

貴大臣御負傷ハ順次御快方ニ趣キ候佳報ヲ得テ頗フル安堵致候然ルニ去ル十四日附拙電ニ對シテハ近日ノ内何分ノ御訓示可有之トノ儀ニ付無論ニ本機密信實方ニ達スルノ前ニ必ス右御電訓ニ相接シ候事トハ相信シ候ヘ共當方事情ハ前述ノ如キ次第ニ付何分ノ御訓令日夜企望罷在候事ニ御座候右日米條約ニ關スル今日迄ノ行懸リ一應申上候 敬具

明治二十二年十月三十日

特命全權公使 陸 奥 宗 光

外務大臣伯 大隈 重信閣下

第三節 對 獨 交 涉

一一一 明治二十二年十月二十六日

大隈外務大臣ヨリ
西園寺駐獨公使宛

新條約締結交渉開始ニ付訓令ノ件

送第七九八號

條約改正一件ハ昨年會議中止ノ後今日迄其儘ニ相成居候處不日諸法律編纂濟ノ上モ昨年ノ草案ニテハ到底我政府ニ於

約各國政府ノ内電ニ供シ別々ニ其意見ヲ質ス積ニ有之候尤モ總テノ條約國ト協議スルコトニ致候テハ又々紛雜ノ極メ且ツ英獨佛露伊ノ六國即チ謂ユル大國ノ同意ヲ得レハ其他ノ各國ハ自然之ニ從テ進退可致モノニ付先ツ前記六ヶ國ト協議可致積ニ有之候右改正草案ノ大體ヲ述ヘレハ昨年ノ如ク裁判權條約ト通商條約ト二箇ノ區別ヲ立デスシテ兩者ヲ總括シテ一ノ和親通商條約トシ其簡條ハ昨年ノ通商條約ヲ基礎トシテ之ニ多少ノ修正ヲ加ヘ且ツ條約實施後五ヶ年間ハ外國人居留地ニ限り領事裁判權ヲ從前ノ儘ニ繼續シ右期限經過後ハ領事裁判權及右ニ附屬シタル外國人ノ特權ヲ一切廢止シテ帝國ノ裁判權ヲ全國ニ普及セシムルコト及右領事裁判權繼續ノ間ト雖モ純粹ニ日本ノ裁判權ニ服從セント欲スル外國人ハ之ヲ爲スコトヲ得ル等ノ數條ヲ加ヘタルモノニ有之候將又外國人ヲ裁判事ニ任用シ及我法律ヲ泰西ノ主義ニ從テ編纂スル等昨年ノ裁判權條約案ニ記載セラレタル簡條ハ一切之ヲ今度ノ新草案ヨリ取除キ其代リトシテ大審院ニ外國人ノ判事ヲ置キ外國人ノ被告タル事件ノ最終審判ヲ掌ラシムルコト並ニ我政府ニ於テハ民法以下ノ諸法律ヲ編纂シ其英文反譯文ヲ公布スルコトニ關シ外務大臣ノ名

一一〇 明治二十二年十月三日
青木外務次官ヨリ
陸奥駐米公使宛(往電)
(在露西公使中繼)

前電回答

Oct. 30, 1889.

Japanese Minister
Washington

T. Aoki. Hope in a few days.
Okuma is progressing fairly.
Nisi.

テ承諾難致簡條不尠且ツ再ヒ條約各國ノ代理者ヲ集メテ會議ヲハ開シ逐條討論ニ及候テハ彼是意見ヲ異ニシ到底満足ノ結果ヲ得サルハ顯然ト存候ニ付此際大ニ前日ノ趣向ヲ變シ是迄ノ行掛リヲ斟酌シテ出來得ル丈ハ外國人ノ利益ヲ計リ且ツ同時ニ我國ノ利益ト威嚴トヲ可成保持セントノ目的ヲ以テ一ノ改正草案ヲ起草シ會議中止中ナルニ係ハラス條

ヲ以テ二箇ノ宣言ヲ爲スヘキ筈ニ候
右條約及宣言草案ノ寫別紙三通差出候間右御熟讀相成候ハハ前文大略申述タル趣向ノ詳細御會得可相成ト存候然ルニ新條約第十五條及第十七條ノ趣意ヲ爰ニ説明スルハ必要ノ事ト存候第十五條條約實施ノ日ヨリ五ヶ年間外國人居留地及ヒ之ニ接近シタル地ニシテ外國人ノ居留ヲ許シタル場所(神戸ノ如キハ尋常居留地ノ外日本人ト雜居ヲ許シタル一區ノ地アリ)及外國船ノ入港ヲ許シタル港灣(東京ノ如キハ開市ナレトモ其港ニ外國船ノ入ルヲ許サス)ニ限り領事裁判權ヲ從前ノ儘ニ繼續スルヲ許スハ治外法權ヨリ純粹ノ日本法權ニ移ルノ間若干ノ移動時期(トランジトリイ、ビリアド)ヲ置キ其間ニ外國人ヲシテ日本ノ法律ノ何物タルヲ知ラシメ且ツ新制度ニ習熟スルノ時ヲ與フルカ爲メニ有之候第十七條領事裁判權全廢ニ前ヲチ望ノ者ヘハ全ク日本ノ裁判權ニ服從スルコトヲ許スハ別紙拙者ノ宣言ニモ有之候通我政府ヘ任用シタル外國人判事力依然居留地ニ於テハ自國ノ裁判權ニ服從スルノミニテ日本ノ裁判權ニ服セサルハ體裁上甚タ不都合ニ付右等外國人ハ領事裁判權ノ存廢如何ニ係ハラス全ク日本ノ裁判ニ從ハシムル仕組ヲ設ケンカ

爲メ加ヘタルモノニ有之候尤モ其他ノ外國人ニテモ望ノモノハ右箇條ニ依リ日本ノ裁判權ニ服從スルコトヲ得ルハ勿論ナレトモ重モニ前文判事ニ任用セラルヘキ者ヲ目的トシタルモノニ有之候

右ノ趣意ニテ不日諸大國政府ヘ内々協議ヲ始ムヘクト存候處獨逸政府ハ先年來本件ニ關シ始終不一方好意ヲ示シ候上昨年ホルレベン氏賜暇歸國ノ砌先任伊藤伯ヨリ本件ニ關シ内議ヲ遂ケタル緣故モ有之候ニ付他國ニ先タチ先ツ同國政府ヘ内議ヲ爲スヘキ積ヲ以テ前文草案ハ既ニ在本邦同國臨時代理公使ヘ相渡シ本國政府ヘ送付方打合セ置候ニ付必定本信ト同便ニテ送付可致事ト存候尤モ内議トハ申スモノノ今度ノ草案ハ十分彼方ノ利害ヲ斟酌シタル上帝國ノ威嚴ト利益トヲ損セシテ爲シ得ル丈ケノ讓與ヲ爲シテ起草シタルモノニハ獨逸政府ニ恰好ノ意見アラハ之ヲ容ルルハ勿論ナレトモ到底草案ノ大主義ヲ動かスコトニハ同意難致畢竟今度ノ草案ハ條約改正ニ關スル帝國政府最終ノ決心ヲ表示シタルモノニ有之候ニ付其次第明ニ獨逸代理公使ニ向ケ斷言致置候就テハ前文ノ次第逐一御承知ノ上閣下ヨリモ其國外務大臣ヘ御内談相成リ本案ニ同意セシメ候様十分御盡力

一一一 明治二十一年十二月三十一日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

日米交渉ニ關聯シテ獨逸改正商議方ニ關スル件

No. 263.

Have submitted treaty revision proposals to some of the Powers identical with those you will receive about this time. U. S. Government have accepted same and have intimated willingness to sign treaty at once. Treaty not yet signed. In view of cordial relations we would be highly gratified if German Government would take favorable action before any treaty is signed. Urge immediate action. Send copies of proposals to Okabe.

December 31, 1909. Okuma.

一一三 明治二十二年一月七日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

米獨同時調印ノ運ビニ至ルル可キ様交渉方ノ件

No. 4. Japanese Government still most anxious that German Government should be one of first powers

大隈外務大臣時代 對米交渉 一一三

有之度候獨逸政府ヘ御開談ノ節ハ本案ニ就テハ内密ニ獨逸政府單獨ノ意見ヲ承知致度且ツ帝國政府ヨリ別段ノ照會アル迄ハ決シテ他國政府ヘ相示サレサル様致度旨ヲ以テ堅ク御約束相成候儀肝要ニ有之候

今度ノ草案ハ昨年ノ案ニ比スレハ極メテ簡潔ニ有之而カモ外國人ノ利益ハ十分保護シテ餘ス所無之ニ付獨逸政府ニ於テハ格別ノ異議ナク同意ヲ表スヘキコトト被存候間十分御盡力ノ儀希望致候

右及訓示候也

明治二十一年十一月二十六日

外務大臣伯 大隈 重信

在柏林特命全權公使侯 西園寺公望殿

追テ本文條約ニ附添スヘキ税則、貿易規則及倉庫規則ハ尙調査中ニ付後便御送付ニ及フヘク尤モ税則ハ昨年調査ノ分ヲ其儘ニ相用ヒ貿易及倉庫兩規則ハ大體昨年ノ分ニ基キ少々修正ヲ加フヘキ廉可有之見込ニ候此段申添候也

to sign new treaty. If German Government will accept our proposals we would be willing to authorise you to sign treaty in Berlin on fixed day so that German and American treaties might bear same date. Trade and Bonded warehouse Regulations will reach you in two or three days.

Tariff on basis already agreed to with few corrections in calculating dutiable values of specific goods. If above suggestion is accepted will telegraph changes in tariff, unless German Government will authorize German Charge d'Affaires here to examine and report upon tariff to be subsequently annexed to treaty. On day treaty is signed I will officially guarantee to German Charge d'Affaires that so long as present tariff is maintained in favor of any power, it shall be likewise maintained in favor of Germany. Urge German Government to act promptly as it is exceedingly difficult for us to postpone action much longer as our proposals were submitted to U.S. Government by American Minister here by telegraph and at once accepted by telegraph without modification, thus necessitating early action on our part.

January 7, 1889. Okuma.

