President Wilson in his protest of February 22, 1921 to the Council of the League of Nations. That protest insisted that the approval of the United States was essential to the validity of any determination respecting mandates over the territory ceded by Germany. It equally contravenes the opinion of Mr. Secretary Hughes, speaking for the present administration, on April 5, 1921, in reply to the Japanese note. The views of Senator Pittman seem to have met the approval of only a small minority of his fellow Senators.

Public interest has been so centered upon the Four-Power Treaty that this important and gratifying agreement with Japan has commanded but little general attention. It has been mentioned almost exclusively as adumbrating the vote of the Senate by which the Four-Power Treaty might be expected to be ratified. It is, however, it is submitted, a remarkable and complete adjustment of a very troublesome and irritating question arising between ourselves and our imperial *vis-a-vis* on the other side of the Pacific. By skilful draftsmanship, the agreement imposes no humiliating repudiations upon Japan, but "desiring to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid islands," the plenipotentiaries proceeded to effect what was desired. Mr. Hughes is to be congratulated in that the treaty accords all that he or his predecessor claimed for this country, or its nationals, in the premises.

As Mr. Albert W. Fox, in the *Washington Post* of March 2, 1922, the day after the final action by the Senate, said: "The ratification of the Yap treaty is important in this sense, that it ends a controversy with Japan by obtaining for the United States and its nationals such rights, relating to cables and radio communication, as have *been contended for by the preceding and present administration.*" It is difficult to see how any Secretary for Foreign Affairs could do more or could do better.

The attitude of the Island Empire and its honored Ambassador was most admirable, the achievement for our own country complete and satisfactory. Mr. Hughes has shown with what promptness and adequacy international disputes can be solved when they are placed in the hands of an able, resourceful, straightforward and courageous lawyer, eager for the rights of his own country, but entirely just to those of others. He is entitled to, and enjoys, the gratitude of all who desire to see the good relations of mankind assured by wise and firm negotiations consummated by just agreements tainted by no enduring bitterness and endangered by the exaction of no humiliations.

CHARLES NOBLE GREGORY.

THE DEPARTMENT OF STATE ON THE AMERICAN FLOTATION OF FOREIGN PUBLIC LOANS

The Department of State, on March 3, 1922, made announcement of its policy of requesting of American bankers information concerning the terms of prospective foreign public loans to be negotiated and underwritten by them.

As the desirability of governmental cooperation had not appeared to be well understood in banking and investment circles, the official explanation was illuminating and reassuring.

It was declared that the flotation of foreign bond issues in the American market was assuming an increasing importance, and that "on account of the bearing of such operations upon the proper conduct of affairs" it was hoped that American concerns contemplating the making of foreign loans would inform the Department of State in due time of the essential facts and of subsequent developments of importance. Responsible American bankers would, it was said, be competent to determine what information should be furnished and when it should be supplied. It was announced that American concerns wishing to ascertain the attitude of the Department regarding any projected loan should request of the Secretary of State in writing, an expression of the Department's views. Assurance was given that the Department would then take the matter under consideration, and, in the light of the information in its possession, endeavor to say whether objection to the loan in question did or did not exist. The point was, however, emphasized that even though the Department might have been informed, silence on its part would not indicate either acquiescence or objection.

It was added that the Department could not, of course, require American bankers to consult it; and that it would not undertake to pass upon the merits of foreign loans as business propositions, nor assume any responsibility whatever in connection with loan transactions. Offers for such loans should not, therefore, it was declared, state or imply that they were contingent upon an expression of opinion regarding them; nor should any prospectus or contract refer to the attitude of the Government. Finally, the belief was expressed that "in view of the possible national interests involved," the Department should have the opportunity of saying to the underwriters concerned, should it appear desirable to do so, that there was or was not objection to any particular issue.

The reasonableness of the general policy thus announced ought to be apparent. It is due to the international and essentially public character of agreements providing for the flotation of foreign public bonds in America, and to the direct effect of such transactions upon both the economic and political relations of the United States with the governmental borrowers.

