69TH CONGRESS, 1st Session } SENATE { DOCUMENT No. 96

RIGHTS OF AMERICAN CITIZENS IN CERTAIN OIL LANDS IN MEXICO

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES

TRANSMITTING

FROM THE SECRETARY OF STATE THE OFFICIAL CORRESPONDENCE EXCHANGED BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND MEXICO REGARDING THE TWO LAWS REGULATING SECTION I, ARTICLE 27, OF THE MEXICAN CONSTITUTION, AND MAKING REFERENCE TO SENATE RESOLUTION NO. 166, OF MARCH 6, 1926, RELATIVE TO THE RIGHTS OF AMERICAN CITIZENS IN CERTAIN OIL LANDS IN MEXICO

APRIL 5 (Calendar day, APRIL 12), 1926.—Read; referred to the Committee on Foreign Relations and ordered to be printed

To the Senate:

I transmit herewith from the Secretary of State a copy of the official correspondence exchanged between the Governments of the United States and Mexico regarding the two laws regulating Section I of article 27 of the Mexican constitution. In this connection, reference is made to the resolution adopted by the Senate on March 6, 1926, in respect to an alleged serious dispute between the two Governments with regard to the rights of American citizens in certain oil lands in Mexico.

CALVIN COOLIDGE.

THE WHITE HOUSE,
April 12, 1926.

THE PRESIDENT:

The undersigned, the Secretary of State, has the honor to refer to the resolution adopted by the United States Senate on March 6, 1926, which is quoted below:

Whereas various statements in the public press seem to indicate that there is a serious dispute between the Government of the United States and the Government of Mexico, in which it is claimed that various constitutional provisions and statutes of the Mexican Government conflict with the rights of

American citizens alleged to have been acquired in oil lands in Mexico prior to the adoption of such constitutional provisions and the enactment of such laws; and

Whereas the American people are in ignorance of the real questions involved because the official correspondence between the two Governments has not been made public; and

Whereas full publicity of all the facts entering into such dispute is extremely desirable in order that the people of the two Governments may fully understand all the questions involved in said dispute: Therefore

Resolved, That, if not incompatible with the public interests, the Secretary of State be requested to send to the Senate all official correspondence pertaining to said dispute referred to in the preamble.

Attest:

EDWIN P. THAYER, *Secretary.*

The undersigned, the Secretary of State, has the honor to attach hereto a copy of the official correspondence exchanged between the Governments of the United States and Mexico regarding the two laws regulating Section I of article 27 of the Mexican constitution, the documents being more particularly described, as follows:

1. Aide memoire of personal message from the Secretary of State to the Mexican Minister for Foreign Affairs, presented by the American ambassador on November 17, 1925.

2. Reply of Mexican Minister for Foreign Affairs, handed to the American ambassador on November 27, 1925.

3. Aide memoire handed by the American ambassador to the Mexican Minister for Foreign Affairs by instruction from the Secretary of State on November 27, 1925.

4. Memorandum of Mexican Minister for Foreign Affairs in reply, dated December 5, 1925, delivered to the American ambassador on December 7, 1925.

5. Memorandum regarding the Arizona and Illinois statutes handed by the chief of the division of Mexican affairs to the counselor of the Mexican embassy on December 22, 1925.

6. Note presented by American ambassador to Mexican Minister for Foreign Affairs under instructions of the Secretaray of State on January 8, 1926.

7. Note in reply of Mexican Minister for Foreign Affairs, dated January 20, 1926.

8. Note of Secretaray of State to Mexican Minister for Foreign Affairs, dated January 28, 1926.

9. Note in reply of the Mexican Minister for Foreign Affairs, dated February 12, 1926.

10. Note of the Secretary of State to the Mexican Minister for Foreign Affairs, dated March 1, 1926.

11. Note in reply of the Mexican Minister for Foreign Affairs, dated March 27, 1926.

Respectfully submitted.

FRANK B. KELLOGG.

DEPARTMENT OF STATE,
Washington, April 10, 1926.

CORRESPONDENCE EXCHANGED BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND MEXICO REGARDING THE TWO LAWS REGULATING SECTION 1 OF ARTICLE 27 OF THE MEXICAN CONSTITUTION

Communication between the two Governments on this subject was commenced on October 29, 1925, when the Department of State through the American ambassador submitted to the Mexican foreign office certain specific inquiries concerning the meaning and interpretation of the so-called alien land bill in the form in which it then stood before the Mexican Congress. The American ambassador

reported responses to these inquiries on November 4, 1925. The formal exchanges which have ensued between the two Governments relating both to the so-called land and petroleum laws are as follows:

Aide memoire of personal message from the Secretary of State to the Mexican Minister for Foreign Affairs, presented by the American ambassador on November 17, 1925.

I am moved to make this personal appeal to you in the hope that the clouds which I perceive on the horizon of friendship between the United States and Mexico may be removed, and I beg of you please to understand that I am speaking to you solely on the basis of friendship and wish to avoid any criticism of prospective legislation of a neighboring friendly and sovereign State. It is, in fact, to avoid even a semblance of such an attitude that I am taking this step, and may I ask that this appeal be taken up by you with the President of the Republic, for whom we have such high regard and esteem and deep personal appreciation of his high qualities formed during his brief sojourn in the United States before entering into office.

As long ago as July, 1924, notes were exchanged by you and Ambassador Warren, in which it was agreed to negotiate a new treaty of amity and commerce between the two countries. The impediments to the negotiation of such a treaty now no longer exist, and I venture to suggest to your excellency the oppurtuneness of beginning such negotiations now, in order that a firmer basis of mutual relationship which can only redound to the advantage of the two countries and their nationals be formed. Please understand that I venture to make this suggestion in the most friendly spirit possible. We are convinced that a treaty can be negotiated which will be fair and satisfactory to both countries and of lasting benefit to Mexico.

I am not moved to make this suggestion because of the present proposed legislation in Mexico. It is, however, futile at such long distance to attempt to reach any understanding with you in regard to the effects of such legislation. Furthermore, nothing could be further from my intention than to seem to wish to interfere with the free course of legislation in your country. There are certain considerations, however, which must cause immediate concern. Americans with acquired rights will appeal to this Government, which is naturally bound to do its utmost on their behalf. The situation may become extremely confused and we must always bear in mind both the letter and spirit of the proceedings of the United States-Mexican Commission, convened in Mexico City on May 14, 1923. However, I do not wish to enter into any discussion of this matter, and I venture to hope that there will be no necessity thereof, as I am loath to believe that the Mexican Government intends to take any action in contravention of that understanding. The Mexican Government surely has in mind the economic aspects and consequences of such legislation. I do not desire to assume the rôle of uninvited adviser.

Let us take a broad view of this matter. My stand is that I dislike to discuss details of the proposed legislation, but I can not help but hope that nothing will be done which will tend to affect

the good relations between the two countries which we have so much at heart and make a continuation of the mutually constructive policy initiated during the presidency of President Obregon impossible.

I beg of you, therefore, Mr. Minister, to accept this appeal in the same friendly spirit from which it springs, and I await with interest and confidence the response of President Calles and yourself.

Reply of Mexican Minister for Foreign Affairs handed to the American Ambassador on November 27, 1925

I have transmitted to the President the personal appeal which you were pleased to make to me in a friendly manner in order legitimately to dispel the clouds which you say you perceive upon the horizon of the friendship between Mexico and the United States, without thereby implying in the least a criticism of the legislation when Mexico as a sovereign people is at present elaborating.

After asserting the foregoing you are pleased to propose the negotiation of a treaty of amity and commerce between the two nations, a treaty of which there has been talk since July, 1924. You now judge that there is no longer any obstacle in the way of its conclusion so that it may serve as a token to establish the mutual relations of both countries upon a firm basis.

You again add that the proposal of the treaty has no connection with the pending legislation in Mexico. You say, however, that there are certain considerations that are now giving you concern and you refer to the fact that American citizens who have acquired rights in this country will appeal to your Government which is naturally obliged to do its utmost in their behalf. Therefore you believe that the situation may become extremely confused and intimate that the two Governments must always keep in mind the letter and spirit of the proceedings of the mixed claims commission which met in Mexico City on May 14, 1923, the findings of which you do not believe that the Mexican Government wishes to disregard, and you call attention to the economic aspect and effects of the new legislation.

You finally express the hope that nothing will be done which might affect the good relations between the two countries, and that the mutually constructive policy initiated during the presidency of General Obregon will be continued.

The foregoing having been considered by President Calles, he requests me to say to you as follows:

In his opinion there is absolutely no cause for perceiving clouds upon the horizon of the friendship between Mexico and the United States since the Mexican Government is disposed, as it has ever been, to fulfill all the obligations put upon it by international law, and since surely the United States will be under no necessity inconsistent therewith. The Mexican Government is therefore disposed to negotiate with the United States a treaty of amity and commerce provided that treaty shall protect legitimate interests of both countries and bear a character of strict and effective reciprocity and of recognition of and respect for the sovereignty of the two contracting parties. But since, although you take a positive attitude of noninterference with or criticism of the Mexican legislation which is being elaborated, you repeatedly refer to it,

I am to understand that it is legislation of that kind which gives you concern and which you believe may harm American interests and jar on the friendly spirit of the conversations of Messrs. Gonzales Roa and Ross, on the one hand, and Messrs. Warren and Payne, on the other, in May, 1923. I therefore wish to offer you the following explanations:

First. The conferences which took place on the above-mentioned date of May, 1923, did not result in any formal agreement other than of the claims conventions which were signed after the resumption of the diplomatic relations. Those conferences were confined to an exchange of views intended to find if possible, a way for the two countries to resume the above-mentioned diplomatic relations, and President Obregon there made known through his commissioners his intention to follow a policy of understanding with the United States as well as with the other countries of the world, a policy which, in the main, consists of extending a friendly reception to foreigners and capital that would settle in Mexico and giving them the guaranties which are granted them by our laws.

Second. The legislation pending in the chambers which in any way refers to foreigners precisely rests on this policy. For instance, the law which regulates fraction one of article 27, which has been approved by the Chamber of Deputies and is pending in the Senate chamber, has respected in their entirety acquired rights, as unbiased examination can prove.

Furthermore, this legislation has been aimed at dispelling the vagueness that prevailed in that section and was much more injurious to the very foreigners it concerned and which only embodies the practice that has been followed from 1917 to the present date toward foreigners without any protests heard from them in years. I should regret your being misinformed on this point and without any wish to take the part of an advisor I venture to call your attention to the very human fact that men and money are generally opposed to any innovation even though it does not mean any invasion of their rights.

With the foregoing explanations I wish to say to you that both the President and myself are inspired by the best wishes to continue cultivating the good relations between Mexico and the United States, repeating again that we should be very glad if negotiations for a treaty of amity and commerce between the two countries were instituted since the treaty could only contain fair stipulations which would not set up undue privileges for the respective citizens or purpose to encroach in any way upon the sovereign power to legislate to which both Nations are entitled within the bounds of international law.

I believe I have thus given you evidence of the friendly reception given by both President Calles and myself to your personal appeal and I now only have to renew the expression of my high consideration.

Aide-memoire, handed by the American ambassador to the Mexican Minister for Foreign Affairs by instruction from the Secretary of State on November 27, 1925

Since my aide-memoire of November 17 I have been advised that the bill regulating fraction 1 of article 27 of the Mexican constitution has passed the Chamber of Deputies and a copy of the bill in the form in which it was passed has reached me. In these circumstances I am moved to renew the sentiments expressed in the said aide-memoire and at the same time to present some further considerations bearing more directly upon the pending legislation which was there only incidentally referred to for purposes of illustration.

I think I should not be acting in a truly friendly spirit if I were to refrain from advising you that this bill, proposed as it is by your Government and passed by the Chamber of Deputies, is viewed with genuine apprehension by many if not all American holders of property rights in Mexico. And I should be less than sincere if I did not say to you at this time that in my judgment such apprehension is justified. Numerous appeals and protests have been and are being received by me. An examination of the bill in its present form enforces the conviction that in certain of its features the measure operates retroactively with respect to American property interests in Mexico, and that its effect upon them would be plainly confiscatory. Rights which have become vested by virtue of the laws and constitution of Mexico existing at the time of acquisition would be seriously impaired if not utterly destroyed. Without here entering upon a detailed analysis, let me indicate some of the principal provisions and my understanding of their effect. The requirement that a foreign holder of corporate stock, without regard to when his holdings were acquired, shall consider himself a Mexican national as to such stock and renounce the right to appeal to his own Government or in the alternative forfeit his interests amounts to substantial confiscation. The requirement that stock in Mexican companies for agricultural purposes may not under any circumstances be held, regardless of when the stock was acquired, if such holding places in the hands of foreigners 50 per cent or more of the total interest of the company, is likewise retroactive and confiscatory. The requirement that all companies for agricultural purposes, more than 50 per cent of whose stock is in foreign hands, whether they hold lands directly or indirectly, shall divest themselves of such property within 10 years of the date of promulgation of the law is by its terms applicable to existing rights legally vested and is therefore confiscatory of those rights. The subsequent provision permitting present individual owners to retain until their death such rights only mitigates and postpones but does not eliminate the confiscatory feature.