一一四 明治二十二年一月七日 大隈外務大臣ヨリ 西園寺駐獨公使宛

對獨交涉促進方ニ訓令ノ件

送第四號

條約改正新案提出及右案ニ關シ獨逸政府へ開談等ノ儀ニ付客年十一月二十六日付送第七九八號信ヲ以テ訓示ニ及ヒ候處本案ヲ他國ニ先チ第一ニ獨逸政府へ相示シ候所以ハ同信ニモ申進候通り同國政府トノ是迄種々ノ行掛リヨリ不一方緣故モ有之候ニ付其邊ノ關係ヲ斟酌シ該政府ニ對シ敬禮ヲ表スル爲メニ有之候尤モ該政府ヨリ回答ヲ得ル迄他國政府ニ開始スルコトヲ見合セ若クハ該政府ノ手ヲ經テ他國政府ニ相示シ候テハ其間ニ猜疑嫉妬等ノ感情起リ政略上彼是得策ニ無之候ニ付新案書類ノ其地ニ達シ其國政府ノ一覽ヲ經タル頃合ヲ見計ヒ大抵本年初メ頃ニハ他ノ大國へ開談スヘキ様最初ヨリ計畫致居候然ルニ米國政府ハ彼我開交以來常ニ好意ヲ以テ我ニ接シ且ツ條約改正一件ニ就テモ極メテ公平ノ見ヲ有シ居候ニ付是又他ノ國々トハ自ラ區別スヘキモ

度事情モ有之且ツ一面ニ於テハ緣故深キ獨逸政府ノ意向如何ヲ聞カスシテ之ヲ捌キ第一ニ米國ト新約ヲ結ビ後日同政府ニ遺憾アラシムルコトヲ防カシカ爲メ客年三十一日別紙寫ノ通貴官へ電信相發シ候ニ付必定昨今獨逸政府ニ向テ決答御督促中ノコトト存候

條約各國カ本案ニ同意ヲ表スルヲ待タス一二ノ國トナリトモ其同意ヲ得次第新條約締結ノコトニ可致ニ就テハ夫ノ現行條約中最惠國條款ニ依リ新條約未締結ノ他國ヨリ新特權ノ均霑ヲ申出テハ之ニ對シ我政府ハ如何ノ處分ヲ施スヘキヤトノ問題ハ必ス相起ルヘキモノニ有之候處帝國政府ニ於テハ新條約中ノ條件ニ從フモノハ格別無條件ニテ單ニ利益ノミヲ均有セントノ請求ハ斷然之ヲ拒絕スルノ決心ニ有之候尤モ稅目ニ至リテハ他國人民ハ舊稅目ニ從テ輸入稅ヲ拂フニ拘ハラス先キニ新條約ヲ結ビタル國ノ人民ニノミ改正増加稅ヲ拂ハシムルコトハ到底行ハレカキ儀ニ付假令ヒ一國ニ於テ他國ニ先チ新條約ヲ結フモ他國トノ談判結了ヲ告ケ一般ニ新稅目施行ノ日迄ハ新條約ヲ締結シタル國ノ人民モ舊稅目ニ從テ納稅セシムルハ無論ノ儀ニ有之候就テハ若シ幸ニ獨逸政府ニ於テ本案ニ同意ナラハ右稅目ノ儀ニ關

ノニ有之候仍テ客月十八日ヲ以テ新案書類ヲ在本邦同國公使ニ相示シ候處同公使ハ大ニ之ヲ贊成シ直チニ其要領ヲ本國政府へ電報シ該案ニ基キ條約締結ノ全權ヲ受クヘントテ翌十九日電報ヲ相發シ候處華盛頓政府ニ於テモ何等ノ異議無之直チニ其全權ヲハツバード氏ニ付與致候右ノ通米國丈ハ誠ニ迅速ニ良結果ヲ得候ニ就テハ最早他ノ國々へ開談スルコトヲ猶豫スヘキ場合ニアラス依テ客月廿九日及卅日ノ兩日ヲ以テ英佛露伊奧五ヶ國ノ公使ヲ別々ニ接見シ本件ニ關スル帝國政府ノ趣意ヲ說明シ新案相渡シ候處何レモ一二ノ質問ヲ爲シタルニ止マリ確乎タル意見ハ申出テス各早便ヲ以テ新案書類ヲ本國政府へ送り其訓令ヲ仰クヘキ筈ニ有之候

元來我政府ノ方向ハ諸大國政府悉皆ノ回答ヲ待タス先ツ同意ヲ表シタル國ヨリ漸次各國別々ニ條約締結ノ計畫ニ有之候ニ付他國ノ進退如何ニ拘ハラス既ニ承諾ヲ爲シタル米國トハ直チニ條約ノ調印ヲナスヘキ筈ニ有之候處成ルヘクハ英獨二國若シクハ責メテハ其内一ヶ國ナリトモ同意ヲ表スル迄米國トノ調印ヲ見合セ候方可然トノ議論有之カ爲メ暫ラク右調印ノ期日ヲ取極メスシテ英獨等ノ舉動如何ヲ窺ヒ

シテハ別段ノ條約ヲ結フトモ又ハ本大臣ヨリ前文ノ意味ヲ表スル宣言ヲ爲ストモ何レニテモ該政府ノ望ニ應スルハ容易ノ事ニ有之候新稅目調整濟ニ付本便二部差進候從價從量兩稅ノ歩合(ペーシス)ハ最前協議濟ニ付一モ變更スル所無之候ハ其從量品從價ノ項ニ記載シタル數字ハ改算ノ上多少ノ増減ヲナシタル廉有之候其算法ハ卷尾ニ説明ヲ相付シ置候間右ニテ御承知可有之候

右今日迄ノ情況申進度如此尙ホ本件ニ關スル今後ノ運動ニ關シテハ時々郵便若クハ電信ヲ以テ御打合せニ及フヘク候間十分御盡力有之度候
右申進候也

明治二十二年一月七日

外務大臣伯 大隈 重信

在獨逸特命全權公使侯 西園寺公望殿
追テ草案書類英文ノ分印刷濟ニ付右ニテ通り取揃ヘ差進候也

註 123 夫々一一、四ノ附屬書、一一二

一一五 明治三十二年一月十日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ意向ニ關スル件

In accordance with your telegram of January 7, I have conferred with Berchem. Impression on German Government does not appear very favorable. Berchem expressed dissatisfaction (?) because he suspects that the new proposals might have been sent to U.S. Government beforehand, for it is surprising that they should have accepted it so quickly. German Government are displeased that the project should have been sent to other Government also. Moreover, as German Government received draft only a few days ago, they are(?), therefore, not in a position to express any decided opinion on it and I have been asked to wait. Berchem promised to see me again in a few days. Hollehen is also exerting action on our behalf.

Salonzi.

Berlin, January 8, 1889.

一一六 明治三十二年一月九日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

シーボルトノ地位ニ關スル件

No. 9. Three telegram from Siebold about drafts and in last telegram he says that in Hollehen's opinion he should be adjoined to you to assist in negotiation. It is very good that you will privately have his assistance if necessary but we can not authorize him to act with you officially. Are these telegrams sent with your knowledge?

January 8, 1889. Okuma.

附 〆一ツベレモハヘヨシ電書ノナト郵送ス

一一七 明治三十二年一月九日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

草案提示ノ日付ニ關スル件

No. 10. On 27th November presented drafts to German Charge d'Affaires. On 18th December presented drafts to American Minister, on account of his contemplated trip to China on 19th December. American Minister telegraphed full particulars to his

Government and on 21st December he received authority to conclude treaty. In consequence of this quick action I presented drafts on 29th and 30th December to some of the other Ministers. Berchem's suspicions that new proposals had been sent to U.S. Government beforehand are entirely unfounded. It was impossible entirely to ignore other Powers. Germany was the first Power consulted show this at once to Berchem and say that Japanese Government are anxious to know whether German Government have any objections to drafts on their merit. Say also that I am delaying conclusion of American treaty solely in the hope that German treaty may be signed at the same time. You must act and report promptly.

January 9, 1889. Okuma.

一一八 明治三十二年一月十日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸公使ハ草案ヲ交付セシ日取問合セノ件

Repeat first word of your last message in reference to the date you presented drafts to German Charge

大隈外務大臣時代 對獨交渉 一一八〇一一九〇一一〇

d'Affaires in Japan. Are you positive that it was on 18th December, for if so how can it be possible German Government should have received drafts on 31st December? Are the other dates mentioned also during December?

Berlin, January 10, 1889. Salonzi.

一一九 明治三十二年一月十一日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

草案提示日取回答ノ件

No. 12. German Charge d'Affaires November 27th. American Minister December 18. Other dates December.

January 11, 1889. Okuma.

一二〇 明治三十二年一月十五日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

在英岡部公使ハ書類寫回送方ノ件

No. 14. Send copy of Trade and Bonded warehouse

三一九

Regulations to Okabe at once if you have not done so already. Telegraph when you will send them and whether you have sent copy of proposed treaty as instructed.

January 15, 1889. Okuma.

一一一 明治三十一年一月十六日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ回答書ニ全權委員ニ關スル件

I have been informed that German Government have sent telegram to German Charge d'Affaire in Japan yesterday stating that they accept jurisdictional part and are ready to negotiate regarding other points although not expressly stating that they are ready to negotiate separately with us here on the authority of Holleben. Am informed that you can authorize me immediately to begin negotiation with German Government. I have not yet received official answer.

Saionzi.

Received, January 16, 1889.

一二三 明治三十一年一月十七日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

シーボルト案に關スル件

If you authorize me without regard to my telegram of January 9(8?), please also authorize Baron Siebold to assist me officially but without official title. Holleben recommends and Berchem of same opinion that this will be convenient to German Government. Copy of proposed treaty sent to Okabe, copy of Trade and Bonded Warehouse Regulations will be sent (in) a few days.

Berlin, January 17, 1889. Saionzi.

