CABINET.

NEGOTIATIONS WITH THE CHINESE GOVERNMENT FOR THE
ABOLITION OF EXTRATERRITORIALITY.

Memorandum by the Secretary of State for
Foreign Affairs.

Foreign Office, S.W.1.

April 27th, 1931.
MEMORANDUM BY SECRETARY OF STATE FOR FOREIGN AFFAIRS
FOR THE CABINET.

The negotiations with the Chinese Government for the abolition of extraterritoriality have reached a stage, at which, in view of the issues involved as regards the general policy which is being pursued by His Majesty's Government in the East, I think it necessary to inform the Cabinet of the present position, and the course of action which with their approval I propose to follow.

The policy which is being pursued is in full accordance with the British Memorandum of December 1925 in which we urged on the Powers a policy of "readiness to negotiate on treaty revision and all other outstanding questions as soon as the Chinese themselves have constituted a Government with authority to negotiate". The general policy is therefore in conformity with the views of the late Government. The particular concessions which it would be necessary to make could only be defined as a result of negotiation.

After the National Government had established themselves in 1928 correspondence began to pass between them and foreign Powers who adopted a cautious and conciliatory attitude of a generally similar character. We were in communication with the other foreign Powers, and have remained so since then. All Powers are committed to negotiate in general.

It will be recalled that in February of last year (1930) I circulated to the Cabinet a comprehensive memorandum setting out the position as regards the policy of His Majesty's Government in China. I indicated in that memorandum the course of action I proposed to pursue in the matter of the impending negotiation for the abolition of extraterritoriality...
extraterritoriality and obtained the general approval of the Cabinet for the policy I had in contemplation. In the memorandum I indicated I was not at that moment prepared to surrender extraterritorial rights in criminal cases except in regard to such minor matters as breaches of municipal regulations and police offences. It later became clear that the question of criminal jurisdiction was not of such importance as was thought at that time. The China Association in London with whom the whole question was discussed were found to attach comparatively little importance to criminal jurisdiction, His Majesty's Minister in China also reported after preliminary talks with the Chinese Minister for Foreign Affairs that he felt it would have to be surrendered if we were to reach a satisfactory settlement and recommended this policy. He has therefore been authorised to adopt it as part of such a settlement. Other British interests primarily concerned with the retention of adequate safeguards for the pursuit of trade with China, notably the Manchester Chamber of Commerce the British Community at Tientsin and the China Association and Chamber of Commerce at Shanghai have been informed of the general terms of the instructions with which His Majesty's Minister has been furnished and seem on the whole reasonably satisfied that the position taken up by His Majesty's Government is consistent with the due protection of essential British interests.
Present position of the negotiations with the Chinese Government.

His Majesty's Minister at Peking has succeeded in securing the assent of the Chinese Government to most of the safeguards desired by His Majesty's Government for the protection of British trading interests, including the submission of cases in which British subjects are the defendants or accused to special courts with eminent legal advisers who will watch the proceedings and will be able before judgment is given to submit their observations to the Chinese judge. I think it unnecessary to refer to the remaining items of these intricate negotiations which cover so wide a field beyond stating that I am satisfied that on the great majority of points on which a settlement has been reached satisfaction for the point of view of His Majesty's Government has been obtained.

The crucial point outstanding in addition to certain matters of relatively minor detail, in regard to which little difficulty is anticipated, if a general agreement can be reached, is that of reserving the settlements of Shanghai, Tientsin, Canton and Hankow from the operation of the Treaty. It is only on a satisfactory settlement as regards these areas that His Majesty's Minister at Peking is at present authorised to surrender criminal jurisdiction over British subjects. On the particular issue of the reserved areas Sir M. Lampson has been instructed in the last resort to give way as regards Canton and Hankow. Sir M. Lampson holds very strongly that the reservation of Tientsin and of all Shanghai is essential, and that surrender on either would be a greater evil than a rupture of the negotiations with all its risks. Owing to the generally unyielding attitude of the Chinese negotiator in the matter of the reserved areas as a whole Sir Miles Lampson has not as yet indicated to the Chinese Government the possibility of any concession as regards Canton and Hankow in return for a satisfactory settlement by the Chinese Government of the question of Shanghai and Tientsin.