I desire particularly to direct attention to the provision requiring foreigners to waive their nationality and to agree not to invoke the protection of their respective governments, so far as their property rights are concerned, under penalty of forfeiture. In this connection it is my duty to point out that my government, in accordance with principles generally if not universally accepted, has always consistently declined to concede that such a waiver can annul the relation of a citizen to his own government or that it can operate to extinguish the obligation of his government by diplomatic intervention to protect him in the event of a denial of justice within the recognized principles of international law.

You will, I am sure, understand that I am impelled to make the foregoing observations, which are submitted in the most friendly spirit, because I feel that you are entitled to a frank expression of the views of my Government, and I should not like to leave any room for misunderstanding between us. As I stated in my aide-memoire of the 17th instant, my Government wished to avoid if possible any criticism of prospective legislation of a neighboring and sovereign state, for it recognizes to the fullest extent the right of any other government by legislation to regulate the ownership

of property as a purely domestic question, unless such regulation operates to divest prior vested rights of American citizens legally acquired or held under the laws of such foreign government, and it is only because of the seeming imminence of the passage of such legislation and because it does so affect the vested rights of American citizens and is in contravention of the understanding arrived at beween the two governments through their commissioners that I am moved to make these representations.

Memorandum of Mexican Minister for Foreign Affairs in reply, dated December 5, 1925, delivered to the American ambassador on December 7, 1925

I have given due attention to your memorandum of the 27th of November last, in which, referring to the previous one of November 17th, you state that the circumstance of the law regulating article 27 of the Mexican Constitution having been approved by the Chamber of Deputies, impels you to present some further considerations directly relating to the above-mentioned pending legislation, adding that you would consider that you were not acting in an entirely friendly spirit if you were to refrain from pointing out that the law under reference is looked upon with apprehension by many American citizens holding property rights in Mexico, you being good enough to conclude that in your judgment such an apprehension is justified, because some aspects of the law regulating fraction 1 of article 27 operate retroactively and with manifestly confiscatory effect.

You then go on to analyze some of these considerations, to which I propose to refer immediately in order to refute the criticism which you make of the law under project qualifying it as retroactive and confiscatory; but first I wish to make certain comments of a general nature:

In the first place, and even in a spirit of perfect friendship, the fact is extraordinary that the American Government should make representations to that of Mexico in regard to the pending legislation which, precisely because of being in a formative state, can cause no present harm to American citizens, and therefore it would seem preferable to know the definite scope of the laws after they have been put into effect, since only then would we be able to appreciate whether the above-mentioned legislation is prejudicial to any rights or persons. The circumstance that there is an exception made to the effect that the observations in regard to such legislation are made in a friendly spirit does not prevent the possibility that suspicious minds may believe that it involves pressure upon the legislative bodies in order that the projected legislation be not approved, especially since these observations are preceded by press publications, which, although I am sure do not emanate officially from the respective offices, certainly originate therein.

Furthermore I understand that within the territory of the United States there exist laws in force very similar to the one which is now pending the approval of the Mexican Senate, denying to foreigners the very rights to which reference is made in the organic law of fraction 1 of article 27 of the constitution, and which restrict and regulate in many cases the right to acquire and possess land. Then,

too, according to a well-recognized principle of the law of nations, a nation must not claim as a violation of rights those not granted by itself, and therefore it is not fitting that the United States should attempt to prevent Mexico from adopting such laws in the exercise of her sovereignty.

I take the liberty of calling your attention to the legislation which exists in the State of Illinois regulating the acquisition of real property by foreigners. This comprises the exact same provisions contained in the legislation approved by the Mexican Chamber of Deputies, but more extreme, since the period given for foreigners to divest themselves of their properties is very much shorter than that contemplated by the Mexican law, and the penalty imposed for the infraction of its provisions is the loss of the real property or of the pertinent rights in favor of the State of Illinois. This law is surely more drastic, more conclusive, and goes further in its effects than the projected Mexican legislation.

Referring now to the aims of the projected legislation you are advised that it merely tends to avoid in general an abuse which the very jurisprudence of the United States decries. No person may acquire through a company property which he is not permitted to possess directly. Devlin, page 259, paragraph 224, says:

Foreign corporations purchasing stock of local corporations.—A foreign corporation can not as a device to enable it to hold real estate purchase the capital stock of a local corporation. Such an act is a violation of the law prohibiting corporations from acquiring any real estate within the State unless authorized by law and land so held is subject to escheat.

Moreover, the legislation pending the approval of Congress is not a novelty in our system. The existing constitution has consecrated it for several years, and it has been applied without opposition on the part of foreigners up to the present time; other laws, as well, have consecrated it for some time; for example: The railroad law, promulgated as far back as the 29th of April, 1899, in article 49, establishes that all railroad enterprises must always be Mexican, even though the company has been organized abroad, and even though all or some of its members be foreigners; the company itself will be subject to the tribunals of the Republic, whether Federal or local, in all affairs over which they may have jurisdiction in accordance with the laws; the enterprise and all foreigners and their successors who may take part in the business of the company, whether they be shareholders, employees, or in any other character, will be considered as Mexicans in everything related to the company; they may never allege, in regard to the titles and affairs related to the enterprise, any rights as foreigners under any pretext whatsoever and will only have the rights and means of making such rights effective as the laws of the Republic grant to Mexicans, foreign diplomatic agents, therefore, having no right to interfere.

The mining law, in force since the 25th of November, 1909, in turn establishes restrictions for the acquisition on the part of foreigners of titles to mining property in a fixed zone on the frontier with foreign countries, and establishes the procedure which must be followed in the cases in which the pertinent provisions are not fulfilled.

Having made the foregoing explanations, and since I do not want the idea to remain in your mind that the Mexican bill is retroactive

and confiscatory, I shall proceed to examine the observations which you were good enough to make.

You refer to the provision which requires that a foreigner owning shares in companies having real property must agree before the Ministry for Foreign Affairs to consider himself as a national in regard to the part of the property which is his share in the company. In this connection you call my attention particularly in regard to the fact that your Government has always declined to allow that repudiation of nationality made by a citizen can deprive the Government of the United States from using diplomatic intervention in case of a denial of justice.

Beyond the fact that the provision to which you allude is not new, that is to say, beyond the fact that it does not emanate from the law now pending before the Senate Chamber, but proceeds from the Mexican constitution of 1917, for which reason your observations seem inopportune, I take the liberty, in my turn, to reply to you that it is a universally accepted principle that every nation is sovereign to legislate in the matter of real property within its own territory. In consequence of this principle Mexico would be able to prevent all foreigners from acquiring such property within its jurisdiction and very justly may regulate the acquisitions of this kind because it is a principle of logic that he who can do greater can do lesser.

You observe particularly that the requirement of an agreement before the Ministry for Foreign Affairs, to which you have referred, is made without taking into account the date of the acquisition of the shares which the foreigner holds, by which you surely pretend to insinuate that the requirement should not be exacted of foreigners who acquired shares previous to 1917.

Possibly the foregoing statement is due to a lack of study of the law since, in article 5, it is clearly established that foreigners who may have acquired property or shares in Mexican companies will have all their rights respected, and precisely for this purpose it has been provided that a declaration be made before the ministry for foreign affairs in respect to the rights which may have been acquired before the entry into effect of the law.

I sincerely believe that even supposing that those who might have acquired, before the entry into effect of the law, real property or shares in companies, should have to make the agreement required by the constitution, this would not conflict with international law since, although it is well known that in accordance with such international principles, acquired rights may not be harmed, in the case of the agreement no right is harmed, since foreigners are in entire liberty to make at any moment the agreement under reference with the ministry for foreign affairs, and since, especially, what the principles assure the foreigner is the respect of his property rights, but not respect of these rights just as they existed at the time of the acquisition, since this would be tantamount to denying to a sovereign nation the right of imposing upon all those who inhabit its territory the modifications and regulations necessary for the defense of its interests, and would make impossible its subsequent development.

I call your attention, on the other hand, to the fact that the agreement required by section 1 of article 27 of the constitution, has been ill named a renouncement of nationality. Such a renouncement does not exist and it is merely a question of an agreement of limited and special effects.

Moreover, the legal provisions in effect in Mexico in this connection are not obligatory since, although it is a requisite required by the law that in order that a foreigner may acquire real property he must obtain the permission of the Government, the foreigner who does not wish to acquire it is not obliged to do so; but from the moment in which he consents to submit to these regulations it must be considered that he has undertaken a voluntary contract which entails, as a consequence, not the renouncement of his nationality, but the agreement not to invoke diplomatic protection in those matters in regard to which he has voluntarily agreed to consider himself as a Mexican, merely for the effects of the acquisition of such rights, submitting himself thus to the guarantees and recourses established by domestic laws. I consider, furthermore, that the Government of the United States will not come to believe that the object of this provision might be that the Mexican authorities have the deliberate aim of committing acts of injustice against foreign citizens and against bona fide foreign investments.

In this connection I should also like to point out to you that this constitutional provision is less rigorous than that which certain States of the American Union require of foreigners, to wit: That of being bona fide residents within the limits of such State or of taking out first papers of American citizenship in order to allow them to acquire rights to real property, in going so far in this direction of demanding American citizenship even for the obtaining of labor as employees or servants of a certain class. Among others, the State of Arizona has established that no person might acquire titles or property within the State unless he be a citizen of the United States or have declared previously his intention of becoming such. And the same law establishes that no corporation, more than 30 per cent of whose shares are in the possession of persons not citizens of the United States or who may have declared their intention of becoming such, may acquire lands, titles, or interests therein. (Civil Code, Arizona, 1913, Ch. III, sec. 4716.)

The provision which includes the requirement of this permission for foreign shareholders in Mexican companies is a consequence, as has already been said, of the general principle established by the Mexican constitution that in order that foreigners may obtain the ownership of lands, waters, and their accessions, or concessions for the exploitation of mines, waters, or combustible minerals, must obtain a permission from the ministry for foreign affairs and make an agreement to consider themselves as Mexicans as regards the acquisition of such rights. But, furthermore, it is a result of the policy of the American Government, which not only makes claims for foreign companies but even for Mexican companies. As a result of this policy it follows that foreign shareholders in Mexican companies not only enjoy the advantages of the laws of the country but, in addition, foreign diplomatic protection, a serious inequality for the development of Mexican companies which have no foreign shareholders.

It might be objected that the permission which foreign shareholders in Mexican companies must obtain in order to acquire rights therein will be a stumbling block for corporations from the moment in which, in order to buy any share, a previous permission would have to be requested, but such would not be the case. In regard to shares payable to the bearer, it will not be necessary that the bearers obtain the permission in every case; it will be quite sufficient that in the charter of the company it will be established that the shares payable to bearer must be inscribed among the obligatory provisions with the requirement that the acquisition of the shares is tantamount to an agreement on the part of the acquirer to consider himself as a Mexican national in regard to the acquisition of such titles, whereby the purchase of the share will be implicitly considered as subordinate to the requirement of the permission established by the Mexican constitution.

In this connection I must inform you, as a proof that this requirement has been so understood by all the unprejudiced companies operating in Mexico, which for several years have inscribed in their charters and upon their bonds this provision, thus anticipating that the law in project establishes, and acting in accordance with the spirit of the constitution.

Since 1920, among others, the Consolidated Oil Co., of Mexico, and the Marland Oil Co., of Mexico, South America, and others have followed such a course, anticipating, as I have said, the provisions of the law under study.

We then go on to examine the requirement that shares in Mexican companies having agricultural purposes can not under any circumstance accumulate in excess of 50 per cent in foreign hands, and you say that this provision is retroactive and confiscatory. I suppose you will not call it such as regards the future, and therefore I shall limit myself to analyzing its effects on the past. You will observe in the appropriate provisions of the organic law which I am commenting upon that a long period is given to foreigners to divest themselves of the excess of 50 per cent of their participation in such companies. Therefore the provision is not confiscatory, because the right is recognized, and it is merely its transformation which is required. This provision is not retroactive either, because it does not harm acquired rights since, as I said above, the form in which a foreigner holds a right may be changed by a sovereign nation as long as the right in its essence is respected.

The limitation imposed by the law upon companies possessing rural property with agricultural purposes tends to preclude possible conflicts in the application of the agrarian legislation—since it is considered advisable to reserve ownership and cultivation of the majority of the land to Mexicans—there is thus eliminated any possible chance of diplomatic discussion which redounds to the direct and immediate benefit of the cordiality of our relations with other countries.

