THE DIPLOMACY OF PROHIBITION

THESIS

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By

Judson S. Walker II, B. A.
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The advent of prohibition in America in the early 1920's brought on wide-spread smuggling activity along the Canadian and Mexican borders as well as along the Atlantic coastline. Since many of the smuggling vessels sought protection from American authorities by foreign registry, the State Department initiated efforts to enable American officials to enforce prohibition without interfering with legitimate commerce.

Washington concluded compromise agreements with fifteen countries that provided for American enforcement measures and suitable liquor cargo arrangements for the other signatory nations. The liquor conventions were not a final solution to the smuggling problem but they did provide for better enforcement. The agreements reinforced existing principles and represented an attempt to eliminate possible sources of friction on the international level arising out of American prohibition enforcement.
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CHAPTER I

INTRODUCTION

At midnight on January 16, 1920, the Eighteenth Amendment made national prohibition a reality. Across the country multitudes of enthusiastic crusaders, preachers, and dry supporters rejoiced, while a substantially larger number of people were unaware of exactly what had happened. Prohibition was not new to the United States. Many people in this country had lived in dry areas for years but now it was a national affair. Congress and federal authorities had responsibility for enforcement.

The fourteen-year period of prohibition was full of problems--bootlegging, rum-running, lack of enforcement and control, and questions of international relations. These problems should have come with no surprise since earlier experiences with prohibition had faced the same difficulties. The failure of colonial Georgia's experiment and the problems that beset nineteenth century dry states among wet neighbors should have indicated what was in store for the country on an international scale.

The story behind the American experiment with national prohibition began in the early colonial period. In 1735,
the trustees for establishing the colony of Georgia in America decided that the colonists would be much better off without rum, since it seemed to cause sickness, death, excessive drunkenness, and social disorder. The Rum Act of 1735 prohibited the introduction of rum, brandy, and other strong spirits into the colony. Unlike prohibition in the 1920's, beer and light wines were permissible and were in fact provided for the colonists by the trustees. Like their descendants, the colonists occasionally liked a stiff drink, especially rum, and thus the Georgia experiment was beset with problems of control and enforcement similar to those later encountered by federal forces in the early twentieth century.¹

The coves and inlets of Georgia's rivers and coastline provided hiding places for traders who brought in contraband booze for Georgians; many Indians also preferred rum in trade for their goods. Enforcement against smuggling proved impossible, as no jury would convict captured offenders. Rum restrictions hurt Georgia's trade with South Carolina, and caused a great deal of friction between the two colonies.

whenever Carolina citizens thought they were improperly detained or their property confiscated.

The loss of trade with other colonies and nations and the ease of smuggling rum into the colony made the Rum Act unenforceable and very unpopular. By 1741, the trustees were considering modifications of the act. Two proposals were reduction of the fine to a nominal sum and licensing of the sale of rum. However, the trustees could not make any changes without approval of Parliament. An amendment to permit licensing by the trustees was proposed, but the Board of Trade failed to approve it.  

Since the trustees did not succeed in passing new legislation or in modifying the original act, prohibition appears to have faded into oblivion sometime in the early 1740's, leaving a licensing system to regulate the sale of rum.  Failure of the Georgia experiment was an early preview of problems that undermined the prohibition of the Eighteenth Amendment: difficulty in enforcement, strained relations with neighboring governments, and popular opposition to governmental interference in personal affairs.

\[2\] Ibid., pp. 291-92.

The prohibition movement, sparked by religious, temperance, and third-party political organizations, began in earnest in the mid-nineteenth century. By the end of the century, the growth of this movement had led to several problems between neighboring wet and dry states and counties that were similar to those which plagued the United States and its neighbors a few decades later.

A few dry states in the midst of many others still wet created a giant problem for the dry states: how to prevent the entrance of liquor for sale and consumption. Before 1913 several attempts had been made to secure federal legislation to alleviate this problem; since control of interstate commerce was a Constitutional prerogative of the federal government, the states had been powerless to enforce their own laws.

The Supreme Court had decided in 1888 that interstate freight carriers should accept shipments of liquor in interstate commerce and that the receiver of these shipments should have the right to receive them. Dry forces succeeded in 1890 in securing passage of the Wilson Act, which made imported liquors subject to a state's laws upon arrival in

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that state; however, the act was openly and frequently violated. By 1911, the Interstate Commerce Commission reported that twenty million gallons of liquor were being shipped each year into the nine dry states.\(^5\)

Because of the mounting violations of the various states' dry laws, Congress passed the Webb-Kenyon Law in 1913. This law declared that the shipment from any other state, territory, or foreign country of liquor into a state to be sold, consumed, or possessed in violation of the laws of that state was prohibited.\(^6\) This law made it easier for the dry states to remain dry, without interference from nearby states.

A few years later the entire nation found itself in a position similar to the dry states. The United States sought agreements with neighboring countries and trading partners to effect her own prohibition.

The first year of Prohibition provided many examples of problems that lay ahead for the government. Within a few weeks the first reports appeared of liquor smuggling across the borders. In early February, the chief of the


customs division requested two million dollars to build an enforcement army along the Mexican and Canadian borders. Smuggling grew rapidly in west Texas, and agents estimated they were intercepting only a small fraction of the smuggling trade. Florida state officials showed little opposition to smuggling from the West Indies and the Bahamas. On March 7, Canadian officers seized a car and its liquor cargo, but the occupants escaped; in late April, a Coast Guard vessel fired upon a submarine of the U.S. Navy, thinking it was a rum runner refusing to stop as signalled; fortunately no damage was done. In early May an anonymous informant told federal authorities that torpedoes powered by electric batteries were being used to send whiskey across the Detroit River from Canada to the American shore.

In July, New York officials captured four men and five hundred quarts of whiskey in a smuggling attempt at Niagara Falls. Also in July Canadian authorities in Windsor, Ontario, instituted a special patrol to look out for "rum runners" crossing the river at night without lights and violating customs regulations. An August report described Treasury Department officials becoming more concerned about the quantity of illegal beverages being smuggled into the country. Considerations were made to rearrange and enlarge the Coast
Guard. Assistant Secretary of the Treasury Jouett Shouse attributed the difficulty in enforcement to the lack of men and money since Congress had not appropriated funds for expansion. Most of the liquor had been coming from ships anchored outside the three-mile limit, with small fast boats unloading their cargoes from these ships all along the coast. The worst situation was reported along the Florida coast. Later that month a Canadian official stated that liquor smuggling along the border was growing larger daily; motor cars carrying $2,500 worth of booze were making several trips a day. And, finally, in December Canadian officials reported that one organized gang was using airplanes in its smuggling efforts.\(^7\)

The problems brought on by smuggling and the reactions of foreign powers to this new American way of life produced a great deal of activity in American diplomatic channels. The following chapters describe these activities and their effects upon prohibition diplomacy in America's international relations.

CHAPTER II

ENGLAND

The problems that arose during the first year of prohibition were only a hint of what was in store for American officials. The amount of liquor smuggled into the United States along the seacoasts multiplied as the months passed, and authorities simply did not know what to do about it. The main source of the outlawed liquor was "Rum Row." In July of 1921 several strange ships were sighted in waters lying off New York City and New Jersey; reportedly these ships were selling liquor to anyone who wanted to sail out and pick it up. Within months as many as a hundred ships were anchored off the Atlantic coast, unloading cargoes to willing buyers while dodging the Coast Guard. Smaller groups also began operating off the West Coast and in the Gulf of Mexico. Many of these ships picked up their cargoes in Europe and sailed to within a few miles of the American coast to unload; the majority, however, picked up its cargo in the West Indies or Bermuda and came right over to the thirsty Atlantic seaboard.
The Coast Guard was able to apprehend most of the smaller craft, but the big fast power boats usually succeeded in reaching shore where they could hide in coves and inlets in the darkness. Massive operations grew up overnight, with syndicates owning supply ships, transfer launches, and trucks on shore to distribute their goods. Most of the supply ships were under foreign registry, as were many of the smaller craft, and the capture and forfeiture of these ships and their cargoes quickly brought protests from several foreign governments, most notably Great Britain. The American government was slow getting started, but in the spring of 1922 State Department officials initiated talks with Great Britain on the subject of cooperative efforts to fight liquor smuggling along the American seacoasts.  

In late March, 1922, Secretary of State Charles E. Hughes wrote to British Ambassador A.C. Geddes about possible cooperation concerning liquor smuggling. American authorities had been having difficulties in enforcing prohibition due to smuggling, and they felt the problem could be alleviated with British assistance in territories being used as bases of operation. Hughes suggested cooperation in issuing registries to suspected vessels engaging in liquor traffic, in issuing

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clearance papers for these same vessels, and in concluding an agreement extending the three-mile territorial limit and controlling British and American vessels within these waters.

The problem of ships' registry was an important one to American officials. To escape penalty, many boat owners sought to register their vessels as British and operated out of the Bahama Islands and Bermuda. Apparently a large number of Americans were obtaining questionable British registry for their vessels in the Bahamas, and a stricter adherence to procedure by the British would decrease this number considerably. Through a series of certificates and applications, the British could help eliminate the false registry and thus cut the flow of smuggled liquor. Close regulation would prevent the practice of obtaining two sets of clearance papers or papers for false destinations.

Hughes encouraged negotiation of a treaty to embody these proposals for Anglo-American cooperation as well as permission for the United States to search British ships within twelve miles of the American coast.

The British government did not reply to Hughes's inquiry until October. Ambassador Geddes noted the usual assurances of Britain's desire to prevent smuggling, stating
that efforts were being made in the Bahamas and the West Indies to enforce more adequately required formalities and see that all regulations were adhered to in the areas involved. Some modifications in the registry papers proposal would be necessary, and the territorial authorities would be willing to institute procedures to deal with any questionable situations. According to Geddes, many of these steps had been taken or begun before the Secretary's communication.

Although willing to cooperate with the Americans in these matters, the British were reluctant to extend the limits of maritime jurisdiction. In view of the temporary nature of the problem, the British government felt it would be unnecessary to abandon the long-standing principle of the three-mile limit.  

Extending America's maritime jurisdiction proved to be the most difficult point in the subsequent negotiations. The Secretary's suggestion had some support in the Senate, as expressed in a July letter from Senator Thomas Sterling to Hughes. Sterling noted several precedents and citations

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from international law to reinforce the idea. He recognized first that the three-mile limit was based on the distance of a cannon shot, but that this distance was outmoded in view of the capacity of modern weaponry. He also quoted from Bouvier's *Law Dictionary*, which stated that the distance may be set as necessary "for the state's safety and for some lawful end," this end being, according to Sterling, enforcement of the Constitution's Eighteenth Amendment. Sterling also cited the advocacy of a six-mile limit by the Institute for International Law.

Hughes replied to Sterling in August, thanking him for his concern over the liquor situation, pointing out that Extension of a nation's maritime jurisdiction by its own domestic legislation was not acceptable under international law. The right of search concerned mainly military situations and could not be extended to include smuggling. Hughes stated that the territorial limit must remain at the three-mile mark except in the case of special multilateral agreements such as the one being sought with Great Britain.3

On October 6, 1922, President Warren G. Harding issued a policy statement on the administration of prohibition.

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enforcement on sea-going vessels and carriers. The ruling stated that all liquor transportation in American waters and on American vessels was prohibited. The ruling was to go into effect upon the issuance of necessary regulations and notification of foreign and domestic shipping lines and government vessels. This policy received an unfavorable reaction from many foreign nations, including Great Britain, who felt that this position was legally unjustified and unfair to the passenger lines' trade.