There.....
There are, I submit, very strong arguments in favour of refusing to consent to any immediate surrender at the four ports, or at least at Shanghai and Tientsin. These arguments may be summarised as follows:

(a) Other Powers whose negotiations with the Chinese are still in the earliest stages are interested equally with ourselves in these areas, and while we could give way over Canton and Hankow without their assent, it is impossible to do so at Shanghai and Tientsin without completely undermining their position and in effect settling a matter in which, particularly as regards the international settlement of Shanghai, they have as much right as we have to a voice in the decision.

(b) Extraterritoriality cannot be abolished by negotiation - until Japan and France have been brought into line with His Majesty's Government. At present these Powers are holding back and think that we have gone ahead too far and too fast. A pause in the negotiations while the question of reserved areas is under consideration would, therefore, afford an opportunity for France and Japan to gauge the value of the various safeguards which we have been able to obtain, and to bring their policy more into line with ours. If we ignore their doubts and fears and advance still further without them, the result would only be to stiffen their attitude of resistance to Chinese demands.
(c) The Municipal Administrations at the four ports which we wish to reserve are based on the extraterritorial system. The necessary adjustments which will have to be made in these administrations before extraterritoriality is surrendered will need careful study. Any attempt to put the treaty into force, particularly at Shanghai and Tientsin, before these adjustments have been made might cause great confusion and disturbance at the most important centres of foreign trade in China.

(d) The only safe way of effecting the transfer of jurisdiction to the Chinese courts is to carry out the operation by successive stages. The new machinery of the proposed treaty should be tried out and got into proper working order before it is called upon to carry the burden of assuming jurisdiction over the important foreign communities at the chief treaty ports. A sudden transfer of jurisdiction on too great a scale might cause the machinery to break down altogether.

(e) If His Majesty's Government were to yield and sign the treaty without stipulating for the reservation of at least Shanghai and Tientsin there would be an immediate panic and agitation in all the chief treaty ports. The agitation would receive considerable support in this country, and would still further stiffen the attitude of France and Japan.

(f)
(f) In pressing for reserved areas His Majesty's Government are not thinking solely and merely of the immediate interests of their own nationals. The whole object of their policy is that China should obtain by negotiation a satisfactory settlement of the extraterritoriality problem. The foregoing paragraphs show that the only way of securing such a settlement is to progress by stages and to keep the interested Powers in step. It is therefore in the interest of the Chinese as much as in ours that they should agree to our proposal.

(g) As regards Shanghai, a further reason for abstaining from any precipitate surrender to Chinese demands is that the position of the international settlement has been under examination for over a year by Mr. Justice Peetham at the invitation of the Municipal Council. The first part of his report has just been published, and the second part containing his recommendations will follow in about a fortnight's time. It is essential that our treaty should not be allowed to prejudice any solution of the problem that may be found desirable and possible as a result of his report.

Shanghai is of course our greatest interest and has been estimated to represent 60% of the value of the total British interests in China. Tientsin comes second with a very large share.
The present attitude of the Chinese negotiators is that they are unable to meet the point of view of His Majesty's Government as regards the reserved areas. In the recent conversation with me the Chinese Minister has emphasised the difficulties of the Nationalist Government as regards making any concession on this important issue pointing to the imminence of the meeting of the National Convention which has been summoned to meet on May 5th to consider a new provisional constitution. The whole political situation in China will be passed under review and the Government will be open to attack on point on which it may be held that they have not upheld the national interests. He emphasised the unfortunate effect which would be produced if no settlement satisfactory to Chinese Nationalist sentiment had been reached by that date. I attach a report by Sir M. Lampson (Annex A) of his most recent conversation with the Chinese Minister for Foreign Affairs which only goes to confirm what the Chinese Minister has said to me on the instructions of his government and shows that for the time being a deadlock exists, and no progress can be made for the completion of the negotiations.