一二四 明治三十一年一月十七日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ回答書ノ報告ノ件

German Government are ready to negotiate on the basis of Japanese proposals. Concerning jurisdiction and commerce, however, Germany is still of opinion that it would be for the interest of Japan that the negotiations should be carried on in conjunction with

一二二 明治三十一年一月十六日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

柏林會議ニ關スル件

No. 16. Your telegram of January 15th received. Gratified to learn of favorable attitude of German Government concerning our proposals. Upon receiving official answer that German Government are willing to enter into negotiations in Berlin. We will at once telegraph you the necessary authority to negotiate and conclude treaty. Ascertain what if any objection German Government has to commercial portions of draft. Other Governments are very favorably disposed and rapidly coming forward to meet us, and we are most anxious that German Government will accept our proposals without delay and without material modification. Express to Holleben my sincere thanks for his kind assistance and add that we rely upon his continued friendly aid. Act promptly.

January, 16, 1889. Okuma.

all the treaty powers because Japan being bound by the present treaties might be otherwise obliged (to) overcome by greater sacrifice resistance of those powers who hold out to the last while those powers which have acceded to first would be at a disadvantage in the meantime. Should this mode of proceeding not be convenient to Japan, Germany has no objection to proceed to separate negotiations but being under the necessity of submitting all its treaties to parliament it must safeguard its own interests against discriminating treatment by adhering to the most favoured nation clause as accepted at the last conference. Foregoing is the purport of answer received yesterday from German Government.

Berlin, January 17, 1889. Saionzi.

一二五 明治三十一年一月十六日 西園寺駐獨公使ヨリ
大隈外務大臣宛

我提案ニ對スル獨逸政府ノ回答書ニ付報告ノ件

第一號 三月二日到
昨年十一月二十六日附貴信並ニ通商和親條約草案一通附外

務大臣宣言書草案ニ通右十二月三十一日接手翌日即本月一日米國政府ハ既ニ承諾云々ノ電信ニ接シ其後續々御發信ノ趣ニ從ヒ當國政府ヘ申込候處漸ク本月十六日ニ到リ公然ノ返答ヲ得候其大略如左

今般貴政府提出ノ草案ニ對シ獨逸政府ハ裁判ノ件ニ關シテハ大體上同意ナリ其他ニ關シテハ共議スルコトヲ承諾ス(以上ハ在東京獨逸臨時代理公使ヘ電報セシモノ同様)而シテ右共議ハ各國ト共ニ開クヲ却ツテ貴國ノ便宜ト思考ス如何トナレハ一國々々ノ承諾ヲ得ルモ最終ノ一國同意セサル以上ハ貴國ハ現在ノ舊條約ニ因リ到底新條約ヲ實施スルコト能ハス故ニ速ナルヲ欲シテ却テ遲滯ヲ致スノ道理ナリ且ツ終リニ殘リ遲ク承諾セシ國ホト段々ト concessionヲ得テ最後ノ國ニハ最多ノ利ヲ與ヘサルヲ得サルノ理アレハナリ又一方ヨリ云ヘハ吾獨逸國ノ如キハ議院ノ承諾ヲ經サルヲ得ス而シテ與國ト之ヲ共ニスルト云ヘハ之ヲ經ルコト頗ル易ク獨逸一箇之ヲ爲スト云ヘハ之ヲ經ルコト頗ル難シ右等ノ理由アルヲ以テ各國ト共同談判ヲ開キタル方貴國ノ便宜ト考ヘ之ヲ勸告ス然レトモ貴政府特別談判ノ方ヲ御所望トナラハ獨逸政府ハ何時ニテモ之ヲ承諾ス可シ猶又最惠

full powers are telegraphed it is indispensable that we receive official information from German Government that they will negotiate in Berlin. It is also essential that we know what if any modifications are proposed. This matter is of great importance and your telegrams are not satisfactory. You are authorized to employ Siebold in any capacity in which his service will be most useful provided it is desired by German Government. We cannot however authorise him to join you in signing treaty. Send Trade and Bonded Warehouse Regulations to Okabe before 20th. January 18, 1889. Okuma.

一二七 明治三二年一月六日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

最惠國條款ニ關スル件

No. 26. Japanese Government are convinced that treaty revision can only be accomplished by separate negotiations and present treaties do not stand in the way of such negotiations. Assure German Government in most positive manner that Powers holding

大隈外務大臣時代 對獨交渉 一二八

國ノ一判ニ關シテハ以前東京ニ於テ決議アリシ主義ニ基テラ希望ス此度ノ新草案ノ主義ニハ到底同意ヲ表スルコト難カルヘシ如何トナレハ歐洲各國間ノ條約ニモ是等ノ事ナケレハナリ但シ亞米利加ハ別ナリ云々右返答ハミュンベルヒMühlberg氏ベルヘム伯ノ名代トシテ公使館ニ來リ之ヲ述タリ(ミュンベルヒ氏ハラシユダウ氏ニ代リ條約改正ノ掛リトナリタル人)但シ返答ノ如キ隨分長文ニ渡ルヲ以テ内々ニテ獨文ニ書取リ廻シ越スノ約束有之候ニ付右領收次第報告可仕候此ニ記スル處ハ概略ニ有之候勿論去十七日電報ニテ申入候ニ付大意ハ既ニ御了悉ト存候右及報告候也

明治二十二年一月十八日

在獨特命全權公使侯 西園寺公堂

外務大臣伯 大隈重信殿

註 1及2 夫々一二二及一二三

一二六 明治三二年一月六日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

シーボルト委任ニ關シ回答ノ件

No. 22. Your telegram of 17th received. Before

out to the last will certainly secure no advantages whatever over Powers first acceding. We would like to proceed with negotiations in Berlin at once in order that German and American treaties may bear same date and will guard against discrimination so far as present tariff is concerned in manner proposed in my telegram of 7th. Is German Government prepared to enter upon negotiations in Berlin at once as suggested? Ascertain definitively and report. In deference to wishes of German Government, we will waive our strong preference in matter of favored nation clause and accept unconditional clause same as article eleven Anglo-Italian treaty 1883, if no other material modifications are proposed. Japanese Government is seriously in earnest in this matter and you must act accordingly.

January 18, 1889. Okuma.

一二八 明治三二年一月二十二日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

在露西公使ヘ書類回送方ノ件

三二三

No. 32. Send copies of all proposals to Nissi with-out delay. We await anxiously your telegraphic report.

January 22, 1889. Okuma.

一一九 明治三十二年一月二十三日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

交渉ノ公式應諾ヲ催告セル件

From Private Communication I am assured that official acceptance to negotiate treaty revision here separately will follow to-morrow or day after to-morrow. Await my further telegram.

Berlin, January 23, 1889. Saionzi.

一三〇 明治三十二年一月二十五日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

伯林交渉應諾ニ關スル件

I have received official communication from the German Government that they are ready to enter

into negotiation with me in Berlin immediately on details of your draft. German Government(?) consider also necessary that at the same time Consular Convention serving as a supplement should be negotiated on the same footing as existing between European countries. They consider draft communicated during the conference (of) 1887 suitable as draft but with regard to detailed points on which German Government desire alterations in your draft, shall not be able to know them before a week or two. It appears that they will not be of material importance. Send a copy of the above Consular Convention.

Berlin, January 25 1889. Saionzi.

一三一 明治三十二年一月二十五日

西園寺駐獨公使ヨリ
大隈外務大臣宛

我提案ニ對スル獨逸政府ノ回答書送付ノ件

附屬書 獨逸政府回答書

第三號

條約改正ニ付我政府ヨリ御申込ニ對シ當國政府ノ返答ハ大略既ニ電信ヲ以テ及御報置猶又第一號機密信ヲ以テ申入候

處其後別紙ノ通ノ一トノ轉載ニテ返答獨逸政府ヨリ送越候ニ付則チ及御回送候 敬具

二十二年一月二十五日

在獨特命全權公使侯 西園寺公望印

外務大臣伯 大隈 重信 殿

附屬書 明治三十二年一月二十五日附西園寺公使來信附屬獨逸政府

回答書譯文

獨逸政府ハ日本政府カ其國內ニ於ケル司法ノ全權ヲ恢復スルコトニ眼勉スルニ際シ力及フ的之レヲ助成セントスルノ決心ハ今尙ホ從前ニ異ナルコトナシ

獨逸政府ハ又種々改正ヲ加ヘラレタル最新ノ原案ニ基キテ商議セントスルノ決心ナリ然レトモ獨逸政府ハ日本政府ノ利益ノ爲メ日本政府ニ對シ日本政府ハ諸國ト殆ント廢棄權ナキ條約ノ關係ヲ有シ且僅カニ一國ノ不同意モ亦日本ニ於ケル裁判權ノ關係ヲ新定セントスル總計畫ヲシテ無結果ニ歸セシムルヲ得ヘキコトヲ注意スルノ必要ナルヲ信スルナリ、抑モ其同意ヲ表スルニ躊躇スルニ最モ長キ國ハ自然其最後ノ加入ニ對シテ日本ノ最大許諾ヲ要求スヘキ利益アル位地ニ立ツヘシ又共同商議ノ方法ヲ廢止センカ其結果ハ

恰モ日本政府カ得ント欲シタル所ト反對ニ出ツヘキモ亦計ルヘカラス蓋シ双務的(ビラテラール)條約ノ形式ニ依リ共同條約文ヲ起草スルノ優レルト爲スニ若カサルナリ斯ノ方法ハ條約文ヲ國會ニ提出スルヲ要スル諸國ヲシテ若シ其國會ニ於テ之ヲ拒否スルコトアルモ亦多少之ヲ調制スルコトヲ得セシムヘシ

然レトモ此考案ニ拘ハラス共同商議ノ方法ハ尙ホ日本政府ノ望マサル所ナレハ獨逸政府ハ又特別ニ日本ト商議シ條約ヲ締結スルコトヲ辭セサルヘシ然レトモ此ノ場合ニ於テハ獨逸政府ハ豫メ其條約文ヲ獨逸ノ帝國議會ヘ提出スル能ハストノコトヲ一言シ置カサルヲ得ス是レ其臣民ノ日本ニ於ケル關係ヲシテ他國ノ臣民ニ比シ困難ナラシムルノ虞アルヲ以テナリ

右ノ如キ條約ハ獨逸帝國議會ニ於テ承諾スヘキノ希望ナシ其承諾ヲ得ルニハ獨逸帝國ノ臣民ニ與フルト同一ナル人事經濟及職業的ノ交際上總テ他ノ條約國ト同一ナル利益ヲ以テシ且將來之レヲ得セシムヘキノ條約タラサルヘカラス獨逸政府カ充分ナル將來ノ保固ナクシテ其現ニ條約上與ヘラレタル權利ヲ特リ他國ニ先チテ放棄スルノ責ニ任スルコト

能ハサルハ日本政府ニ於テモ亦推察セサルコト能ハサルハ
シ又特ニ稅表ニ關シ最惠ヲ保固スルノミニテハ未可ナリ例
ハハ條約ノ期限ヲ十二年ト定ムルカ故ニ特別條約ニナリテ
ハ最後ニ條約ヲ締結スル國ハ最初ニ之ヲ締結スル國ニ比シ
テハ條約權ヲ掌有スルコト久シカルヘシ獨逸國ニシテ若シ
最初ニ條約ヲ締結スル時ハ稅表ニ關スル保固ハ未タ此ノ不
利益ヲ免レシムルニ足ラサルナリ交際上總テ此般ノ不利益
ナル結果ヲ防禦スルハ唯タ獨逸國ヲ歐洲及海外諸國ト締結
シタル條約ノ如ク無限最惠約ヲ締結スルハ一方法ナルヘシ
註 本回答書ニハ日附モ何モ無シ

(市原文)

明治二十二年一月二十五日附西國寺公使來信附屬獨逸政府回答
書原文

Die Deutsche Regierung ist nach wie vor bereit, der Japanischen Regierung bei ihren Bestrebungen, die volle Justizhoheit in ihrem Lande herzustellen, nach Kräften behülflich zu sein.