By the fall of 1922 American officials in the State and Treasury Departments had encountered a great deal of opposition in the enforcement of prohibition on the international level. Ambassador Geddes relayed to Hughes some of the implications and general considerations of the situation from the British point of view. The Ambassador described liquor as a passive, controllable substance, in contrast to explosives or infective organisms. Given this nature of liquor Geddes could find no reason for applying municipal law, in cases involving liquor, to cover foreign vessels on the open sea (beyond the three-mile limit) or even in territorial waters. Adding to the problem were the considerations of alcohol as necessary ship's stores or

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4. Secretary of the Treasury (Mellon) to Secretary of State, Oct. 7, 1922. Ibid., p. 577-78.
usage for medicinal purposes. Further complications had already arisen when liquor cargoes (destined for other ports, on board ships that stopped in American ports) were confiscated or the ship was detained. Geddes seriously doubted the legality of the proposed application of prohibition due to its confusing nature and lack of foundation in international law, and expressed concern over the possibility of the practice spreading to other nations and other articles, thereby hampering trade and complicating existing maritime relations.

Hughes stated the official American position on shipboard liquor for Geddes, citing a recent New York District Court ruling for legal support. In the case of Cunard Steamship Co. v. Mellon, the court had upheld the ruling prohibiting transportation of liquor in American waters, and Hughes was confident the forthcoming appeal would be upheld by the Supreme Court.⁵

In May of 1923 Geddes wrote to Hughes again about the application of municipal law to foreign vessels in American territorial waters. His Majesty's Government was concerned about the extent to which a country could demand obedience

⁵Ambassador to Secretary of State, Nov. 30, 1922; Secretary of State to Ambassador, Jan. 3, 1923. Ibid., pp. 585-89, §92.
of its domestic statutes that went beyond the accepted limits of public order and safety. He recognized the need for maintaining peace and securing public welfare within a nation's waters, but prohibition went beyond these limits. Geddes expressed once again the fear that if comity and practice were abandoned, great difficulties would be introduced into shipping and commercial relations. He concluded by asking the United States to reconsider and discuss the problem with other nations to find a more workable solution.

Once again Hughes maintained his position, stating that the Supreme Court had upheld the legality of the prohibition ruling in the Cunard v. Mellon case. Quoting an excerpt from the opinion of Chief Justice Waite, Hughes reasserted the principle that merchant ships must owe some temporary allegiance to the ports in which they trade, and lack of this respect would degrade all nations and lead to infractions of international law on a broad scale. Thus Hughes and Geddes apparently reached a temporary stalemate on the extension issue, but another problem with American prohibition enforcement demanded attention.

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Ambassador to Secretary of State, May 25, 1923; Secretary of State to Ambassador, June 6, 1923. Foreign Relations, 1923, I, 135-36, 144.
Many of the rumrunners had adopted the practice of bringing small loads of liquor to shore by means of small, fast boats, making several trips with cargo obtained from one vessel anchored outside the three-mile limit. The U.S. Coast Guard began searching these large vessels lying outside the limit, and Ambassador Geddes noted to Hughes that the British government would reserve the right to lodge a protest concerning any case which might be made from what they considered an illegal search.

Hughes responded by stating that the United States would retain its position on the practice of search beyond the three-mile limit, and cited for support the case of the British vessel Araunah, seized by the Russians in the Bering Sea in 1888. The Russians had held that British boats were illegally hunting seals within one-half mile of the shore and returning to the schooner; the British had agreed that Russian municipal law had been violated.7

In 1922 the United States seized several vessels on suspicion of smuggling. Washington based these seizures on the hovering statutes which extended national jurisdiction

four leagues out to sea in the case of suspected smuggling ships. These statutes dated back as far as 1790 and were reaffirmed in the Tariff Act of 1922. The United States, as a gesture of goodwill and an effort to secure quick acceptance of the proposed convention to extend the jurisdictional limit, released several of the seized vessels. Washington did not release vessels such as the Grace and Ruby which had been in contact with the shore through small craft, stating that these vessels definitely violated the prohibition and smuggling statutes. In the case of the Grace and Ruby, three members of the vessel's crew had been on board the small craft assisting in the actual smuggling operation. This case was similar to that of the Araunah, seized while using her small craft to move closer to shore. The British government offered no protest in these cases, but did not make any favorable moves toward acceptance of the suggestions for an agreement.  

A major case involving the principles under discussion was the condemnation and forfeiture of the supposedly British vessel Henry L. Marshall. United States officials had seized the vessel in July 1921 off the coast of New

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Jersey, beyond the three-mile limit. H.G. Chilton, the
British charge in Washington, wrote to Secretary Hughes
about the case in July 1923. His Majesty's Government had
not protested the seizure, and press reports had interpreted
this silence as acceptance of the right to search suspected
vessels beyond the three-mile limit—a principle supported
by United States authorities and legislation, but at least
until that time opposed by the British. Chilton wanted to
correct these views by denying any change in his government's
position. No protest had been made because the Henry L.
Marshall was not recognized as being of British registry and
was thus considered an American vessel. Chilton made clear
however that any attempt to seize a British vessel outside
the three-mile limit would create a very serious situation.

Hughes acknowledged Chilton's position, but emphasized
several other important aspects of the case. He pointed
out that the problem areas in this case involved clearance
papers and the actual acts of smuggling the liquor unto
the New Jersey coast. The vessel had sailed from the Bahamas
with one set of papers declaring liquor for Halifax, and
one set declaring in ballast for Massachusetts. Both sets
of papers had been issued on the same date and signed by
the same revenue collector. When boarded in the Atlantic
the ship still had part of its liquor cargo but no manifest. In its decision upholding the forfeiture, the United States Circuit Court of Appeals held that the ship was engaged in smuggling in violation of the Volstead Act. Although the ship was beyond the three-mile limit, it was in contact with the shore through small craft unloading the cargo and was thus liable to boarding and search by American authorities. Hughes concluded that the vessel had committed unlawful acts with aid from British authorities, and the case was concerned with more than the principle of the ship's registry. 9

Hughes elaborated more on the Marshall case and the desirability of a special treaty concerning maritime jurisdiction in a formal note to the British embassy. He contended that a special agreement limited to the situation at hand would deal more effectively with the problem than any treaty or amendment discussed previously. The Secretary continued his argument by pointing out that normal traffic would not be affected by the new rule since any vessel coming to port would not remain between three and twelve miles out. Only vessels with a questionable purpose would

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9 Charge to Secretary of State, July 10, 1923; Secretary of State to Charge, July 16, 1923. Foreign Relations, 1923, I, 163-67.
hover within this range offshore. Hughes cited the Henry R. Marshall case as indicative of the seriousness of the smuggling problem and the methods employed by the smugglers. He ended the note by asking for cooperation and suggestions on the matter, asserting that only those ships engaged in illicit activities would be affected. Under this agreement, British ships that violated the statutes would not be able to seek protection under their flag.¹⁰

By September 1923, British officials were still not convinced of any necessity for extension of the three-mile limit or even the applicability of municipal liquor laws to foreign vessels within American territorial waters. In addition Lord Curzon of the Foreign Office doubted the alleged extent of the smuggling traffic. Lord Curzon had noted a statement in the New York Times by Prohibition Commissioner Roy G. Haynes, who believed the chief source of illegal liquor was the domestic still, and that the widely publicized reports of smuggling were propaganda tools of the liquor interests to conceal that almost all liquor being consumed was adulterated moonshine, not a genuine imported article. Haynes added that only one-tenth as much smuggled liquor was successfully brought in as was claimed.

¹⁰Secretary of State to Ambassador, July 20, 1923. Ibid., pp. 168-70.
His Majesty's Government was desirous, however, of assisting American officials in enforcement of their liquor laws. London had considered a law prohibiting export of liquor to ports adjacent to the United States. The proposed law was ruled out because it would eventually necessitate some form of rationing to other countries involved. British officials did seek an agreement similar to one between the United States and Italy which allowed liquor on board as ship's stores if it were kept under seal while within American territorial waters. Lord Curzon did not deny the right of a nation to claim jurisdiction over its own waters as long as such jurisdiction was related to peace, health, and the safety and welfare of all ships and passengers. Lord Curzon apparently felt that a compromise could be reached by allowing transport of liquor if kept under seal, but hoped for a better solution to "an unwarrantable interference with the domestic concerns of British ships." Chilton noted to Hughes that the extended limit question would be discussed at the next Imperial Conference in London. The Conference subsequently decided that while maintenance of the three-mile limit should be a principle of British policy, an extension of the limit for right of search was
feasible, and negotiations should begin on an experimental agreement toward this end.¹¹

British officials also raised the question of the validity of any such agreement. The Volstead Act made an exception to liquor prohibition on ships passing through the Canal Zone, stating that no penalties or forfeitures would occur to foreign ships while passing through this zone. Since it would be a convention approved by the Senate, and not a direct part of the Constitution as the prohibition amendment was, Chilton was concerned that such an outside agreement might not be upheld by any subsequent legal action. Under the proposed agreement Britain would gain the advantage of transporting liquor under seal while within American waters, if such liquor were for ship's use or destined for non-United States ports. However, if the agreement should be nullified, Britain would be without this advantage.

Hughes pointed out to Chilton that the second part of the prohibition amendment provided that the Congress could take appropriate measures to enforce it as necessary, and the proposed agreement would fall within these bounds. Thus Britain's right to transport liquor under seal would be

¹¹ British Charge to Secretary of State, Sept. 17, 1923; American Charge in London to Secretary of State, Nov. 10, 1923. Ibid., pp. 188-91, 209.
secured, but this exception to penalty or forfeitures would be made only in exchange for the extended distance for rights to search. The Secretary assured the British that should the exception clause be denied for any unforeseen reason, the entire agreement would be abrogated by both parties and the situation would remain as it was prior to the agreement.  

Several days later Chilton left with Hughes a copy of a British draft treaty concerning the extension of the right to search. The main points of the draft proposal were: recognition of the three-mile limit principle; that Britain would allow search rights up to a distance of one hour's travel time from shore of the vessel under suspicion; that British ships could carry sea stores of liquor under seal while within American waters; and that the agreement would remain in effect for one year unless revised or terminated.

Hughes considered a few changes in the proposed treaty and submitted these suggestions to Chilton a few days after receiving the draft copy. He proposed the addition of reference to the three miles distance from the coastline to include rivers and bays, measured from the low-tide mark.

12 British Charge to Secretary of State, Nov. 23, 1923; Secretary of State to British Charge, Nov. 26, 1923. Ibid., pp. 214-17.
Also to be included was a clear reference to the exchange of search rights for the penalty and forfeiture exception. A third change suggested was a clause mentioning "judicial decision or legislative action" that would terminate the agreement, to cover British fears of such a possibility. With the inclusion of these modifications Hughes felt the proposed treaty would be acceptable.\(^\text{13}\)

The treaty with modifications was signed on January 23, 1924, by Secretary of State Hughes and Ambassador Geddes.\(^\text{14}\) This accord was the first official cooperative effort between the two countries aimed at combating the flow of liquor smuggled into the United States by means of ships and small craft.

One of the particular areas that American officials hoped to crack down on was the Bahama Islands. In 1923 the islands had imported ten million quarts of liquor compared to fifty thousand quarts in 1917, and the increased revenues had greatly helped the island's economy. The overcrowded harbor, increases in the export duty, and the new Anglo-American agreement forced a great deal of the traffic to

\(^{13}\) British draft treaty left with Secretary of State, Dec. 3, 1923; Secretary of State to British Charge, Dec. 7, 1923. Ibid., pp. 217-19, 221-23.

\(^{14}\) Ibid., 1924, I, 158-61.
move north to the French islands of St. Pierre and Miquelon, off the coast of Newfoundland. Nevertheless, enough activity remained around the Bahamas to give American officials and the Coast Guard plenty of problems, and two years later they sought more ways to secure British help in the area.