In regard to the permission for the present owners to preserve their rights until their death, the only thing that might be adduced is that the law puts a limitation upon the right of inheritance, which is in strict conformity with international law, since in such cases there are no acquired rights, but merely an expectation of acquiring

them. This has been practiced by the United States where there existed several laws on this matter, and Devlin, in the above-mentioned work in pages 260 and 261, paragraph 226, citing hundreds of authorities, says:

> 226. Alien acquiring title by descent: At common law an alien can not acquire title to land by descent or by mere operation of law. The treaties of 1783 and 1794 between the United States and Great Britain were held to provide only for titles existing at the time of the making of the treaties and not titles subsequently acquired, and all British subjects born before the Revolution were held to be equally incapable with those born after of inheriting or transmitting the inheritance of lands. Aliens, however, could inherit real estate under the laws of Mexico which were in force in California. But for the purpose of preventing an escheat, and with the object of effectuating the wishes of a testator, a court of equity will, if necessary, consider land as money in a case where a testator, who is trustee, had directed the land to be sold, and will direct that the proceeds be given to the cestui que trust.

A careful study of the law will be able to show that it can not be retroactive and confiscatory in its several provisions since, even in the cases in which a period of time is established for certain effects of the law, these rights are not confiscated, but it is established that foreigners may divest themselves in prudent and ample periods.

The President of the Republic, as well as the two legislative chambers, are animated in this respect with the best desire and have the firm intention of doing nothing but what is just, fair, and allowable under international law.

I believe that the foregoing will be sufficient to convince you that the law in project, although it entails for foreigners the necessity of fulfilling certain acts to place themselves in harmony with it, does not disregard any of their rights. And as further explanation I wish to repeat to you what I put down in my memorandum on November 28, to wit, that the provisions contained in the legislation on which you have been good enough to make observations have already been put in practice for the last seven years in conformity with the various decrees and proclamations of the Executive, who found himself compelled from the beginning to apply fraction 1 of article 27 of the constitution.

Finally, I believe that your idea will be dissipated that such legislation may contravene the understanding reached between the two Governments by means of their commissioners before the renewal of relations, since the spirit of this agreement was only that of mutual respect for the rights of the two sovereign nations, but never of setting aside the clear provisions of their respective constitutions.

Memorandum regarding the Arizona and Illinois statutes handed by the chief of the division of Mexican affairs to the counselor of the Mexican Embassy on December 22, 1925

Respecting Illinois, see alien act of 1897; also court decision in Meadowcroft *v.* Winnebago County (181 Ill. 504; 54 North Eastern Reporter, 949), in which the court stated inter alia that it could not see how the act of 1897 could be applied to this case, "the title to the property in question having vested prior to its taking effect." The court held, "Therefore, the subsequent act can not be held ap-

plicable here without divesting or impairing vested rights, to hold which would render the act unconstitutional and void." See also Wunderle *v.* Wunderle (144 Ill. 40; 33 North Eastern 195), wherein the court said:

> But aliens who had acquired lands in Illinois before the act of 1887 went into force had vested property rights which could not be confiscated or taken away from them.

Regarding Arizona, see the provisions of section 4716 of the Arizona Civil Code of 1913, relating to alien ownership of real estate, wherein the restrictions are expressly stated to refer to future acquirements.

Note presented by American Ambassador to Mexican Minister for Foreign Affairs, under instructions of the Secretary of State, on January 8, 1926

EXCELLENCY: Under instructions from my Government I have the honor to refer to the recent passage by the Mexican Congress of a law regulating land ownership by foreigners and to recall to your excellency's attention the statements respecting the bill now enacted which I made to you November 17 and 27 last, and to say that, generally speaking, the observations made in those statements regarding certain retroactive and confiscatory features of the bill are considered to be applicable to the law as passed.

My Government has also instruced me, referring to the official publication in the edition of the Diario Oficial of December 31, 1925, containing the text of a petroleum law, to remind you that December 16 last I conveyed to you in confirmation of the statement made by the Secretary of State of the United States to Ambassador Tellez on December 12 last certain general observations relating to the retroactive and confiscatory character of the petroleum bill then pending. My Government regrets to observe that the last-mentioned law published in the Diario Oficial appears to be subject to the same objections which were advanced against the pending bill. Specifically but with the expressed statement that the following objections are not comprehensive my Government desires me to point out that in its view:

1. This law fails by far to give full recognition to rights lawfully acquired prior to the adoption of the present Mexican constitution when Mexican law expressly provided that the owner of surface lands owned also the subsoil deposits of petroleum.

2. The law fails not only in the respect indicated but it also fails to respect decisions of the supreme court of Mexico in the interpretation of the very constitutional provisions which the law is apparently designed to regulate in that those decisions hold in effect that such constitutional provisions are not retroactive and inapplicable to those whether corporations or individuals who performed any one of a number of what are denominated as "positive acts," whereas:

(*a*) This law (art. 4) seems to provide that foreign corporations, regardless of the time when they lawfully acquired rights and irrespective of whatever "positive acts" they performed, will not be able to obtain recognition of those rights; and

(*b*) That foreign individuals, without regard to the time when they lawfully acquired rights and irrespective of whatever "positive acts" they performed, will be deprived of such rights unless they renounce their citizenship with respect to such rights. (Art. 4.)

(*c*) That the number of "positive acts" recognized shall be much less than these enumerated in the decisions mentioned (art. 14); and

(*d*) That even as to foreign individuals who performed "positive acts" recognized in the law and made the renunciation mentioned confirmation of their rights must be applied for within a year or such rights will be forfeited. (Art. 15.)

3. In apparent contradiction to the statements made by the Mexican commissioners in the conference held in Mexico City in 1923 as to the past, present, and future policy of the Mexican Government to grant preferential rights to the owners of the surface or persons entitled to exercise their preferential rights to the oil in the subsoil who have not performed a "positive act," the law in question seems to give no preferential rights to such owners or persons.

My government also directs me to invite your excellency's attention to the provisions in the laws under discussion requiring foreigners to waive their nationality and to agree not to invoke the protection of their respective Governments so far as their property rights are concerned under penalty of forfeiture and to inform your excellency that my Government has consistently declined to concede that such a waiver can annul the relation between an American citizen and his Government or that it can operate to extinguish the obligation of his Government to protect him in the event of a denial of justice.

In connection with the foregoing considerations, my Government further calls attention to the statements made by the Mexican commissioners at the conference mentioned regarding the duty of the Federal executive power under the constitution to respect and enforce the decisions of the judicial power, wherein, speaking, as they stated, for the Mexican Government, Mexican commissioners said:

> In accordance with such a duty, the executive has respected and enforced, and will continue to do so, the principles of the decision of the Supreme Court of Justice in the Texas Oil Co. case and the four other similar amparo cases, declaring that paragraph 4 of article 27 of the constitution of 1917 is not retroactive in respect to all persons who have performed prior to the promulgation of said constitution some positive act which would manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface.

Then enumerating a large number of positive acts, the Mexican commissioner added:

> The above statement has constituted, and will constitute in the future, the policy of the Mexican Government in respect to lands and the subsoil upon which or in relation to which any of the above-specified acts have been performed or in relation to which any of the above-specified intentions have been manifested.

My Government is therefore unable to escape the conclusion that the petroleum law as published in the Diario Oficial violates rights lawfully acquired under provisions of Mexican law, of the present Mexican constitution, recent decisions of the Supreme Court of Mexico, and pledges solemnly given but two years ago by designated representatives of the Mexican Government.

With respect to both the laws referred to, my Government is of the view that the laws are in violation of the principles of international law and equity.

In view of the foregoing, my Government directs me to inform your excellency that it hereby reserves on behalf of citizens of the United States whose property interests are or may hereafter be affected by the application of the two above-mentioned laws, all rights lawfully acquired by them under the constitution and laws of Mexico in force at the time of the acquisition of such property interests and under the rules of international law and equity and points out that it is unable to assent to an application of the recent laws to American-owned properties so acquired which is or may hereafter be retroactive and confiscatory.

Accept, excellency, the renewed assurance of my highest consideration.

JAMES R. SHEFFIELD.

Note in reply of Mexican minister for foreign affairs, dated January 20, 1926

MR. AMBASSADOR: I duly received your excellency's note No. 989, dated the 8th instant.

Your excellency states therein that by instruction of your Government you refer to the recent approval by the Mexican Congress of the law regulating real property of aliens and call my attention to the declarations relative to the law as already approved, which you made to me on November 17 and 27 last, in order to advise me that, generally speaking, the observations made in the said declarations with relation to certain retroactive and confiscatory aspects of the law are considered applicable to it as actually approved.

With the intention of later referring to this matter, and before going any further, I beg to recall to your excellency that in my memorandum of December 3, 1925, which is still unanswered by the embassy, I stated at length the reasons on account of which the aforesaid legislation may not be looked upon as possessing the character which your excellency attributes to it.

Your excellency then discusses as of primary importance the petroleum law, as published in the edition of the Diario Oficial of December 31 last, after recalling that on the 16th of the same month you brought to my attention, in confirmation of the declarations made by the Secretary of State to Ambassador Tellez on the 12th of December, certain general observations relating to the retroactive and confiscatory character of the law then pending approval. Your excellency adds that your Government regrets to observe that the recent law as actually approved is open to the same objection as those which were made beforehand against the draft of law. Your excellency then states that in your opinion and without the observations which follow, being all those that might be made against the law, you must make the following objections:

First objection: The law fails duly to recognize fully those rights acquired prior to the going into effect of the present constitution, since the law of Mexico provided that the owner of the subsoil was also the owner of the subterranean petroleum deposits.

With regard to this observation I take the liberty of informing your excellency that although it is true that the provisions of the Mexican law were as stated and that under the new legislation petroleum deposits are the property of the nation, this does not imply any refusal to acknowledge prior rights lawfully acquired. In fact, a right may not be acquired except by its exercise. The owner of the surface might exploit the subsoil as his own property, but as long as he did not do so he could not acquire ownership of anything whatsoever which might be found therein. A subsequent law may modify a status in law created by a previous law without being retroactive; and it may not only do this but such has necessarily to be the case, since if it were otherwise the legislation would remain immobilized, which is an absurdity, because law is no more than one phase of the existence of peoples and has to be gradually modified from time to time in order to be adaptable to the new necessities of peoples. If it were otherwise, there would not have been suppressed slavery nor rights of primogeniture, nor obligatory inheritance, nor irredeemable taxes, etc. It is always assumed that a new law is an improvement on the preceding one and the only limitation to be placed on the application of such new law is that it shall not be retroactive and it is not as long as it does not infringe upon any right that has already been put into effect, and in the case under discussion there was no such consummation. Now, if there are in question cases in which such acts have been performed (executed), article 14 of the law provides that it will not apply retroactively.

As a second objection, your excellency states that the law not only fails to respect what has been indicated above, but that it also fails to respect the decisions of the supreme court of justice, according to which the constitutional precepts may neither be retroactive nor applicable to corporations or individuals who may have performed any of those acts denominated "positive acts"; an objection which, having a general character, it is sought to base upon the following objections, which are specific in character:

A. That under article 4, foreign corporations, without taking into consideration the time when they acquired their rights and without taking into account any "positive acts," will not be legally qualified to obtain the recognition of their right.

In reply to the foregoing objection, I beg leave to state to your excellency that, from a careful reading of the law, it is clearly obvious that the hypothetical case in question does not come under article 4, but under article 14, according to which foreign corporations which have acquired rights and performed "positive acts" before the going into effect of the constitution will have such rights confirmed.

Furthermore, article 14 should be read in this case in connection with articles 5 and 6 of the organic law of section 1 of article 27, which provides that rights to real property situated in the prohibited zones, not devoted to purposes of agriculture and lawfully acquired by aliens prior to the going into effect of the law, may be retained by the present owners until their death.

In my turn I beg to call to your excellency's attention that it is against jurisprudence to judge of legislation on the strength of a

single legal precept, but that such legislation should be examined in its entirety and all such provisions as may be applicable should be taken into consideration in order to determine under which one of them any given case would come.

B. That alien individuals, regardless of the date on which their rights were acquired and without taking into account any of the said "positive acts," will be deprived of such rights unless they renounce their nationality with respect thereto.

To this objection I beg leave to observe that, leaving aside the last assertion, that is to say, the one which refers to the so-called renunciation of nationality, the same explanation must be given in this case as was set forth in treating of the preceding objection, since this case does not come under article 4, but under article 14, which respects the rights in question.

C. That the number of recognized "positive acts" will be much less than those enumerated in the decisions of the supreme court.

The "positive acts" enumerated are drillings, leases, conclusion of any contract relative to the subsoil, the investment of capital in land with the object of extracting petroleum from the subsoil, the carrying out of the work of exploitation and exploration, the conclusion of contracts relative to the subsoil in which it appears that a greater price was given than had been paid for the surface due to the purchase having been made for the purpose of searching for petroleum and, in general, any other act manifesting an intention of similar character. It will be seen that the above enumeration of "positive acts" is confined to cases in which petroleum exploration work has begun or contracts have been entered into for the purpose of carrying out such exploitations, cases which are precisely those stated in article 14, in order that rights previously lawfully acquired be confirmed and subsequently respected.