After carefully reviewing all the considerations involved and having regard to the difficulty, certainly at the present moment, for the very cogent reasons I have enumerated of authorising His Majesty's Minister at Peking to make any further concessions on these vital issues, beyond those he has already been authorised to make,
notably in the matter of the abandonment of criminal jurisdiction, and as a last resort in the matter of the concessions at Hankow and Canton, I consider that we should endeavour to bring home to Chinese Government that the course we have indicated to them is the best in their own interests, and that they would be well advised to sign the treaty with us excluding the four reserved areas for the time being. As regards the solution of the problem of those areas it can be suggested to the Chinese Government as a way out of the present difficulty that an International Commission should be set up after the entry of the Treaty into force to study the question of the reserved areas, settlements and concessions.

I attach (Annex B) a telegram which I have despatched to Sir H. Lampson from which it will be seen that the above considerations have been set forth as material to help him in resisting the Chinese arguments for the surrender of the reserved areas.

The risks of a refusal to meet the Chinese over the extraterritoriality problem as a whole are explained in the attached despatch of arch 7th to His Majesty's Ambassador in Washington (Annex C). Similar risks may possibly attend a rupture of negotiations over the question of reserved areas. It is believed, however, that the Chinese will realise the essentially reasonable nature of the attitude we have taken up, and in that case it is improbable/
 improbable that the reaction will be of a serious nature.

**Position of other Powers.**

The position of the other Powers is not yet clearly defined except in the case of the United States of America who are in close accord with us and with whom we elaborated the various safeguards required. Their negotiations are temporarily suspended after the extreme positions on each side had been stated. The French and Japanese are aware of our own policy and are somewhat disquieted, their own inclination being to go more slowly. Their position is different in that French interests are similar and a dilatory policy exposes them to smaller risks, while the Japanese, besides being nearer and perhaps less averse to the use of force in defence of the existing position, have special interests of their own, notably in Manchuria, and are apt to flatter themselves that they can manage the Chinese in a way impossible to western Nations.

(Initialled) A.H.
After disposing of detail points covered in my preceding telegrams I stayed behind and had a long talk with Minister for Foreign Affairs alone.

2. We made little or no progress, he remaining obdurate about excluded areas, I refusing to admit any possibility of settlement on any different basis plus a 10 years duration. Once more he offered Shanghai alone for strictly limited period (amount not specified) but I refused to follow him and referred him to your conversation with Chinese Minister of April 2nd and explicit wording of memorandum then handed to him of which by request I am sending him text.

3. He employed usual covert threats about public exasperation if by May 5th no settlement had been reached but I rode him off that, pointing out that now of all times China would stand to lose if she estranged Great Britain. Nor was any other Power likely to go so far as we had shown our readiness to do - e.g. surrender of criminal jurisdiction. He said, "Other will follow." I retorted, "Quite so, all the more reason to give us the one point on which we are bound and determined to insist." Once more he argued that our (group undecypher
2. Undecipherable) of 4 areas would prejudice Chinese case for resisting Japan's and France's claims to other reserved areas elsewhere. I countered this as false logic. Shanghai, Tientsin, Hankow and Canton were all recognised centres of international trade with no political facets. Give us them and thereby strengthen Chinese case against same political reserved areas.

