without previously making completely *au courant* of the affair the friendly powers (Great Britain) which had a title and the means of being heard in this negotiation.

The principles of the treaty project are today the basis of Moroccan division under the Franco-Spanish convention of November 27, 1912, notwithstanding all the intervention that occurred from 1905 on. Great Britain and France two years later acknowledged Spanish special interests by Art. 8 of the declaration of April 8, 1904, and the secret Franco-Spanish convention of October 3, 1904, reiterated the territorial division contemplated in 1902 but took account of the increasing French influence by a decrease of the extent of the Spanish spheres of influence. Though the convention of 1904 was secret, it became known to the German diplomats at Madrid shortly after its signing and the plans it indicated for dividing Morocco between France and Spain, thereby closing a market and throwing large potential mineral resources out of competition particularly into French control, are assigned as reasons for the Kaiser's dramatic visit to Tangier in the spring of 1905 and the international status of the Moroccan question resulting from the Algeciras Conference.

THE ATTEMPT OF TURKEY TO ABROGATE THE CAPITULATIONS

The Department of State was officially informed by the Turkish Ambassador on September 10, 1914, that on and after the first of October the Ottoman Government had determined to abrogate the conventions known as the "Capitulations" which he stated "restrict the sovereignty of Turkey in her relations with certain Powers." The United States is one of these Powers. It was further stated that "all privileges and immunities accessory to these conventions or issuing therefrom are equally repealed." The purpose was to remove "an intolerable obstacle to all progress in the Empire," and the relations of Turkey to the Powers were to be regulated henceforth by "the general principles of international law." There can be no doubt that extraterritorial rights interfere with sovereignty, or at least with its unhindered exercise; that they are, at least at the present day, regarded as a mark of inferiority; and that they are to be considered as marking a stage of transition to the full exercise of sovereignty. But the question arises how rights of this kind are to be abrogated. Can it be done by the country in which they exist without the consent of the country which exercises them? Thus considered, the question involved in the action of the Turkish Government is not what

extraterritorial jurisdiction the United States has in Turkey; but, as previously said, whether Turkey has the right to abrogate, without the consent of the United States, such extraterritorial rights as the United States may possess in the Ottoman Empire. Admitting that the exercise of these rights is obnoxious to Turkey, the question is, what is the proper method of securing their abrogation or relinquishment?

The question of the Capitulations is too complicated for an editorial comment, and the reader is referred to the excellent little book on the subject, entitled *Foreigners in Turkey: their Juridical Status*, published by Mr. Philip Marshall Brown, Assistant Professor of International Law and Diplomacy in Princeton University.

A judicial statement of the origin and nature of the Capitulations in general and the rights of the United States in particular will be found in the case of Dainese *v.* Hale, 91 U. S. Reports, 13 (1875), and a much more elaborate discussion in Dainese *v.* The United States, 15 Court of Claims Reports, 64 (1879). From this latter case two paragraphs are quoted:

> The "usages of the Franks" begin in what are known in international law as "the capitulations," granting rights of exterritoriality to Christians residing or traveling in Mohammedan countries. Some ingenious writers attempt to trace these capitulations far back of the capture of Constantinople in 1453 by the Turks. (1 Féraud-Giraud, *Juridiction Française dans les Échelles*, 29 *et seq.*) They are undoubtedly rooted in the radical distinction between Mohammedanism, which acknowledges the Koran as the only source of human legislation and the only law for the government of human affairs, and the western systems of jurisprudence, which are animated by the equitable and philosophical principles of Roman law and Christian civilization. But their accepted foundation in international law is in the treaty made with the French in 1535, which guaranteed that French consuls and ministers might hear and determine civil and criminal causes between Frenchmen without the interference of a *Cadi* or any other person. (1 De Testa, 16.) After this treaty the French took under their protection persons of other nationalities not represented by consuls (2 Féraud-Giraud, 76), and hence the generic name of "Franks" was given to all participants in the privileges, and has been preserved in the laws, treaties, and public documents of the United States. (8 Stat. L., 409; 12 Stat. L., 76, sec. 21; 7 Op. Attys. Gen., 568.)
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> Other nations followed the example thus set by the French, as, for instance, the English in 1675 (Brit. & For. St. Pap., 1812–'14, Part I, 750); the Two Sicilies in 1740 (1 Wenckius, 522); Spain in 1782 (3 Martin's Rec., 2d ed., 405); and the United States in 1830 (8 Stat. L., 408). All writers agree that by these and other similar capitulations a usage was established that Franks, being in Turkey, whether domiciled or temporarily, should be under the jurisdiction, civil and criminal, of their respective ministers and consuls. This usage, springing thus not only out of the capitulations, but out of the "very nature of Mohammedanism" (3 Phil., preface, iv), became a

part of the international law of Europe (note to Spanish treaty cited above; 1 *Guide Dip.*, sec. 75; Wheat. *El.*, Lawrence's ed. of 1863, 219–'22, Dana's ed., sec. 110; 2 Phil., sec. 273; 1 Vattel, Pradier Fodéré ed., 625 n.; Bluntschli, *Dr. Int. Cod.*, sec. 269; Calvo, *Dr. Int.*, sec. 495).