In point of fact, article 14 of the petroleum law provides the following:

ART. 14. The following rights will be confirmed without any cost whatever and by means of concessions granted in conformity with this law:

I. Those arising from (que se deriven) lands in which works of petroleum exploitation were begun prior to May 1, 1917.

II. Those arising (que se deriven) from contracts made before May 1, 1917, by the surface owner or his successors in title for express purposes of exploitation of petroleum. The confirmation of these rights may not be granted for more than 50 years computed in the case of Fraction I, from the time the exploitation works began, and in the case of Fraction II, from the date upon which the contracts were made.

III. To owners of pipe lines and refiners who are at present operating by virtue of a concession or authorization issued by the department of industry, commerce, and labor, and as to what has reference to said concessions or authorizations.

D. That even in the case of foreign individuals who have performed "positive acts" and who have made the renunciation mentioned, the confirmation of their rights must be applied for by them within one year, as otherwise such rights will be confiscated according to article 15.

In regard to this observation, I wish to point out to your excellency that this article, far from injuring alien individuals in the case in question, is beneficial to them inasmuch as it gives them the

right to have a title emanating from the Government; and it is to their advantage, moreover, that the said Government should have full knowledge of all such acquisitions, to which the same provisions will not be applied which are to govern subsequent acquisitions, it being obvious, moreover, that no person can in any way be injured by applying for confirmation of his rights.

The third objection of a general character made by your excellency is, that, in contradiction to the declarations made by the Mexican commissioners during the conferences which took place in this city in 1923, in regard to the policy of the Mexican Government of granting preferential rights to owners of the subsoil or to such persons as may be legally qualified to exercise such preferential rights to the petroleum in the subsoil and who may not have executed any "positive act," the law in such cases does not recognize such preferential right.

In this connection I take the liberty of advising your excellency that this supposed contradiction does not exist, since the Mexican commissioners declared that the then Executive considered it just to grant the preferential right in question, and they added that such declaration was not intended to establish an obligation on the part of the Mexican Government for an indefinite period. Indeed, it suffices to read carefully paragraph 4 of the minutes of the session of August 2, 1923, which reads textually as follows:

> IV. The present Executive, in pursuance of the policy that has been followed up to the present time, as above stated, and within the limitations of his constitutional powers, considers it just to grant, and will continue in the future to grant, as in the past, to owners of the surface or persons entitled to exercise their preferential rights to the oil, who have not performed prior to the constitution of 1917 any positive act such as mentioned above, or manifested an intention as above specified, a preferential right to the oil and permits to obtain the oil to the exclusion of any third party who has no title to the land or subsoil, in accordance with the terms of the legislation now in force as modified by the decisions of January 17, 1920, and January 8, 1921, already mentioned. The above statement in this paragraph of the policy of the present Executive is not intended to constitute an obligation for an unlimited time on the part of the Mexican Government to grant preferential rights to such owners of the surface or persons entitled to exercise their rights to the oil in the subsoil.

It is sufficient, therefore, as I have said above, to read carefully these said minutes in order to completely cause the disappearance of the contradiction which is alleged, apart from the fact that failure to grant the preference to the owners of the surface does not imply any retroactivity whatsoever in the law.

Your excellency then goes on to state in regard to both laws that your Government does not accept the renunciation of nationality required of aliens, and the agreement not to invoke the protection of their Governments, since this would be equivalent to the annulment of the relations between an American citizen and his Government and, consequently, to releasing the latter of any obligation to protect the former in the case of a denial of justice.

In this connection—and after calling to mind all that I have stated with respect to this matter in my note No. 12816 of September 28, 1925, and in my aforementioned memorandum of December 5, 1925—I wish to observe, in the first place, that there is no such renunciation of nationality since the alien retains his own nation-

ality. What the constitution requires of aliens, in order that they may acquire certain properties, is that in regard to the latter they shall agree to consider themselves as nationals, and therefore it is a necessary consequence that such aliens shall undertake not to invoke the protection of their Governments in so far as such properties are concerned. Attention has already been called to the power enjoyed by all countries to impose upon aliens such conditions and requirements as they may believe expedient in order to allow them to acquire real property, and, on the other hand, any alien making such an acquisition, under the conditions in question, does so under a resolutory condition, and it is in harmony with the legislation of all countries that when a condition of this sort is fulfilled the right so acquired is dissolved, which is absolutely different from confiscation.

Your excellency ends by stating that, notwithstanding the declarations of the Mexican commissioners, at the conferences mentioned above to the effect that the executive power would respect and fulfill the decisions of the judiciary power, the petroleum law violates rights acquired under Mexican laws, under the constitution now in force and under the decisions of the supreme court of justice and in violation of promises made by the authorized representatives of the Government.

In this regard I must advise your excellency that the law does not modify nor can it modify the decisions in question made and confirmed; to the contrary, it renders the effects thereof universal through the provisions of article 14. The above-mentioned decisions, on the other hand, do not restrict the power of Congress to enact laws which it may believe expedient and those which it has enacted do not violate any rights lawfully acquired in conformity with the Mexican laws and the constitution then in force, now are they contrary, as has been said, to the statements made by the representatives of our Government.

I must call your excellency's attention to the fact that whatever may have been the promises made by the executive, they were given with an express declaration to the effect that they were made within the limitations imposed upon his constitutional powers and without thereby encroaching upon the attributes of the other two powers. So that under the organization which our fundamental charter gives to the public powers, no other organ thereof, apart from the supreme court of justice, had at its disposal any clear and precise standard by which to go when applying the provisions of paragraph four of article 27 of the constitution until the Congress of the Union enacted the law regulatory of this precept. The decisions of the supreme court made and confirmed, which are invariably respected by the Federal Executive may not be considered except as decisions rendered in the specific cases which gave rise to them but not as a doctrinal interpretation universal in character of paragraph 4 of article 27 of the constitution, which, according to constitutional precepts and by express command of the same, belong solely to the legislative power.

The supreme court of justice was empowered to render the decisions made and confirmed in the form in which it did, in the absence of a law for the regulation of the constitution in regard to petro-

leum, and it may decide, when applying to new and specific instances the petroleum law recently enacted by the Congress of the Union, whether this law is or is not unconstitutional; but the Federal Executive may not give to the decisions of the supreme court a universal character equivalent to an act interpretative of the constitution without exceeding his powers.

Moreover, the decisions of the supreme court of justice, when precedents are set by them, are only binding in so far as they interpret the law to the Federal courts; but they can never bind nor be obligatory upon, as has been indicated above, the legislative power, as this is the only one authorized to enact laws for general observance throughout the Republic.

Aside from this, I take the liberty of calling your excellency's attention to the fact that the same thing occurs in the United States, where the Supreme Court has been known to vary the precedents set by it with regard to various questions which were not of minor consequence. Again, there (the United States) these variations of jurisprudence took place without there being any subsequent law or regulation emanating from the legislative powers, as has been and is now the case in Mexico.

Referring to the suggestions made in regard to the policy followed by the Executive, I take the liberty of advising your excellency that this is in every way similar to the course followed by the honorable Executive of the American Union in the case of Japanese immigration. In fact, the American Executive had arrived at an arrangement—gentlemen's agreement—with the Japanese Government in regard to the immigration of Japanese into the territory of the United States. The arrangement was in force when the American Congress in the exercise of its sovereignty, which could not have been diminished by any act of the Executive, deemed it expedient for the interest of the Republic to issue an exclusion law which modified the engagements entered into by the said Executive power. I do not believe that in this case, as in the one under reference, the President may be charged with having modified his policy.

The laws in question, therefore, do not violate either the principles of international law or those of equity. Far from so doing, they favor aliens in various ways, since they dispel all uncertainty with regard to the matters under discussion, and in regard to the petroleum law it may be observed that aliens who have acquired rights in the prohibited zones may hold them, which could not be the case except for the provisions of article 14, in accordance with the pertinent section of article 27 of the constitution, and if there is in the said laws nothing either retroactive or confiscatory there is no well-grounded reason for the declaration which the embassy makes, to the effect that it will not be possible to agree to the application of said laws to American properties.

Finally I take the liberty of inviting your excellency's attention to the fact that article 11 of the organic law of section 1 of article 27 of the constitution and article 22 of the law regulating the said article in the matter of petroleum empowers the Executive to issue regulations of those laws. Now, it is known that the purpose of regulation is to determine the manner in which the laws which they

regulate shall be applied, and it is certain that the Executive, in making use of the pertinent powers, will do so, taking into account not only the express content of the laws but also the precepts of international law and of justice and equity as well.

Legislation in the subjects indicated will only be complete when the regulations shall have been issued, and only from the aggregate will it be possible to judge whether they violate or respect and protect the rights of the nation as well as private individuals, whether nationals or aliens.

I should like also to invite the attention of your excellency to the measure adopted by my Government in extending a spontaneous invitation to the petroleum companies with interests in Mexico to attend a conference at which the suggestions and points of view of these companies may be made clear in connection with the study of the regulations of the present petroleum law within the most ample spirit of equity and for the purpose of affording a hearing for such arguments as may be presented, in order to endeavor, within the spirit of the above-mentioned law, to smooth over such obstacles as might arise so that as a consequence of the enactment of the law and of its regulations, the petroleum industry may enter unrestrictedly into a period of true prosperity. The position thus taken, which would not be binding upon my Government on any consideration other than that of seeking a solution that would safeguard the interests of both parties, is the best proof of the sentiments of equity and justice which inspire all the acts of the Mexican Government, and, in the case before us, constitutes the evidence of the respect and interest it considers due to the solution of the problems in which, as in the petroleum question, it is only sought to establish a policy defined by law which shall afford security and confidence to the development of the industry and to the foreign investments in the country in general, when they come to cooperate in a manner consistent with consideration for, and respect of, our laws.

I also take the liberty of observing to your excellency that a diplomatic representation is not considered appropriate in connection with the enactment of a law, but that it is only justified when the enforcement of such law involves an injury, and in such cases the parties affected thereby are afforded by our laws the necessary recourse, the means for vindicating their rights before the Mexican courts, to which they have free access in every case in which they may believe their rights are being violated.

I have the pleasure to renew to your excellency the testimony of my highest consideration.

AARON SAENZ.

Note of Secretary of State to Mexican Minister for Foreign Affairs, dated January 28, 1926

EXCELLENCY: This Government, in response to the note delivered by your excellency to the American ambassador on January 20, 1926, notes with satisfaction that his excellency the President of the Mexican Republic proposes to frame the executive regulations covering the application and enforcement of the recent alien land law and the law relating to certain deposits of the subsoil in such man-

ner that the application thereof will not be retrocative in respect of rights legally acquired under laws existing at the time the property or property rights was acquired.

This Government expresses its sincere hope that such regulations may so regulate and restrict the application of these laws as to bring them into accord with the decisions of the supreme court of Mexico, later herein referred to, with the agreements of 1923 and within the principles of the law of nations, thus preventing their retroactive effect as to rights already legally acquired by American citizens.

The discussions of these matters between the two Governments is not of recent origin, but goes back to the time following the adoption of the constitution of 1917. The entire field was thoroughly covered in the discussion during the negotiations between the American and Mexican commissioners in 1923, as shown by the signed record of their proceedings. From the beginning, this Government in presenting its views has endeavored to call attention to the vital distinction between future acquisitions of property and the status of property rights legally acquired under laws existing at the time of the acquisition of the property or right. Every sovereign state has the absolute right within its own jurisdiction to make laws governing the acquisition of property acquired in the future. This right can not be questioned by any other state. If Mexico desires to prevent the future acquisition by aliens of property rights of any nature within its jurisdiction, this Government has no suggestion whatever to make. When, however, any foreign government seeks to divest aliens of property rights which have already been legally acquired, this Government, so far as its citizens may be concerned, rests under a positive duty to make representations and efforts to avoid such action. This Government has been and is now concerned only with property rights in Mexico duly and legally acquired by American citizens under laws existing at the time of the acquisition, and has asked in the past and now asks that the guaranties afforded by the generally accepted principles of international law and equity be afforded by the Mexican Government for the protection of such rights.

Article II of the recent land law provides that any alien who may have acquired or may acquire ownership of agricultural lands, waters, and their accessories or concessions for mining or for the use of waters or for taking combustible minerals from the subsoil in the territory of the Mexican Republic shall agree before the department of foreign relations to consider himself a national of Mexico in respect of his part of the property, and shall agree not to invoke in respect thereof the protection of his government with reference thereto under penalty, in case of failing in the agreement, of defaulting his property to the nation.

This conception of the rights of a nation under the rules of international law has never been accepted by this Government, and in the past this Government has frequently notified the Mexican Government that it does not admit that one of its citizens can contract by declaration or otherwise to bind his own government not to invoke its rights under the rules of international law. Under the rules applicable to intercourse between states, an injury done by one

state to a citizen of another state through a denial of justice is an injury done to the state whose national is injured. The right of his state to extend what is known as diplomatic protection can not be waived by the individual. If states by their unilateral acts or citizens by their individual acts were permitted to modify or withhold the application of the principles of international law, the body of rules established by the custom of nations as legally binding upon states would manifestly be gradually broken down.