The Bahamas had been a favorite source and refuge for liquor smugglers since the early days of prohibition. Because of their proximity to the United States (some of the islands were within fifty miles of the Florida coast) and the fact that they were British possessions, the Bahamas provided an excellent rendezvous for buyers and sellers and a destination for large shipments of liquor from England and Europe. In the Bahamas huge cargoes of liquor were unloaded, money and spirits changed hands, and under cover of night (sometimes even in broad daylight) small fast boats departed for numerous inlets, coves, and private docks on the nearby Florida coast.

The smuggling activity in the Bahamas presented many problems for United States enforcement officers and again led to a bid for Anglo-American cooperation. In December

16 Ibid., p. 241-42.
1925, American and British Bahaman officials met to discuss ways and means of solving some of the difficulties. One problem was the presence of several Coast Guard vessels at Gun Cay without prior permission of British authorities. The British Ambassador stated that it was the usual practice to advise the proper authorities before the entry of armed vessels into a nation's territorial waters. Adm. F.C. Billard agreed that this was true, but since Gun Cay was an uninhabited coral reef with a good harbor which was being used to anchor liquor supply ships, he had sent three boats to observe and identify any vessels there in order to facilitate their capture off Florida coasts later. The ambassador and the admiral agreed that prior notice was necessary, and the ambassador agreed to seek an arrangement for a blanket permit to allow Coast Guard vessels to observe activities at Gun Cay and to seek shelter there in case of bad weather.

Another point of discussion was the possibility of effecting an agreement for exchanging information on smugglers' activities, names of vessels, and materials

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17 Officials from the British Embassy were: Sir Esme Howard, Ambassador; H.W. Brooks, First Secretary; and G.H. Thompson, Second Secretary. American officials were: W.R. Vallance, State Department; Adm. F.C. Billard and Lt. Cmdr. C.B. Root, Coast Guard; Mrs. Mabel W. Willebrandt, Assistant Attorney General; and Mr. Arthur W. Henderson, Department of Justice. United States Foreign Relations, 1926, II, 336.
necessary for proceedings by either country. Ambassador Howard also stated that he would look into two other problems: first, to find out if any liquor ships were entering or leaving the Bahama Islands without declaration or clearance papers; and second, to determine if there could be any prosecution of ships' masters for declaring false destinations on their clearance papers. 18

The next topic discussed at the conference was the seizure of liquor-smuggling vessels by United States officers. One such seizure had been protested by the British embassy because it felt the ship was outside the one-hour steaming distance set by the treaty of 1924. 19 W.R. Vallance of the State Department informed the British officials that although the Herman had been outside of its own one-hour travel distance, sixteen miles, the seizure had been based on the capability of the smaller transfer craft, or a distance of twenty-two miles, which the Herman was within. Ambassador Howard expressed some concern about the very strict American adherence to the liquor treaty; Vallance replied that often nations found it necessary to seize


19 The British vessel Hazel E. Herman, whose captain admitted he had run 1,000 cases of liquor to shore on the coast of Louisiana.
offending ships in smuggling cases outside the limit. He supported this claim by referring to a passage from a British international law volume that stated "the nation, whose mercantile flag has been violated by the seizure, waives in practice its right to redress, those in charge of the offending ship being considered to have acted with mala fides and consequently to have forfeited all just claim to the protection of their nation." \(^{20}\) Vallance outlined the circumstances that led to the signing of the liquor agreement (the extension of the three-mile limit in exchange for British right of having shipboard liquor under seal), and pointed out that the United States had been very liberal in enforcing its end of the agreement. American officials felt that the British were being too strict in their review of the cases; the disagreement in the Herman case was the interpretation of evidence by each side. \(^{21}\)

In late March 1926, several months after the conference, the British embassy sent a memorandum to the State Department concerning new administrative policies with regard to liquor smuggling. The authorities in the Bahamas would permit


\(^{21}\) Ibid., p. 340-46.
unregulated observation by Coast Guard vessels in outlying areas, but only after initial notification of officials at Bimini. Secondly, more stringent measures would be followed in approving the transfer of ships' ownerships to British registry. In addition, attempts would be made to prosecute cases of false declaration on clearance papers. The ambassador emphasized the voluntary nature of these measures, and that they could be rescinded if deemed unworkable. In an effort to improve cooperation, the British government invited one or more American representatives to come to London for a conference on liquor smuggling.\(^{22}\)

The conference between American and British officials concerning liquor smuggling was held in London in July 1926.\(^{23}\) The discussion centered around illegal registries and false clearance papers, names of offending vessels, and prosecution of cases by both sides. The goal of the discussion was to find solutions to these problems and to implement them in a workable manner. A list of eight

\[^{22}\]Ibid., p. 346-48.

\[^{23}\]American officials attending were: Gen. L. C. Andrews, Assistant Secretary of the Treasury; Mr. Vallance, State Department; Adm. Billard, Coast Guard; and three other officials. British officials present were: Mr. R.G. Vansittart, Foreign Office; Captain Douglas, Admiralty; Sir Charles Hipwood, Board of Trade; and other officials from the Colonial and Customs offices. Ibid., p. 350.
suggestions was made up to be submitted for approval to
the proper authorities of both nations. The first suggestion
would provide for a list of ships and persons suspected of
smuggling activities, compiled and maintained in Washington,
with copies made available to all officers concerned. Next,
arrangements would be made to facilitate the exchange of
information between British colonial officials in the Bahamas
and elsewhere and proper American authorities. Also, a
special liaison would be established by both countries in
London to deal with questions of registry and ownership.
A fourth suggestion concerned the exchange of evidence and
sought ways to aid each country in prosecuting cases. A
proposal was made for stationing a British vessel in the
Bahamas to aid in enforcement of British customs laws. In
addition, the notification of Bahamian authorities of U.S.
Coast Guard activity in outlying areas would be made by
telegraph to retain the element of surprise. The British
agreed to investigate more closely any suspected cases of
false declaration of destination; and finally, the officials
agreed to provide supporting evidence to either side in case
of inquiries or protest. 24

24 Joint Conference Report, American Ambassador to
Secretary of State, July 31, 1926. Foreign Relations, 1926,
II, 349-54.
Secretary of State Frank Kellogg wrote to Ambassador Howard indicating that the report and its suggestions were acceptable to the United States government. Chilton acknowledged that His Majesty's Government also approved and would consider the measures in effect as of September 29, 1926. Both parties also agreed to implement similar cooperative measures between English and American authorities in several U.S. and Central American ports. 25

The agreement included a unique new provision whereby British customs house officials would notify the consulate-general in London of clearances of "interesting shipments"—liquor cargoes of five hundred or more cases or gallons, destined for any port between the Panama Canal and the St. Lawrence River, including the West Indies. This and other provisions enabled U.S. and British authorities to work more closely together and with better results in the battle against the smugglers. The agreement was to be of one year's duration, and it was subsequently renewed each year through 1929.

25 Secretary of State to British Ambassador, Sept. 16, 1926; British Charge to Secretary of State, Sept. 29, 1926; Secretary of State to British Charge, Oct. 4, 1926, Oct. 28, 1926; British Charge to Secretary of State, Dec. 8, 1926. Ibid.
British efforts at cooperation with the United States did not go unnoticed in England. The press kept up with American prohibition and what was being done to enforce it, especially concerning Great Britain. A visit to England by U.S. Prohibition Commissioner General L.C. Andrews for the conference in 1926 stirred a renewed interest in this subject after the two years of inactivity since the 1924 agreement. An article entitled "Liquor Smuggling" in the Manchester Guardian of July 14, 1926, quoted General Andrews as saying that the United States had spent thirty million dollars enforcing prohibition in 1925, that Rum Row no longer existed but large amounts of liquor were being brought in by big crime organizations. In the London Morning Post of July 16, British shipping and export interests were reported to be worried about dangerous possibilities resulting from the proposed measures of the conference; these included delay, unnecessary inspections, cargo-shifting, and ill effects on British-South American trade. On July 18th the London Observer reported that before prohibition about one hundred million gallons of British liquor were annually imported into America; in 1925 only one and one-half million had been smuggled in. Liquor exports to the West Indies and other countries were down
twenty-seven per cent, so obviously the problem was not as large as U.S. officials claimed. "War on Rum-Runners" in the London Daily Telegraph, July 19, raised the question of British taxpayers bearing the costs of increased activity by British authorities in support of another country's domestic legislation. The article protested armed American vessels patrolling Bahamian waters, infringing on British sovereignty. An editorial in the London Times of July 22 acknowledged that the majority of ships and liquor involved in smuggling were of British origin and stated that the British had responded obligingly and generously to American demands for cooperation. The writer did not feel however that the British should be subject to the moral obligations of another country when the violation of rule in that country was the source of the problem. The British were interested in cooperation, but the press felt that more than enough had already been done, and further agreements would not be for the best of British interests.

In late 1927 the British embassy after hearing reports from several shipping officers sent a letter to the State Department calling attention to recent Coast Guard activities in the Delaware Bay and Delaware River. The letter protested detention and search of two British commercial vessels.
Reportedly a gun was trained on one of the vessels whose manifest was subsequently removed and not returned; the other vessel was detained for two days. Ambassador Howard asked for a review of the need for this type of activity since the vessels would be searched at Philadelphia customs and in view of the risk involved with the difficult navigation of the channel.

In February 1928, Robert Olds, Acting Secretary of State, replied to Howard that the incidents mentioned had been investigated. Concerning the dangerous boarding of vessels, the greater risk was for the smaller patrol boats; the unorthodox activity of one of the Guard vessels was denied; the two-day delay had actually been only fifteen hours and had been unavoidable; and the usual procedure had been followed in forwarding the manifests by mail to the vessel's destination port. Olds stated that the practice of checking vessels in the Delaware Bay vicinity had become necessary because of recent liquor smuggling activity in that area. In addition he mentioned that a conference had been held between government and shipping officials and the International Mercantile Marine, and that all parties had appeared
satisfied with the results of the investigations, vindicating American procedures. 26

Several months later Ambassador Howard reported that the Consul-General in Philadelphia had no information about recent smuggling activities during the last four years. Howard requested that he be sent information concerning these activities in order to take necessary action against vessels involved.

W.R. Castle of the State Department reported back to the ambassador that in several cases no action had been taken and no report made because of the lack of sufficient evidence. Castle mentioned three ships that had been seized with liquor cargoes in the Delaware area (the Charles Edward, the Lairy, and the Clackamas), but British officials made no protest in these cases. 27

In late 1931 American officials at the Consulate in Nassau and in the State Department attempted to obtain British records concerning clearance papers, cargoes, shippers, and other information to be used in proceedings

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26 British Ambassador to Secretary of State, Dec. 28, 1927; Secretary of State to British Ambassador, Feb. 8, 1928. Foreign Relations, 1928, II, 992-94.

27 British Ambassador to Secretary of State, May 7, 1928; Secretary of State to British Ambassador, June 6, 1928. Ibid., p. 995-96.
against several vessels suspected of smuggling liquor out of the Bahamas. The Colonial Secretary of the Bahamas refused to release the material, apparently unaware of some of the cooperative principles agreed upon in the London Conference of 1926. The Bahamian officials were providing weekly lists of liquor-laden vessels bound for the area of the American east coast, but these lists usually came out a week after the vessels had departed. Some information had been gathered by private means but not enough to warrant proceedings. W.R. Castle of the State Department wrote to the American ambassador in Great Britain, Charles G. Dawes, asking him to investigate the matter. British officials in the Foreign Office and the treaty department communicated with each other and by June of 1932 had settled the question. The initial American note had failed to specifically mention that the requested material was to be used in proceedings. Without this prerequisite, the Colonial Secretary had rightly refused to release the material. No information concerning shippers, consignees, or the actual nature of consignments would be given out. In 1930 an arrangement had been made (almost identical to the one of 1926) whereby British customs officials would notify American authorities of the departure of a suspected vessel, its name, destination, date of
departure, and include the fact that it carried an "interesting cargo," such phrase to indicate the vessel was carrying over 500 cases or gallons of liquor. Bahamian officials indicated that they would try to be more helpful in their efforts and asked American officials to be more specific in their communications regarding liquor smuggling.\(^{28}\)

The first decade of prohibition had seen the growth of organized groups large and small trying to smuggle liquor into the United States. A majority of the ships and liquor were of British origin, especially from the West Indies, Bahamas, and Bermuda. United States officials had endeavored to elicit the cooperation of British authorities in as many ways as possible. The convention of 1924, the Conference of 1926, and the helpful informed efforts of the British in many areas combined to reduce the amount of liquor smuggled in from the sea.