In giving fresh heed to such considerations the Department of State is following, somewhat conservatively, the avowed policies of numerous foreign States whose bankers have had funds available for foreign investment. It is understood that the governments, for example, of Great Britain, France, Germany and Japan, have always worked in cooperation with their respective bankers, influencing both the direction and nature of foreign loans, and oftentimes the terms of arrangements and the character of security. With respect to loans to certain States, particularly to those of neighboring countries under the wardship of the United States for purposes of financial

rehabilitation or otherwise, such as Cuba, Haiti, Nicaragua and the Dominican Republic, the Department of State has long exercised a large and perhaps decisive influence of incalculable benefit to American lenders. In at least one instance, a bond agreement has made definite reference of the absence of objection to the arrangement on the part of the Secretary of State to whom the document was submitted.[1] On another occasion, the prospective American lender has conditioned its flotation of bonds upon the acceptance by the borrower of the terms of a particular convention with the United States establishing the basis of protection.[2] The China Consortium Agreement of October 15, 1920, and the relation of the Department of State thereto, during the régimes of opposing political administrations, have revealed the closeness of the working arrangement that may under certain conditions be effected between the United States and American bankers.[3]

The full significance of American governmental cooperation deserves consideration. To the lender, the known approval of its government is of distinct value because of the removal of possible obstacles which might otherwise supervene should the lender have cause to request diplomatic interposition, and because also of the salutary effect upon the mind of the borrower of entire harmony between the lender and its government. The favorable effect of that harmony upon the mind also of the American investor may be considerable. For that reason it is believed that when such a relationship does in fact exist, the lender may well be permitted to make formal announcement of it, and perhaps beyond the limitations contemplated by the Department of State in its cautious declaration of policy.

Real cooperation between the Department of State and American lenders ought to be productive of something more. It should, for example, serve to aid the lender in ascertaining the nature and extent of requirements essential to the validity of the transaction according to the local laws and institutions of the borrower, and to give warning when those requirements are not met. It should place within the reach of the banker fresh counsel as to the desirability or need of security, and as to the kind of security to be demanded of a particular applicant, as well as the means to be employed for its utilization. Necessary safeguards should be suggested and needless impediments discouraged. Thus the Government might well bring home to the attention of prospective lenders the insufficiency of pledges or hypothecations of assets not surrendered to the control of the lender or of an agency in its behalf. It might emphasize the impotence of a lender as against a foreign public

[1] See Art. X of Bond and Fiscal Trust Agency Agreement between the Republic of Nicaragua and certain bankers, Oct. 5, 1920.

[2] Such was the attitude of certain American bankers in 1911, in negotiations with the Republic of Honduras. See in this connection U. S. Foreign Relations, 1912, p. 587.

[3] For the text of the agreement, see this JOURNAL (Jan. 1922), Vol. XVI, Official Documents, p. 4. See also Geo. A. Finch, "American Diplomacy and the Financing of China," *id.*, XVI, 25.

borrower retaining in its grasp the asset employed to induce credit. With its close knowledge of the fiscal, political and economic conditions confronting every foreign public applicant for a loan, the Department of State might unhesitatingly inform a prospective lender of the probable effect of certain forms of security upon the stability of the borrower from which they were exacted. Thus it might, for example, in a particular case, question the wisdom of demanding of a borrower constituting an independent State not under the protection of the United States (and not subjected to a régime of extraterritorial jurisdiction) pledges of customs revenues to be relinquished to an alien trustee.[4] Should the borrower be called upon to surrender by way of security or for the purpose of utilizing security, the exercise of privileges locally deemed to be incapable of delegation to a foreign entity, the danger of the transaction, however valid, should be made known. The effect of terms likely to be challenged by enlightened opinion as subversive of the sovereignty of the borrower upon the popular mind throughout its domain should be made clear. Arrangements likely to beget hostility towards the United States and resentfulness in relation to American investors should be pictured in their true colors. In a word, governmental cooperation should serve to emphasize precautions to be taken, risks to be guarded against, forms of security to be avoided, pitfalls to be shunned, as well as safeguards to be demanded. Under scientific and persistent and friendly development, the coordinated labors of the Department of State and American lenders to foreign governments are capable of safeguarding the interests of American investors, enhancing the ultimate success of American loans, and simultaneously of advancing in the best sense the cause of American diplomacy by eliminating obstacles otherwise bound to impede its progress.

CHARLES CHENEY HYDE.

THE CLASSIFICATION OF JUSTICIABLE DISPUTES

There was considerable discussion at the annual session of the Institute of International Law in Rome last October concerning the jurisdiction of the Permanent Court of International Justice provided for by Article XIV of the Covenant of the League of Nations. This discussion centered around the wording of Article 36 of the Statute of the Court adopted by the Assembly of the League of Nations at Geneva on December 13, 1920. The text of this Article reads as follows:

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex of the Covenant may, either when signing or ratifying the protocol

[4] It is not suggested that such terms might not, under entirely different circumstances, be justly exacted as a necessary safeguard for the lender and without jeopardizing the validity or ultimate success of the loan.