Dieselbe ist auch bereit, auf der Grundlage des neuesten Entwurfes, vorbehaltlich verschiedener Abänderungen zu unterhandeln, aber sie glaubt die

Japanische Regierung in ihrem eignen Interesse darauf aufmerksam machen zu wollen, dass sie fast mit allen bedeutenden Mächten in einem unkündbaren Vertragsnexus stehe, und dass die Ablehnung auch nur einer Macht sämtliche Versuche zu einer Neugestaltung der jurisdiktionalen Verhältnisse in Japan fruchtlos machen könne. Diejenige Macht, welche am längsten mit ihrer Zustimmung zurückhält, befindet sich naturgemäss in der vortheilhaften Lage, die grössten Zugeständnisse von Japan für ihr endliches Beitreten zu verlangen. Es kann eintreten, dass durch Aufgabe des Wegs gemeinsamer Verhandlungen ein Endergebniss herbeigeführt wird, welches sich gerade als das Gegentheil dessen darstellt, was die Japanische Regierung zu erreichen wünscht. Am praktischsten scheint immer noch die Herstellung eines gemeinsamen Vertragstextes in Form bilateraler Verträge zu sein. Ein solcher Modus sichert auch denjenigen Mächten, welche ihre Verträge den Parlamenten vorlegen müssen, einem gewissen Rückhalt gegen eine etwaige ablehnende Haltung der letzteren. Widerstrebt indess trotz dieser Krwägungen der Japanischen

kunft aufzugeben.

Die würde aber der Fall sein, wenn sie lediglich auf die Sicherung der Meistbegünstigung hinsichtlich des Tarifs eingehen wollte. Beispielsweise geniesst bei Separat-Verträgen diejenige Macht, die am letzten abschliesst, da die Vertrags-Dauer auf 12 Jahre bemessen ist, die Vertragsrechte länger wie die zuerst abschliessende Macht. Die Sicherung hinsichtlich des Tarifs genügt nicht, um Deutschland, wenn es mit dem Vertragsabschluss vorgeht, gegen diesen Nachtheil zu bewahren. Gegen derartige und ähnliche nachtheilige Folgen auf den Verkehrsgebieten kann nur die Aufnahme der uneingeschränkten Meistbegünstigungsklausel schützen, wie solche in den meisten Verträgen, die Deutschland mit europäischen und überseaischen Mächten abgeschlossen hat, gleichfalls vereinbart ist.

一三三 明治二十二年一月二十六日

大隈外務大臣ヨリ
西國寺駐獨公使宛(往電)

獨逸政府催告ニ關スル件

No. 34. Regret to learn from your telegram of 25th that it will be a week or two before you can ascertain alterations German Government have to propose to new treaty revision proposals as U.S. Government are constantly urging us to delay conclusion of treaty no longer. Drafts have been in hand of German Government for several weeks and it is consequently impossible to understand reason for this additional delay. We hope that German Government will propose as few modifications as possible as we have endeavored to conciliate all rights and interests. We have no objection to conclude consular convention on basis of existing conventions between European Powers, but considering that consular jurisdiction will exist for at least five years, the necessity for concluding such convention at same time as the main treaty cannot be perceived. In order to avoid delay on main question and to simplify matters we would suggest that negotiations on treaty be opened at once, upon the understanding that after conclusion of treaty of Amity, commerce and navigation, negotiations be opened for conclusion of consular

Japan's history. We are most anxious about this and it must be remembered that our only object in transferring negotiations to Berlin was to save time.

January 23, 1889. Okuma.

一三四 明治三十一年一月二十六日 西國寺駐獨公使ヨリ
大隈外務大臣宛(來電)

ベトナム領土擴張欲望を告ぐ

Consequent upon your new instructions, I have seen Berchem. He assured me again of the favourable intentions of German Government, but firmly maintains that it is impossible to conclude treaty of such importance without due examination by all the competent authorities in order to assure its obtaining the consent of Parliament. I feel it my duty to advise you that, if we persist in exercising pressure on the decision of German Government, an effect *gracie*(?) contrary will be the result. The reason that America is disposed to sign at once can not exercise here any favourable influence; on the contrary, this fact should not be put forward too much as an argument, for

convention if German Government deem such convention desirable before abolition of consular jurisdiction. See personally the officers in charge of this matter and while discouraging as much as possible any modifications ascertain immediately, even if verbally nature of proposed alterations and urge strongly that main treaty and consular convention be negotiated separately. If reply is favorable will at once telegraph you full powers. Report clearly and fully, as many points remain unanswered.

January 26, 1889, Okuma.

一三三三 明治三十一年一月二十六日 大隈外務大臣ヨリ
西國寺駐獨公使宛(往書)

憲法頒布ニ關スル件

No. 35. On 11th February the Emperor will proclaim the Constitution with great ceremony. You will make it a special point to ask German Government to make all suggested without delay in order that German and American treaties may be signed same time and before that most memorable day in

it hurts the susceptibility of the European Powers. Your instructions regarding Consular Convention shall be obeyed, but this additional convention will not delay the conclusion of main treaty. Although points which German Government desires (to have) *changed*(?) can only be ascertained at the opening of negotiations. I hope to be able to obtain them confidentially in a few days.

January ? 1889. Saionji.

註 西國寺公使ノ條約改正始末記事務報告ニヨリ本電ノ日
十九日發渡ナリ

一三三三 明治三十一年一月三十一日 西國寺駐獨公使ヨリ
大隈外務大臣宛(來電)

古巴國條ニ關スル獨逸政府ノ意向ニ關スル件

Have seen Berchem again and impressed upon him in conformity to your last instructions. Could not obtain definite answer. Sent Siebold to-day to find out from official in charge of treaty revision. He reports as follows *which* (we) *do not*(?) consider as official or complete. Proposed changes by German

Government will be article V to be restored to original printed text; article X to include Hiogo, Niigata, Hakodate; old article XV of printed draft is to be maintained; new article XIV to be restored to original printed text as far as regards measurement of vessels; new article XXII to restore printed text from the word *such*(?) to liabilities, that is, three bottom lines page 15 and five top lines page 16; regarding Most Favoured Nation Clause, Italian clause not quite satisfactory; printed text old Article XXIII is preferred without any change. With regard to jurisdiction, further observations may come after council of Foreign Office and other department in a few days. Your consent to above changes would accelerate negotiations. Regarding tariff, no particular difficulty is expected. Trade Regulations and Bonded warehouse Regulations will be left for settlement in Japan. Consular Convention can be made afterwards.

Berlin, January 31, 1889. Saionzi.

ticle sixteen alternately should be read "alternatively." Article twenty-one, strike out "of the exchange of ratifications of" and insert after treaty "goes into operation". Article twentyfour, first paragraph should read "The present treaty shall be ratified as soon as possible and the ratifications shall be exchanged at Tokio. It shall go into operation on the 1st day of February 1890 and shall remain in force for the full period of twelve years". In second paragraph, same article, strike out "of the exchange of ratifications" and insert "the treaty goes into operations". Last change is suggested in order that all treaties may take effect simultaneously. The following is confidential. You should discourage in every way all changes because of our desire, to have all treaties identical. If German Government insist you must telegraph and obtain my answer before consenting any alterations. We rely upon your energy and tact to carry negotiations to speedy and successful conclusion and this telegram is sent in the hope it will expedite matters.

January 31, 1889. Okuma.

一三六 明治三十二年一月三十一日 大隈外務大臣ヨリ 西園寺駐獨公使宛(往電)
改正條約米政府承認ニ付獨逸政府ノ回答應答ノ願望
スル件

No. 41. On 29 January Emperor granted you full powers in usual form to conclude with German Government treaty of amity, commerce and navigation. The powers will be forwarded to you by American mail of 6th February. You are authorized in anticipation of receipt of above powers to enter into negotiations at once with German Government and to conclude said treaty, Officially notify German Government of this fact furnishing them with a copy of this telegram and request them to open negotiations. 以下原紙切斷サレ居リ全然不明ナリ
Also notify German Government that Japanese Government desire to insert following modifications in draft treaty.

Article one, insert "the" before administration. Article three, at end, insert "provided such protection shall in no case exceed the period prescribed by the laws of the country affording such protection". Ar-

一三七 明治三十二年二月一日 大隈外務大臣ヨリ 西園寺駐獨公使宛(往電)

獨逸政府ノ修正公使提示ニ期待スルノ件

No. 44. Your telegram (of) 31st January received. It probably crossed ours of that date. We reserve reply until we are informed fully and officially of modifications proposed by German Government including those relating to jurisdiction. Meanwhile you will continue to urge despatch.

February 2, 1889. Okuma.

