . .

"I repeat that I have no disposition to withhold any information which the duty of my station will permit or the public good shall require to be disclosed; *and in fact, all the papers affecting the negotiation with Great Britain were laid before the Senate when the treaty itself was communicated for their consideration and advice.*"

Thus, it will be observed that the denial of the papers by President Washington was to the House of Representatives, which was not a part of the treaty-making power, but that all the papers and documents were laid before the Senate, which was a part of the treaty-making power.

May I commend to the very able representatives of the State Department the study of the controversy between the House of Representatives and the President, which arose in relation to the Jay treaty, and which has been a source of debate among statesmen and comment among historians and writers from the time of Washington to the present. The question there was not at all like that here involved.

2) Congressional Record vol. 73 p. 27—28; U. S. Saily, June 9, 1930, p. 3.

I might add the Foreign Relations Committee has ever in the past jealously guarded such confidential information as has been transmitted to it, and to-day, as in days gone by, if it be compatible with the public interest to maintain as confidential some state documents upon which the treaty was founded, the Foreign Relations Committee and the Senate itself will, of course, maintain that confidence inviolate.

In the case of the London treaty a very different proposition is presented that either lawyer or layman can readily understand. In the hearings before the Foreign Relations Committee the signers of the treaty themselves introduced into the public record a document wherein the Premier of Great Britain is quoted most intimately concerning the negotiations, and the contents of various dispatches between the British Government and our own are discussed and referred to. When the signers of the treaty saw fit thus not only to introduce in evidence but to make public a part of the telegrams and communications passing between the British Government and our own, the Foreign Relations Committee at once were entitled to all of the details and everything relating to the subject matter. It is silly and worse for any individual to contend that he can put into the public record and publish broadcast in the press of the country a part of the correspondence bearing upon the treaty and then holding up his hands in holy horror at a request for all of the correspondence, pretend that while a part of the record upon which he relies may be by him given to the public, the giving of all of it to his partner in treaty making would be incompatible with the public interest.

This is the question that is at issue in the demand that I have made for the papers relating to the London treaty, and it can not be avoided by a half quotation from Washington, which is utterly set at naught by the full context nor by any pretense of safeguarding delicate international secrets.

3. Resolution des Senatsausschusses für Auswärtige Beziehungen vom 12. Juni 1930 [3])

Whereas this committee has requested the Secretary of State to send to it the letters, minutes, memoranda, instructions, and dispatches which were made use of in the negotiations prior to and during the sessions of the recent conference of London; and

Whereas the committee has received only a part of such documents; and

Whereas the Secretary of State, by direction of the President, has denied a second request from this committee for all of the papers above described; and in his letter to the chairman of this committee has apparently attempted to establish the doctrine that the treaty of London must be considered by the Senate "from the language of the document itself and not from extraneous matter": Therefore be it

Resolved, That this committee dissents from such doctrine and

3) Congressional Record vol. 73 p. 28; U. S. Daily, June 13, 1930, p. 2.

regards all facts which enter into the antecedent or attendant negotiations of any treaty as relevant and pertinent when the Senate is considering a treaty for the purpose of ratification, and that this committee hereby asserts its right, as the designated agent of the Senate, to have free and full access to all records, files, and other information touching the negotiation of any treaty, this right being based upon the constitutional prerogative of the Senate in the treaty-making process; and be it further

Resolved, That the chairman of this committee transmit a copy of these resolutions to the President and to the Secretary of State.

4. Brief des Staatssekretärs Stimson an Senator Borah vom 12. Juni 1930 [4])

Dear Senator Borah: I have received your favor of today transmitting a copy of a resolution of the Committee on Foreign Relations in respect to letters and documents in the recent negotiation of the naval treaty.

I did not, in my letter to you of June 6, attempt to define the duties of the Senate or the scope of its powers in passing upon treaties. My statement in that letter that 'the question whether this treaty is or is not in the interests of the United States and should or should not be ratified by the Senate must in the last event be determined from the language of the document itself and not from extraneous matter' was intended to call attention to the fact that the obligations and rights arising from the treaty, as in the case of any other contract, must be measured by the language of the document itself.

5. Erklärung des Senators Johnson vom 13. Juni 1930 [5])

Obviously, the learned Secretary of State was unfortunate in his expressions. In his prior communication, he said the question whether the treaty is or is not in the interests of the United States and should or should not be ratified by the Senate must in the last event be determined from the language of the document itself and not from extraneous matter.

By every rule of construction, this language would seem to imply that in the matter of the ratification of a treaty by the Senate, the Senate in the last event is limited to the document itself and no extraneous matter could be considered. Now the distinguished Secretary of State says he was merely calling attention to the fact that obligations and rights arising from the treaty must be measured by the language itself.

While the explanation may not be as clear and as bright as the noonday sun, I'm delighted that the declaration of policy enunciated by the Foreign Relations Committee is neither controverted nor denied. We may accept as settled, now, the rights of the Senate in the consideration of treaties as defined in the resolution of the Committee on Foreign Relations.

4) Congressional Record vol. 73, p. 70; U. S. Daily, June 14, 1930, p. 3.
5) U. S. Daily, June 14, 1930, p. 3.