The right of diplomatic protection is not a personal right, but exists in favor of one state against another. It is a privilege which one state under the rules of international law can extend or withhold in behalf of one of its nationals. Whether or not one of its citizens has agreed not to invoke the protection of his government, nevertheless his government has, because the injury has been inflicted by one state against the other, the right to extend what is termed diplomatic protection.

Under Article IV of the recent land law, any foreigner who may own prior to the enactment of the law 50 per cent or more of the total stock interest in any company or corporation owning agricultural property in Mexico is prohibited from retaining such interest in excess of 50 per cent for more than 10 years. Thereafter such alien must sell such a portion of his holdings as to divest him of the majority interest in such property.

This provision of the law is manifestly retroactive. It deprives the alien owner of many rural properties legally acquired under the laws of Mexico and requires him to divest himself of the ownership, control, and management of his property. Your reference in the memorandum dated December 5, 1925, to the statutes existing in the States of Arizona and Illinois is based upon a misconception of those laws. Both the Illinois law of 1897 and the provisions of the Arizona Civil Code of 1913, relating to alien ownership of real estate, are expressly made to apply to future acquisitions of real property and do not apply to property already acquired. This Government does not understand, and would like to be further advised, as to the meaning of your observation in the same memorandum that "the limitation imposed by the law upon companies possessing rural property for agricultural purposes tends to preclude possible conflicts in the application of the agrarian legislation since it is considered advisable to reserve ownership and cultivation of the majority of the land to Mexicans."

Even if a foreigner should be a minority stockholder in a company owning agricultural lands, this Government does not understand how the agrarian law could be applied to the interest of the Mexican citizen therein and not be applied to the interest of an American citizen who might be the owner of less than 50 per cent of the interest therein. The stockholders of a corporation own a proportional interest in its assets and any taking of agricultural property under the agrarian laws of Mexico, so proportionately owned by Mexican and American citizens, would nevertheless deprive the American citizen of some portion of his interest in the property.

This Government has also carefully considered the statement in your note of January 20, 1926, that in accordance with article 14

of the law relating to the subsoil rights acquired before the going into effect of the constitution will be confirmed.

This Government heretofore in the discussion of this matter has taken the position that lands acquired by American citizens in Mexico under the laws of 1884, 1892, and 1909 entitle the owners or lessees of the surface to the mineral fuels and oils contained in the subsoil, and during the negotiations of 1923 the American commissioners reserved in behalf of this Government all the rights of its citizens in respect of all lands in Mexico acquired by them before May 1, 1917. Nevertheless, this Government now expresses the hope that the regulations to be issued by his excellency the President will confirm the rights of the owners of the subsoil who had, prior to the going into effect of the constitution of 1917, acquired rights in accordance with the decisions of the Supreme Court of Mexico and who had performed positive acts as defined in the declarations and agreements made by the Mexican Government under date of August 2, 1923, during the negotiations of that year and in accordance with the repeated assurances of the Mexican Government many times since 1920, and more particularly during the negotiations with the American commissioners in 1923.

What has disturbed this Government and prompted its recent inquiries as to the construction and interpretation to be placed on article 14 of the recent law relating to certain deposits of the subsoil is the wording of the article itself. This Government has from time to time recently called the attention of your Government to the threatened conflict between the decisions of the Supreme Court of Mexico, the agreements of 1923, and the terms of the law.

The Supreme Court of Mexico in an amparo case decided August 30, 1921, unequivocally held paragraph 4 of article 27 of the constitution of 1917 not to be retroactive in cases where rights had been legitimately acquired prior to May 1, 1917, the date on which the constitution went into effect. The same principle was announced in four other amparo cases, establishing under the law of Mexico a precedent not to be broken.

The pertinent portion of this decision is:

> These premises being established, it must be ascertained whether Paragraph IV of article 27 of the present constitution, which nationalizes, among other substances, petroleum and all solid, liquid, or gaseous hydrocarbonates, is or is not retroactive. It is absolutely necessary to define the meaning of Paragraph IV, because if it is retroactive the decrees complained of, which are based on this article, should also be applied retroactively, notwithstanding article 14 of the constitution; and if this paragraph is not retroactive, then the decrees are contrary to the said constitutional text, and, because they are issued by the ordinary legislator, fall within the scope of said article 14 of the most recent supreme law.
>
> Paragraph IV of article 27 of the present constitution can not be deemed retroactive either in letter or in spirit, inasmuch as it does not damage acquired rights.
>
> By the letter thereof, because it does not contain an express mandate to the effect that it shall be retroactive, nor does the wording thereof necessarily convey this idea; nor by its spirit, as it is in consonance with the other articles of the same constitution, which recognize in general the ancient principles upon which rest the rights of man and which grant ample guaranties to such rights, and because, holding it to be nonretroactive, it also proves to be in harmony with the principles expressed in the paragraphs which immediately precede it on the subject of private ownership from its inception, and also with the portions of the text relative to petroleum which immediately follow it as integral parts of the same article 27 of the constitution.

From all this it is inferred that in consonance with the rules universally accepted for the interpretation of laws and those imposed by sound logic, it must be held that Paragraph IV of article 27 of our present constitution is not retroactive, inasmuch as it does not damage former rights legitimately acquired. This precept establishes the nationalization of petroleum and its by-products, as well as of the other substances, to which it refers, amplifying the enumeration that existed in our former mining laws, but respecting the rights legitimately acquired prior to May 1, 1917, the date on which the present constitution went into effect in its entirety.

Considering, third, in view of all that has been before expressed, and in strict compliance with the provisions of Section I of article 107 of the constitution, it is opportune to determine now whether in the concrete case on which this amparo is based vested rights have been injured by violating the individual guaranties which the complainants invoke.

In our Republic there have been in effect in successive periods the mining code of 1884, the mining law of June 4, 1892, and that of November 25, 1909, which latter in its second article granted the owner of the lands the right to explore and exploit oil freely in order to appropriate the oil he might find without the necessity of a permit from any authority, and also enabled him to transmit the said rights as he would any other property either for a consideration or gratuitously.

In pursuance of this binding construction by the Supreme Court of Mexico of Article IV of section 27 of the constitution of 1917, the Mexican commissioners, on August 2, 1923, as a part of the negotiations of that year, stated, "in behalf of their Government, in connection with the representations relating to the rights of the citizens of the United States of America in respect to the subsoil," as follows:

It is the duty of the Federal executive power, under the constitution, to respect and enforce the decisions of the judicial power. In accordance with such a duty, the Executive has respected and enforced, and will continue to do so, the principles of the decisions of the supreme court of justice in the Texas Oil Co. case and the four other similar amparo cases, declaring that Paragraph IV of article 27 of the constitution of 1917 is not retroactive in respect to all persons who have performed, prior to the promulgation of said constitution, some positive act which would manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface, such as drilling, leasing, entering into any contract relative to the subsoil, making investments or capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation and exploration of the subsoil, and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described. According to these decisions of the supreme court the same rights enjoyed by those owners of the surface who have performed a positive act or manifested an intention such as has been mentioned above will be enjoyed also by their legal assignees or those persons entitled to the rights to the oil. The protection of the supreme court extends to all the land or subsoil concerning which any of the above intentions have been manifested, or upon which any of the above-specified acts have been performed, except in cases where the documents relating to the ownership of the surface or the use of the surface or the oil in the subsoil establish some limitation.

The above statement has constituted and will constitute in the future the policy of the Mexican Government in respect to lands and the subsoil upon which or in relation to which any of the above-specified acts have been performed, or in relation to which any of the above-specified intentions have been manifested; and the Mexican Government will grant to the owners, assignees, or other persons entitled to the rights to the oil, drilling permits on such lands, subject only to police regulations, sanitary regulations, and measures for public order, and the right of the Mexican Government to levy general taxes.

II. The Government, from the time that these decisions of the supreme court were rendered, has recognized and will continue to recognize the same

rights for all those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who are in a similar situation as those who obtained amparo; that is, those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who have performed any positive act of the character already described or manifested any intention such as above specified.

On August 22, 1923, after the termination of these negotiations and the return of the American commissioners, the Secretary of State transmitted to the Minister of Foreign Affairs of Mexico a message, in part:

I have examined the report of the proceedings of the American and Mexican commissioners at Mexico City, closing August 15, 1923, and I have submitted the same to President Coolidge. I have the honor to inform you that President Coolidge approves the statements and recommendations of the American commissioners as therein set forth. I shall be glad to be advised by you that General Obregon approves the statements set forth in the said report as having been made by the Mexican commissioners.

In the event that you are able so to advise me, I beg leave to suggest the following procedure with respect to the resumption of diplomatic relations. It seems to be advisable that we should agree upon a day on which the resumption of diplomatic relations should be formally announced. * * *

To this message the Minister of Foreign Affairs of Mexico replied to the Secretary of State:

* * * I have received your courteous message by which you inform me, on the one hand, to have examined the minutes of the work of the Mexican-American commission adjourned on the 15th of this month at this city and to have submitted same to the President, and, on the other hand, that the President has deigned to approve the declarations and recommendations made by the American commissioners. You suggest, furthermore, the procedure through which the reassumption of diplomatic relations could be accomplished, should President Obregon have approved the declarations of the Mexican commissioners embodied in said minutes.

In reply to all this, upon expressing to you the gratification with which this chancellery has noted President Coolidge's approval of his commissioners' recommendations, and upon informing you that President Obregon has also approved the declarations made by his commissioners, I take the liberty to submit to your consideration some slight modifications to the procedure you have been good enough to propose—modifications which undoubtedly will greatly facilitate the attainment of the ends in view, to wit:

(*a*) That both chancelleries simultaneously make the following or a similar statement to the press:

"The Governments of Mexico and that of the United States, in view of the reports and recommendations that their respective commissioners submitted as a result of the Mexico-American conferences held at the City of Mexico from May 14 to August 15, 1923, have resolved to renew diplomatic relations between them, and therefore pending the appointment of ambassadors, they are taking the necessary steps to accredit, formally, their respective chargés d'affaires."

The reference by your excellency to the termination of the agreement with Japan in respect of immigration was undoubtedly made without recalling what has already been published, the reservation constituting a part of the agreement of 1911 between Japan and the United States. That reservation, fully set forth at the time in the agreement, was "In accepting the proposal as a basis for the settlement of the question of immigration between the two countries, the Government of the United States does so with all necessary reserves and without prejudice to the inherent sovereign right of either country to limit and control immigration to its own domains or possessions."

This Government believes that the Mexican Government will surely appreciate that all that this Government has said in connec-

tion with these matters arises from a genuine wish for friendliness and cooperation. In this way complete understanding can be arrived at and great and irreparable losses and damages to American citizens possessing property in Mexico be prevented. There exists a profound conviction that His Excellency the President of Mexico will formulate regulations under the terms of article 14 of the law pertaining to certain property rights in the subsoil in harmony with the decisions of the Supreme Court of Mexico and the agreements between the two Governments in 1923. This Government has felt great apprehension that the heretofore admitted rights of its citizens in Mexico were about to be disregarded by the terms of the laws under consideration.

The Supreme Court of Mexico, as has been pointed out, declared that in the Republic of Mexico—

> There have been in effect in successive periods the Mining Code of 1884, the mining law of June 4, 1892, and that of November 25, 1909, which latter in its second article granted the owner of the lands the right to explore and exploit oil freely in order to appropriate the oil he might find without the necessity of a permit from any authority, and also enabled him to transmit the said rights as he would any other property, either for a consideration or gratuitously. The statement made in behalf of the Mexican Government already quoted asserts the duty of the Mexican Government under the constitution to respect and enforce the decisions of the judicial power. On behalf of their Government, and with the approval of their Government, the Mexican commissioners stated that in respect of lands where positive acts, fully defined in the agreement, had been performed or intentions manifested to perform any such act "the Mexican Government will grant to the owners, assignees, or other persons entitled to the rights to the oil, drilling permits on such lands, subject only to police regulations, sanitary regulations, and measures for public order, and the right of the Mexican Government to levy general taxes."

Under article 14 of the recent law relating to the subsoil the President of Mexico may confirm without any cost whatever these acquired rights in accordance with the decision of the supreme court. Indeed, your excellency stated in your note of January 20, 1926, "In regard to this matter I must advise your excellency that the law (article 14 of the present law) does not modify nor can it modify the decision of the supreme court."

This Government can not fail to point out, however, that the exchange of a present title for a concession having a limited duration does not confirm the title. Such confirmation can be brought about by regulations in harmony with the supreme court decision. Nor can this Government fail to point out that anything less than a confirmation does not grant the owner in the language of the supreme court of Mexico, without the necessity of a permit from any authority, the right to appropriate such products of the subsoil and does not enable the owner to transmit his acquired rights as he would any other property.

This Government awaits with deep interest information as to the land law as it affects rural lands and other property rights and as to the nature of the regulations intended to be issued by his excellency the President of the Republic in accordance with the supreme court decisions, the negotiations of 1923 and the rules of international law, equity, and justice.

Accept, excellency, the assurances of my most distinguished consideration.

FRANK B. KELLOGG.