一三八 明治三十二年二月五日 大隈外務大臣ヨリ 西園寺駐獨公使宛

全權御任狀差進ノ件

添第一〇四號

皇帝陛下ヨリ獨逸政府ト新條約締結ノ全權ヲ貴官ニ與ヘラレ候儀去一月三十一日付電報ヲ以テ申進候處右全權御委任狀今便差進候間御受領可有之此段申進候也

明治二十二年二月五日

外務大臣伯 大隈 重信

特命全權公使俊 西園寺公望 殿

一三九 明治二十二年二月五日 大隈外務大臣ヨリ
西園寺駐獨公使宛

電信寫送附ノ件

送第一〇五號

條約改正一件ニ關シ去一月七日以來本月二日迄ニ貴官ヘ發送致候電信寫十三通別紙取纏メ差進候間御查收可有之此段申進候也

明治二十二年二月五日發遣

別紙左ノ通り

送第四號	一月七日	(一一三)
送第九號	一月八日	(一一六)
送第十號	一月九日	(一一七)
送第十二號	一月十一日	(一一九)
送第十四號	一月十五日	(一二〇)
送第十六號	一月十六日	(一二二)
送第二十二號	一月十八日	(一二六)

一四一 明治二十二年二月五日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

日米條約調印濟ノ件

No. 70. Treaty with United States signed to-day on exact lines of our proposals to German Government. Treaty to take effect February 11, 1890. It was impossible for me longer to delay action. You may inform German Government of foregoing if you think best.

Feb. 20, 1889. Okuma.

一四二 明治二十二年二月二十一日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ修正探聞ニ關スル件

I have been informed of the modifications which have been determined in the council of Imperial Departments. They will be officially communicated to me shortly in writing and *Contain*(?) numerous and important modifications mainly in the sense of a return to original text prepared by the *committee*(?).

送第二十六號	一月十八日	(一二七)
送第三十二號	一月二十二日	(一二八)
送第三十四號	一月二十六日	(一二九)
送第三十五號	一月二十八日	(一三〇)
送第四十一號	一月三十一日	(一三六)
送第四十四號	二月二日	(一三七)

註一括弧内數字ハ本書ニ於ケル文書番號ナリ

一四〇 明治二十二年二月八日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ回答遲延ニ關スル件

Am informed that official observations on our drafts will not be ready before ten days at least, because the consent of Bundesrath and three Imperial Departments must be obtained previously and it is now being discussed by them. There is, therefore, no means of pressing any more at the present moment.

Berlin, Feb. 1889, Saionzi.

They will demand also additional guarantees in jurisdictional questions. Wait for instructions whether you still desire receiving details by telegraph or whether in consideration of the length of propositions it would not be preferable to *sending away*(?) by mail. Our proposition to adopt Italian text of the Mast Favoured Nation Clause has been accepted. German Foreign Office know since yesterday conclusion of American treaty which I have only just received.

Berlin, Feb. 21, 1889. Saionzi.

一四三 明治二十二年二月二十三日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

獨逸政府ノ修正案電報並ニ郵送方ノ件

No. 75. Telegraph details and also communicate by mail.

Feb. 23, 1889. Okuma.

一四四 明治三十二年三月六日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

獨逸政府ノ修正案催促ノ件

No. 89. Why do not you telegraph German Government proposed modifications.

March 6, 1889. Okuma.

一四五 明治三十二年三月八日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ修正公報未領ノ件

I have not yet received official communication of modifications proposed by German Government. Will telegraph immediately on receipt.

Received, March 8, 1889.

Saionji.

一四六 明治三十二年三月八日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

草案修正並ニ伯林ニテ英文假條約締結ニ關スル件

No. 91. I have had two satisfactory interviews

Paper to be transferred from specific to ad valorem list.

These changes in tariff to be kept secret until new treaty comes into operation in order to prevent demands of similar nature from other Powers. Although these changes entail loss of nearly thirty thousand yen annually to Imperial Treasury, I consented to make them in addition to the others in order to arrive at once at satisfactory settlement it being understood that my acceptance of the amendments was not to stand if any other important changes in our proposals were asked. Holleben perceived equally with myself great necessity to hasten matters and it was agreed that matters would be greatly expedited by your signing treaty provisionally in English at once with German Plenipotentiary, leaving actual treaty to be signed here in German, Japanese and English. Holleben is telegraphing his Government in this sense and you will also communicate this telegram to German Government and urge immediate acceptance.

March 8, 1889. Okuma.

with Holleben. He assured me of friendly disposition of German Government in relation to treaty revision. He suggested several amendments to our proposals. The following in addition to those contained in my telegram of January 31st were finally agreed upon.

Angle-Italian favored nation clause Treaty to go into operation February 11th 1890. Art. XIV of treaty to remain in present form. Japanese and German systems of measurement being identical reciprocal exemption from re-measurement to be secured by exchange of diplomatic Notes. Japanese Government by diplomatic Note to guarantee establishment of Private Bonded Warehouse system in the event of trade requiring the facility. Trade Regulations art. VIII. 1st paragraph, insert after the word "retained by the Customs" the following words "upon the understanding that it is not to be made public." Same Article, 2nd paragraph, substitute three and one-half for three months. The tariff was more difficult. We were however able after some discussion to arrive at following arrangement.

No. sl29, 149 and 340, Quinine, Blue and Printing

一四七 明治三十二年三月十一日 大隈外務大臣ヨリ
西園寺駐獨公使宛

伯林ニ於テハ假條約ノ調印ニ止ムヘキ旨訓令ノ件

送第一八七號

獨逸國特命全權公使ノオシ、ホルレーベン氏本月二日歸任候ニ付爾後二回面會ノ上條約改正事件ニ關シ協議候處同人伯林出發ノ頃ハ本案ニ關スル獨逸政府ノ調査既ニ大略結了致居只通商上ノ事項ニ關シ一在日本獨逸商人ノ意見ヲ聞キタル上ニテ新條約ニ調印ヲ爲スコトヲ得ル手順ニ相運居候ニ付當地到着後早速在横濱ノ重立テタル獨逸商人ト内議ヲ遂テ候處貿易規則並ニ税目ニ於テ二三修正ヲ欲スル廉申出候趣ヲ以テ右修正ヲ要スル廉々ヲ列舉シ之ヲ本大臣ニ於テ承諾スルニ於テハ速ニ其旨ヲ本國政府ニ通知可致然ル上ハ容易ニ談判結了新條約調印ノ都合ニ相運フヘキ旨申出候依テ右修正箇條ノ内一二ヲ除キ其他ハ彼ノ申出ヲ容レ修正スヘキコトニ協議相整ヘ候然ルニ去ル二月二十一日付貴官ヨリ電報ノ趣ニ依レハ獨逸政府ハ通商並裁判管轄ノコトニ付數多ノ修正ヲ申出スヘキ趣ニ有之候ニ付貴官電報ノ趣トホルレーベン氏談話ノ次第トハ大ニ齟齬シ不審ノ至リニ付去

ル六日電報ヲ以テ獨逸政府ノ修正早速御電報可有之旨申進候處八日ニ到リ未タ獨逸政府ヨリ通知無之ニ付通知有之次第報知可致トノ貴電ニ接シ候仍テ察スルニ獨逸政府ハ在本邦公使館ヨリ通商上ノコトニ關スル意見ノ通知ヲ相待居右通知ヲ受ケタル上ナラテハ貴官ニ向テ何等ノ照會ヲ爲ササル趣向ニモ有之哉ト存候就テハホルレーベン氏ト修正協議濟ノ廉々別紙寫ノ通本大臣ヨリ貴官ヘ同人ヨリハ其政府ヘ同様ノ趣意ヲ以テ電報スルコトニ申合せ去ル八日双方ヨリ電報相發シ候然ルニ獨逸政府ヨリハ本大臣ノ承諾ヲナシタル外ニモ重要ナル修正ヲ申出候様ニテハ不都合ノ至リニ付若シ該政府ニ於テ他ニ重要ナル修正ヲ申出スルニ於テハ本大臣トホルレーベン氏トノ間ニ協議濟ノ修正ハ本大臣ノ隨意ニ取消スコトヲ得ヘキ旨ヲ電報中ニ書加ヘ置候將又ホルレーベン氏ヨリ本條約ヲ伯林ニ於テ締結スルニ於テハ獨逸文ヲ必要トスルニ付該文調整ノ爲メ少ナカラサル時日ヲ費ヤスヘク依テ貴官ニ於テハ英文ノミニテ直チニ假條約ヲ結ビ本條約ハ獨逸文調整ノ上獨和英三文(英ヲ以テ解釋ノ本文トス)ヲ以テ追テ東京ニ於テ締結ノコトニ取計ヒ候ハハ事ノ早便ト相成ルヘキ旨申出候右ハ察スルニ自分ハ先年

來條約改正事件ニ關係致シタルニ最後ノ一段ニ至リ萬事伯林ニ於テ結了ニ到リ候テハ新條約上毫モ自分ノ名ヲ現ハスニ至ラサルニ付聊カ遺憾ノ情可有之旁右ノ説ヲ提出シタルモノト存候ニ付其名譽心ヲ満足セシメンカ爲メ同人ノ勸告ニ應ジ貴官ニ於テハ英文ヲ以テ假條約ヲ結ビ追テ東京ニ於テ本條約締結ノコトニ致度旨電報中ニ申進候且ツホルレーベン氏申出ノ如ク其地ニ於テ本條約締結ノコトニ致候テハ獨逸文調整ノ爲メ若干ノ餘分時日ヲ要スヘキニ若シ英文ノミニテ調印ノ儀ナレハ獨逸政府ノ決答次第直チニ調印スルコトヲ得ヘク而シテ其名ハ假條約ナルモ其實ハ全ク條約改正ノ目的ヲ遂クル譯ニハ他國ニ對シテモ日獨條約ハ既ニ完結サレタリト云フヲ得ヘク旁早便ヲ計リ前文ノ通取計候儀ニ有之候間此段御了承相成度候
右申進候也

明治二十二年三月十一日

外務大臣伯 大隈 重信

在伯林特命全權公使侯 西園寺公望殿

一四八 明治二十二年二月十二日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

伯林調印ニ關スル件

No. 97. It was understood that German Government would require that treaty be signed in German and as preparation of that text would take considerable time and as German text might be made here during interval between signing provisional treaty in English in Berlin and its arrival here, it was thought that time would be saved by course suggested while Japanese Government would at once have benefit of fact that treaty had been signed. If however German Government are willing to sign actual treaty at once in Japanese and English, or without much further delay in Japanese, German and English making English the deciding text, you are fully authorized to sign same. Our main object being to hasten matters, you will with concurrence of German Government adopt whichever course secures desired end. No alteration in your full powers necessary. Provisional and actual treaties to be identical, excepting one will show its temporary nature and that it is to be super-

seded by the other. Holleben concurs in this explanation.
March 12, 1889. Okuma.