6. Minderheitsbericht des Senators Shipstead vom Senatsausschuß für Auswärtige Beziehungen, vom 23. Juni 1930 [6])

I cannot vote to ratify a proposed contract, the material facts of which are not before the Senate — under the Constitution a contracting party, . . .

. . . . .

Accordingly, as a member of the Foreign Relations Committee, and in connection with the Committee action in reporting the treaty of London, I beg to call attention to certain clauses and implications in the letters of the Secretary of State declining to grant the request of the Committee on Foreign Relations for subject matter embraced in papers prior to and during negotiation of the proposed treaty of London, including 'letters, minutes, memoranda, instructions and despatches' relevant and pertinent to the Senate's consideration of the proposed treaty for the purposes of ratification.

The Secretary of State takes the position that the needs of the Senate are satisfied by perusal of the language of the document itself; and he reaches the gratuitous conclusion that pertinent and relevant subject matter entering into or leading up to the negotiation is 'extraneous matter' not necessary to the Senate's consideration.

The Secretary further implies, in his words, 'scope of its powers in passing upon treaties' that the Senate is not a component part of the coordinate treaty- making power, but is limited to 'passing upon treaties'.

His position, therefore, would seem to be that a proposed treaty, or treaty form, is per se a treaty, before the Senate, as coordinate and coequal treaty maker in conjunction with the Executive, and that the Senate has considered the document and given its 'advice and consent' by two-thirds vote, as provided in the Constitution.

The Secretary of State rightly speaks of a treaty as a 'contract' but in his well recognized position as an attorney at law, has he forgotten that well known rule of law, that 'suppressio veri', or concealment of material facts from the knowledge of one of the contracting parties, vitiates a contract?

The Supreme Court of the United States classifies a treaty as part of 'the law of the land'. Under the Constitution no 'law of the land' is enacted solely by Executive action. 'Advice and consent' of two-thirds of the Senate is required to make a treaty the 'law of the land', whereas only a bare majority of the Senate suffices for the passage of an ordinary statute.

Treaty making is a sovereign power. It is one of the highest sovereign powers which a country can possess. No people having serious regard for the public safety, for national perpetuity, for the protection of their boundaries, or for the lives of their sons, can afford to misunderstand, forget, or regard lightly their treaty making powers.

Before entering into a discussion of constitutional provisions and

[6]) U. S. Daily, June 24, 1930, p. 2.

an historical outline of the practice of our Presidents and Senators, I wish, first of all, to call attention to the vital import of note exchanges and related collateral evidence regarding the meaning and purpose of a treaty.

The necessity of the Senate to have before it, in performance of its constitutional function as coordinate treaty maker, the exchanges of notes leading up to and entering into the negotiations, as well as to have full and free access to all relevant subject matter, is plain when we take into consideration:

1. That international agreements may be negotiated without any treaty, simply by exchange of notes — a fact demonstrated by scores of instances, both in our history and in that of every nation.

2. The first naval armament negotiation of the United States, that between this country and Great Britain in 1818, regarding the Navy on the Great Lakes, during the Monroe Administration, was by exchange of notes, without treaty, and President Monroe set up the first American precedent of negotiation on naval armament when he transmitted all exchanges of notes and all other papers relevant to the case with his message to the Senate. And President Monroe's ultimate proclamation of the treaty was based on the Senate's 'advice and consent' after study of the papers.

3. A treaty may be general in form, the concrete application being defined in notes in which particular exceptions are specified.

4. The controlling purpose of a treaty may not be clear, unless it is read in the light of the antecedent and attendant notes and diplomatic understandings.

5. Exchanges of notes, 'confidential' and 'secret' understandings, are among the most fruitful causes of war — as was the case in the recent World War. Also, they are fruitful causes of boundary disputes, misunderstandings over shipping and fishery rights — and are the productive cause of what is known as 'paper treaties'.

6. In short, it is American law and international law that the contracting treaty parties — of which under the Constitution the Senate by its required two-thirds vote is a co-equal in making all American treaties — shall have complete power over the subject matter. We shall find that to be the holding of our leading American authorities, when we come to consult, and I do later quote such authorities as 'Moore's Digest of International Law', by the international jurist, John Bassett Moore; 'Treaties, Their Making and Enforcement', a textbook by Judge Crandall; 'The Treaty-making Powers of the Senate', by Henry Cabot Lodge, for many years a member of the Senate Foreign Relations Committee.

7. Withholding of material subject matter, such as exchange of notes, instructions and dispatches, protocols of the proceedings of the negotiators, indeed, the existence in itself of 'confidential' and 'secret' documents not communicated to a contracting party, such as the Constitution has made the Senate, constitutes what in contract

making is termed 'suppressio veri', which legally vitiates a contract and morally invalidates a treaty.

We shall see, as we go over the history of American treaty cases, the precedents set by the early Presidents, Washington, Adams, Jefferson, Madison, and Monroe — and followed by Jackson, Polk, Lincoln, Grant, Cleveland and other successors, that it is a well established American custom, dating from the time of the framers of the Constitution, for the Executive who shares the coordinate treaty-making power with the Senate to acquaint the Senate with the complete diplomatic record.