In 1856, as a consequence of the Crimean War, the Ottoman Empire was formally admitted into the society of nations, and it has been a source of embarrassment and of annoyance to Turkey that the Powers have not been willing to recognize its right to be master in its own house, although it has since this period been recognized as a member of the society of nations. The Turkish Government has evidently taken advantage of the disordered state of Europe to abrogate extraterritorial jurisdiction, in the belief that both the Triple Alliance—if Italy is still to be considered a member,—and the Triple Entente would be willing to pay this price for Turkish neutrality, and that it could afford to take its chances with the other Powers. It has a precedent for its action at this time in the abrogation by Russia during the Franco-Prussian war of the clause of the Treaty of Paris, which forbade Russian warships in the Black Sea. It appears, however, that the Triple Alliance, composed of Germany, Austria-Hungary and Italy, and the Triple Entente, composed of France, Great Britain and Russia, have protested against the abrogation of the Capitulations, and that the United States, as appears from the following paraphrase of cablegram to the American Ambassador at Constantinople, given to the press, has likewise protested:

> You will bring to the attention of the Ottoman Government that the Government of the United States does not acquiesce in the endeavor of the Imperial Government to set aside the Capitulations.
>
> Furthermore, this government does not recognize that the Ottoman Government has a right to abrogate the Capitulations, or that its action to this end, being unilateral, can have any effect upon the rights enjoyed under the Capitulatory conventions.
>
> You will further state that the United States reserves for the present the discussion of the grounds upon which its refusal to acquiesce in the action of the Ottoman Government is based, and also reserves the right to make further representations in this matter at a later date.

By the treaty of 1830 (Articles 4 and 7), by the agreement of 1874 concerning realty, and by the favored-nation clause the United States obtained certain rights within Turkey, which it is not necessary to discuss at present, for the action of the Turkish Government deprives the United States, not merely of some or other of these rights, but of its extraterritorial jurisdiction in its entirety. What rights the United States may have has been the subject of much discussion, and a clear

determination of them has not been reached. They will doubtless be further discussed in the future.

The method employed by Turkey to denounce, upon its own initiative, extraterritorial jurisdiction, where the United States possessed it, whether by express treaty, by custom or by favored-nation clause, is contrary to the action of other countries in which extraterritorial rights have been claimed and exercised. The traditional policy of the United States has been to make its agreement to renounce extraterritoriality depend upon reforms to be accomplished in the respective countries, and when these reforms have been instituted and the results have been found or are considered satisfactory by the United States, then, and not till then has the United States renounced its extraterritoriality. See the treaty with Korea of 1882 (Art. 4), treaty with Japan of 1894 (Art. 18), treaty with China of 1903 (Art. 15), and the process of abrogation of extraterritoriality now in progress in Siam. In other cases the renunciation of extraterritoriality has not taken place until the native laws and tribunals have been superseded by those of a civilized country which has assumed a protectorate. Reference is made to the abrogation of extraterritoriality in Madagascar, Morocco, Tunis, Zanzibar, and the leased territories in China. In all these cases, however, the relinquishment of extraterritoriality has been accomplished with the consent, often expressed in a formal treaty, and as a voluntary act of the United States.

THE BRYAN PEACE TREATIES

In the July number of the JOURNAL[1] an editorial comment was devoted to Mr. Bryan's peace plan, and the treaty between the Netherlands and the United States was taken as the representative of the group, and its terms analyzed in detail. On August 13, 1914, the Senate advised and consented to the ratification of eighteen of the twenty treaties which had up to that time been submitted to it. The treaties with Panama and Santo Domingo were reserved for further consideration, as the relations between Panama and the United States are of a peculiar character, and the situation in Santo Domingo was far from satisfactory, owing to a revolution which was then in progress. The treaty with the Netherlands was very carefully considered by the Senate and a test vote was taken upon it. Upon its acceptance, the others were advised and consented to as a matter of course. Mr. Bryan's plan of communicating in advance with the Senate Committee on Foreign Relations, laying his plans before

[1] Page 565.