一四九 明治二十二年三月十五日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

獨逸政府ノ回答遲延事情問合せノ件

No. 103. What does the German Government say to suggestion about signing provisional?
Present delay in negotiations is incomprehensible. Are Germany and England in consultation? Answer by telegraph.

March 15, 1889. Okuma.

一五〇 明治二十二年三月十六日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ回答遲延事情回報ノ件

Reason for delay is that, although Foreign Office has decided upon modifications to be proposed, yet

there exists in Ministry of Justice difference of opinion which is difficult to be reconciled. With regard to signing treaty provisionally, will telegraph as soon as soon as I receive reply from German Government. (We ?) have been continually trying to hasten matters. I heard more than one month ago that England has made representations to Germany respecting our new proposals, yet the latter has always declined. Therefore is nothing to fear on this point.

Berlin, March 16, 1889. Saionzi.

一五三 明治三十三年四月二日 大隈外務大臣ヨリ西國寺駐獨公使宛(來電)
同法省へ諸議條問大前ニ英國へ回文ニ關スル件

No. 111. Instruct Siebold to see Muhlberg confidentially about the difficulties raised in the German Department of Justice. It is important to know if these difficulties relate to fundamental principles, because if so that would conflict with former promise of German Government to accept Jurisdictional part of draft. Let Siebold ascertain if English Government

form which consists in the fact that in the place of our project which has been drawn up according to English system, German modification in formed in accordance with the principles of countries of Roman law. Siebold is travelling with my permission, but he will return April. As we shall receive in a few days answer from German Government, think it will not be necessary to recall Siebold to execute your instructions. With regard to the representation of *British Government*(?), although they might have sent circular to other Powers as already telegraphed, German Government has not entertained them. Muhlberg is of opinion that British Government will not accept our proposal so easily as Germany.

Berlin, March 28, 1889. Saionzi.

一五三 明治三十三年四月二日 西國寺駐獨公使ヨリ大隈外務大臣宛(來電)

獨逸政府へ回答書領ノ件

I have received to-day official answer from German Government. It contains voluminous modifications.

大隈外務大臣時代 對獨交渉 一五三、一五四

has issued circular to Powers in reference to treaty revision and if so its nature and attitude of German Government in reference to it.

March 27, 1889. Okuma.

一五四 明治三十三年四月二日 西國寺駐獨公使ヨリ大隈外務大臣宛(來電)
同法省へ修訂ニ關スル件

Your telegram of March 27 received. I saw Muhlberg yesterday. He has informed me that the proposals have been returned to Foreign Office after having been modified by Judicial Department and that the modification will be officially communicated to me at the end of this week. He assured me confidentially that the modifications respecting the jurisdictional part will not in any way touch the fundamental principles of our drafts excepting the portion relating to personal status, consular jurisdiction of which German Government desires to maintain for five years for German subjects residing in Japan. As to the other modifications, they are only change of

It will be translated at once and will be telegraphed as soon as possible.

Berlin, April 2, 1889. Saionzi.

一五四 明治三十三年四月十日 西國寺駐獨公使ヨリ大隈外務大臣宛(來電)

獨逸政府へ回答

German answer contained in despatch of April 1 and accompanied by memorandum. The former is very conciliatory, fully admits our rights of judicial autonomy, expresses desire to receive by note on signature of treaty the assurance that Consular Convention be concluded on the basis proposed by Japanese Government. As the new Treaty is to be concluded for a shorter period than it was expected, Germany accepts the same under presumption that eventual abrogation of German Treaty should not take place whilst other Treaties to the same effect, which may be concluded for a longer period, still remain in force.

Memorandum contains modifications and counter-proposals. Our articles 2 to 4, 6, to 9, 11to 13, 17, 18, 20, 22 and 24 have been accepted without any alteration. Regarding article 19, Italian clause accepted. Article 15 requires addition and article 16 requires alteration as being contrary to German legal principles. Therefore it is proposed to add a clause to article 15 to the effect that during continuance of consular jurisdiction Germans in Japan, in questions of personal status, to remain under Consular jurisdiction. This is because Japanese Civil law and Customs deviate at present considerably in this respect from European. Article 16 to contain stipulation to the effect that German Consular Courts in Japan shall in conformity with German laws render legal aid to the Japanese Courts, the latter to render equally legal aid to German Consular Courts. The following special stipulations to be observed in civil cases; The enforcement of judgments of Japanese Courts within the limits of foreign settlements or of Consular jurisdiction is to take place by a decree of the German Consular Courts. This decree has to be granted

In criminal cases, the following stipulation to be observed:

German subjects residing in the foreign settlements shall be liable for all punishable sections committed outside the same limits and subject to Japanese Criminal jurisdiction. Japanese authorities may not enter German residences within foreign settlements except with the cooperation of German Consul. In the same manner a summons to appear or arrest for the purpose of criminal prosecution or execution of punishment or the enforcement of fines or costs shall within the settlements only be admissible with the cooperation of the German Consular officers. German subjects who have committed punishable offences within the settlements shall in case they are found outside the same limits be arrested by the Japanese authorities upon the requisition of the German authorities.

April 7, 1889.

Foregoing proposal for Article 16 has not been repeated here in the exact words of the German drafts, but with reduction and addition in order to render **their** sense more clear. From the statement of no-

without any inquiry into questions of fact. It will be refused, however, firstly in case the judgment proposes to enforce an action which is contrary to German law. Secondly in case Japanese Courts were, according to German Civil Procedure, incompetent to pass judgment. Rest will be continued in the next telegram.

April 7, 1889.

Thirdly, in case adjudged person had not defended himself in the law suit and the writ of summons had not been served on him either personally in Japan if outside the foreign settlement or, if inside, by cooperation of German legal aid. Whenever a civil case has been legally commenced in a Japanese Court or has been legally adjudged by the same, the litigence or legal force thereof can be duly maintained before a German Consular Court in Japan. This rule will not be, however, applicable in the foregoing cases 1 to 3, where a Consular decree for the enforcement of the judgment would have to be refused. Japanese Courts shall, in their relation to the German Consular Courts and their decision, exercise entire reciprocity.

tives it appears that German objects to our proposed division of competence in Art. 16 as being contrary to German legal principles and proposes instead the above stipulation by which no division of competence is stipulated and therefore the respective German or Japanese law determines competence with the general principle that within the limits of settlements where German Consular Jurisdiction prevail no Japanese jurisdictional action is admitted and outside the limits of settlements no Consular jurisdictional action allowed and reciprocal legal aid takes its place. Exceptionally in Status question the Consular Courts are competent all over the country. In criminal cases culprits residing in the settlements to be arrested by the cooperation of the Consular officers for trial in Japanese Court if the punishable action was committed outside the limits. German Government further claims in respect to the guarantees to be given by despatch firstly that in all civil, bankruptcy and criminal cases Germans should have the right of appeal to the highest courts where foreign judges sit as our new proposition which reduces this right to a

certain limit is considered insufficient.

April 9, 1889.

Secondly that in all cases of crime and delict a foreign judge should always conduct the examination conform to the Art. VII number 10 of Convention (of) 1887; thirdly that the same promises as contained in Art. VIII number 1 and 5 of the Convention (of) 1887 in regard to qualification and discipline of judges be given; fourthly that the Japanese Government engages itself to apply Most Favoured Nation Clause in all matters of jurisdiction. As to other modifications Germany desires in the introductory part a few Changes in the wording of minor importance, for instance, instead of "states" the word "territories" etc. In Art. I the right of freedom from billeting as contained in old draft of Commercial Committee is claimed. In Art. V, last sentence of first paragraph of old draft to be restored, the new wording being unsatisfactory. Besides, an addition is to be introduced to the effect that both Contracting Parties reserve to themselves the right to revise the valuation of specific duties after five years. Also, to add to Tariff itself

a stipulation respecting the mode of fixing comparative values of foreign coins and Japanese currency, corresponding to the sense of old Art. VI. Further, desire to reinstate in paragraph 3 of Art. X the ports (of) Hiogo, Niigata and Hakodate. Old Articles XV and XVII to be again revived. April 9, 1889.

It is further desired to reinstate instead of second paragraph of new Article XIV the former wording as follows: "the dutiable tonnage of....vessels shall be the net tonnage as shown by the....certificates of registry or other papers". German Government desire that old article XXII of former draft should be maintained. In regard to new Article XXI it is desired that in place of first sentence the former wording of old Article XXIV should be revived to which the last sentence of new Article XXI beginning with the words "from the date this treaty etc" should be added. German Government take note of declaration contained in your telegram of March 16 respecting private Bonded Warehouse and tariff. Germany also desired the insertion of the words "harbour regulations" in Art. XXIII. Finally, Germany in consequence of its

Customs Union with Luxembourg Claims the stipulation that the Treaty should be applicable also to these countries with whom the Contracting Parties are connected or will hereafter be connected by Customs Union.

Foregoing are the alterations proposed by German Government about which I reserve my opinion to my next telegram.

Berlin, April 10, 1889. Saionzi.