Indeed, it was the uniform practice of the early Presidents to lay all available subject matter before the Senate prior to negotiation, in order to secure the Senate's 'advice' in advance.

Later practice was to transmit the papers with the treaty message, or sometimes in advance of the message. But there appears to be no American precedent of a refusal on the part of the Executive to transmit to the Senate, his partner and coequal in treaty making, any subject matter deemed by the Senate essential to consideration in rendering its required 'advice and consent'.

. . . . .

I. Both in its origin and in American treaty making practice for over 100 years, the Senate under the Constitution is a component part of the treaty-making power, and as such has complete power over the subject matter of negotiation both antecedent thereto and attendant thereupon.

II. The so-called treaty drafted by negotiators is, in fact, as well stated by Senator Lodge, 'inchoate, a mere treaty form', unless it becomes a treaty by advice and consent of two-thirds of the Senate.

III. The treaty power residing in the people is conferred for treaty making purposes by the Constitution upon the Executive and the Senate, who are coequals working by coordination — and both the Executive and the Senate are sworn to maintain and uphold the Constitution.

IV. The treaty-making powers of the Senate, as of the Executive, extend to every stage of the negotiation — prior thereto and during negotiation, and culminate in advice and consent for purposes of ratification.

V. Power over the subject matter includes full and free access to all pertinent and relevant papers — note exchanges, diplomatic understandings, letters, telegrams, memoranda, all collateral evidence defining the meaning, the concrete application, and ultimate purpose of the negotiation.

VI. These principles have been crystallized in the practice of the Executive and Senate from the day of Washington and Monroe down to the present time. No precedent can be cited wherein the Executive hitherto, as a member of the coordinate treaty making power, has refused his coequal in treaty making, the Senate of the United States, a request for papers pertinent to the consideration of a proposed treaty.

VII. The Supreme Court, in the language of Justice Brewer, finds there is 'something which shocks the conscience' in withholding a proviso from 'one of the contracting parties', even though an Indian. The evidence that no such material proviso is concealed from the Senate, a contracting party, is readily available by submitting all subject-matter pursuant to the Constitution.

My Committee vote of 'nay' on the proposed treaty of naval armament limitation is based on grounds outlined in this report.

The material facts pertinent and relevant to the case, such as exchange of notes leading up to negotiation, letters, telegrams, diplomatic proceedings and understandings touching the purpose and concrete commitments of the proposed treaty are not laid before the Senate, and a request therefor has been refused.

This admitted 'suppressio veri', or concealment of material facts from a contracting party, to wit, the Senate of the United States, appears in law and morals to vitiate the proposed contract. It reduces the document to a gesture on paper — a paper negotiated by advice and consent abroad, in lieu of advice and consent of the Senate. Such a paper I am unable to sign on the dotted line.

I do not attempt to define the scope of the Secretary of State in having 'confidences abroad'. I respect the chivalry which can not 'in honor' divulge the secrets of his relations with the 'mistress of the sea'.

Once freed from the primitive formalism which views the document as a self-contained and self-operative formula, we can fully appreciate the modern principle that the words of a document are never anything but indices to extrinsic things, and that therefore all the circumstances must be considered which go to make clear the sense of the words, that is, their associations with things. (Wigmore on Evidence, IV p. 2470.)

I cannot determine the importance of the documents requested by the Committee because I do not know what they are. I assume the Committee and the Senate will share this predicament with me. These documents may become of great importance in the future; and with that possibility in view it must be evident that they are important now. Therefore, I am of the opinion that the Senate is not in a position to consent to the treaty without having the subject matter before it for examination before it decides to grant its consent.

The Senate and the Executive being coordinate in treaty-making power, it necessarily follows that with its joint responsibility goes a joint ownership and custody of the documents involved.

On the question of making the documents public, it is my opinion, that this may also involve a joint responsibility, which I do not think is necessary to discuss here.

On the other hand, I cannot in honor betray the confidence of my people, country and its Constitution. I cannot vote to ratify a proposed contract, the material facts of which are not before the Senate — under the Constitution, a contracting party.

In my judgment, the great issue before us is not whether we shall

be limited to build 8-inch cruisers or 6-inch cruisers, but whether or not the Constitution as understood by those who framed it shall be maintained as a living force, and shall exist in works as in words — whether or not the Americanism of Washington and Monroe, of Jackson and Cleveland, of Lincoln and Grant, shall abide from this day on, as it has for nearly five generations of the Republic.

