

E 2200 Washington 14/1

*Der amerikanische Staatssekretär, F.B. Kellogg,
an den schweizerischen Geschäftsträger in Washington, E. Lardy*

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Washington, April 2, 1928

I beg to refer to the Legation's note of July 3, 1923¹, and previous correspondence regarding the conclusion of a new arbitration treaty between Switzerland and the United States, and to transmit herewith for the consideration of your Government and as a basis for negotiation a proposed draft of an arbitration treaty², the provisions of which operate to extend the policy of arbitration enunciated in the convention signed at Washington, February 29, 1908³, (which expired by limitation on December 23, 1918), and are identical in effect with the pro-

1. *Nicht ermittelt.*

2. *Als Annex abgedruckt.*

3. AS 1909, NF 25, S. 311ff.

visions of the arbitration treaty signed between the United States and France on February 6, 1928 [...].

You will observe that Article I of the treaty with France⁴ does not appear in the draft submitted herewith. Its language was borrowed from the language of the Treaty for the Advancement of Peace signed in 1914, and some question having arisen as to whether the new treaty affected the status of the Treaty of 1914, the matter has been resolved in the case of France by an exchange of notes recording the understanding of both Governments that the earlier conciliation treaty was in no way affected by the later arbitration treaty. In order to obviate further questions of this nature, however, it seemed desirable to avoid the incorporation in other arbitration treaties of any portion of the language of the earlier conciliation treaties, where such treaties exist, and in such cases I have therefore proposed the elimination of Article I of the French treaty and amended Article II (which is Article I of the draft transmitted herewith) by substituting for the words "the above-mentioned Permanent International Commission" the words "the Permanent International Commission constituted pursuant to" the applicable treaty of conciliation. As no such conciliation treaty is yet in force between Switzerland and the United States, this latter formula is not applicable at this time. I have therefore made no mention in Article I of any Permanent International Commission referring instead to "an appropriate commission of conciliation". The negotiation and conclusion of an arbitration treaty can thus proceed independently of negotiations with respect to a conciliation treaty.

The Government of the United States would be pleased, however, if a conciliation treaty could come into force between Switzerland and the United States, and I take this opportunity to suggest that your Government might care to consider again the ratification of the so-called Bryan treaty which was signed by the two Governments on February 13, 1914⁵. While the Senate of the United States took favorable action on August 13, 1914, it does not appear that Switzerland has ever ratified that instrument.

I feel that by adopting a treaty such as that suggested herein and by bringing into force the treaty signed February 13, 1914, we shall not only promote the friendly relations between the Peoples of our two countries, but also advance materially the cause of arbitration and the pacific settlement of international disputes. If your Government concurs in my views and is prepared to ratify the treaty signed February 13, 1914, and to negotiate an arbitration treaty along the lines of the draft transmitted herewith, I shall be glad to enter at once upon such discussions as may be necessary.

4. *Art.1 des amerikanisch-französischen Vertrages lautet:* Any disputes arising between the Government of the United States of America and the Government of the French Republic of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report, as prescribed in the treaty signed at Washington, September 15, 1914, to the Permanent International Commission constituted pursuant thereto.

5. *Vertragstext in:* E 2200 Washington 14/1.

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ANNEX

DRAFT TREATY OF ARBITRATION

The President of the United States of America and the Swiss Federal Council
Determined to prevent so far as in their power lies any interruption in the peaceful relations that have always existed between the two nations;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between them; and

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world:

Have decided to conclude a new treaty of arbitration enlarging the scope and obligations of the arbitration convention signed at Washington, February 29, 1908, which expired by limitation on December 23, 1918, and for that purpose they have appointed as their respective Plenipotentiaries

The President of the United States of America

The Swiss Federal Council

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

Article I

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to an appropriate commission of conciliation, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

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

Article II

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

- a) is within the domestic jurisdiction of either of the High Contracting Parties,
- b) involves the interests of third Parties,
- c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,
- d) depends upon or involves the observance of the obligations of Switzerland in accordance with the Covenant of the League of Nations.

Article III

The present treaty shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof and by Switzerland in accordance with its constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously

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unless and until terminated by one year's written notice given by either High Contracting Party to the other.

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