一五五 明治二十二年四月十日 西園寺駐獨公使ヨリ
大隈外務大臣宛

我提案ニ對スル獨逸政府ノ回答書送附ノ件

附屬書一 四月一日付ヘルム伯來翰
ニ ヘルム伯來翰附屬覺書

第八號 五月二十四日到

條約改正ニ關シ我新案ニ對スル獨逸政府ノ返答ハ本月一日附ノ公翰並ニ意見書ヲ以テ條約改正掛ミヘルム氏攜帶來館ノ上交付有之候ニ付豫テ御電訓ノ旨ニ從ヒ別紙甲號寫ノ通直チニ其對譯ニ取掛リ本月七日以來五回ノ電信ヲ以テ

大隈外務大臣時代 對獨交涉 一五五

其要旨不取敢及申報置候間既ニ夫々御翻譯御了承ノ事ト存候左候テ右意見書ノ如キハ頗ル長文ニ涉リ我新案ニ對シ數多ノ修正變更記載有之候ニ付其主意ヲ明瞭ニ貫徹セシメン爲メ當館ヨリ發送ノ電報モ隨テ長ク相成不得止五回ニ分テ繼續發送致候次第ニ御座候將又今回獨逸政府ヨリ送付ノ公翰並ニ意見書ハ別紙貳通ニ號寫ノ通ニ有之候間委典ノ儀ハ右ニテ御了悉相成候様致度候尤モ當館於テ不取敢別紙丙號ノ通英文ニ對譯調製致候間爲御參考併テ及御回送候條夫々御查收相成度候此段及具申候 敬具

明治二十二年四月十日

特命全權公使侯 西園寺公望印

外務大臣伯 大隈重信 殿

註 別紙甲號寫(電信五通)ハ前田ニ付省略
附屬書一 乙號 明治二十二年四月一日附ヘルム伯來翰

Abschrift

Answärtiges Amt

Berlin, den 1 April 1889.

Der Unterzeichnete beehrt sich den Kaiserlich Japan-

nischen ausserordentlichen Gesandten und bevollmächtigten Minister Herrn Marquis Saionji, zu benachrichtigen, dass die Prüfung des von der Kaiserlich Japanischen Regierung hieher mitgetheilten Entwurfs zu einem Freundschafts-Handelsund Schiffahrts-Vertrage Seitens der beteiligten Ressorts stattgefunden hat. Das Ergebnis dieser Prüfung findet sich in der beifolgenden Denkschrift niedergelegt.

Die Japanische Regierung hat dem vorliegenden Entwurfe denjenigen früheren Vertrags-Entwurf zu Grunde gelegt, welcher in den langjährigen Revisionsverhandlungen aus den Beratungen des sogenannten Commercial Committee's im Jahre 1887 hervorgegangen und im Wesentlichen von den Vertragsmächten als annehmbar bezeichnet worden war.

Von dieser Arbeit weicht indess der vorliegende neue Entwurf in erheblichen Punkten ab. Indem die Japanische Regierung es vermieden hat, für Abänderungen und Streichungen irgend welche Motive anzuführen, hat sie die Beurtheilungen, der Vorlage wesentlich erschwert, namentlich in Betreff solcher Bestimmungen, die sich ausschliesslich auf das Verhältniss

Deutscher Reichsangehöriger in Japan zu Japanischen Behörden und Einrichtungen beziehen. Hierzu kommt, dass die Japanische Regierung die gemeinsamen Verhandlungen mit den Mächten aufzugeben und mit den beteiligten Regierungen Einzel-Vorträge abzuschliessen wünscht, deren Genehmigung durch die gesetzgebenden Körperschaften jedenfalls grösseren Bedenken begegnen wird, als ein allen Mächten gemeinsamer Vertrag.

Wenn ungeachtet dieser grösseren Schwierigkeiten die Deutsche Regierung sofort in die Vertragverhandlungen eingetreten und dabei bemüht gewesen ist, zu einem Ergebnisse zu gelangen, welches den wesentlichsten Wünschen der Japanischen Regierung volle Rechnung trägt, so glaubt sie hiermit einen neuen Beweis für ihr Bestreben zu geben, innerhalb der Grenzen der eigenen Gesetzgebung und der Interessen der Reichsangehörigen der Japanischen Regierung gefällig und entgegenkommend zu sein.

Die Gegenvorschläge lassen die in dem Japanischen Entwurfe vertretenen Principien unberührt.

Die einzige, übrigens nicht wesentliche Ausnahme

in Rechtsstreitigkeiten wegen Statussachen rechtfertigt sich durch die Verschiedenheit der Lebensverhältnisse in den beiden Nationen.

Die Neuformulierung des Artikels XVI erkennt vollständig die Japanische Rechts-Autonomie an sucht in Anlehnung an allgemein geltende internationale Rechtsgrundsätzen mit den Japanischen Vorschlägen zu vereinen. Die vorgeschlagene Fassung für den Artikel XVI ermöglicht die Erreichung dieses Ziels und gewährt Deutschen wie Japanischen Rechte gleich freien Spielraum.

Diesem Principe folgend, konnte sogar in Stratsachen der Japanischen Regierung die unter III des Detuscherseits vorgeschlagenen Artikels zum Ausdruck gebrachte, weiter als die Japanischen Vorschläge gehende Konzession gemacht werden.

Im engsten Zusammenhang mit diesem Eingehen auf die Grundlagen des Japanischen Entwurfs steht der Wunsch der Deutschen Regierung, dass ihr bei Unterzeichnung des Vertrags mittelst Note der Abschluss eines Konsular-Vertrages in dem Rahmen des früheren Japanischen Entwurfs zugesichert werde.

Die ferner erforderlichen gleichfalls in Notenform zu ertheilenden Zusicherungen.....Erweiterung der Kompetenz des gemischten Gerichtshofes, Führung der Voruntersuchung bei Verbrechen und Vergehen durch einen Richter fremder Nationalität, Voraussetzungen für die Anstellung Europäischer beziehungsweise Amerikanischer Richter, Meistbegünstigung in Rechtsachen.....bilden dem notwendigsten und auf das geringste zulässige Mass beschränkten Ersatz für die Garantien, welche Japan in dem früher geplanten Jurisdiktions-Vertrage zuzugestehen beabsichtigte.

Sämtlicher anderen Gegenvorschläge charakterisiren sich nicht als besondere Ansprüche, sie bezwecken lediglich Bestimmungen zu formuliren, welche autonome Staaten in Verträge, die sei einander schliessen, aufzunehmen pflegen.

Die Dauer des Vertrages ist auf kürzere Zeit bemessen, als früher ins Auge gefasst war; die Deutsche Regierung muss deshalb auf die zusage Werth legen, dass eine Kündigung des Vertrages Seitens Japans nicht zu einem früheren Termine erfolgen kann, als

zu demjenigen, mit welchem die etwa auf längere Zeit geschlossenen Verträge mit anderen Nationen ihr Ende erreichen.

Indem der Unterzeichnete hoffe, dass die Seitens der Regierung Seiner Majestät bestätigte Würdigung der Japanischen Interessen und Wünsche die freundschaftlichen Beziehungen zwischen den beiden Ländern erneut befestigen werde, benutzt er auch diesen Anlass, um dem Herrn Gesandten die Versicherung seiner aussezeichnetsten Hochachtung zu erneuern.

(sg) Berchem.

An

den Kaiserlich Japanischen

ausserordentlichen Gesandten und bevollmächtigten

Minister

Herrn Marquis Saionji.

(平格譯文)

聖諭(明治二十一年四月廿六日) 勅諭第幾第幾

Answerables Amt (*translation*)

Berlin 1 April 1889.

The undersigned has the honour to inform His Imperial Japanese Majesty's Envoy Extraordinary &c.

Government having decided to give up the joint negotiation with the Powers and to resort instead to the conclusion of separate treaties with the respective Governments, it follows that these having to be submitted for approval of the respective legislative bodies will consequently be liable to meet there with greater objections than if the treaties had been concluded at the same time with all the Powers in common.

If notwithstanding these increased difficulties the German Government has at once entered into the negotiation for the proposed Revision and has endeavored to obtain a result which is of a nature to satisfy fully the essential wishes of the Japanese Government, the same hopes thereby to have given a renewed proof of its friendly and obliging disposition to meet the Japanese Government to the utmost extent and as far as compatible with the national (German) legislation and the interests of its (German) subjects.

The counter-proposals of the German Government in the Jurisdictional question have the principles which were adopted in the Japanese Draft intact.

&c. the Marquis Saionji, that the project communicated by the Imperial Japanese Government for a Treaty of Friendship, Commerce, and Navigation has been duly examined by the interested departments. The result of this examination has been recorded in the accompanying Memorandum.

The Japanese Government has taken as a basis for its present project the results of the prolonged work for the Revision of the Treaties, notably the draft of the so-called Commercial Committee of 1887, which had been on the whole accepted by all the Treaty Powers.

It is, however, to be noticed that the present new draft differs materially in many points. The Japanese Government having altogether avoided to enter into a statement of its motives in respect to the proposed alterations and omissions the same has considerably increased the difficulties for a consideration of the draft, particularly in respect of those stipulations which have exclusively (exclusive?) reference to the relations of German subjects to Japanese Authorities and institutions. In addition to this the Japanese

The only and not very important exception concerns the disputes in Status questions which is, however, justified by the difference in the habits and Customs of the respective nations.

The new wording of Art. XVI recognizes completely the Japanese Legislative autonomy and proposes, in harmony with generally accepted international legal principle, to bring about a harmony with the leading Principles of the German Law. The proposed construction of Art. XVI admits the realization of this object and recognizes equally the application of German and Japanese Law.

In following these principles it became possible in Penal Matters even to go beyond what the Japanese propositions aimed at and to propose the adoption of the proceedings laid down under III.

In the closest connection with this acceptance of the fundamental principles of the Japanese Draft is also the desire of the German Government that at the time of the signature of the treaty, the willingness of the Japanese Government should be signified by a note to a conclusion of a Consular Convention

conform to the scope of the former Japanese project on this subject.

The further assurances which should also be given in form of a note in respect to an extension of the competency of the Mixed Court, the conduct of preliminary examination in cases of crime and delict by a judge of foreign nationality the conditions for the nomination of Judges of European, respectively (or ?) American, nationality, the application of the Most Favored Nation Clause in Jurisdictional Affairs, form the essential conditions which, reduced to the least possible degree, are intended to take the place of those guarantees which Japan had in its former jurisdictional convention intended to great.

All other counter-propositions may be characterized as not forming special demands, for they have merely for their object the adoption of such stipulations which autonomous States usually adopt in the treaties which they conclude with each other.

The period during which the treaty is to be in force has been reduced from what was originally intended, the German Government cannot fail there-

fore to attach value that its acceptance of this should be accompanied by the security that a denunciation on the side of Japan should not take effect in the case of Germany before the treaties with other Powers which may have been concluded for a longer period had also expired.