7. Senate Resolution Nr. 320, vom 10. Juli 1930 [7])

Whereas on June 12, 1930, the Senate Committee on Foreign Relations by resolution requested the Secretary of State to send to it the letters, minutes, memoranda, instructions, and dispatches which were made use of in negotiations prior to and during the sessions of the recent conference at London; and

Whereas that committee received only a part of such documents; and

Whereas the Secretary of State, by direction of the President, denied a second request from the Foreign Relations Committee for the papers above described, and in his letter to the chairman of that committee the Secretary of State has apparently attempted to establish the doctrine that the treaty of London must be considered by the Senate "from the language of the document itself and not from extraneous matter"; and

Whereas the committee dissented from such doctrine and regarded all facts which enter into the antecedent or attempted negotiation of any treaty as relevant and pertinent when the Senate is considering a treaty for the purpose of ratification; and

Whereas that committee continued to assert its rights as the designated agent of the Senate to have full and free access to all records, files, and other information touching the negotiation of the treaty, such right being based on the constitutional prerogative of the Senate in the treaty-making process; and

Whereas the chairman of that committee transmitted a copy of those resolutions to the President and Secretary of State; and

Whereas the President and Secretary of State refused to submit the papers and documents requested by the Foreign Relations Committee: Now, therefore, be it

Resolved, That the President be, and he is hereby, requested, if not incompatible with the public interest, to submit to the Senate, with such recommendation as he may make respecting their use, all letters, cablegrams, minutes, memoranda, instructions, and dispatches and all records, files, and other information touching the negotiations of said London naval treaty, to the end that the Senate may be able to do and perform its constitutional obligations with respect to advising and consenting to and ratifying such treaty or rejecting same.

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7) Congressional Record vol. 73 p. 88—89; U. S. Daily, July 11, 1930, p. 1, 3.

8. Botschaft des Präsidenten Hoover an den Senat vom 11. Juli 1930 [3])

To the Senate:

I have received Senate Resolution No. 320, asking me, if not incompatible with the public interest, to submit to the Senate all letters, cablegrams, minutes, memoranda, instructions, and dispatches, and all records, files, and other information touching the negotiations of the London naval treaty.

This treaty, like all other international negotiations, has involved statements, reports, tentative and informal proposals as to subjects, persons, and governments given to me in confidence. The Executive, under the duty of guarding the interests of the United States, in the protection of future negotiations, and in maintaining relations of amity with other nations, must not allow himself to become guilty of a breach of trust by betrayal of these confidences. He must not affront representatives of other nations, and thus make future dealings with those nations more difficult and less frank. To make public in debate or in the press such confidences would violate the invariable practice of nations. It would close to the United States those avenues of information which are essential for future negotiations and amicable intercourse with the nations of the world. I am sure the Senate does not wish me to commit such a breach of trust.

I have no desire to withhold from the Senate any information having even the remotest bearing upon the negotiation of the treaty. No Senator has been refused an opportunity to see the confidential material referred to, provided only he will agree to receive and hold the same in the confidence in which it has been received and held by the Executive. A number of Senators have availed themselves of this opportunity. I believe that no Senator can read these documents without agreeing with me that no other course than to insist upon the maintenance of such confidence is possible. And I take this opportunity to repeat with the utmost emphasis that in these negotiations there were no secret or concealed understandings, promises, or interpretations, nor any commitments whatever except as appear in the treaty itself and in the interpretive exchange of notes recently suggested by your Committee on Foreign Affairs, all of which are now in the hands of the Senate.

In view of this, I believe that to further comply with the above resolution would be incompatible with the public interest.

HERBERT HOOVER.

THE WHITE HOUSE, *Juli 11, 1930.*

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[3]) Congressional Record vol. 73 p. 108—109; U. S. Daily, July 12, 1930, p. 1.

9. Reservation proposed by Mr. Norris to the treaty for the limitation and reduction of naval armament signed at London on April 22, 1930 [9])

Whereas in the consideration of said treaty the Senate on the 10th day of July, 1930, requested the President of the United States to submit to the Senate all letters, cablegrams, minutes, memoranda, instructions, and dispatches and all record files and other information touching the negotiations of said treaty; and

Whereas the President of the United States has declined to comply with said request, and the Senate therefore, in acting upon said treaty, has been compelled to do so without any opportunity to give consideration to the letters, memoranda, and other documents and communications leading up to the drafting of said treaty or in negotiating the same: Therefore be it

Resolved by the Senate, That in ratifying said treaty the Senate does so with the distinct and explicit understanding that there are no secret files, documents, letters, understandings, or agreements which in any way, directly or indirectly, modify, change, add to, or take away from any of the stipulations, agreements, or statements in said treaty; and that the Senate ratifies said treaty with the distinct and explicit understanding that there is no agreement, secret or otherwise, expressed or implied, between any of the parties to said treaty as to any construction that shall hereafter be given to any statement or provision contained therein.

B.

1. Brief des Representative McFadden an Mr. Ogden L. Mills, Undersecretary of the Treasury, vom 12. Dezember 1931 [1])

My dear Mr. Mills:

The Washington Post this morning carries the following:

Ogden L. Mills, Undersecretary of the Treasury, will go to the Capitol this morning to discuss the Hoover one-year moratorium on war debts with five influential Senators.

"I am going to talk about the Dec. 15 payments and nothing else", Mr. Mills said last night.

He was referring to the payments which certain European countries were scheduled to make to this country next Tuesday, but which, under the Hoover moratorium, would be postponed and paid later over a 10-year period.

It is now evident that Congress cannot adopt the moratorium resolution until after Tuesday. Thus it becomes necessary for Henry L. Stimson, Secretary of State, to issue a statement explaining to the debtor nations that they are not expected to make the Dec. 15 payments.