Note in reply of the Mexican Minister of Foreign Affairs, dated February 12, 1926

Mr. SECRETARY: I have the honor to reply to your note dated January 28 of the present year, which opens with the following statements:

First. That the American Government observes with satisfaction that the President of Mexico proposes to issue the regulations of the alien land law and the law regarding certain deposits of the subsoil, in such manner that they will have no retroactive effect in so far as it affects rights lawfully acquired in accordance with prior laws, and it is hoped that these regulations will be in accord with the decisions of the supreme court of justice, with the agreements of 1923, and the principles of international law;

Second. That the said Government from the beginning has called attention to the vital difference there is between future acquisitions of property and acquisitions made under prior laws; and

Third. That every sovereign State has the absolute right to promulgate laws which determine the acquisition of property in the future, a right which can not be impugned by any other State; wherefore if it be Mexico's desire to prevent aliens from acquiring in the future property rights of any kind within its jurisdiction, the American Government has no observation to offer; but that when any Government attempts to dispossess foreigners of property rights which have already been lawfully acquired, the American Government, with respect to its citizens, has the absolute duty of making representations and efforts to prevent it; wherefore it has been and is now concerned solely with the property rights lawfully acquired in Mexico by American citizens in accordance with the laws existing at the time of the acquisition, and has requested and now requests that the Government of Mexico afford for the protection of those rights the guaranties which the generally accepted principles of law and equity require.

The foregoing declarations are satisfactory to my Government, because they involve points of view which are common to the Governments of Mexico and the United States. All the more since the most explicit recognition is given to the absolute right of Mexico to enact such laws as it may deem expedient, even though the effect thereof would be to exclude aliens from all acquisition of property in the country, a point which has not been reached, since the only demand is for certain requisites in cases specified by the law; wherefore the entire question is reduced to determining whether or not the laws under consideration are retroactive in their application or whether they assail or respect rights previously lawfully acquired.

But before proceeding further, it is well to reproduce the opinion of Chief Justice Marshall (7 Cranch 116, 136, 144), who stated:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.
>
> All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him, nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter can never be construed to grant such exemption.

Your excellency states with regard to Article II of the law approved by the Mexican Congress on December 31 last, that the Government of the United States does not admit that one of its citizens can contract by declaration or otherwise to obligate his own Government not to invoke its rights under the rules of international law, because the right of the State to extend diplomatic protection can not be waived by an individual, since it is not his personal right but a prerogative of the Government which, in spite of everything, must extend the protection referred to.

It appears that the foregoing statement is due to some confusion. It is evident that an individual may not compel the State of which he is a citizen to refrain from asserting a right that belongs to it, and in this sense the American doctrine is entirely correct; but the article under consideration makes no such assertion, since that which is required is that the alien shall consider himself a national with respect to the property which may belong to him in the Mexican corporation which he enters, and shall not invoke in regard thereto the protection of his Government.

It is therefore an obligation assumed individually and producing effects only between the contracting party and the Mexican Government, in no wise infringing upon any of the rights of the foreign State. But if the individual who assumed the obligation violates it, the infraction must be sanctioned, because a law without sanction is not a law. And if the infraction only affects the individual privately, without in any way infringing the rights of the State to which he belongs, it is not understood how it can be contrary either to international law or to the thesis sustained by your excellency's Government.

It appears, moreover, that in its general terms the Mexican law is less stringent than American jurisprudence, because it does not require naturalization as a condition for acquiring any kind of real property, as is the case in other countries.

Thornton, umpire, Smith Bowen *v.* Mexico, No. 442, American Docket, convention of July 4, 1868, Ms. Op. III, 586:

The umpire is of opinion that with regard to Mexico the claimant can not be considered to be a citizen of the United States. The umpire has always held that the purchase of real property in Mexico gave a foreigner the right to call himself a Mexican citizen if he wished to be so, but did not impose upon him the obligation if he did not wish it. There being no regulation prescribed for carrying out the law upon this subject, the foreigner's silence would imply that he wished to remain a citizen of the nation to which he previously belonged.

But in this particular case the claimant asked to be allowed to become a Mexican citizen for the purpose of being able to consummate the purchase of land in the State of Tamaulipas, on the frontier. The permission was granted him, though his naturalization papers were not issued, apparently because he failed to pay the legal fees. But in the following year, 1863, he purchased real property; and not only did he purchase it, but it was on the frontier, where foreigners were prohibited by law from holding real property; he thus doubly became a Mexican citizen. (Moore International Arbitrations, Vol. 3, p. 2482.)

Your excellency asserts that Article IV prohibits any alien who may represent, prior to the going into effect of the law, 50 per cent or more of the total interest in any kind of corporation owning rural property for agricultural purposes, from conserving the interest in excess of 50 per cent for more than 10 years, after which time the alien must sell a part of his property, so that he loses the benefits of the majority ownership in such property, a provision which is clearly retroactive, because it deprives the alien of many rural properties lawfully acquired and requires him to dispossess himself of the ownership, control, and management thereof. The provision of this article is not exactly as expressed, since it provides that aliens, if physical persons, can retain integrally their rights until their death, and, therefore, far from assailing acquired rights, it respects them, since the right of an individual can not be protected beyond his own life, save in the case of transmission, which is provided for in Article VI. Only treating of alien moral persons (corporations) which are shareholders in Mexican corporations owning real property for agricultural purposes, it is provided that they may hold the aforesaid rights for 10 years, since under the constitution of 1917 foreign corporations can not acquire real property in the Republic and it was necessary that for corporations which might be in such condition a reasonable period be fixed, so as not to cause them any injury. In all legislation it is admitted that the law is free to amplify, modify, or restrict the capacity of that class of persons.

The principle in question, with regard to the period allowed for corporations (personas morales) will be applied in very few cases, because it applies only to those in which foreign corporations are shareholders in Mexican corporations. And since the same article refers to future rights, such as those arising from the death of an individual now living or the period of time subsequent to 10 years, its effects can not be regarded as retroactive, since there was no acquired right but merely expectation of a right. And since the laws in force at the time of the acquisition are invoked, it is proper to recall that the precept of article 729 of the Civil Code, like all prior precepts on the subject, defines property as follows: "It is the right to enjoy and dispose of a thing without further limitation than those fixed by the laws." And since the latter are not immutable, the right of ownership may be modified by them for the future.

It was in that sense that there were cited in the memorandum of December 5, 1925, the provisions in force in the States of Arizona and Illinois applying to the acquisition of real property; and though the note I am now answering affirms that both the law of Illinois of 1897 and the provisions of 1913 of Arizona, relating to the ownership of real property by aliens, are expressly devised to apply to future and not to prior acquisitions, it is seen that in some cases

there is a limit set for the retention of rights already acquired which is exactly the principle of the Mexican law. In the States cited and in those of Kansas, Kentucky, Minnesota, Oklahoma, Missouri, and Washington, whose laws on the subject are similar, it is provided that an alien not domiciled in the country is incapacitated from acquiring real property, except if he be an heir of an alien who may have previously acquired property; but even in this case he must divest himself of the inherited property within a period varying from three to six years, under penalty of forfeiture to the State. Aliens are also permitted to accept encumbrances and mortgages in security for obligations due them and to acquire at public sale the property so encumbered; but with the obligation of disposing of it within a period, generally fixed at three years, under the same penalty as above stated.

Lastly, I venture to remark that when the prohibition law was enacted in the United States it paralyzed established businesses falling under its provisions (the amendment meant to stop the whole business. Hamilton *v.* Kentucky Distilleries, 251 U. S. 146, 151, No. 1); and completely to paralyze a business would seem to be tantamount to destroying lawfully acquired rights therein, but nevertheless the American Government was not deterred by that consideration.

Your excellency says that the Government of the United States does not understand and would appreciate clarification of the meaning of the observation made in the memorandum of December 5, 1925, to the effect that the limitation put by the law on corporations owning rural property for agricultural purposes tends to prevent possible international conflicts with regard to the application of the agrarian legislation, since, although an alien might hold a minority of the stock in that kind of a company, it is not understood how the agrarian law could apply for the benefit of a Mexican shareholder and not that of an American who might be the owner of an interest of less than 50 per cent, and how any dispossession of agricultural property belonging proportionately to Mexican and American citizens would deprive the latter of any part of their interests.

The observation of the Mexican Government finds its explanation in the fact that when an alien holds 50 per cent or more of the total interest in a corporation of the kind under consideration it is really he who can dispose of it; because as a rule in corporations decisions are made by majority vote and when under the application of the agrarian laws a case arises, where rights of the corporation are to be expropriated, if these rights pertain in the majority to Mexicans, the matter is settled in strict conformity to the legislation of the country, but if the said property pertains to an alien, he applies to his government for protection, which gives occasion for possible conflicts of an international nature, and it is clear that if the good relations with another state are to be maintained it is essential to remove as far as possible any cause of friction.

With respect to article 14 of the law relative to the subsoil, which article provides for the confirmation of rights acquired prior to the going into effect of the constitution, your excellency remarks that the Government of the United States has taken the position that in prop-

erties acquired by American citizens in Mexico in accordance with the laws of 1884, 1892, and 1909 the owners and lessees of the surface are granted the right to the fuel, minerals, and oils in the subsoil, and your Government expresses the hope that the regulations to be issued by the executive will confirm such rights of owners who may have performed positive acts as defined by the declarations made to the American commissioners in the conferences of 1923. In this connection there is copied part of the decision rendered by the supreme court of justice on August 30, 1921, wherein it is held that Paragraph IV of article 27 of the constitution of 1917 is not retroactive, which was also decided in four other cases of injunction (amparo), and there are likewise copied the declarations of the Mexican commissioners in the sense that the executive would respect and enforce the decrees of the judiciary, confirming that he would continue to observe the principles contained in the sentences of the court in the sense that the principle cited would not be retroactive in regard to any persons who prior to the promulgation of the constitution may have performed some positive act showing the intention of the owner of the surface or of competent persons to exercise their rights to the petroleum in the subsoil.

As article 14 of the law regulating article 27 of the constitution in the matter of petroleum provides that the rights acquired before it went into effect will be confirmed in accordance with the terms therein set forth, there can be no doubt that the regulations to be issued by the executive will cause that provision to be fulfilled, and therefore the rights acquired in accordance with the laws of 1884, 1892, and 1909 will be confirmed; but it must be understood that those laws gave to the owner of the surface, or to the person who had right thereto, an optional right—that is, the liberty of appropriating for his own use the fuel, minerals, and oils contained in the subsoil—and therefore until he had performed some act looking to said appropriation no right was acquired. This was the understanding of the American commissioners at the conferences of 1923 and they accepted it, and your excellency's note reproduces it when it agrees that the rights which are to be confirmed will be confirmed, provided there shall have been executed any of the positive acts enumerated in the said conferences and which are substantially the same as those referred to in article 14, and consequently when none of those acts have been performed, and therefore the right alleged may not be confirmed, there will be no retroactivity whatsoever since no acquired right will be assailed.

It is not possible to understand with any degree of reason that when a law gives to the owner of the surface the right to the subsoil that it may be believed that he owns the subsoil down to the center of the earth, to use the language of the old Roman law. Otherwise, when, for instance, a subway is built without damaging the buildings or any other work whatsoever, it would be necessary to indemnify the owners of the surface, which would be inadmissible and wholly unjustifiable. Similarly, the right of the owner of the surface extends upward, and yet it would be absurd were he to complain that his right had been violated when a balloon or airplaine passes over his property. Hence the necessity that the owner of the surface execute some positive act, that is, some act

which at least evinces his purpose to appropriate, and only in that case will he have an acquired right.

The legislation on the subject under consideration does not have in view a lucrative purpose, nor is it intended to secure thereby any advantage, but only to apply a principle of domestic public law which is traditional in the country, and further to define the situation and solve our problems by means of laws which will fix a standard and equable system with guaranties to all. The right of the Nation to deposits of specified substances in the subsoil does not constitute an extraordinary principle; the Supreme Court of the Philippines has established in various decisions that the subsoil belongs to the sovereign, and consequently to the State, and the courts of the United States have held that the ownership of hydrocarbonates in the subsoil is governed by principles other than those applicable to the ownership of the surface. The mining law of Mexico establishes a system in regard to mining property similar to that established in regard to petroleum and with the application of which there has arisen no difficulty, nor has it obstructed the development of industry and large enterprises, freeing them from the difficulties which would be met under the local legislation. And, finally, the declaration that the petroleum industry is a public utility is a guaranty for the interested parties, because it placed them under the protection of the Federal power and grants them various advantages such as the right of expropriation.

Furthermore, the petroleum deposits are for the most part located in regions where ownership is denied to aliens by the constitution; wherefore if aliens were granted direct ownership over those deposits instead of the usufruct (dominio util), they would be placed in a more favorable position than the owners of the surface, and therefore the law on the subject instead of prejudicing the rights of the interested parties, puts them in an advantageous position with regard to the law governing those possessing direct ownership who are, in their majority, owners of the surface.