There was an occasional uproar at home and abroad when America seemed to proclaim sovereignty over any vessel within her territorial jurisdiction or when the British press feared U.S. police-type activity in the Bahamas. There were dissenting voices to be heard in America, too, and not

\(^{28}\) Secretary of State to American Ambassador, Nov. 27, 1931; American Ambassador to Secretary of State, June 20, 1932. *Foreign Relations*, 1932, II, 45-52.
just from the liquor interests. Concerned writers and politicians expressed disapproval of the often fanatical approach of some U.S. officials and the extent to which they appeared willing to go to insure that the country remained dry.

The amount of smuggling was reduced because of the expansion of the Coast Guard and its activities and by the increased cooperation of the United States and Great Britain. The 1925 report of the Coast Guard showed that up until that time 213,802 cases of liquor had been confiscated, and much more had been reportedly dumped during chase activity. Through 1926, twelve hundred and twenty-three seizures were made, and the so-called "Rum Row" had been broken up and pushed much farther out to sea.  

Progress had been made, but much of the activity had moved to Canada.

29 Masterson, Jurisdiction in Marginal Seas, pp. 358-59.
CHAPTER III

CANADA

Canada's proximity to the United States, the 3,000 miles of inland border, and the numerous lakes and waterways touching each meant that she would be fertile ground for smuggling activities intended to bring liquor into America. Although liquor consumption was still prohibited in some Canadian provinces, the manufacture and exportation of it, particularly to America, was legal. This situation proved to be a problem of gigantic proportions for American enforcement officials. When Canadian officials closed several Quebec warehouses dealing in bonded liquors American authorities hoped this would eliminate the source of much of the illegal liquor coming into the United States from the north. ¹ However, the bootleggers managed to continue their operations quite successfully by using a former Canadian submarine, by using motorboats across the Detroit River, and utilizing automobiles, railroad cars, and even airplanes.²

In the summer of 1922, the State Department sent a note to the British Embassy regarding possible legislation by the Canadian government that would prohibit liquor shipment into the United States without prior permission of American authorities. Commissioner Roy Haynes had contacted J. Hales, Chairman of the Board of License Commissioners for Ontario, who had replied that Canadian authorities felt that an official United States request for cooperation would get a favorable response. Hales wrote to Haynes again on July 4, stating that unfortunately the session of Parliament had ended before any legislation could be worked up and acted upon.3

Secretary Hughes wrote to Ambassador Geddes in March, 1923, again concerning the problem of liquor smuggling across the border from Canada into the United States. The main source of trouble for American authorities was Canadian law which prohibited the sale of liquor to Canadians, but allowed its exportation to any foreign country. An undetermined number of American-owned small boats were taking advantage of this situation, bringing liquor across the Great Lakes and several rivers into the United States at night. Hughes proposed an agreement between the two nations that would

3Foreign Relations, 1922, I, 563-64.
eliminate the granting of clearance papers to liquor-laden vessels bound for American ports, unless an importation permit were presented. H.G. Chilton, the British charge d'affaires in Washington, replied that apparently no laws were being broken; all liquors cleared for foreign ports were duty paid, and there was no provision in customs regulations that would warrant refusal of papers if a vessel's cargo was prohibited in its port of destination.

In a subsequent letter Chilton elaborated upon his previous stand concerning clearance papers. Regarding the negative answer to Hughes's letter, he explained that this was based upon observance of the present Canadian laws. He then added that the Dominion Government desired to assist the United States in the enforcement of its laws, and that already in several ports cooperative efforts were being made by notifying American officials of the departure of liquor-carrying vessels headed for American ports. Chilton then invited the Secretary to send a representative to Ottawa for a conference to discuss cooperative efforts regarding smuggling.

4 Ibid., 1923, I, 228-29.
5 Ibid., pp. 229-30.
Secretary Hughes selected McKenzie Moss, Assistant Secretary of the Treasury, to head the delegation of American officials to the conference. Hughes stressed the objective of the conference as an effort to obtain assistance from Canadian authorities in suppressing the illegal liquor traffic along the border. He outlined eight major proposals for discussion at the conference.

The first proposal consisted of three types of cooperative efforts between customs officials of the two countries. The first was to provide an arrangement for Canadian officers to furnish information to American officers concerning clearances of liquor-carrying ships bound for United States ports until regulations denying such clearances could be instituted; this agreement was to be similar to one made with Cuba to prevent the violation of United States smuggling laws. The second type was to request an Order-in-Council to prohibit clearance of ships to United States ports with liquor cargoes. It was pointed out that the United Kingdom allowed no clearances of this type, and that hopefully Canada could be persuaded to follow suit. The third type

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called for prevention of clearance for any ship under two hundred fifty tons carrying liquor, whether the taxes had been paid or not. It was felt that ships of this size were obviously incapable of making their claimed destinations of Cuba or Mexico, and so must be construed as smugglers.

The second major proposal sought to allow revenue cutters to search and seize smuggling vessels on the Great Lakes and tributary rivers, especially along the international boundary line. A third proposal concerned the obligation of vessels to proceed to their declared port and to show proof of arrival by means of a landing certificate. It was generally felt that a stricter adherence to this procedure by Canadian officials would cut the flow of liquor traffic into nearby United States ports.

A third proposal was for a treaty arrangement whereby Canadian authorities could transport liquor from the port of Skagway, Alaska, across Alaskan territory into the Yukon Territory of Canada. Canadian officials felt they had this right by virtue of an 1871 treaty, though American officials disagreed. However, since the liquor was imported and controlled by the Yukon officials, and there was little likelihood of any smuggling in this area, Hughes felt that some accommodation could be reached in their favor to gain
cooperation on the other proposals. A fifth proposal called for the reporting to American officials of auto or airplane shipments, to decrease land and air smuggling. Other proposals for the conference included agreements for the extradition of persons accused of violating the liquor laws, for the conveyance of prisoners through the other country's territory, for reciprocal arrangements regarding witnesses at trials, and the exchange of evidence and official records to facilitate better prosecutions of liquor-related cases.⁸

The Ottawa Conference began on November 27, 1923. The American proposals were submitted and discussed by the conferees. The advantages of reciprocal exchange of information relevant to customs violations were mentioned, and the arrangement between the United States and Cuba along his line was used as an illustration.⁹ Regarding denial of clearance papers for liquor-laden vessels bound for American ports, Canadian officials were unaware of any cases where


⁹See Ch. 4 below.
vessels had fraudulently obtained papers declaring liquor cargo for a non-American port, then illegally unloading liquor in American territory, while also carrying a second set of papers declaring no cargo and bound for an American port. By using two sets of papers the smugglers could get around either Canadian or American laws. Copies of these false papers were given to the Canadian officials who promised to investigate those customs officers involved. The American delegation also mentioned Great Britain's cooperation in refusing clearances for vessels with liquor bound for the United States, adhering to the principle of non-exportation of goods which were prohibited in another country.

The Canadian representatives stated that smaller vessels (under 200 tons) with liquor cargoes were cleared only if the tax had been paid, and clearance was denied any vessel which was physically incapable of making its declared destination. American officials however described cases where vessels with liquor cargoes cleared for Cuba or Mexico and returned empty, often with foreign landing certificates, in far less time than was usually needed to reach their declared destination. The Americans urged that vessels provide proof of having gone to their declared destinations; such requirement would act as a further safeguard against smuggling.
Reciprocal search and seizure was suggested as a means of aiding in enforcement of customs, narcotics, and prohibition laws in the Great Lakes area. The Canadian officials agreed to submit the matter to their government for consideration. The treaty agreement sought by the Canadians to facilitate the transportation of liquor across a small part of Alaska into the Yukon Territory appeared to present no problem and would increase greatly needed Canadian revenue in this area. In view of pending negotiations with the British concerning possession of liquor under seal while within American territory, both sides agreed that some similar arrangement could be reached regarding transportation of Canadian liquor through Alaska. The other proposals discussed included smuggling of liquor across the border by automobile and reciprocal arrangements necessary to provide witnesses, depositions, and records needed by either country for prosecution purposes. At the close of the conference Moss submitted written copies of the proposals to the Canadian officials to be considered by their government as soon as possible.  

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^10 Foreign Relations, 1923, I, 240-55.
On June 6, 1924, a convention embodying all but the most important of the desired proposals and agreements with Canada was signed by the United States and Great Britain. Both countries ratified the convention and it went into effect on July 17, 1925. This agreement initiated serious cooperation between Canada and the United States in efforts to suppress the smuggling of liquor across the border into the states; however, it did not include consent by the Canadians to deny all clearances for ships carrying liquor to American ports. The exchange of information between officials, the refusal of clearances to small or unfit liquor-carrying vessels, and the agreements concerning evidence and prosecution were of great value in decreasing the flow of liquor from Canada into the United States.

In spite of the new efforts at cooperation, refusal by the Canadians to deny clearances to liquor-laden vessels declaring for American ports continued to be the main stumbling block in the diplomatic negotiations between the two countries. In October of 1925 Secretary of State Frank Kellogg wrote Chilton about the problem. Kellogg proposed

11 Ibid., 1924, I, 188-92.
12 Ibid., 1925, I, 573-76.
an amendment to the Convention of 1924 that would provide for this denial of clearances. The exportation of liquor from Canada was legal, but since its importation into the United States was not, Canadian officials, he said, were aiding Canadian citizens in the violation of American laws.  

Canadian officials agreed to discuss such a proposition but preferred waiting until after the conclusion of an investigation of the Canadian customs service by a Royal commission. By June of 1926 the investigation had uncovered massive fraud, favoritism, and maladministration. One of the subsequent recommendations of the commission was the denial of clearances to ships bearing liquor for American ports. The investigation continued, postponing American attempts to set a date for a conference. The Canadians also desired to widen the scope of the conference to include all commercial smuggling into either country. The final report of the commission agreed with the Parliamentary committee about denial of clearances. It was not until late in 1928 that the arrangements for a conference were finished.

13 Ibid., 1929, II, 48-49.

There was some opposition in Canada to the American proposal because cooperation meant the use of Canadian funds and officials for enforcement of an American law. Some Canadians felt that they had done enough and that the United States was not doing all it could in the way of enforcement or cooperation among its own governmental authorities. Canadian exports of liquor had grown to a considerable quantity by this time. In 1927 over sixteen million dollars worth of liquor had been exported to America, and in 1928 and 1929 over eighteen million dollars worth of liquor had been shipped each year. The revenues for the Canadian government also had been large. In 1927 over eight million dollars had gone into the treasury; in 1928, the figure was over nine million; in 1929, around eight and one-half million dollars in revenues from the liquor export traffic had been received by the Canadian government. By 1928, the total value of liquor smuggled across the Canadian border was estimated at seventy-five million dollars; the greatest amount of smuggling occurred in the Great Lakes area, particularly around Detroit. These sizable revenues were another factor behind the resistance of many officials to changing the clearance policies. There were however
other sections of the populace and press that supported the proposal in the interest of international cooperation.\textsuperscript{15}

Prohibition Commissioner James M. Doran estimated that one hundred per cent enforcement of the Volstead Act would cost three hundred million dollars; Congress would probably appropriate one-tenth this amount for the job. Complaints of incidents all along the border had been increasing, and citizens on the northern side were growing more concerned about their peace and safety. Prohibition agents were often of dubious character and were prone to wild shooting and other careless activities while on the job. Reports of corruption among officials and arrests of Canadian and American citizens engaged in smuggling helped point out the need for an improved, more unified effort by the Americans and even more cooperation by the Canadians.\textsuperscript{16}

Washington at this time still sought the elimination of clearances for Canadian vessels carrying liquor to American ports, and an amendment to the convention to effect this end was proposed to Canada. In January, 1929, delegates from the two countries met in conference at Ottawa. The


official Canadian response to this amendment proposal was that no amendment was deemed necessary, but that a stricter observance of the present regulations would have to suffice. They felt that Canadian liquor represented only a small portion of what was consumed in America (according to statements by some American officials), and that since the signing of the convention, enforcement had been increased satisfactorily. American delegates stressed that recent figures showed an increase in smuggling along the inland border, the area where the proposed action would do the most good. A general lack of support coupled with anticipation of a pending American tariff increase brought the conference to a close without any concrete results.