Mr. Mills wants to consult the Senators about the form this statement should take.

9) Congressional Record vol. 73 p. 109; U. S. Daily, July 12, 1930, p. 3.

1) U. S. Daily, Dec. 14, 1931, p. 3.

Mr. Mills, who is regarded as the President's principal adviser with respect to the international economic situation, will meet with the group of Senators this morning in the office of Majority Leader Watson.

I desire to call your attention to the fact that the Secretary of State has no authority whatsoever to issue a statement to any debtors to the United States affected by the Hoover moratorium that they need not ask payment of debts due the United States on Dec. 15, 1931, pending action on the moratorium which is now before the Congress.

The Hoover moratorium was negotiated by the President of the United States without the authority of Congress, and now certainly the Secretary of State has no authority, and if he takes such action as indicated by you it will be a reversal of his position taken in July, 1929, when the Government of France asked for a short delay before executing the Mellon-Berenger agreement, wherein his position then was stated to France to be that the disposition established by the Mellon-Berenger accord could not be modified save by a law enacted by Congress and he further stated that Congress was not in session and that the United States held the French documents of indebtedness and would proceed to an execution upon France if the Mellon-Berenger accord were not modified immediately.

Under my responsibility as a Member of Congress, I challenge the right of the Secretary of State to issue such a communication.

2. Erklärung des Undersecretary of the Treasury Ogden L. Mills vom 14. Dezember 1931 [2])

There seems to be some confusion as to the discussion of yesterday between several Senators and myself, accompanied by Mr. Feis of the State Department, in respect of the postponement of payments on foreign debts during this fiscal year.

Installments are due on Dec. 15 from a number of debtor nations. Since the appropriate committees of the Congress cannot hold hearings on the proposed legislation until next week, it is obvious that the Congress cannot act by the 15th.

However, inasmuch as 68 Senators and 276 Members of the House have already pledged themselves to support the legislation, it is equally obvious that when circumstances permit the action of Congress will be favorable.

In the meantime, some answer has to be given to representatives of foreign debtor governments in response to their inquiries as to the existing situation.

Should such inquiries be made, the Secretary of State proposed to say verbally something along the following lines:

"The President's proposal for a debt suspension of one year has been submitted to the Congress. Owing to the fact that the Congress only met last Monday and that the appropriate committees of the Senate

[2]) U. S. Daily, Dec. 15, 1931, p. 4.

and of the House of Representatives are not in a position to consider the proposed legislation prior to Dec. 15, it will be impossible for the debt suspension legislation to be enacted by that date. While recognizing that neither the President of the United States nor any of the executive departments of the Government has power to alter the terms of the debt agreements now in force, I desire to advise you that under the special circumstances in which the proposal was made and accepted and without intending in any way to vary the legal rights of this country, it appears to this Government that a postponement on the part of your government of Dec. 15 payments pending action by the Congress would not be subject to any just criticism."

As a matter of courtesy, and in order to keep Members of Congress fully informed, this proposed answer was shown by me to the Senators attending the meeting yesterday, as it had previously been shown to some Members of the House.

No Senator or Representative was asked to sign or approve such statement yesterday or at any time. No Senator was asked to commit himself, and this seemed to be fully understood. I simply told them that I was there to keep them informed and to ascertain whether anyone saw any objection to a statement made verbally in that form. No objection was voiced by anyone present.

Subsequent to the meeting this was fully explained to the representatives of the press in the presence of Senator Watson and Senator Smoot.

. . . . .

3. Erklärung des Staatssekretärs Stimson vom 23. Dezember 1931 [3])

I have been surprised that the President's power to suggest and negotiate a suspension of intergovernmental debts should have been questioned.

Under our system of government, the President is vested with the duty of initiating all international treaties, understandings, or agreements. He holds in his hands the conduct of our relations with other countries. Such contracts as he negotiates are subject to confirmation by other branches of the Government; in the case of treaties, to the consent and approval of the Senate; in the case of contracts affecting the National Treasury or property, to the approval of Congress.

From the very beginning last June of President Hoover's suggestion of an intergovernmental suspension of debts, he notified the world that it must be subject to approval by the Congress of the United States, and this restriction and reservation has been reiterated throughout the negotiations. His authority to do what he has done in regard to the year of debt postponement is no less or different than his authority exercised every day in the negotiation of treaties and international conventions.

3) Department of State Press Releases, Dec. 26, 1931, p. 621; U. S. Daily, Dec. 24, 1931, p. 1, 9.

The only difference of method used by President Hoover in this case from that which the President of the United States normally follows was that in this case, before even initiating the negotiation, he consulted with the leaders of Congress and obtained their approval to what he was doing. This approval has now been formally and abundantly given by the vote last evening.

Anmerkung.

Zu A.

Der Streit, der sich zwischen dem Präsidenten und dem Senat aus Anlaß des Londoner Flottenvertrages erhoben hat, hat mit einer Niederlage des Senats geendet. Der Senat hat weder die verlangten Dokumente erhalten noch seinen Rechtsstandpunkt voll und wirksam gewahrt.