Your excellency goes on to state that subsequent to the negotiations of 1923 the Secretary of State transmitted to the Minister of Foreign Relations of Mexico the message which you insert and in which he states that President Coolidge approved the declarations of the American commissioners; that he requested to be informed whether General Obregon approved those of the Mexican commissioners and, if so, suggested the manner for the resumption of diplomatic relations. He is pleased likewise to insert the reply of this Department of Foreign Relations, in which it was stated that President Obregon approved the declarations of the Mexican commissioners and proposed certain modifications in the form suggested for the resumption of the relations between the two countries, but this latter insertion is not complete, since it omits paragraph (b), reading as follows:

> Subsequently, for example, 10 or 15 days from the date upon which the respective chargés d'affaires shall have been formally accredited—that is to say, the resumption of diplomatic relations—the conventions shall be signed in the form suggested by you. I make this proposition, since I sincerely believe that the simultaneity or excessive proximity between the two acts mentioned might unjustly give to the former the false appearance of being

conditional, because the Government of Mexico spontaneously proposed the signing of similar conventions as early as November 19, 1921 furthermore unnecessary because the conventions about to be signed can not become effective before the date of the opening of the American Senate. Therefore the resumption of diplomatic relations having been decided, the proposed modifications in short tend only to assure—without any sacrifice for the American interests or for the aims of the Government of the United States—the greatest and firmest cordiality in the future relations of the two Governments, allowing them to develop upon the solid basis of reciprocal confidence, the only possible foundation of true friendship.

The statement in the paragraph that has just been quoted is of the utmost importance, because therein is manifested beyond question that the conferences of 1923 were not a condition for the recognition of the Government of Mexico, and consequently can never be given that character; but this explanation does not mean that Mexico fails to recognize the declarations made by its commissioners.

Again invoking the decisions of the supreme court of justice, the declarations of the Mexican commissioners, in regard to the fact that the Government must respect the decisions of the judicial power and the statements of the Department of Foreign Relations in the following tenor: "The law (article 14 of the present law) does not modify nor can it modify the decisions of the court." Your excellency says that the Government of the United States can not refrain from pointing out that the exchange of an actual title for a concession of limited duration does not confirm the title, nor will it recognize the owner's right to appropriate the products of the subsoil without the necessity of a permit from any authority, nor to transfer his rights as he would transfer any other property.

In this connection I again repeat that the decisions of the court can not be either modified or altered in any manner either by the executive or by any other authority; and moreover, there is no objection, since such is the purpose of the executive himself, to reiterating the declarations of the Mexican commissioners in the sense that, in conformity with article 14, there will be granted to owners, concessionaires, or other persons having rights to petroleum permits to drill in the respective lands, although it is proper to state that the decisions of the court have not the scope of laws, nor can they signify that the legislative power loses its ability to issue such laws as it may deem expedient and that the executive action is necessarily limited by the contents of the laws themselves.

To grant a concession in exchange for an actual title is to confirm the latter, because the granting of the concession will have no other foundation than respect for the former; and although it is true that concessions are for a limited duration of time, on the one hand, to determine the period for the future exercise of a right is not to proceed retroactively, because it does not modify the effects already consummated of a right, but only applies a rule for future use, and, on the other hand, the period of a concession having expired, the latter may be extended or another obtained, wherefore in practice no prejudice is caused by the application of the precepts under consideration.

The law of waters under Federal jurisdiction of December 14, 1910, also provides for the confirmation of rights to waters which may have been previously acquired, and it has been so functioning

without any difficulty or any prejudice resulting therefrom to anyone.

Your excellency concludes by saying that the Government of the United States awaits with deep interest information in regard to the agrarian law with respect to rural property and other property rights, and in regard to the nature of the regulations which the President is to issue in accordance with the decisions of the supreme court of justice, the negotiations of 1923, and the dictates of international law, equity, and justice. In this connection I wish to confirm to your excellency that the purpose of the President in regulating the laws is to conform to the principles of international law, justice, and equity.

The President is convinced, and it affords me satisfaction so to inform your excellency, that in the regulation of the laws which we have just been considering there will be defined all points which have been the object of explanations between the two Governments.

Therefore I take pleasure in availing myself of this opportunity to renew to your excellency the assurances of my most distinguished consideration.

AARON SAENZ.

Note of the Secretary of State to the Mexican Minister for Foreign Affairs, dated March 1, 1926

EXCELLENCY: I am pleased to observe that by the terms of my note to you, dated January 28, 1926, and of your courteous reply, dated February 12, the two Governments find themselves in accord as to the principle that should be applied in the adjustment of certain of the matters now under discussion between the two Governments. After restating the position of this Government set out in the first part of my note of January 28, your excellency stated:

> The foregoing declarations are satisfactory to my Government, because they involve points of view which are common to the Governments of Mexico and the United States * * *; wherefore, the entire question is reduced to determining whether or no the laws under consideration are retroactive in their application or whether they assail or respect rights previously lawfully acquired.

The position of this Government in respect of property rights of its citizens in Mexico, as fully appears in the conferences between the American and Mexican commissioners in 1923 and as stated in my note of January 28, is that Mexico should not enact laws which in their application are retroactive in respect of rights legally acquired by aliens under laws existing at the time the property or property right was acquired. As I have already stated, your excellency declares this principle to be common to both Governments.

In view of this accord in principle, this Government is desirous of information from your excellency as to how the Mexican Government regards, in their practical application, some of the provisions of the alien land law, promulgated on January 21, 1926.

Is article 1 of this law retroactive and in application will it be given retroactive effect? That is, does article 1 apply to an alien who had acquired, or had an interest in any kind of company that had acquired, direct ownership in lands and waters within the prohibited zones prior to the promulgation of the law on January 21, 1926?

In respect of this same article, would your excellency inform me as to whether your Government considers the article to apply to mining, transportation, industrial companies, and other enterprises not involving the direct ownership in lands and waters?

Is article 2 of this law, promulgated on January 21, 1926, retroactive in its application in the sense that an alien who, prior to the promulgation of the law, had acquired an interest in a Mexican company, will be required to comply with article 2?

Is article 3 of this law retroactive in the sense that it will be necessary for an alien, who possesses an interest in a Mexican company acquired prior to the promulgation of this law, to apply for any permit?

As to article 4 of this law, I now understand from your excellency's note of February 12 that any alien who owned, prior to the promulgation of this law, a stock interest of 50 per cent or more of the total interest in any kind of company owning rural property in Mexico for agricultural purposes may retain such interest until his death without any permit or without compliance with article 2 of the law and that the right of his heirs as to such interest over and above 49 per cent is determined by the provisions of article 6 of the law; but that in the case of a foreign corporation owning stock in a domestic corporation, the Government of Mexico maintains that such corporate interest shall be disposed of on or before 10 years from the date of the promulgation of the law.

On the basis of the principle of nonretroactivity, is it the view of the Government of Mexico that article 5 of the law under consideration is not retroactive but that the rights, which are sought to be regulated by the law under discussion, legally acquired by aliens prior to the going into effect of the law, shall be conserved by their present owners until their death without the seeking of any permit under the terms of article 2 and by their heirs under the provisions of article 6?

Reverting to the prior inquiry as to whether mining, transportation, industrial companies, and other enterprises not involving the direct ownership in lands and waters are covered by article 1 of the law, it is, of course, manifest that any acquired rights of aliens in such enterprises in whatever form held do not come within the terms of article 5, independent of whether the activities in which the alien had an interest prior to the promulgation of the law were conducted within or without the prohibited zones.

Am I correct in assuming that the provisions of article 7 of the law promulgated January 21 last are in antithesis to the provisions of article 2, and that an alien who has acquired a right before the law went into effect, which otherwise would come within the terms of the law, is only required to make a declaration before the department of foreign relations within one year following the date of the promulgation of the law, which in effect gives notice of his prior acquired rights, thus bringing the application of the law within the principle of the nonretroactivity of legislation, and that such declaration will merely be a statement of his existing right and title?

The provisions of article 7 only apply to the rights which are the subject matter of the law.

In view of the foregoing inquiries, which are made with a sincere desire to clarify the matters under discussion between the two Governments, I see no occasion for repeating at length the principles set forth in my note of January 28 bearing on the inability of an individual citizen of the United States to make any contract or declaration which would be binding upon his own Government not to invoke its right under the rules of international law to extend diplomatic protection should there be committed any act of injustice justifying under the rules of international law such diplomatic protection.

In your note of February 12, the statement is made that if the infraction only affects the individual privately, without in any way infringing the rights of the state to which he belongs, it is not understood how it could be contrary to international law. As pointed out in my note of January 28, an injury done by one state to a citizen of another state through a denial of justice, should there be a denial of justice, is an injury done to the state whose national is injured. Even though the individual should make a waiver, that could not estop his state in case of any act of injustice from extending its right of diplomatic protection of seeking redress in accordance with the principles of international law for the injury to the state, inflicted by another state, through an injury to one of its nationals. The injury to one of its nationals by another state is the basis of the right of his state to seek redress for the injury in conformity to the established standards of civilization which modern states have mutually acquiesced in and which have become a part of international law.

In making a reference to the prohibition laws of the United States in your note of February 12, it is probable that your excellency overlooked the fact that the liquor business in the United States has not been a property right but a licensed occupation which was subject to the fullest extent at all times to the police powers of the states, to license by the United States, to the war powers of the Federal Government, and now, subject under the constitutional amendment, to the police powers of the United States.

It does not seem necessary to discuss further the exchange of notes in August, 1923, between the two Governments after the return of the American commissioners. Inasmuch as you state in your note of February 12 that "this explanation does not mean that Mexico fails to recognize the declarations made by its commissioners" and in another place state "In this connection I again repeat that the decisions of the court (Supreme Court of Mexico) can not be either modified or altered in any manner either by the executive or by any other authority and, moreover, there is no objection since such is the purpose of the executive himself to reiterating the declarations of the Mexican commissioners."

However, for the purposes of clarification, I do desire to call your excellency's attention to the fact that the proceedings of the American and Mexican commissioners were approved by President Coolidge and that the request was made by this Government that it be advised that President Obregon approved the statements set forth in the report made by the Mexican commissioners and that in the event that the statements were so approved, a certain line of pro-

cedure should be followed for the purpose of the resumption of diplomatic relations.

The additional paragraph which you quote from the note of the Minister of Foreign Relations of Mexico in 1923, had reference to the time of the signing of the conventions, which the American commissioners and the Mexican commissioners had agreed, as appears in the formal minutes of the meeting of August 15, 1923, would be signed forthwith by duly authorized plenipotentiaries of the President of the United States and the President of the United Mexican States in the event that diplomatic relations were resumed between the two countries. The suggestion was made that a time elapse between the resumption of diplomatic relations and the signing of the conventions, set out in the proceedings of the commissioners, with which this Government willingly complied.

Your excellency states in your note of February 12 that—

> As article 14 of the law regulating article 27 of the constitution in the matter of petroleum provides that the rights acquired before it went into effect will be confirmed in accordance with the terms therein set forth, there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled and, therefore, the rights acquired in accordance with the laws of 1884, 1892, and 1909, will be confirmed; but it must be understood that those laws gave to the owner of the surface or to the person who had right thereto an optional right, that is, the liberty of appropriating for his own use the fuel, minerals, and oils contained in the subsoil and, therefore, until he had performed some act looking to said appropriation, no right was acquired. This was the understanding of the American commissioners at the conferences of 1923 and they accepted it and your excellency's note reproduces it when it agrees that the rights which are to be confirmed will be confirmed provided there shall have been executed any of the positive acts enumerated in the said conferences.

The declarations of the Mexican commissioners in the meeting of August 2, 1923, set forth in my note of January 28, specified that Paragraph IV of article 27 of the constitution of 1917 is not retroactive in respect to all persons who had performed, prior to the promulgation of the said constitution, some positive act which would manifest the intention of the owner of the surface, or of the persons entitled to exercise his rights to the oil under the surface, to make use of or obtain the oil under the surface and then in detail described the nature of such positive acts or intentions. But in the same declaration of the Mexican commissioners it was stated in behalf of their government that "they recognized the right of the United States Government to make any reservation of or in behalf of the rights of its citizens," and specific reference was made to the statement of the American commissioners in behalf of their Government making such reservations in behalf of citizens of the United States should diplomatic relations between the two countries be resumed.

It was to this reservation made by the American commissioners that I referred in my note of January 28 when I stated "during the negotiations of 1923 the American commissioners reserved in behalf of this Government all the rights of its citizens in respect of all lands in Mexico acquired by them before May 1, 1917."

Nevertheless, I was only expressing to your excellency the hope of this Government that the regulations to be issued by his excellency the President of Mexico would confirm the rights of the

owners of the subsoil who had, prior to the going into effect of the constitution of 1917, performed positive acts as defined in the declarations made by the Mexican commissioners under date of August 2, 1923, during the negotiations of that year and approved by the Mexican Government.