In March, 1929, Canadian Prime Minister MacKenzie King sent a proposal to Washington that would provide for an improved information system along the border and the stationing of American officials on Canadian soil to handle clearance information. Washington rejected the proposal, however, reasoning that information which previously had been mostly unreliable would not change under this new system, and that the only suitable solution was the denial of clearances.¹⁷

Prime Minister King next sought a different approach. In order to avoid any turmoil within the Canadian government, he decided to introduce a measure in Parliament that would satisfy the American demands, yet not place his Liberal government in jeopardy. First he needed assurance that Washington was sincere in its efforts to enforce prohibition and reduce smuggling. Washington obliged in early 1930 by announcing an increase of ten thousand armed officers in the border force. With this support King introduced legislation to deal with clearances. Other members of the Canadian government also felt that it was time to cease cooperating with the smugglers. Senator Raoul Dandurand of the Canadian Parliament stated that the practice of levying an excise tax on liquor destined for American ports, though its importation was illegal, made the government an official party to the smugglers' activities; despite the passing of information to American officials, the bootleggers would manage to get their cargoes in eventually.18

The legislation was passed in March, 1930, and subsequently became law. The amendment to the convention never came about, though, as the negotiations reached a standstill.

18 Dominion of Canada, Parliament, Debates of the Senate, 1930 (Ottawa: 1930): 77-78.
when the Conservative party achieved power in Canada in the summer of 1930. The economic situation, the Smoot-Hawley tariff, and the growing domestic opposition to prohibition in the United States influenced the lessening of the campaign to secure such an amendment. Washington was satisfied with the Canadian law to eliminate the clearances. That problem had been solved, but the liquor-smuggling interests stayed active by moving their operations to the islands of St. Pierre et Miquelon off the coast of Newfoundland.\textsuperscript{19}

The most important case involving a Canadian vessel and the extended maritime jurisdiction of the U.S. during prohibition was that of the \textit{I'm Alone}. This suspected smuggling vessel was sighted by the United States Coast Guard on March 20, 1929, while supposedly lying ten and one-half miles off the United States coast. The vessel refused to be searched and proceeded out to sea. The Coast Guard vessel pursued, and two days later the \textit{I'm Alone} was sunk after disregarding Coast Guard efforts to search, about two hundred miles out on the high seas with the loss of one life.

\textsuperscript{19}Kottman, "Volstead Violated," pp. 118-24.
In reply to a Canadian request, the State Department sent a memorandum to the Canadian Minister a week later. The note contained the details of the pursuit and sinking and presented the position that the Coast Guard was fully justified in its actions, that the vessel was within U.S. territorial waters (as defined by the distance traversed by the vessel in one hour), and that the hot pursuit was fully justified. The captain of the vessel had reportedly refused to surrender, and this resistance had led to the disabling and sinking of the vessel.

The Canadian government admitted that the vessel had been a known smuggler for several years. The calculations of the captain of the vessel showed, however, that he was four miles farther out to sea than stated by the Coast Guard, and that this was farther than one hour's traveling distance for his schooner. The Minister also wrote that although Canada had not completely agree with American prohibition regulations, the Canadian government had cooperated a great deal with the United States in the convention of 1924, the prevention of liquor storage after import into Canada for later exportation, and the application of double duty bonds on transient liquor cargoes. The government did not feel that the sinking of the vessel was legal.
under the terms of international law or the convention of 1924. The territorial limit of three miles was regarded as the defining factor in case of hot pursuit, and the punitive measures of the Coast Guard were deemed much too extreme for the situation. In concluding, the minister felt that the government was forced to seek redress in the case.

Secretary of State Henry Stimson in his reply to the Canadian note reiterated the earlier statements and position of the U.S. government in support of the Coast Guard action. After citing testimony and evidence from the hearing on the case, Stimson offered to submit the case for arbitration, as provided for in Article IV of the convention of 1924. The Canadian Minister, Vincent Massey, though disagreeing with some of the evidence and the other cases cited as legal precedents, did agree that the matter could be solved only through arbitration, in the interest of international law and the observance of the regulations of the convention. 20

In the course of the arbitration commission's investigation it discovered that the vessel was owned by a group of people, mostly Americans. In January, 1935, at the conclusion of the arbitration, the United States was ordered to apologize and pay over fifty thousand dollars to Canada and the vessel's

crew members. This compensation was not to be paid for the loss of the ship and its cargo but as a fine and for personal damages. The Coast Guard's sinking of the I'm Alone was regarded as an unlawful act occurring in international waters; the theory of "hot pursuit" was not applicable to the case. 21.

A second important case in which the Canadian government protested United States enforcement actions involved the seizure of the Josephine K in January, 1932. The boat was sighted approximately nine and one-half miles off the coast of Long Island, New York, unloading some cargo onto another vessel. After a short chase, the boat, which had ignored orders to halt, was seized when its pilot house was damaged by gunfire and its master fatally injured. The Coast Guard did everything possible to save the captain's life, to no avail; a subsequent investigation by Coast Guard officials vindicated the seizure and the action taken by the patrol vessels involved.

The Canadian government protested the seizure on the grounds that the vessel was beyond one hour's sailing distance and therefore not within Coast Guard jurisdiction.

either at the time of its sighting or of its seizure. The computations taken by other Coast Guard officers in nearby vessels and during the investigation were ignored in favor of that made by the officer making the seizure, who had no means on board to determine precisely his location.

In reply the State Department again contended that the seizure was legally justified. A case had been filed in a United States District Court in New York and the vessel meanwhile had been released under bond to its claimant. American officials declined any further comment until the court's decision was handed down.

Canadian officials agreed to wait on the decision before continuing negotiations on the issue. They stipulated, though, that this deference did not mean they would abide by any decision of a tribunal of one of the parties of the convention, but would seek redress under provisions of Article IV of the convention providing for arbitration of disputed cases. Canadian Minister W.D. Herridge in an additional memorandum stressed again that a United States court decision would not be the final one in this, a case of international considerations. The decision rendered by the court was in favor of the United States government, which sparked a new demand by the Canadians for appropriate redress for the illegal seizure.
The State Department in its official reply again stated the particulars of the incident and declared that the vessel's speed for determining sailing distance was that which was entered on her official registry (11 knots) as opposed to any trial at sea, which would vary with weather and vessel condition. On this basis the seizure had been legitimate according to the standards of the convention of 1924. The Josephine K had been engaged in smuggling since built in 1926 and had been sighted in these activities by the Coast Guard many times. Moreover, information received in 1927 indicated that the vessel was owned by United States interests and therefore should not have the protection of the British flag. Thus it appeared that in this case American interests were violating American prohibition laws under cover of a foreign flag.  

During the investigation to reach a settlement of the case, it was disclosed that at the time of its seizure, the Josephine K was owned by the Liverpool Shipping Company of Nova Scotia. The owners agreed to forfeit the liquor cargo, and the vessel was released to them under bond; reportedly the vessel was again engaged in the liquor traffic shortly after its release. No disposition was published as

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22 *Foreign Relations, 1932, II, 78-92.*
to the protest made by the Canadian government in behalf of the family of Captain W.P. Cluett, killed during the seizure of the vessel.\textsuperscript{23}

In December, 1932, the Canadian government informed Washington that it would cease its cooperation in the prevention of liquor smuggling if the United States continued seizing ships up to a twelve mile limit in smuggling cases. Under a 1930 tariff act, the United States authorized seizures up to such a distance if the vessel was in violation of customs or revenue laws, similar to the "hovering statutes" covering a distance of up to four leagues. In the case of the Canadian vessel \textit{Mazel Tov}, its seizure was held by Canada as unjustified according to the convention of 1924, which set one hour's sailing distance as the limit. Canada felt that the new limit appeared to supercede that set by the convention and protested to Washington that she only accepted the international limit of three miles, except in the case of a special agreement that extended this limit, such as the liquor convention. Thus any change in procedure would conflict with the current agreement, and Canada could not agree with this at all; the agreement would thus be rendered ineffective. The Canadians did not intend, however,

to revoke the 1930 legislation prohibiting exportation of liquor to the United States. 24

A Supreme Court decision in January, 1933, ruled that the seizure of the Mazel Tov was illegal and stated in its decision that the 1930 tariff act distance of twelve miles was not applicable in cases involving any country with which the United States had signed a special anti-liquor smuggling pact. Secretary of State Henry L. Stimson writing to the Canadian Minister (Herridge) soon after the decision, stated that the ship was in reality owned by Americans who had paid Canadians to allow their names to be used to obtain Canadian registry and protection for the ship. 25

The years of prohibition in America were full of numerous incidents involving smuggling of liquor that often found the government of Canada at odds with Washington. Border activities, ship seizures at sea, and some Canadian laws were among the problems that plagued American officials. Washington's perseverance in dealing with Canada on the subject of prohibition eliminated many difficulties in its enforcement. The convention of 1924 and the subsequent

24 Ibid., Dec. 9, 1932, p. 3.
agreements and legislation went a long way toward improving the enforcement along the border and at sea. The problems that arose during this time were all eventually solved, and the United States continued its drive to eliminate smuggling while continuing to maintain good relations with its neighbor to the north.
CHAPTER IV
NEGOTIATIONS AND CONVENTIONS WITH OTHER NATIONS

The first three years of prohibition enforcement went by with little opposition or protest from the major foreign countries. Treasury Department regulations stipulated that all foreign vessels while within American waters must keep their liquor cargoes and rations under seal, not to be sold, transported, or consumed. The difficulties of enforcement became such that United States authorities deemed it necessary to become even stricter in their enforcement campaign. The Attorney General's office decided that even the storage of liquor under seal was not strong enough--there should be no liquor on any vessel, American or foreign, while within American jurisdiction. The Supreme Court's decision in April, 1923, in the Cunard case upheld this opinion and subsequent regulations were issued by the Treasury Department to put the ruling into effect on June 10, 1923.¹ This action quickly elicited unfavorable responses from many members of the international community.

Spanish Ambassador Juan Riano protested the new ruling in Spain's behalf, on grounds that it would ruin the business of Spanish steamship companies serving American ports and would encroach upon Spanish sovereignty over her own ships. Belgian Ambassador E. de Cartier indicated to the State Department his government's misgivings about the new ruling. Belgian law provided for liquor for the crews and for medicinal purposes; Belgium also felt that jurisdiction over foreign ships should be concerned only with safety and public order. De Cartier stated that Belgium was of the opinion that the present rule was sufficient in the matter of liquor cargoes, and hoped that Washington would reconsider its position regarding enforcement of prohibition on foreign vessels.2

The Italian Embassy and the Swedish and Portuguese Legations sent memoranda to the State Department concerning Washington's new ruling. All of the protests spoke of American violation of international comity and practice, the limits being put on freedom of navigation and commerce, but did profess the willingness of the several nations to cooperate in finding an equitable solution to the problem. Both the Danish minister and the minister from The Netherlands

2Foreign Relations, 1923, I, 133-34; 136-37.
sent lengthy notes to Secretary Hughes explaining the positions of their governments concerning the new law and its effects on commerce and international law. The Norwegian and Panamanian representatives also submitted letters to the State Department concerning the new prohibition regulation.  