Daß der Senat faktisch unterlegen ist, ist minder bedeutsam. Nicht nur in der Literatur [1]), sondern auch in der Senatsdebatte [2]) ist von allen Seiten festgestellt worden, daß der Präsident zur Herausgabe der umstrittenen Dokumente nicht gezwungen werden kann, es sei denn, daß zu dem äußersten Mittel einer Staatsanklage (Impeachment) gegriffen würde. Die offene Frage [3]), ob und wodurch der Staatssekretär zur Herausgabe der Dokumente gezwungen werden kann, soweit sie sich in seinem Gewahrsam befinden, ist im vorliegenden Falle zwar berührt [4]), aber nicht weiter verfolgt worden.

Seine Bedeutung als Präzedenzfall gewinnt der Streit vielmehr dadurch, daß der Senat seinen Rechtsstandpunkt nicht voll und wirksam gewahrt hat.

Eine Abschwächung des Rechtsstandpunkts des Senats ist darin zu erblicken, daß in der Resolution vom 10. Juli 1930 [5]) die Forderung auf Vorlage der Dokumente mit dem Zusatz "if not incompatible with the public interest" gestellt wird. Die Resolution des Senatsausschusses vom 12. Juni 1930 [6]) trägt diesen Zusatz nicht; er war im Ausschuß ausdrücklich abgelehnt worden [7]). Man hat während der Senatsdebatte die Einfügung des Zusatzes damit begründet, daß das Ersuchen um Information dem Präsidenten gegenüber stets in diese höfliche Form gekleidet werde [8]). Dieser Begründung ist entgegenzuhalten, daß es sich bei dem genannten Zusatz um mehr als eine Höflichkeitsformel handelt. Er ist Maßstab für ein Ermessen, das dem Präsidenten bei der Erfüllung seiner Informationspflicht eingeräumt wird. Ein solches Ermessen des Präsidenten nimmt die Verfassungspraxis bei der Aus-

[1]) Vgl. z. B. Mathews, The Conduct of American Foreign Relations, New York 1922, p. 19, 153.

[2]) Congressional Record vol. 73, p. 33 (McKellar), p. 45 f. (Robinson, Black).

[3]) Beard, American Government and Politics, 6th ed., New York 1931, 144.

[4]) Congressional Record vol. 73, p. 38 ff. (Black), p. 45 (Robinson).

[5]) S. oben S. 438.

[6]) S. oben S. 432 f.

[7]) Congressional Record vol. 73, p. 33 (Black), p. 53 f. (McKellar).

[8]) ibid., p. 24 f. (Robinson, Borah), p. 46 f. (Robinson).

legung des Art. II Sec. 3 der Verfassung im allgemeinen an [9]). Nichts hindert den Senat, auch im Sonderfalle der Information über Vertragsverhandlungen ein solches Ermessen zuzugestehen. Beansprucht aber der Senat in diesem Sonderfall kraft seiner Stellung als gleichberechtigter Faktor der vertragschließenden Gewalt ein unbedingtes Recht auf Information, so darf er seinem Ersuchen den sonst üblichen Zusatz nicht geben. Der von einem der Beteiligten [10]) geäußerten Ansicht, die Einfügung des Zusatzes sei rechtlich bedeutungslos, kann also nicht beigepflichtet werden.

Zum Schlusse hat der Senat seinen Standpunkt in der staatsrechtlichen Streitfrage überhaupt nicht mehr wirksam zur Geltung gebracht. Von der Reservation Norris [11]) ist nur der Hauptteil — unter Hinzufügung einer hier nicht interessierenden Ausnahmebestimmung betreffend Art. XIX des Vertrages —, nicht aber die Präambel zum Beschluß erhoben worden [12]). Nun ist zwar mit Recht nur der Hauptteil, der einen Vorbehalt hinsichtlich etwaiger Geheimabmachungen macht, als Schlußabsatz in die endgültige Resolution [13]), mit welcher der Senat seine Zustimmung zum Vertrage gibt, aufgenommen worden, denn nur er kann bei der Ratifikation des Vertrages völkerrechtlich relevant sein [14]). Staatsrechtlich gesehen liegt aber das Entscheidende in der Präambel, die eine Rechtsverwahrung des Senats wegen Nichtvorlage der angeforderten Dokumente enthält, während der Hauptteil für den Zustimmungsakt eine Konsequenz daraus zieht. Das übersieht der Antragsteller selbst, wenn er, auf das Fehlen der Präambel aufmerksam gemacht, erklärt [15]): "I did not offer the preamble because as a legal proposition the preamble is no part of the reservation itself. The preamble only states . . . the facts on which the resolution is based". Der Präsident und die auf seiner Seite stehenden Senatoren, die den Verzicht auf die Präambel veranlassen [16]), erkennen dagegen richtig, daß die Reservation ohne die Präambel staatsrechtlich bedeutungslos ist [17]), mithin vom Präsidenten ohne die geringste Preisgabe seines eigenen staatsrechtlichen Standpunktes angenommen werden kann.

Im Ergebnis liegt ein Präzedenzfall für eine Machtverschiebung innerhalb der auswärtigen Gewalt — genauer: der vertragschließenden Gewalt — zugunsten des Präsidenten vor, insofern der Präsident durch-

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9) Willoughby, The Constitutional Law of the United States. 2nd Ed. New York 1929, p. 1488.

