

Canada, but our history furnishes no precedent for an agreement between a State and a foreign government, and although such a course might be appropriate in this case, yet undoubtedly it would be even more difficult for the several States and the Dominion of Canada to reach an agreement on these questions and to secure congressional approval of it, than it would be to secure uniform regulations among the several States and in Canada by concurrent legislation independently of any such agreement. Moreover, even if such an agreement became effective, the situation would hardly be more satisfactory in the end than under concurrent legislation, for so long as the regulations on the American side were under State control, the difficulties attendant upon their enforcement would be largely the same, whether the Canadian regulations were concurrent or divergent. The inherent difficulty with any arrangement leaving the control of these fisheries to the several border States is that the enforcement of fishery regulations in the contiguous waters is likely to involve the authorities on either side in conflict with the citizens of the other country, or otherwise raise international questions which the several States have no power to deal with. The several boundary States seem to be entirely willing to turn to the Federal Government for relief in this matter, and their fisheries commissioners and in more than one instance their legislatures have expressed the view that if these fisheries are to be preserved they must be subjected to Federal regulation, and in this view the commercial interests in the Great Lakes fisheries have fully concurred.

It is evident, therefore, that nothing short of the adoption of regulations for the protection and preservation of these fisheries through the operation of the treaty-making power would furnish a complete and permanent solution of the difficulties presented, and if the present treaty accomplishes this result it will serve as a conspicuous example of the wisdom and foresight of the framers of the Constitution in conferring upon the treaty-making power the extensive jurisdiction which has been exercised in this case.

RUSSIAN-JAPANESE FISHERIES CONVENTION OF JULY 15 (28), 1907

In pursuance of Article XI of the Treaty of Portsmouth, Russia in July, 1907, reached an understanding with Japan, granting to subjects of the latter State fishing rights along the coast of Russian possessions in the seas of Japan, Okhotsk, and Bering.¹ This convention, with the

¹ For the text of this article see U. S. For. Rel., 1905, 826.

The text of the fisheries convention of 1907 is contained in the current number of the Supplement of this JOURNAL.

explanatory protocol and reciprocal declarations annexed thereto, embodies an agreement of unusual significance.

The territory concerning which provision is made extends from the Korean boundary to Bering Straits. The extent of this coast line, without allowing for the indentations of the Asiatic mainland, corresponds roughly to that of North America included between northern Labrador and the island of Cuba. Japanese subjects are given the right to —

Fish, catch, and prepare all kinds of fish and aquatic products except fur seals and sea otters, along the Russian coasts of the seas of Japan, Okhotsk, and Bering, with the exception of the rivers and inlets.²

With minute care it is provided in the annexed protocol what particular inlets are reserved. These include certain wide bays.³ Among them may be noted Anadyr Bay, “as far as a straight line drawn from Cape Saint Basilus to Cape Guek.” These headlands are about one hundred miles apart. Saint Croix Bay, “as far as the parallel of Cape Meetchken,” is also named. On the northern coasts of the Sea of Okhotsk it is provided that those bays fall within the exception which “cut into the continent a distance three times as great as the width of their entrance.” Again, it is declared that for strategic reasons fishing shall be prohibited to Japanese as well as other foreigners within the limits of the territorial waters of certain bays, which include among their number Peter the Great Bay, from Cape Povorotony to Cape Gamov. These headlands are about one hundred miles apart.⁴

It can not be said that the Russian claim of control over fisheries within any of the reserved inlets is excessive. At the present time the principle is generally recognized that the right of a state to control a particular bay depends, not upon the distance between headlands at the entrance, but rather upon the geographical configuration of the coast of which the inlet or bay forms an indentation, and over which the state exercises solitary dominion.⁵

The right granted to Japanese subjects consists in the privilege of

² Article I.

³ See Article I of protocol.

⁴ *Id.*

⁵ See case of *The Alleganean*, Second Court of Commissioners of Alabama Claims, *Stetson v. United States*, No. 3993, Class I; Moore, *Inter. Arbitrations*, IV, 4332-4341.

Compare *Direct United States Cable Company v. Anglo-American Tel. Co.* (1877), L. R. 2 App. Cases, 394; *Reg. v. Cunningham*, Bell's C. C., 72; *Mortensen v. Peters*, 8 Fraser, 93.

leasing at public auction so-called fishing tracts.⁶ Fishing, however, for whale or cod, or other fish which can not be taken within special tracts, is given to such subjects on sea-going vessels provided with special permits.⁷ Within the licensed tract the lessees are given free use of the coast for numerous purposes, such as that of making repairs, salting, drying, and preparing of fish, as well as of erecting cabins and store-houses.⁸ Furthermore, no restriction is made as to the nationality of the person to be employed by the lessees,⁹ except in tracts in the "Liman of the Amour."¹⁰

Russia agrees to accord equal treatment to Japanese and Russian subjects regarding imposts or taxes levied on the fishing industry;¹¹ and expressly contracts not to collect duties on fishing products intended for export to Japan.¹² Russia retains the right to make necessary laws and regulations concerning the protection and culture of fish, subject to

See also A. H. Charteris, "Territorial Jurisdiction in Wide Bays," Proceedings of International Law Association, twenty-third report, 1906, 103.

The opinion of Mr. Bates, umpire, in the case of *The Washington*, under convention between the United States and Great Britain of February 8, 1853, in denying that the Bay of Fundy was a British bay adverted to the fact that one of the headlands thereof was in the United States. (Moore, *Inter. Arbitrations*, 4342, 4344.) The precise problem before the umpire was whether that body of water was a "bay" within the meaning of the word as used in the treaties of 1783 and 1818. It is to be observed that the issue between the United States and Great Britain with reference to the proper signification of the term "bays," as employed in article 1 of the treaty of 1818, is unrelated to the question as to the extent of bays over which a state may, according to international law, exercise control.