This hope was expressed with greater confidence by reason of the statements in your excellency's note dated January 20, 1926, that—

> The "positive acts" enumerated are: Drillings, leases, conclusion of any contract relative to the subsoil, the investment of capital in land with the object of extracting petroleum from the subsoil, the carrying out of the work of exploitation and exploration, the conclusion of contracts relative to the subsoil in which it appears that a greater price was given than had been paid for the surface, due to the purchase having been made for the purpose of searching for petroleum and, in general, any other act manifesting an intention of similar character. It will be seen that the above enumeration of "positive acts" is confined to cases in which petroleum-exploration work has begun or contracts have been entered into for the purpose of carrying out such exploitations, cases which are precisely those stated in article 14, in order that rights previously lawfully acquired be confirmed and subsequently respected.

Your Excellency, in closing your note of February 12, states that the purpose of the President of Mexico in regulating the laws is to conform to the principles of international law, justice, and equity, and that the President is convinced that in the regulation of the laws which we have just been considering there will be covered all points which have been the object of discussions between the two Governments.

This Government would be pleased to be assured that the regulations will confirm the rights of American citizens in whatever form the property may be held, without cost or added burdens in all cases where the positive acts enumerated in Your Excellency's note of January 20 have been performed. This Government can not understand why reference is made to an exchange of title when the object is to confirm the titles already held in cases where such positive acts have been performed.

Your excellency refers, in your note of February 12, to the law of waters under Federal jurisdiction of December 14, 1910, which, it is stated, also provides for the confirmation of rights of waters which have been previously acquired. Were not such rights confirmed by the regulations without any change in the nature of the right or title?

Should a right have been acquired in the year 1885 under the law of 1884 and the works constructed or the intention manifested in 1885, or by the nature of the contract or purchase or lease, would the Mexican Government think that the rights of the purchaser or lessee would be confirmed if not only the very nature of the title were changed but a concession granted limited to 50 years, computed from the time the works began or from the date the contract was made or the intention manifested? The result would be to limit the use of property, admitted to be the property of the purchaser, to a beneficial use under new conditions for a maximum additional period of nine years.

This Government expresses the hope in the most friendly manner that, in view of the statement in your excellency's note of February 12 that "there can be no doubt that the regulations to be issued by

the Executive will cause that provision to be fulfilled, and therefore the rights acquired in accordance with the laws of 1884, 1892, and 1909 will be confirmed" in cases where positive acts of the nature specified in the declaration of August 2, 1923, and in your excellency's note of January 20, 1926, have been performed, the Mexican Government will be able to assure this Government that the rights of American citizens in respect of certain products of the subsoil, where positive acts of a nature which your excellency has specifically set forth have been performed, will be confirmed.

Accept, excellency, the assurance of my most distinguished consideration.

FRANK B. KELLOGG.

Note in reply of the Mexican Minister for Foreign Affairs, dated March 27, 1926

MR. SECRETARY: I have the honor to refer to your excellency's note dated March 1, in which you are pleased to express your satisfaction with the agreement reached by our respective Governments as to the principles that are to apply to the settlement of some of the matters that have been under discussion in connection with the two laws regulating section 1 of article 27 of the constitution; and afterwards, in view of this harmony of principles, your excellency says that your Government is desirous of information concerning the view taken by the Mexican Government of some of the provisions of the said laws in their practical enforcement and to that end your excellency formulated various questions which I quote so as to have each of them accompanied by an explanation of the views of the executive.

Is article 1 of the law retroactive, and in application will it be given retroactive effect? That is, does article 1 apply to an alien who had acquired or had an interest in any kind of company that had acquired direct ownership in lands and waters within the prohibited zones prior to the promulgation of the law on January 21, 1926? In respect of this same article, would your excellency inform me as to whether your Government considers the article to apply to mining, transportation, industrial companies, and other enterprises not involving the direct ownership in lands and waters?

Article 1 of the law published on January 21, 1926, is not retroactive, neither will it be given retroactive effect in its application; that is to say, it does not refer to an alien who had acquired or had an interest in any kind of a company that had acquired direct ownership in lands and waters within the forbidden zone prior to the promulgation of the said law. With respect to that same article, my government considers that it does not refer to mining, transportation, industrial companies or other enterprises that have no direct ownership in lands and waters.

Is article 2 of the same law retroactive in its application in the sense that an alien who, prior to the promulgation of the law, had acquired an interest in a Mexican company will be required to comply with it?

Said article 2 is not retroactive in its application, because it does not require compliance by aliens who, prior to the promulgation of the law, had acquired an interest in a Mexican company, since the provision under consideration lays down the requisite therein stated

in order that hereafter it be complied with by any alien wishing to join a Mexican company holding rights to the things referred to in article 2.

Is article 3 of this law retroactive in the sense that it will be necessary for an alien who possesses an interest in a Mexican company acquired prior to the promulgation of this law to apply for any permit?

Article 3 is not retroactive because the alien who, before the promulgation of the law, held an interest in a Mexican company does not need to apply for any permit. This article is connected with the preceding one and therefore also provides for the following article:

In connection with article 4 of the law, your excellency understands—

that any alien who represented, prior to the promulgation of this law, a stock interest of 50 per cent or more of the total interest in any kind of company owning rural property in Mexico for agricultural purposes may retain such interest until his death without any permit or without compliance with article 2 of the law and that the right of his heirs as to such interest over and above 49 per cent is determined by the provisions of article 6 of the law; but that in the case of a foreign corporation owning stock in Mexican companies, the Government of Mexico maintains that such corporate interest shall be disposed of on or before 10 years from the date of the promulgation of the law.

As for the first part of the foregoing paragraph, it is true that an alien who prior to the going into effect of the law represented 50 per cent or more of the total interest of any kind of association holding rural property for agricultural purposes may retain the said interest without any need of a permit, or without complying with article 2, and that the right of his heirs to such interest in excess of 49 per cent is provided for in article 6. As to its effect, however, upon foreign companies holding stock in Mexican companies under the aforesaid conditions, they must dispose of the said corporate interest in excess of 49 per cent within the term of 10 years; which does not mean that the law is given retroactive effect in its application, since it has to do with an act in the future, and not with an act in the past; but if any dispute should arise on that point, that is to say, as to whether or not the application of the law under the terms last mentioned is retroactive, it would be for the courts to determine it in accordance with the provision of article 14 of the constitution.

On the basis of the principle of nonretroactivity, is it the view of the Government of Mexico that article 5 of the law under consideration is not retroactive, but that the rights, which are sought to be regulated by the law under discussion, legally acquired by aliens prior to the going into effect of the law, shall be conserved by their present owners until their death without the seeking of any permit also under the terms of article 2 and by their heirs under the provisions of article 6?

My Government is of the opinion that article 5 is not retroactive, because the rights acquired by aliens prior to the going into effect of the law shall be conserved by the present owners until their death without applying for any permit under article 2 and by their heirs in accordance with the terms of article 6.

Reverting to the prior inquiry as to whether mining, transportation, industrial companies, and other enterprises not having the direct ownership in lands and waters are covered by article 1 of the law, it is, of course, manifest that any acquired rights of aliens in

such enterprises, in whatever form held, do not come within the terms of article 5, independent of whether the activities in which the alien had an interest prior to the promulgation of the law were conducted within or without the prohibited zones.

I repeat that article 1 does not include mining, transportation, and industrial companies and other enterprises which have not the ownership over lands and waters. Now, the rights of aliens acquired in the said enterprises, in whatever form they may be held are included in article 5, independent of whether the activities in which the alien had an interest prior to the publication of the law were conducted within or without the forbidden zones.

Am I correct in assuming that the provisions of article 7 of the law promulgated January 21, last, are in antithesis to the provisions of article 2 and that an alien who has acquired a right before the law went into effect which otherwise would come within the terms of the law is only required to make a declaration before the department of foreign relations within one year following the date of the promulgation of the law, which in effect gives notice of his prior acquired rights, thus bringing the application of the new law within the principle of nonretroactivity of legislation; and that such declaration will merely be a statement of his existing right and title?

The provisions of article 7 apply only to the rights that come under the law.

In accordance with the article cited, aliens who prior to the going into effect of the law had acquired rights of the class that come under the law only have to make a declaration before the department of foreign relations within one year following the date of such promulgation, which declaration must be a statement of such rights previously acquired. The terms in which the said declaration is made must be specified by the regulations, since the law does not say in what form it has to be made.

Your excellency declares that in view of previous inquiries you see no occasion to repeat the principles that were set forth in your note of January 28, concerning the inability of any citizen of the United States to make any declaration or contract which would be binding on his own Government not to invoke its right to extend diplomatic protection if any act of injustice were committed justifying such protection in accordance with international law.

On this point and with reference to what I had the honor to say in my previous note, I consider that even though an individual should renounce applying for the diplomatic protection of his government, the government does not forfeit the right to extend it in case of a denial of justice; but this is independent of the consequences that a private person may incur through failing to comply with an obligation assumed by him.

With regard to the prohibition laws of the United States, your excellency says that the liquor trade has not been a property right, but an activity subject to license, at all times and to their full extent, and also subject to the police powers.

By way of merely explaining the reference made on this subject by this department, I venture to say to your excellency that in Mexico the word ownership is understood to mean not only the dominion of the material thing, but also the same faculty over a right, and that is the point of view from which the allusion under consideration was made.

As for the declarations made by the commissioners at the conferences in 1923, my Government is not unaware of those that were made by its commissioners, nor of the fact that those same declarations were approved by President Obregon. I have therefore no objection to acknowledging the declaration of the Mexican commissioners who affirmed in the name of my Government that "they would recognize the right of the Government of the United States to make any reservation of the rights of its citizens or in their name," which was made for the event of a resumption of diplomatic relations between the two countries. As admitted by your excellency, your note of January 28, referred to that reservation and said that "during the negotiations of 1923 the American commissioners reserved in behalf of their Government all the rights of its citizens in respect of lands acquired by them in Mexico before May 1, 1917."

Your excellency continues with the statement that you had expressed the hope of your Government that the regulations issued by the President of Mexico would confirm the rights of the owners of the subsoil who prior to the going into effect of the constitution of 1917 had performed positive acts as defined in the declarations of the Mexican commissioners, which hope had all the more foundation by the statement in the note of this department of January 10, 1926, in which it declares with reference to that very point and with regard to article 14 of the law regulating Section I of article 27 of the constitution in regard to petroleum, which the President of Mexico purposes in regulating the laws to conform to the principles of international law, justice, and equity, feeling convinced that the said regulations would define every point that had been considered by the two Governments.

I take these purposes of the President of the Republic for my basis in extending to your excellency's Government the assurances that in the regulations on the subject the rights to the subsoil held by American citizens who had performed any of the positive acts enumerated in my note of January 20, will be confirmed.

Your excellency adds that you can not understand why any reference be made to an exchange of title when the object is to confirm those that are already held in the event of such positive acts having been performed, and you are pleased to inquire whether the confirmation of rights of waters in accordance with the law of December 14, 1910, takes effect without any change in the nature of the right or title.

The cases of confirmation of rights to the subsoil are altogether analogous to those of the confirmations of rights of waters with regard to which the title of confirmation is issued, as will be done with regard to the said rights to the subsoil. Article 74 of the regulations for the law of December 14, 1910, laid down all the requirements that should be met by an application for a confirmation of rights of waters; and compliance with that provision and the others on the subject has not prejudiced any person whatever, but, rather, has served to avoid disputes among persons holding rights of waters.

Your excellency makes a last inquiry in these words:

> Should a right have been acquired in the year 1855 under the law of 1884 and the works constructed, or the intention manifested in 1885, and it would so appear from the nature of the contract or purchase or lease, would the Mexican Government think that the rights of the purchaser or lessee would be confirmed

if not only the very nature of the title were changed, but a concession granted limited to 50 years computed from the time when works began or from the date the contract was made or the intention manifested? The result would be to limit the use of property of the purchaser to a beneficiary use under new conditions for a maximum additional period of nine years.

In the first place the fact that the original title is confirmed by means of a concession confers on the owner the right to engage in the same activities which he could engage in under the said original title; in the second place the time set is sufficiently ample in terms to enable him within that time to exhaust a petroleum deposit, and even though it were not so, as the concession may be extended, no prejudice whatsoever would result; and in the third place the extension of the concession does away with the limitation of the term set for the exercise of the right. As I have stated on another occasion, a new law may change the condition of right created by a previous law without being retroactive; but supposing that on this point, that is to say, that it should be alleged in some case that the application of the law is retroactive, and any dispute should arise on that point, I must repeat what has already been stated with regard to the concluding part of article 6 of the law of January 21, 1926, that it would be for the courts to decide the point in accordance with the provision of article 14 of the constitution.

Your excellency closes with a statement that your Government, in the most friendly manner and in view of the statement contained in my note of January 20, 1926, expresses the hope that the Government of Mexico may assure that of the United States that the rights of American citizens with respect to certain products of the subsoil shall be confirmed when positive acts of the nature defined in my note are done or performed.

In my turn I cherish the hope that all that has been hereinabove said will give your excellency's Government the assurances to which reference is made.

I avail myself of the opportunity to renew to your excellency the assurances of my highest consideration.

AARON SAENZ.

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