Thus virtually all of the major maritime powers made representations to Washington against the new ruling and the ill effects it might have on commerce, sovereignty, and international law. To all these protests Hughes could only reply that this government cannot well discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Supreme Court of the United States.

Hughes did indicate the possibility of negotiating treaties similar to one proposed with England, in hopes that this might alleviate the problem. Otherwise the administration would have to enforce the congressional statute and disregard international law and any possible complications with foreign nations. Hughes did ask several American

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3 Ibid., p. 138, 139, 140, 140-42, 142-43, 146, 159-60.

4 Hughes to Panamanian Minister (Alfaro), June 28, 1923, Ibid., p. 160.
diplomats to investigate the various customs neutrality laws and jurisdictional statutes of their respective countries in order for the State Department to have a better background and knowledge of the precedents of the issue. The negotiations that went on between the United States and France, Cuba, Mexico, and Japan will be discussed below, as these countries were affected to some degree by prohibition enforcement, though not as much as England and Canada.

The effects of the new American prohibition laws were felt rather hard in France, which had long enjoyed a sizable commerce with the United States in wines and liquors. The French did not agree with America's reasoning on the subject but went along with the enforcement campaign until 1923. When the new regulations forbidding any liquor at all went into effect, France immediately lodged a formal diplomatic protest. French Ambassador Jules Jusserand visited the State Department and discussed his government's attitude toward the new regulation. France felt that her merchant vessels were French territory and not subject to local jurisdiction except in cases involving peace and safety while in a foreign port. French law also included provisions for ships to carry alcoholic beverages on board for crew's
rations and medicinal purposes. The French desired to keep in effect the rules permitting liquor under seal while in American waters, rather than endure the difficulties which were sure to evolve from the new regulation.  

Secretary of State Hughes wrote to Ambassador Myron Herrick in Paris shortly after the new ruling on liquor went into effect. Hughes mentioned that several nations had made protests against the ruling, based upon considerations of international comity and practice and the theory of jurisdiction over foreign vessels only in cases affecting peace and safety. The State Department was in the process of formulating certain agreements that would facilitate better enforcement along the coasts by allowing American vessels to search and seize foreign vessels violating United States liquor laws in an extended zone up to twelve miles out, rather than the three-mile limit of international law. In exchange for this privilege the United States authorities would allow the other party to the agreement to retain liquor under seal on board her merchant vessels while within American waters. This type of agreement was intended to improve enforcement, particularly against the "rum-row"

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5 Jones, Eighteenth Amendment, pp. 98-99.
along the eastern seaboard and satisfy the other nations regarding alcoholic beverages aboard ship. Washington also hoped to eliminate the smugglers' practice of using a foreign flag as protection and thus put that nation in the position of supporting the violation of American law.⁶

Hughes sent Herrick a draft of the agreement which had also been proposed to Great Britain, Italy, Japan, and Spain. The first article dealt with the extension up to twelve miles of a zone in which search and seizure of suspected vessels would be allowed. The second article provided for transportation of liquor cargo and ship provisions under seal while within this twelve-mile limit. Thus the agreement between the United States and France was basically the same as ones being sought with other countries.⁷ There were two differences in the agreement proposed to France. The treaty made no specific mention of adhering to the principle of a three-mile limit since France did not support that limit. The other difference in the final agreement provided that claims arising from the issue would be considered by one person from each country, then referred to an umpire,

⁶Foreign Relations, 1923, I, 152-54.
⁷Ibid., pp. 155-56.
and, if necessary, referred to the Permanent Court of Arbitration at The Hague. The British agreement provided for settlement by a joint report or a Claims Commission established in an Anglo-American agreement of 1910. The Franco-American liquor convention was ultimately signed on June 30, 1924, by Secretary Hughes and Ambassador Jusserand.8

The treaty was ratified by the United States Senate in December of the same year, but the French Parliament and citizenry did not favor the agreement. William Vallance of the Solicitor's Office noted that French liquor interests opposed ratification and believed that rumors in the French press that French seamen were being mistreated or sometimes even killed by enforcement officials also caused difficulties. He suggested that Hughes make an official denial of this.9

A report by M. Pierre Valude, of the Committee on Merchant Marine and Foreign Affairs of the French Parliament, was definitely unfavorable to ratification because it would be detrimental to French shipping and jurisdiction.10 American

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8 Jones, Eighteenth Amendment, p. 104, 103.

9 Vallance to Hughes, Feb. 19, 1925, 711.519/21. Citations followed by file numbers refer to State Department decimal file on microfilm in the North Texas State University library.

10 Jones, Eighteenth Amendment, p. 105.
officials wanted French ratification because it would enable them to search and seize suspected smuggling vessels flying the French flag; Washington also believed ratification to be important to French commercial interests involved in passenger service to the United States, who were losing business because of their dry ships.

The issue of ratification lay dormant for two years as the French government virtually ignored it. Several French ships were seized during this period for violations of the prohibition law. The Cherie was seized off the coast of Maine on June 21, 1925; both ship and cargo were forfeited. The Mousmee was seized July 30, 1925, off Rhode Island but was subsequently released when the seizure was ruled illegal. The La Parisienne was seized more than twelve miles off the coast of Massachusetts November 4, 1925, but was also released. The Mistinguette was seized in New York Harbor on March 2, 1926, and both ship and cargo were forfeited. Pending ratification of the Liquor Convention Washington permitted French vessels to have ample liquor provisions on board for their crews and medical purposes, as long as it was sealed in American waters. Nonetheless this "diplomatic fiction"

could be ended at any time by American officials. France would probably not get any better agreement on the subject, and pressures of war debts and international economics led the French government gradually to assume a favorable attitude. The French were concerned about two main points of the agreement. The first was the principle of the three mile limit of territorial waters—as France had not always adhered to this principle it was not mentioned in the agreement, whereas it had been specifically noted in the British version. Secondly, Paris had some apprehension about the search and seizure of French ships. France had endured a century of problems and abuses along these lines during Great Britain's dominance of the seas. During time of war such protective measures might be necessary but during peaceful times they were highly questionable. Though Paris predicted difficulties in enforcement, the treaty was looked upon as being safe and fair enough to merit approval. France consulted several other nations who had signed similar agreements with the United States including Italy, Sweden, and Belgium and was satisfied with their favorable

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M. Pierre Valude of the Foreign Affairs Office had changed his mind about the treaty, and subsequently both houses of the French Parliament ratified the agreement. On March 12, 1927, ratifications were exchanged between Paris and Washington. By the terms of the agreement French commercial vessels could carry wine and liquors on board for crew and passengers as long as it was sealed while in American waters. In return American authorities could search and seize French vessels suspected of smuggling activities within the one-hour sailing distance.

With the advent of prohibition and the smuggling that ensued it was not long before Cuba was the source for a sizable amount of bootlegging. Like the Bahama Islands, Cuba became a favorite location because of its short distance from the Florida coast, which provided hundreds of landing places along its irregular shoreline. The tourist and commercial trade of Florida combined with the lackadaisical attitude of some of its local enforcement officers proved to be a bonanza for the illegal liquor trade.


14 Jones, Eighteenth Amendment, pp. 110-12.
After the first few years of prohibition had provided massive evidence of the growth of smuggling activities, Washington, as had been done with Great Britain, Canada, France, and other countries, sought ways to gain the cooperation of Cuban authorities in suppression of this contraband trade. In May 1923 the State Department sent instructions to Enoch Crowder, American Ambassador in Cuba, to discuss with the Cuban government the possibility of exchanging information regarding vessels, clearances, cargoes, and persons involved in smuggling in violation of the laws of either country. The Cuban government indicated its willingness to cooperate in such an agreement.\[15\] Discussion was also held concerning the denial of clearances to ships of less than two hundred tons, as had been proposed to Canada (such vessels were considered incapable of reaching a distant location such as Nova Scotia); the Charge in Cuba, William Howell, was also directed to find out if any ships were being cleared for American ports with liquor cargoes and to mention to Havana that Great Britain no longer allowed such clearances in hopes that Cuba would cooperate in this vein also.\[16\]

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15 Secretary of State to Ambassador in Cuba, May 14, 1923, Foreign Relations, 1923, I, pp. 255-56.

16 Charge in Cuba to Secretary of State, Sept. 11, 1923; Secretary of State to Charge in Cuba, Oct. 2, 1923, in ibid., pp. 257-59.
The Cuban Secretary of State, Carlos Manuel de Cespedes, informed the American Embassy in Havana that the Cuban government would be willing to give information concerning ships and cargoes bound for the United States in exchange for information concerning narcotics and other forbidden articles possibly bound for Cuba. Howell accepted with gratitude Cuba's cooperative efforts and indicated that the agreement was understood to be in effect as of the date of Howell's reply, August 4, 1923.17 The question of denying clearances to vessels bound for American ports with liquor cargoes was not solved at this time, although Cuban export regulations required the return of landing certificates signed by officials at the port of destination, which made such clearances legally impossible.18

When the Cuban public learned of the agreement they protested to Washington for several reasons—no previous agreements of this type had ever been made without legislative approval by both countries, the agreement violated the Cuban Constitution, and disregarded basic rules of international

17 Cuban Secretary of State to American Ambassador, July 7, 1923; American Charge in Cuba to Cuban Secretary of State, Aug. 4, 1923, ibid., pp. 260-61.

18 Charge in Cuba to Secretary of State, Dec. 6, 1923, ibid., pp. 262-63.
relations. The people and press criticized Havana for involving Cuba in the enforcement of an American municipal law. 19 The agreement was one small strand of a complex web of economic and diplomatic relations existing between Washington and Cuba at this time. One source indicates that the agreement was used originally as a lever by Washington when Cuba was in dire need of a large loan, since Washington still had some control over Cuban affairs by virtue of the Treaty of Paris, 1898, regarding the occupation and administration of Cuba. 20 The informal agreement to exchange information was further cemented by Washington when, as a result of an American munitions embargo to rebels during a 1924 Cuban uprising, the Cuban government decreed the prohibition of all shipments of liquor from Cuban ports except in authorized commercial carriers with proper papers and posted bonds. 21

Despite the informal arrangements for information and the new Cuban liquor export policy, the Gulf area and


20 Jones, Eighteenth Amendment, pp. 115-14, refers to Cosme de la Torriente, "The Platt Amendment," Foreign Affairs, 8 (April 1930), 365. (Note: I have been unable to find any official records indicating that Crowder or Hughes followed such a course.)