10) Congressional Record vol. 73, p. 52 (Norris).

11) S. oben S. 440.

12) Congressional Record, vol. 73, p. 368.

13) ibid. p. 378.

14) Wenn wirklich keine Geheimabmachungen vorliegen, ist der Vorbehalt gegenstandslos und überflüssig. Congressional Record vol. 73, p. 362 (Reed).

15) ibid. p. 362.

16) ibid. p. 198 (Mitteilung von Copeland).

17) Dem Umstand — auf den der Antragsteller verweist (ibid. p. 362) —, daß die der Reservation zugrundeliegenden Tatsachen im Verhandlungsbericht verzeichnet sind, kommt keine rechtliche Bedeutung zu.

gesetzt hat, daß er die Vorlage von Dokumenten, die sich auf einen vom Senat zu verabschiedenden Vertragsentwurf beziehen, an die Bedingung der Geheimhaltung knüpfen darf.

Diese Machtverschiebung beruht auf zwingenden sachlichen Gründen. Es ist zwar richtig, daß der Senat ein Recht auf Mitteilung aller für die Beurteilung des Vertrages wesentlichen Dokumente hat, da er nach dem Willen der Verfassung ein dem Präsidenten koordinierter Faktor der vertragschließenden Gewalt ist, der, um seine Funktion der Beratung und Zustimmung voll erfüllen zu können, der Kenntnis des gesamten in Betracht kommenden Materials bedarf [18]), und es ist richtig, daß der Präsident, wenn sich der Senat auf dieses von der Verfassung notwendigerweise mitverliehene Recht beruft [19]), die verlangte Information nicht, wie sonst, nach seinem Ermessen geben oder versagen darf. Aber die Verfassung erkennt dem Senat dieses Sonderrecht offensichtlich nur unter der Voraussetzung zu, daß er die für die Führung der auswärtigen Politik sachlich unentbehrliche Geheimhaltung gewisser Vorgänge oder Dokumente gewährleistet [20]). Diese ursprünglich gegebene Voraussetzung ist, wie die Erfahrung lehrt, nicht mehr generell erfüllt [21]), eine Erfahrungstatsache, die den Hinweis auf das Verantwortungsbewußtsein des Senats und der einzelnen Senatoren [22]) entkräftet. Der Präsident als der andere Faktor der vertragschließenden Gewalt ist daher gezwungen, die Voraussetzung für das Sonderinformationsrecht des Senats im Einzelfall erst zu schaffen, indem er sicherstellt, daß im Senat das Geheimnis gewahrt bleibt. Diese Sicherung kann der Präsident von sich aus aber nur in der Weise herbeiführen, daß er dem Senat als Körperschaft die Vorlage der Geheimdokumente überhaupt verweigert und die Einsichtnahme nur den einzelnen Senatoren gestattet, die sich ihm gegenüber zur Geheimhaltung verpflichten. Die Sicherung der Geheimhaltung bei einer Vorlage an den Senat als Körperschaft ist nur dann möglich, wenn sich der Senat dem Präsidenten gegenüber ausdrücklich im voraus zur Geheimhaltung verpflichtet — verpflichtet und nicht bloß in Aussicht stellt, Empfehlungen des Präsidenten über die Behandlung der Dokumente [23]) nach Möglichkeit respektieren zu wollen. Eine solche Verpflichtung stellt freilich eine nicht unbedenkliche Beschränkung der parlamentarischen Autonomie dar. Der Senat hat sich daher im vorliegenden Falle nicht dazu entschließen können, eine solche Verpflichtung einzugehen [24]).

[18]) S. oben S. 435 ff. und Congressional Record vol. 73 p. 33 (McKellar), 40 (Black), 44 f. (Norris), 48 f. (Robinson), 55 f., 69 (Shipstead), 196 f. (Pittman), 200 (Copeland).

[19]) Daß es sich hier um ein verfassungsrechtliches Sonderrecht handelt, betont insbesondere McKellar (ibid. p. 33).

[20]) Das geht u. a. aus der oben S. 431 zitierten Botschaft Washingtons hervor.

[21]) Vgl. Mathews, l. c. p. 145; Congressional Record vol. 73, p. 29 (Glenn), p. 128 (Fess).

[22]) Congressional Record vol. 73, p. 27, 29 (Johnson), p. 129 (McKellar).

[23]) Vgl. den Zusatz »with such recommendation as he may make respecting their use« in Senate Resolution Nr. 320 (oben S. 438), der auf einen Antrag George zurückgeht. Vgl. dazu Congressional Record vol. 73, p. 54 f., 85 ff.

[24]) Gegner ist namentlich Senator Borah gewesen: »I do not like to see the precedent established of the Senate saying in advance, before it receives the papers, that it

Zu B.

Die Staatsrechtspraxis der Vereinigten Staaten kennt neben den von der vertragschließenden Gewalt abzuschließenden Verträgen sog. Executive Agreements, die entweder vom Präsidenten kraft eigenen Rechts oder vom Präsidenten oder seinen Vertretern auf Grund einer Ermächtigung der gesetzgebenden oder der vertragschließenden Gewalt abgeschlossen werden [1]).