Compare article 1, fishery convention between Great Britain and France of 1867, N. R. G., XX, 455; Art. II of North Sea Convention, May 6, 1882, N. R. G., 2d series, IX, 556, 557; sec. 1, art. 2, treaty between Spain and Portugal, Oct. 2, 1885, N. R. G., 2d series, XIV, 77, 78.

See also resolution of the Institute of International Law (1894-1895) with reference to the extent of control which a state should be permitted to exercise over adjacent waters, and particularly the preamble and article 3, with reference to bays. *Annuaire*, XIII, 328, 329.

See also communication of Mr. Olney, Secretary of State, to Mr. de Weckerlin, Dutch Minister, February 15, 1896. Ms. Notes to the Netherlands, VIII, 359; Moore *Inter. Law Dig.*, I, 734.

⁶ Article II.

⁷ *Id.*

⁸ Article III.

⁹ Article VI.

¹⁰ Reciprocal declarations, Article II.

¹¹ Article IV.

¹² Article V.

the stipulation, however, that their operation shall apply equally to the subjects of the two Contracting States, and that the Government of Japan shall be notified, six months beforehand, of newly enacted laws.¹³ Japan, on her part, agrees not to levy import duties on fishing products taken on the Russian coast and the Amour.¹⁴

The procedure to be followed by Japanese fishermen is carefully specified. A certificate of navigation to and from the Russian fisheries is to be issued by the Russian consuls in Japan, on the presentation of documents showing the right of the fishermen to lease a particular tract, and giving fullest information as to the purpose of the voyage, the persons interested therein, as well as the individuals and cargo on board the vessel. A fishing vessel, upon receipt of its certificate, may only enter and call at points named therein. Such vessel is, however, given access to Russian ports having a custom-house.¹⁵ When the vessel is in pursuit of cod or whale, it is obliged to call provisionally at a Russian port specially designated, where the authorities will issue a special permit to fish.¹⁶ All Japanese steam vessels must be provided with a ship's journal, translated into Russian or English. Sailing vessels also must, as far as possible, comply with this regulation.¹⁷

The convention is to remain in force for twelve years, and is to be renewed or modified at the end of every twelve years thereafter.¹⁸ The duration of the leased fishing tracts is from one to five years, according to a specified classification.¹⁹

Notwithstanding the extent of the area within which fishing tracts may be secured, it must be apparent that the grantor retains largest powers of regulation and control of the industry within its waters. Russia yields no permanent right to Japan or its subjects, but simply agrees, within a stated period, to grant licenses of limited duration.²⁰

¹³ Article IX, and Article IV of protocol.

¹⁴ Article XII.

¹⁵ Article XI of protocol.

¹⁶ *Id.*

¹⁷ Reciprocal declarations, Article V.

¹⁸ Article XIII.

¹⁹ Article VIII of protocol.

Provision is made that in case a lease shall not have expired at the expiration of the treaty, the former shall remain valid until the end of the term, irrespective of the decision of the High Contracting Parties as to the convention itself (Article IX of protocol).

²⁰ In this respect the rights acquired by Japan contrast sharply with those which, by the provisions of Article I of the treaty of October 20, 1818, between the United States and Great Britain, are declared to belong to American citizens.

Should war unfortunately again disturb the friendly relations between the High Contracting Parties, the convention of 1907 would not withstand the shock.

MACEDONIAN RAILWAYS AND THE CONCERT OF EUROPE

The announcement by Baron Aehrenthal, on January 27, of the proposal to construct a railway, under Austro-Hungarian auspices, from Uvac, the southern terminus of the Bosnian system, through the Sandjak of Novibazar to Mitrovitsa, the northern terminus of the Salonika line, opens a new chapter in the history of the Near Eastern Question. In 1897 Austria-Hungary and Russia substituted for their traditional rivalry in the Balkan Peninsula an *entente* whose purpose was the maintenance of the political *status quo*. The emergence of the Far Eastern Question was Russia's reason for coming to an agreement in the Near East; while Austria was impelled to consent to a policy of inaction by her serious domestic troubles. These causes have now largely disappeared and the old rivalry is again revived. It is true that the proposal to build the Novibazar railroad is not strictly a breach of the *entente*, since only the political, not the economic, *status quo* was guaranteed; nor is Austria-Hungary probably transcending her rights under the Treaty of Berlin, which confers upon her the privilege of building roads in Novibazar, although there is a difference of opinion as to whether the term *route* employed in that instrument may be interpreted as including railroads or should be confined to highways; nevertheless the *entente* is shattered. In spite of Baron Aehrenthal's insistence on the purely economic character of the road, the fact that it is to be narrow gauge and that all goods shipped from Central Europe will, therefore, require to be handled twice en route, as well as its greater length, makes it certain that it can never compete on equal terms with the existing line via Belgrade. On the other hand, its strategic importance, in giving Austria-Hungary a railway connection with Salonika, not liable to interruption by a hostile Serbia, can not be gainsaid.

The Russian press at once accepted Baron Aehrenthal's announcement as equivalent to a change of policy, and the Russian Government has virtually acknowledged that the *entente* is at an end by actively supporting the proposal for a Danube-Adriatic railroad, which Serbia has long sought. This road, after traversing Roumania, will probably find its northeastern terminus at Odessa, thus bringing Russia herself