4. At one moment he touched on question of (concessions) and argued that to include Tientsin and Shameen would be to perpetuate concession status indefinitely. I proved to him that this was not at all the case: retention of jurisdiction did not necessarily entail retention of concessions regarding which our offer of January 1927 stood on record: but I admitted that conversely we could not abandon jurisdiction in those areas aniretain concessions. As this was becoming delicate ground I switched discussion back to restatement of our minimum, i.e. 4 areas and 10 years and on leaving begged him to reflect most seriously before deliberately turning down this golden opportunity of settling with us. He replied that no one would regret failure more than he but that he would not dare to give way over reserved areas which neither his government nor May conference would ever countenance. His parting words were, "I hope our next meeting will be more satisfactory."

5. On the whole his attitude was only what I expected. And presumably the right course now is to await developments and show no sign of weakening. Meanwhile I may be able to use the interval to lobby in influential quarters.

Addressed to Foreign Office No.107, April 19th, repeated to Peking. Copy to Shanghai.
Cypher telegram to Sir M. Lampson (Nanking).

Foreign Office. 27th April, 1931. 7.30 p.m.

No. 77 (Tour).

Your telegrams Nos. 107 and 112 (Tour) of April 20th: extraterritoriality negotiations.

The crux of the whole matter seems to be whether the Minister for Foreign Affairs is right in believing that "others will follow" us in whatever we agree to. If not, then no matter what concessions His Majesty's Government may make China will be no nearer her goal, namely, abolition of extraterritoriality. If agreement can be reached on every point save only duration and reserved areas, it would seem advisable to pause in order to give France and Japan an opportunity of reaching the point which His Majesty's Government are now at. Knowledge of the terms of the proposed treaty should have a favourable effect on public opinion both foreign and Chinese. After such a pause therefore the atmosphere should be much more favourable for reaching a settlement with all the Powers concerned on the vexed question of excluded areas. On the other hand any precipitate surrender on this point on the part of His Majesty's Government alone - apart altogether from the ill effect such action might have on British interests in China - might merely stiffen France and Japan in their attitude of resistance to Chinese demands. This would produce a confused and dangerous situation and would merely make more difficult the realisation of China's desires.
2. Dr. Wang Chung-hui does not appear to realise the very great practical difficulties that would be involved were the provisions of the treaty now under negotiation to be applied forthwith to those treaty ports where settlements and concessions now exist. His Majesty's Government have been influenced in the attitude which they have adopted on this question by the following considerations:

(a) The Municipal Administration at the ports in question presuppose a system of extraterritoriality, and in each case it would be necessary to devote prolonged study to the question of the adjustments that would have to be made in the machinery of these administrations before any actual transfer of jurisdiction could take place. Unless these adjustments are carefully worked out beforehand, any attempt to put the treaty into force in these areas might be followed by a period of confusion and disturbance at all the most important centres of foreign trade in China. This might inflict an even greater injury on China than on the vested interests of the foreign nationals concerned.

(b) It is essential for the success of this great experiment that it should be carried out by successive stages. The new machinery for exercising jurisdiction over foreigners should be set up, tried out, and got properly into working order before any attempt is made to impose upon it the burden of assuming jurisdiction over the important foreign communities at the principal treaty ports. A sudden transfer of jurisdiction on too great a scale might cause the machinery to...
to break down altogether with consequences comparable to 
those that ensued in similar circumstances when jurisdiction 
was assumed without adequate experience or preparation over 
the Russian communities in Manchuria. It is impossible for 
His Majesty's Government to be party to any new arrangement 
which might have similar disastrous consequences.

(c) If His Majesty's Government were to yield to the 
urgings of Dr. Wang and sign the treaty without stipulating 
for the four reserved areas, there would immediately ensue 
at each of these places a financial panic and a political 
agitation. Japan and France, who are already inclined to 
think that His Majesty's Government have gone ahead too far 
and too fast, would be confirmed in this view. They would 
become firmer in their attitude of resistance to the Chinese 
demands and the prospect of negotiating similar treaties with 
those powers would become more remote. The agitation among 
the British communities in China would receive a considerable 
measure of support in this country, and this might even make 
it impossible for His Majesty's Government to ratify the 
treaty. On the other hand once it has become known that 
the Chinese Government have agreed to reasonable safeguards 
and still more when it is realised by actual experience of 
the working of the treaty in practice that submission to 
Chinese jurisdiction involves no disastrous consequences, 
the extension of the provisions of the treaty to these ports 
could be effected smoothly and with goodwill and confidence 
on both sides.