Zu den auf Grund gesetzlicher Ermächtigung abgeschlossenen Agreements gehören die mit den europäischen Mächten vereinbarten Schuldenregelungsabkommen [2]). Das Hoover-Moratorium stellt eine Abänderung dieser Abkommen dar. Die Rechte des Präsidenten und des Kongresses bei dieser Abänderung sind der Gegenstand der Kontroverse.

Es ist zunächst bestritten worden, daß der Präsident das Recht gehabt habe, ohne Ermächtigung des Kongresses die Verhandlungen über das Moratorium überhaupt einzuleiten [3]). Zu Unrecht. Mag man die Stellung des Präsidenten beim Abschluß eines Agreements auf Grund einer gesetzlichen Ermächtigung formal als »Sorge für die treue Ausführung der Gesetze« (Art. 2 Sec. 3 der Verfassung) auffassen [4]), so darf daraus nicht gefolgert werden, daß der Präsident auf dem durch ein solches Agreement geregelten Gebiet nicht das Initiativrecht besitze, das ihm als Träger auswärtiger Gewalt von der Verfassung zwar nicht ausdrücklich zuerkannt, aber notwendigerweise mit andern ausdrücklich gewährten Rechten mitverliehen ist [5]).

Es ist sodann bestritten worden [6]), daß der Präsident angesichts der Tatsache, daß ihn der Kongreß zum Abschluß eines die Schuldenregelungsabkommen im Sinne seines Moratoriums-Vorschlages abändernden Agreements nicht mehr rechtzeitig ermächtigt hatte, den Mächten durch seinen Staatssekretär einen vorläufigen Zahlungsaufschub hatte bewilligen dürfen. Auch diese Kritik ist unberechtigt. Es

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would treat them in confidence. The Senate might well determine, after it had received the papers, that it ought not to make them public; but to make that as a pledge, as it were, previous to receiving the papers is a practice which I think the Senate ought not to begin ... The rights and duties and powers of the President and of the Senate are defined by the Constitution and are not to be defined by contracts or pledges and understandings« (ibid. p. 44).

[1]) Vgl. z. B. Mathews a. a. O. S. 168 ff.; J. B. Moore, Political Science Quarterly. 20 (1905) 385 ff.

[2]) Vgl. Moulton-Pasvolsky, World War Debt Settlements, New York 1926, Appendix B, sowie 45 Stat. 1176, 46 Stat. 48, 500.

[3]) McFadden (s. oben S. 441); Sumners in den Verhandlungen des Repräsentantenhauses vom 11. und 14. Dezember 1931 (U. S. Daily, Dec. 12, 1931, p. 3; Dec. 15, 1931, p. 3—4); Minderheitsbericht des Committee on Ways and Means des Repräsentantenhauses vom 18. Dezember 1931 (U. S. Daily, Dec. 19, 1931, p. 3); Johnson in den Verhandlungen des Senats vom 21. Dezember 1931 (U. S. Daily, Dec. 22, 1931, p. 3).

[4]) Mathews, l. c. p. 172.

[5]) Über das Initiativrecht des Präsidenten in auswärtigen Angelegenheiten im allgemeinen vgl. Mathews, a. a. O. S. 4 ff.

[6]) McFadden (s. oben S. 441).

ist von der Praxis anerkannt, daß der Präsident kraft eigenen Rechts mit auswärtigen Mächten einen modus vivendi abschließen darf 7). Ein unzulässiger Eingriff in die Finanzgewalt des Kongresses aber ist im vorliegenden Falle nicht gegeben, da sich der Präsident zuvor vergewissert hatte, daß im Kongreß eine sichere Mehrheit für das Ermächtigungsgesetz 8) vorhanden war. Friede.

Gesetzgebung

Bundes-Gesetz betreffend die Naturalisation und Staatsangehörigkeit der Ehefrauen. 22. September 1922/3. Juli 1930/3. März 1931

An Act Relative to the naturalization and citizenship of married women. Sept. 22, 1922 (c. 411, 42 Stat. 1022), as amended July 3, 1930 (c. 826, 46 Stat. 849; c. 835, 46 Stat. 854) and Mar. 3, 1931 (c. 442, 46 Stat. 1511).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.

Sec. 2. That any woman who marries a citizen of the United States after the passage of this Act [1]), or any woman whose husband is naturalized after the passage of this Act [1]), shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required;

(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto Rico for at least one year immediately preceding the filing of the petition.

Sec. 3. (a) A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after this section, as amended, takes effect [2]), unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens.

(b) Any woman who before this section, as amended, takes effect [2]), has lost her United States citizenship by residence abroad after marriage to an alien or by marriage to an alien ineligible to citizenship may, if she has not acquired any other nationality by affirmative act, be

7) Moore, l. c. p. 397; Mathews, l. c. p. 171, 177 ff.

8) Vgl. Joint Resolution vom 23. Dezember 1931 (Public Res. — No. 5 — 72 d Congress).

1) I. e. September 22, 1922.

2) I. e. March 3, 1931.