21 Jones, Eighteenth Amendment, pp. 115-16.
especially Florida continued to be inundated with smuggled liquor. By 1925 the State Department and Prohibition Bureau officials felt that a formal agreement was necessary to secure better cooperation and enforcement results regarding Cuba. When Havana indicated strong interest in concluding a convention on consular arrangements, Washington was agreeable if Cuba would sign a treaty similar to ones concluded with Great Britain and others concerning liquor smuggling, cargoes under seal, and search and seizure of suspected vessels outside the international boundary. Havana was also interested in having American authorities furnish her with information regarding any Cuban revolutionary activity originating in the United States. The United States for its part was necessarily interested in maintaining a stable government in Cuba to protect American investments from possible loss or destruction by revolutionary activity. Thus an agreeable compromise on consular arrangements, smuggling, and anti-Cuban activity was seen as the solution.22

The agreement to be proposed to Cuba was a mixture of the ones signed with Canada and Mexico. Its main features

22Secretary of State (Kellogg) to Ambassador in Cuba (Crowder), April 11, 1925, 711.379/2. William R. Vallance to Kellogg, July 15, 1925, 711.379/4.
included the principle of the three-mile international limit, the denial of clearances for liquor cargoes, the search and seizure of Cuban vessels, the exchange of information concerning shipments of liquor, drugs, and illegal aliens, and the provisions for arbitration of claims arising from any subsequent activity under the agreement.\textsuperscript{23} The negotiations for the consular convention, the smuggling pact and an extradition treaty went on for several months. Cuba desired several changes in the proposed smuggling agreement, including elimination of Article II which provided for denial of clearances. Another change was Cuba's insistence on a reciprocal right of search and seizure and the omission of provisions for transporting liquor under seal in American waters. Havana felt this latter clause would not be necessary since Cuban shipping was not heavily involved in American commercial trade.\textsuperscript{24} After Christmas 1925 Prohibition Commissioner Lincoln Andrews and William Vallance of the State Department went to Havana to discuss the agreements with Cuban officials.\textsuperscript{25}

\textsuperscript{23}Kellogg to Crowder, July 14, 1925, 711.379/4.

\textsuperscript{24}Crowder to Kellogg, Nov. 3, 1925, 711-379/32; Crowder to Kellogg, Dec. 31, 1925, 711.379/39.

\textsuperscript{25}Jones, \textit{Eighteenth Amendment}, p. 117.
As a result of negotiations a convention for the prevention of liquor-smuggling was signed on March 4, 1926, between the United States and Cuba. Havana achieved one goal with this agreement, the omission of Article II, but compromised with Washington on the rest of the desired changes. This convention did not include an article regarding the denial of clearances, nor did it give reciprocal rights of search and seizure to the Cubans. It did include an article providing for the transportation of liquor under seal on Cuban vessels while within American waters. The convention also provided for claims arbitration and was to last for one year with the feature of self-renewal if no modifications were proposed by either side.\(^{26}\)

A supplementary convention for the suppression of smuggling activity was signed one week later. This agreement provided for mutual assistance between the two countries to suppress smuggling of liquor, drugs, and aliens. Its main features were the denial of clearances for all shipments of forbidden articles between both countries. The formal exchange of information concerning illegal shipments and persons or vessels involved was also agreed upon; articles covering disposition of stolen goods recovered by enforcement

activity and the provisions for evidence exchange and prosecution assistance were also included. Both conventions were ratified in April, 1926, and were officially proclaimed on June 19, 1926.

Through the signing of these two agreements the United States achieved more in the way of official cooperation from Cuba than it did from any other country. These agreements also represented the limits to which Washington wanted other nations to go to aid in the suppression of smuggling activities. As had been the case with other nations though, Washington felt that Cuba could be more effective in upholding her part of the agreements. In late 1927 the President of Cuba, as a gesture of good will preceding his visit to Washington and an upcoming meeting of the Pan-American Congress, reorganized his administration and made some necessary changes to improve Cuba's enforcement of the two agreements. The flood of smuggled liquor from Cuba was sharply affected and Washington was satisfied with the measures as long as Cuba would continue to cooperate in enforcing them.

28Jones, Eighteenth Amendment, p. 121, 125.
During the early years of prohibition the lengthy international boundary shared by the United States and Mexico was crossed frequently by persons engaged in smuggling liquor. As it had done with several other countries, Washington sought solutions through diplomatic channels to suppress this illegal activity. The new government of Mexico was hoping for recognition from Washington, which in turn was seeking favorable policies on land ownership and mineral rights (particularly petroleum) for American citizens and companies operating in Mexico. President Alvaro Obregon's government was not willing to yield on these two issues, but he did wish to cooperate with Washington on the smuggling issue.30

The border towns of Mexico had long been full of vices--gambling, drugs, and brothels--and prohibition had added liquor to the list. Obregon, in efforts to find favor with Washington, considered establishing a dry zone fifty miles wide along the boundary and cleaning up the border towns. Senator Henry F. Ashhurst of Arizona also favored such an idea, as did the W.C.T.U. and various church groups in the states along the border. President Harding asked Secretary of State Hughes to explore the idea and have it

30 Ibid., p. 129.
included in a Commissioners' Conference to be held later that year, but nothing material ever came of the idea.31

In August, 1924, in a conversation with William Phillips of the State Department, the Charge of the Mexican Embassy, Manuel Tellez, discussed with Phillips the possibility of implementing a ruling or arrangement whereby Mexican commercial vessels could carry on board enough liquor for their crews and passengers while within American waters. Treasury Secretary Andrew Mellon suggested to Hughes in November, 1924, that a conference be held between American and Mexican officials concerning the smuggling of narcotic drugs into the southwest, and that the topic of liquor-smuggling should also be included.32

In early 1925 James Sheffield, American Ambassador to Mexico, proposed such a conference to the Ministry of Foreign Affairs, where it was favorably received. In March, 1926, the American delegates to the conference, to be held at El Paso in April, were named. Assistant Treasury Secretary Mackenzie Moss was named chairman, and other delegates were


32 Memorandum of William Phillips, Aug. 29, 1924, 711.129/9; Mellon to Hughes, Nov. 6, 1924, 711.129/17.
William Vallance of the State Department Solicitor's Office, H.S. Creighton and L.G. Nutt of Customs and Narcotics divisions, and several others from the Justice and Labor Departments. Mexican delegates were primarily from the Departments of Foreign Relations, Government, Finance, and Health.  

The State Department, in preparing for this conference, received reports from several consuls along the southwestern border concerning smuggling, drugs, and general conditions. The main problems described were the rough terrain, the inadequate number of enforcement agents, and the cooperation given by Mexican citizens and businesses to smuggling and vice activities. Recommendations made to suppress these activities included the exchange of information between officials and the establishing of a dry zone along the border.  

The conference met in El Paso, beginning May 15, 1925, and was chaired by General Lincoln C. Andrews (who replaced the retiring Moss as Assistant Secretary of the Treasury).  

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33 Secretary of State Kellogg to Sheffield, Mar. 20, 1925, 711.129/23. Jones, Eighteenth Amendment, p. 133.  

34 Drew Linard (Consul at Piedras Negras) to Kellogg, April 15, 1925, 711.129/36.
The agenda included discussion on smuggling, illegal aliens, hunting and fishing, and extradition. The discussion on smuggling was aimed at implementing cooperation between American and Mexican officials. This cooperation was to include the exchange of information on shipments of illegal merchandise and to set up a fifty-mile-wide zone where liquor, drugs, and other vices would be prohibited. The delegates also agreed that specific measures should be formulated to suppress liquor-smuggling by autos, ships, and planes.\(^{35}\) The result of the conference was a convention for the purpose of suppressing smuggling and other violations, submitted to the governments of both countries. The convention was signed by Kellogg and Ambassador Tellez in December, 1925, ratified the following spring, and proclaimed on March 19, 1926.\(^{36}\)

The four articles of the convention dealing with smuggling were very extensive. The first stipulated that all merchandise shipments between the two countries must be accompanied by a "shipper's export declaration" containing pertinent information such as contents, destination, and receiver. The second

\(^{35}\) L.G. Nutt to Vallance, May 5, 1925, 711.129/57.

article called for denial of clearance for shipments to either country of prohibited merchandise and of shipments to any other port which might be illegally introduced into either country. In the third article the parties agreed to exchange information relevant to smuggling activity. The fourth article provided for issuance of special permits to cover shipment crossing the boundary line at unauthorized places. 37

The United States attained all its desired goals pertaining to smuggling from Mexico with the formulation of this agreement. The export declaration and the denial of shipment clearances were positive gains in the quest for the suppression of smuggling activity in the southwestern area. The signing of the convention on smuggling and other subjects remained secondary however in the relationship between Washington and Mexico City. The most pressing issue at this time was the land and mineral rights owned by American interests in Mexico. Under Article 27 of the Mexican constitution, all lands and subsoil rights were owned by the State, and were distributed at its discretion. Washington succeeded in getting a promise from Mexico in 1923 that all claims previous to 1917 would be honored, but

the issue remained only partially solved. After the signing of the convention two laws were proposed in Mexico City which would have nationalized petroleum deposits and prohibited ownership of land by foreigners. Washington then hinted at a withdrawal of support for the Mexican government and a possible revocation of the arms embargo. This latter action would have been negated by the terms of the smuggling pact requiring declaration of shipments into Mexico and that information concerning such shipments be given to Mexican officials.\(^3\)\(^8\)

In March, 1927, the White House decided to terminate the convention when it reached the end of the twelve-month period. With the treaty out of the way the arms embargo could then be lifted (the embargo was not lifted, though). Enforcement under the convention had not done very much to suppress liquor smuggling along the border. Mexico had cooperated with the United States in implementing the provisions of the smuggling articles, but Washington had hoped for more and better efforts than were given. After abrogation of the treaty Mexico continued some cooperation with America in the fight against liquor-smuggling, but the subject

remained overshadowed, as it had been from the start, by more important political and economic issues between the United States and Mexico. The convention held great potential as it embodied all the important proposals put forth by Washington, but the failure to realize this potential eventually contributed to its termination.

There were several different factors involved in the negotiations for a smuggling convention with Japan. Smuggling activities in the Pacific coast region of the United States did not reach the level encountered in the Atlantic, with its Rum Row and European territorialities in such proximity as the Bahamas and St. Pierre et Miquelon. Japanese ships, in contrast with British, French, Belgian, and Italian, did not require liquor for crew rations. After the privilege to keep liquor cargoes under seal while in American waters was revoked in 1923, Japanese vessels apparently continued to follow this practice with no interference from enforcement officials.

The Japanese government and shipping interests had been working since the turn of the century to increase their

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[40] Ibid., pp. 146-47.
strength in Pacific shipping. After the disastrous 1923 earthquake in Japan, Americans had responded with generous aid and relief; American banking interests had also provided substantial financial aid to Japan during the years 1924 through 1926. In view of this situation and to protect her Pacific trade, Tokyo had declined to make any protest against American prohibition enforcement even though it might possibly interfere with Japanese shipping. Later, though, Japan apparently felt it was in her best interest to seek a formal agreement with the United States on liquor smuggling. 41

In 1923 Secretary of State Hughes had sent copies of the proposed articles concerning the search and seizure of foreign vessels and the liquor cargo seals to the American ambassador in Tokyo. In 1924 the State Department gave a draft of the proposed convention to the Japanese ambassador in Washington. The first article of this convention expressed support of the three-mile limit of international law. The second article dealt with the search and seizure of suspected Japanese smuggling vessels up to a distance of one hour's travel from the American coast. The third article gave Japanese shippers the right to carry liquor

41 Ibid., pp. 148-53.
cargo under seal while in American waters. The fourth article outlined the regulations for claim compensation in cases evolving from actions taken under the first three articles. The fifth article set a time limit for the convention of one year. The last article provided for termination of the convention in the event of revocation by legislative or judicial action taken by either country. No communications were received from the Japanese on this subject until 1928.\textsuperscript{42}

In early 1928 the proposed Japanese liquor convention was discussed during a meeting between Assistant Secretary of State W.R. Castle and Japanese Ambassador Matsudaira. Several minor technical changes in the text were proposed by the Japanese, and explanations were made of some phrases in the agreement. A second conference two months later was held between Charles Barnes and Stephen Latchford of the State Department Treaty Division and S. Sawada, counselor of the Japanese Embassy. These officials discussed termination of the agreement in case of a change in the domestic laws of the United States, the regulations on sea stores in

\textsuperscript{42} Hughes to Ambassador Charles B. Warren, June 13, 1923, 711.949/-; Hughes to Ambassador Cyrus E. Woods, April 5, 1924, 711.949/2a. \textit{Foreign Relations, 1923, I}, 158.
American law; the Japanese questioned the meaning of the term "unladen" regarding liquor cargo, and it was explained as not only unloading of such cargo but also transshipment of same within American waters. Counselor Sawada also received approval for the attachment of memoranda to the convention for the purpose of clarifying interpretations of several terms and principles of the agreement. 43

The Japanese convention was basically similar to agreements signed with Great Britain and other countries. The only major difference between the Japanese agreement and all the others was the omission in the third article of the comparison of privileges for carrying liquor under seal without penalty to transportation through the Panama Canal without penalty. The reference to the Panama Canal was provided as an illustration of suitable exceptions provided by the Volstead Act or by treaty and was included in all the other agreements. The Japanese government felt the reference to be unnecessary and it was left out of the formal agreement. The convention with Japan was signed on May 31, 1928, but was not proclaimed until January 1930. 44


44 C. Barnes to G. Hackworth (Solicitor's Office), May 9, 1928, 711.949/7; Hackworth to Barnes, May 18, 1928, 711.949/7; Kellogg to Ambassador C. MacVeigh (Tokyo), June 1, 1928, 711.949/8.
The agreement with Japan, though delayed in its conclusion, was advantageous to both parties. The Japanese maintained a favorable position with Washington which benefited her commercial interests and enabled American officials to improve enforcement of prohibition along the West coast.