3. The attitude of His Majesty's Government is there-
fore not only perfectly reasonable in itself but is also the
one best calculated to promote the object which the Chinese have in view. I earnestly hope that the Chinese Government will not allow their judgment to be deflected by the immediate exigencies of the domestic crisis which they have to face on May 5th. If their object is to obtain actual abolition of extraterritoriality at an early date - and not merely to secure an empty paper triumph for use at the Convention on May 5th - undoubtedly their wisest course is to accept our four reserved areas, sign the treaty with us, then negotiate similar treaties with America, France and Japan, and finally reach a settlement with all the powers concerned on the question of the reserved areas.

4. The many difficulties encountered in connexion with the question of the reserved areas might possibly be surmounted if it could be arranged that an international commission should be set up after the entry of the treaty into force to study the question of the reserved areas, settlements and concessions. It might be agreed on both sides that negotiations on the basis of the recommendations of this commission, with a view to seeking a final solution of the problem, should be entered into within a fixed period of say 3 or 5 years. The commission would be Sino-British in the first instance but there would be obvious advantages in expanding it to include representatives of the United States of America, France and Japan and the ultimate solution could hardly be reached without their assent. Such a commission might also be entrusted with the task of settling the many difficult legal problems that will probably arise in connexion with jurisdiction in the reserved areas. If you concur you might discuss this idea with the Chinese Government with a view to ascertaining whether, in their opinion, it offers any prospect of a solution of the present deadlock.

The matter has now reached a stage when I have thought it well to re-submit it to the Cabinet, but in the meantime the above may be of use to you in dealing with Dr. Wang. Repeated to Peking No. 128.
Mr A. Henderson to Sir B. Lindsay (Washington).

Foreign Office, March 7, 1931.

Sir,

I have had under consideration your despatch No. 271 of the 12th February on the subject of your conversation with Mr Castle in which the latter enquired whether His Majesty's Government take a serious view of the possibility of the unilateral abolition of extra-territoriality by the Chinese Government in the near future, and whether they had considered how to deal with this situation if it arose.

His Majesty's Government have for some time past held the opinion that, as soon as the political situation in China had become stabilised by the cessation of civil war, and the present Government of China had become firmly established, the foreign Powers would be presented with the alternatives of negotiating immediately an agreed settlement of the question of extra-territoriality or facing a unilateral abrogation of extra-territorial jurisdiction. It has been possible hitherto to defer coming to grips with the question - thereby, incidentally, gaining valuable time for a thorough study of the whole problem - and at the end of 1929 means were found of rendering innocuous the long heralded mandate purporting to abolish extra-territoriality on the 1st January, 1930. It does not seem possible, however, either to prolong or to repeat these manoeuvres. There is little doubt that Mr Castle is right in thinking that the French Ambassador has entirely misjudged the situation. The next time the Chinese issue a mandate abolishing extra-territoriality there will be no drawing back and the mandate will be enforced.
3. The three suggestions tentatively put forward by Mr Castle do not appear to offer any effective means of dealing with the situation that would be created by the issue of such a mandate. For a number of reasons — of which the Kellogg Pact is one — His Majesty's Government cannot contemplate the seizure of custom-houses in China. It may be many years before the Chinese ask the foreign Powers for a reconstruction loan — if, indeed, they ever do so — and a refusal would not affect their attitude towards extra-territoriality. In any case His Majesty's Government are not in favour of allowing economic and financial questions to be influenced by political considerations. It seems unlikely that a threat that the United States would withdraw their friendship from China would have any real effect upon the situation.

4. There is, therefore, no immediate and overt action that the Powers could take to counter a unilateral abrogation of extra-territoriality. They might enter a formal protest, but after that they could only wait for the situation to develop. The Chinese, while carefully avoiding anything like an open clash — as, for example, with the police of the settlement at Shanghai — would act as if all treaties had been abrogated and extra-territorial rights and privileges had ceased to exist. By a process of gradual encroachment they would eventually arrive at the stage when they would arrest, try and sentence British subjects, expropriate British property without compensation, levy such taxation as they chose and compel payment by direct executive action, &c., and to all protests they would reply that extra-territoriality having ceased to exist British subjects had no higher rights than Chinese. They would refuse, as in the case of their unilateral denunciation of
of their treaty with Belgium, to appear before an arbitral tribunal, and the Powers would have no remedy but force, to which His Majesty's Government cannot contemplate resorting.

5. The argument has been put forward that it would be practicable to maintain extra-territorial privileges by force because the strikes and boycotts which such a policy might provoke would have no terrors at a time when trade is practically at a standstill. It would, however, be very difficult, in face of a universal conspiracy to ignore extra-territoriality, to decide exactly when, where and how force should be applied. Force would not be available to preserve every extra-territorial privilege of every foreigner in China, nor would public opinion in the countries concerned approve the use of force for such a purpose. There would have to be some particularly spectacular breach of extra-territorial rights to justify the use of force. This might not occur for many months, during which the whole position would be rapidly crumbling. When it did occur the nation resorting to force would, in accordance with time-honoured practice, be singled out for attack by strikes and boycotts and, as has invariably happened in the past, that nation would have to stand alone and bear the brunt of all the loss inflicted. Irreparable damage might be suffered, but, so far as the preservation of extra-territoriality was concerned, the sacrifice would have been made in vain. The persistent ignoring of extra-territoriality would go on as before, and in the end foreigners would fall completely under Chinese jurisdiction without any treaty safeguards whatever. Once this position had been reached, it might be possible, and even desirable, to regularise it by subsequent treaties, but the opportunity of obtaining safeguards of real value would have been lost.
6. These considerations have led His Majesty's Government to the conclusion that, as soon as the danger of unilateral abolition of extra-territoriality has become serious and imminent, the wisest policy is to avert it by timely and liberal concessions to Nationalist sentiment. If negotiations are undertaken in this spirit before the Chinese have braced themselves for the final irretrievable step of unilateral action, it should be possible to obtain, in return for a surrender of extra-territorial jurisdiction, safeguards providing that foreign nationals shall be subject only to properly promulgated and easily ascertainable laws together with further safeguards relating to the administration of these laws. Against the arbitrary will of the executive or of the militarists it will then be possible to appeal to the definite stipulations of an international agreement accepted by a modern Chinese Government.

7. It is not to be expected that the time will ever arrive when the foreign nationals residing in China will agree that the state of the Chinese laws and the arrangements for their administration are such as to justify a relinquishment of extra-territorial rights. They will maintain that the surrender - whenever it takes place - is premature, and there will probably be considerable justification for such a view. His Majesty's Government, however, believe that the true criterion is not whether the Chinese are fit to assume jurisdiction over foreigners, but whether the Chinese are politically sufficiently stabilised to give effect to their determination to put an end to the extra-territorial system. When that time has arrived, the choice that lies before foreign nationals in China is submission to Chinese jurisdiction with reasonably adequate safeguards duly negotiated.
negotiated and embodied in a treaty or submission without any safeguards at all.

8. I should be glad if you would inform Mr Castle of the views of His Majesty's Government as set out above, and at the same time take the opportunity of conveying to him the pleasure with which I have learnt of the instructions on this subject which have been sent to the United States Minister in China. The attitude which he is to adopt is calculated to facilitate close consultation between the two Governments, and should therefore conduce to a satisfactory solution of the whole problem.

I am, &c.

ARTHUR HENDERSON.