The United States was approached in early 1930 by Ambassador Carlos Davila of Chile regarding the possible conclusion of a convention to suppress smuggling of intoxicating liquors. Chilean vessels were unloading all liquor cargoes in South or Central America before heading north to American ports. Because these ships could not enter American waters without losing these cargoes, they were being stored with resulting problems of loss and theft. Chilean commerce was at a disadvantage since it did not enjoy privileges of transportation under seal similar to many other nations who had signed such an agreement with the United States. Secretary of State Henry L. Stimson indicated to Davila that Washington would respond favorably to such a treaty, and draft copies were exchanged between the two governments.

The Chilean convention makes no mention of the three-mile international limit, merely stating that each party
retains its rights and claims to its own international jurisdiction. One major change in Article Five was the addition of a sentence which provided that modifications could be made if either party notified the other of such intentions three months prior to the termination of the one-year agreement signed May 27, 1930. As was the case with Japan, no major incidents were reported involving Chilean vessels in smuggling attempts. The Japanese and Chilean agreements like most of their counterparts operated very smoothly and benefited all parties concerned.\textsuperscript{45}

\textsuperscript{45} Carlos Davila to State Department, Feb. 17, 1930; Stimson to Davila, May 23, 1930; Davila to Stimson, May 26, 1930, \textit{Foreign Relations, 1930}, I, 543-44.
CHAPTER V

CONCLUSION

The prohibition laws in the United States during the years 1920 through 1933 gave birth to one of the largest smuggling campaigns ever undertaken. All types of people using every imaginable vessel and vehicle endeavored to bring illegal liquor into the United States in quantities ranging from a half-pint bottle to huge multi-ton shiploads. The State Department was brought into the enforcement picture when officials discovered that most of the vessels in "rum row" off the northeastern Atlantic Coast were of foreign registry and were seeking protection under their various flags when apprehended for smuggling violations.

When prohibition first began Washington established regulations to allow legitimate commercial vessels of foreign registry to maintain stocks of liquor on board as sea stores, if kept under proper seal while within American waters. This situation was reversed in 1922 by Supreme Court decisions in two companion cases; Anchor Line v. Aldridge and Grogan v. Walker and Sons.¹ The Court ruled

¹259 U.S. 80; 66 L. Ed. 836 (1922).
that transportation of liquor even under seal violated the prohibition laws, and such procedure was no longer followed after June 10, 1923.\(^2\)

American enforcement officials had seized many offending vessels under the old "hovering statutes" of 1799 which extended American jurisdiction over a zone extending four leagues or twelve miles out. The Tariff Act of 1922 allowed American officials to board suspected vessels within a twelve-mile zone and effect search and seizure if any violations of American law were discovered. The Tariff Act also covered illegal unloading of cargo within this zone and provided for fines, imprisonment, and forfeiture in smuggling cases. The major maritime powers protested the new enforcement being exercised by Washington on grounds that it went against established principles of comity and practice. These powers generally felt that a nation should exercise its jurisdiction only in cases involving peace and safety; each recognized Washington's right to impose its jurisdiction, but protests were lodged nevertheless.\(^3\)


The United States was thus confronted on the international level with a two-fold problem—the right of foreign vessels to carry liquor cargoes within American waters and the enforcement of prohibition laws beyond the three-mile limit. The United States along with several other maritime powers firmly supported the three-mile limit of territorial waters. In cases of suspected smuggling attempts, American authorities had made seizures under the "hovering statutes," principle of "hot pursuit," or the Tariff Act of 1922 (later construed to be unenforceable against non-American vessels except under special treaty provisions. In light of the protests received by the State Department, Washington saw the need for some international agreement that would be favorable to all parties concerned. This agreement was designed to eliminate the friction generated by seizures of foreign vessels in time of peace and resolve questions of law and fact that might arise from such cases. The convention signed by the United States and Great Britain in 1924 and the fourteen other similar agreements that followed put American enforcement on solid ground and gained cooperation from the other parties; in exchange the co-signing maritime nations.

were given the right to carry liquor cargoes under seal in American waters. 5

The liquor conventions were in legal accord with provisions of the Eighteenth Amendment and the Volstead Act. Congress was given discretion in determining penalties and forfeitures and in protecting the interest of the country. By providing for exceptions from penalty for cargoes in transit through the Panama Canal Zone, Congress legitimately exercised this discretion. In the same manner, the treaty-making power was exercised to put cargoes of liquor and stocks for crew and medicinal purposes on board foreign vessels in the same status as those in transit through the Canal Zone, such cargoes not being destined for American ports or delivery. 6

The liquor treaties as outlined in the preceding chapters were basically similar. In the conventions with Great Britain, Germany, The Netherlands, Cuba, and Panama, affirmation of the three-mile limit was expressly mentioned in the


6 Hughes, "Recent Questions and Negotiations," pp. 234-35.
first article; in the agreements with other nations, each recognized whatever rights and claims to territoriality held by the individual nation. The provisions for claims arbitration were different in some cases: in the British treaty cases were referred to a Claims Commission established by an agreement of 1910; in the French agreement the claims were to be submitted to an umpire if not resolved by a joint report, then to the Permanent Court of Arbitration at The Hague for final disposition. This intermediate step of referring claims to an umpire was also found in the treaties signed with Belgium and Greece. 7

In each of the liquor treaties or conventions (the term "convention" was used instead of treaty to refer to the agreements signed beginning with the Belgian agreement of December 9, 1925), the United States was given the right to board, search and seize suspected vessels of the signatory nations, up to a distance from shore of one hour's travel of the suspected vessel. This distance was suggested by the British in lieu of the twelve-mile limit, because of the projected difficulty of ascertaining a twelve-mile mark from inlets, bays, and low-water marks; the one-hour travel

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distance also proved to be extremely difficult to determine and enforce. This right granted to American officials was not a reciprocal right held by any of the other signatories, though Sweden and Norway requested it of Washington and were refused. No mention of the legality of such actions was made in any of the agreements, only that the co-signing nation would "raise no objection" to these enforcement activities. In return for this right the maritime powers were given the right to have on board within American ports and waters any liquor cargoes bound for non-American ports and stocks for crew and medicinal usage, as long as such cargoes were kept sealed.⁸

In each of the liquor agreements the duration is specified at one year, with modifications to be proposed and submitted at least three months before the termination of the agreement. The agreements were self-perpetuating if the notice of abrogation or modification were given by either party. Included in the agreements was the provision that the convention would lapse if judicial or legislative action in either country prevents its full observation and effect.⁹


⁹"Convention Between the United States of America and Great Britain to Aid in the Prevention of the Smuggling of
The prohibition experiment in America was brought to a close in 1933 by a combination of factors. The early opposition—the liquor interests, brewers, and distillers—was replaced by groups such as the American Bar Association, the Association Against the Prohibition Amendment, the American Federation of Labor, and the Constitutional Liberty League of Massachusetts. These organizations based their opposition on questions of constitutionality, the difficulty of enforcement, and the growing disrespect of prohibition and other laws. The neutrality of Congress toward the issue was reflected by the lack of adequate appropriation and development of a sufficient enforcement structure. Organized crime multiplied its operations during the prohibition years; two-thirds of the cases in federal courts involved prosecution under the Volstead act. In the area of international diplomatic relations, the Departments of State, Treasury, and Justice, and the executive branch of the American government sought ways to improve enforcement and aid in suppression of smuggling activities without interfering with legitimate trade among the maritime nations.

Smuggling remained a problem, though, to authorities during and after prohibition.  

Washington had initiated its war on the "Scotch Armada" by making seizures based on two principles—the "hovering Statutes" and hot pursuit, or in cases where there was a connection between the vessel's activity and shore in violation of American law (the case of the Grace and Ruby, using small boats to ferry liquor to shore). Foreign governments objected to these seizures. While they recognized the right of the American government to exert its control over marginal waters, they objected because of the difficulties and inconvenience such enforcement would cause. Hughes was faced with two questions—could a state exercise customs surveillance on the high seas? and could a state exercise certain rights over foreign vessels on high seas when given such rights by a special treaty? England's Sir Charles Russell had argued in the Bering Sea Arbitration that no state should encourage offenses against the recognized laws of another, that a state should be allowed "reasonable measures of prevention within a moderate distance even outside the territorial waters." Such control had often been exercised by the British, French, Russians and others in

10 Merz, Dry Decade, pp. xi-xiv.
cases of customs, quarantine, and fishing rights. The Supreme Court in its decision on the Cunard case in reference to control over marginal waters stated that a nation under certain circumstances could "choose to forego the exertion of its jurisdiction or to exert the same in only a limited way" according to its discretion. This opened up the avenue for Hughes to begin negotiating for the special agreements on smuggling and liquor cargo seals.\textsuperscript{11}

The liquor agreements were designed to give limited immunity to foreign nations to the operation of federal prohibition laws; in return, American officials would be permitted to take some necessary measures in suppressing the smuggling traffic. The agreements were of two types--those with nations having land territory adjacent to the United States (Canada and Mexico), and those with maritime nations. The agreements with Canada and Mexico contained provisions dealing with smuggling by land or air; the Mexican agreement also contained a novel clause, the "shipper's export declaration" covering goods shipped and other pertinent facts, and providing for shipments only through authorized

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ports or places. In the second type of agreement, American officials were faced with problems such as fraudulent foreign registry, especially in the Bahama Islands area, and the British treaty led the way in alleviating this problem.¹²

The Eighteenth Amendment and the Volstead Act focused international attention on the question of jurisdiction over foreign ships in territorial waters. The subsequent smuggling operations that evolved from this legal situation raised important questions of international responsibility and right. The treaties and conventions that Washington signed with fifteen other powers were not intended as a final solution to the smuggling problem, but were intended to improve American enforcement and permit the continuance of legitimate commerce. The agreements did not enact a specific code or establish any new general principles.¹³ They did serve to reinforce existing legislation and principles and were an attempt to eliminate possible sources of friction.


on the international level arising out of American prohibi-
tion enforcement. The creation, negotiation, and conclusion
of the liquor agreements showed that when nations were
confronted with a difficult situation to which no suitable
solution could be found in existing law, some kind of adjust-
ment or remedy should be sought. In this case the rights
of control and jurisdiction were recognized, international
comity and practice were considered, and an agreeable solution
was found.\textsuperscript{14}

\textsuperscript{14} Masterson, \textit{Jurisdiction in Marginal Seas}, pp. 356-57.
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