The undersigned trusting that the conciliatory recognition on thh part of His Imperial Majesty's Government of the Japanese interests and duties in this instance will not fail to be of benefit to the development of more intimate and close relations between the two countries avails himself of the opportunity to renew to His Excellency the assurances &c. &c.

(signed) Berchem

蓋國華川

西曆一千九百零四年四月廿六日 大日本海軍大臣書翰

Abschrift

Denkschrift

Die Regierung Seiner Majestät trägt kein Bedenken, die nachfolgenden Artikel des von der Kaiserlich Japanischen Regierung mitgetheilten neuen Entwurfs

zu einem Freundschafts-, Handels- und Schifffahrts-Vertrage in der vorgeschlagenen Fassung anzunehmen; Art. II-IV, VI-IX, XI-XIII, XVIII, XX, XXII, XXIV.

Zu Art. XIX.

Die Bedenken gegen Art. XIX-Meisbegünstigungsklausel-sind erledigt. Deutscherseits wird der Japanische Vorschlag, diesen Artikel so zu formuliren wie Art. XI des englisch-italienischen Handels- und Schifffahrtsvertrages vom 15. Juni 1883 angenommen. Allgemeine Bemerkungen zu Art. XV und XVI. Der zweitwichtigste Punkt in dem Entwürfe ist die Jurisdiktionfrage, auf welche hiernit zuerst eingegangen wird.

Deutschland ist mit der principiellen Regelung der Frage wie sie von Japan gewünscht wird, einverstanden. Allein die Hauptbestimmungen in Art. XV und die Ausführungsbestimmungen in Art. XVI in Verbindung mit den beiden hierzu gehörigen Noten-Entwürfen tragen den geltenden deutschen Gesetzes-Bestimmungen, deren Beachtung Deutscherseits nicht zu umgehen ist, keine Rechnung. Um sie mit letz-

teren in Einklang zu bringen, würden Art. XV eines Zusatzes und Art. XVI einer anderen Fassung bedürfen, zu welchem Zwecke die folgenden mit Gründen versehenen Vorschläge gemacht werden. Dieselben sind so gehalten, dass mit ihrer Annahme das von Japan erstrebte Ziel der Rechtsautonomie nicht gefährdet werden würde.

Zu Art. XV.

Die Bestimmung in Art. XV in Betreff der Japanischen Jurisdiktion über Reichsangehörige ausserhalb der "Foreign Settlements pp." erwähnt nicht die Rechtsstreitigkeiten in Statustragen. Da aber Deutscherseits so lange Bedenken getragen werden muss, für die bezeichneten Rechtsstreitigkeiten die Zuständigkeit der Japanischen Gerichte anzuerkennen, als diese Gerichte noch das zur Zeit geltende Japanische bürgerliche und Prozessrecht anzuwenden haben, welches gerade in den fraglichen Beziehungen von der europäischen Rechtsauffassung durchaus abweicht, so wird vorgeschlagen, dass, so lange die Konsulargerichtsbarkeit in den geöffneten Häfen fortdauert, deutsche Angehörige und Schutzgenossen in Japan,

auch wenn sie in dem japanischen Gebiet ausserhalb der "Foreign Settlements pp." wohnen oder sich aufhalten, in Rechtsstreitigkeiten über Statussachen, insbesondere in Rechtsstreitigkeiten, welche die Rechtshandlungsfähigkeit als solche, die Khe, das Eltern- und Kindesverhältnis und die Vormundschaft betreffen, nur der deutschen Konsulargerichtsbarkeit unterliegen.

Zu Art. XVI.

Artikel XVI würde etwa folgendermassen zu fassen sein:

"I. Die deutschen Konsulargerichtsbehörden in Japan werden nach Massgabe der für sie geltenden Gesetze den Japanischen Gerichten Rechtshilfe leisten. In gleicher Weise wird von den Japanischen Gerichten den deutschen Konsulargerichtsbehörden Rechtshilfe geleistet."

"II. Für bürgerliche Rechtsstreitigkeiten gelten nach folgende besondere Bestimmungen:"

Die Zulässigkeit der Zwangsvollstreckung aus den rechtskräftigen Urtheilen der japanischen Gerichte wird durch Entscheidung der deutschen Konsular-

gerichtsbehörde ausgesprochen. Die Vollstreckbarkeits-Erklärung erfolgt ohne sachlich Nachprüfung. Die Vollstreckbarkeits-Erklärung ist zu versagen:

1) wenn durch die Vollstreckung eine Handlung erzwungen werden würde, welche nach dem für die Konsulargerichtsbehörde massgebenden Rechte nicht erzwungen werden darf;

2) wenn nach den Bestimmungen der deutschen Civilprozessordnung die japanischen Gerichte nicht zuständig waren;

3) wenn der Verurtheilte sich auf den Prozess nicht eingelassen hat und ihm die den Prozess einleitende Ladung oder Verfügung weder in Japan ausserhalb der im Art. XV bezeichneten Grenzen in Person, noch durch Gewährung deutscher Rechtshilfe zugestellt worden ist. Ist eine bürgerliche Rechtshandlung bei einem japanischen Gericht rechtshandlungsfähig geworden oder rechthandlungsfähig entschieden, so kann die Rechtshandlungsfähigkeit oder die Rechtshandlungsfähigkeit auch vor den deutschen Konsulargerichts-Beörden in Japan geltend gemacht werden.

Diese Bestimmung findet jedoch keine Anwendung

soweit nach den vorhergehenden Vorschriften (no 1 bis 3) die Vollstreckbarkeits-Erklärung, der in einer solchen Rechtsstreitigkeit ergehenden Entscheidung zu versagen sein würde.

Die Japanischen Gerichte werden im Verhältnis zu den deutschen Konsulargerichts-Beörden und deren Entscheidungen die volle Gegenseitigkeit zur Anwendung bringen."

"III. Für Strafsachen sind folgende Bestimmungen massgebend:

Deutsche Angehörige und Schutzgenossen, welche in den im Art. XV bezeichneten "Foreign Settlementspp" wohnen oder sich aufhalten, sind wegen der von ihnen in Japan ausserhalb der genannten Bezirke begangenen strafbaren Handlungen der japanischen Strafgerichtsbarkeit unterworfen. Jedoch dürfen die japanischen Behörden in diesen Bezirken die Wohnungen von Reichsangehörigen und Schutzgenossen, welche sich solcher Handlungen schuldig gemacht haben, nur unter Zuziehung des Deutschen Konsuls oder seines Vertreters betreten, desgleichen eine Vorführung und Verhaftung zum Zwecke der Strafver-

folgung oder Strafvollstreckung, sowie die zwangshandlungsfähige Beitreibung einer Vermögensstrafe oder der Kosten des Strafverfahrens den bezeichneten Personen gegenüber gleichfalls nur unter Zuziehung des Konsuls oder seines Vertreters bewirken. Deutsche Angehörige und Schutzgenossen, welche sich einer strafbaren Handlung in den "Foreign Settlements pp" schuldig gemacht haben, werden falls dieselbe auf japanischen Boden ausserhalb der genannten Bezirke betreten werden, auf Verlangen der Deutschen Konsulargerichts-Beörden von den japanischen Behörden festgenommen und der ersuchenden Behörde überliefert."

Begründung:

Die für Absatz I des Art. XVI gewählte Fassung soll klar stellen, dass die Bestimmungen dieses Artikels nur im Verhältnis zwischen den japanischen Gerichten und den Organen der Deutschen Konsulargerichtsbarkeit in Japan gelten. Die Bestimmung unter I entspricht dem letzten Absatz des Japanischen Entwurfs, mit der Einschränkung, dass die Verpflichtung zur Leistung der Rechtshandlungsfähigkeit nicht unbedingt, sondern nur nach Massgabe der beiderseitigen Gesetzgebung

ausgesprochen ist. Eine solche Zusage wird, wenn die wichtigsten Fälle der Rechtshilfe so wie vorgeschlagen, besonders geregelt werden, dem Bedürfnisse genügen.

Was sodann den Vorschlag unter II betrifft, so konnte die in dem japanischen Entwurf vorgeschlagene Abgrenzung der Gerichtsstände für das Gebiet der bürgerlichen Rechtsstreitigkeiten Deutscherseits aus Rechtsgründen nicht angenommen werden. Der vorliegende Japanischen Entwurf schliesst sich, in dieser Hinsicht durchweg (zu vergleichen namentlich die Bestimmungen unter II B C und D.) an das englische Prozessrecht an, ohne die deutsche Gesetzgebung irgendwie zu berücksichtigen. In Wirklichkeit wird eine Regelung, welche den Verschiedenheiten der deutschen und der Japanischen Prozessgesetzgebung gleichmässig Rechnung trüge, kaum möglich sein (sein ?), vielmehr müsste der Versuch, die bezeichneten Verschiedenheiten im Wege der Vereinbarung auszugleichen, beinahe nothwendig zu einem Ergebnisse führen, welches von den allgemeinen Kompetenzvorschriften des einen wie des andern Theiles abweichen

würde und eben deshalb für keinen befriedigend wäre. Es bedarf aber auch für bürgerliche Rechtsstreitigkeiten einer solchen Vereinbarung überhaupt nicht. Aus Art. XV ergibt sich nämlich von selbst.

1) dass innerhalb der Bezirke, in welchen die deutsche Konsulargerichtsbarkeit geübt wird, japanischerseits keinerlei Akt des Gerichtszwanges gegen die Person oder das Vermögen deutscher Angehörigen und Schutzgenossen vorgenommen werden darf;

2) dass, soweit nach japanischen Rechte die Zuständigkeit der japanischen Gerichte durch den Wohnsitz oder Aufenthalt des Beklagten im Gerichtsbezirk begründet wird, diesem Zuständigkeit nicht Platz greifen kann gegen deutsche Angehörige und Schutzgenossen, welche in den "Foreign settlements pp" wohnen oder sich aufhalten.

Die gleichen Schranken gelten selbstverständlich auch für die deutsche Konsulargerichtsbarkeit im Verhältnisse zu den in Japan ausserhalb der "Foreign Settlements pp" wohnenden oder sich aufhaltenden Reichsangehörigen und Schutzgenossen (unbeschadet jedoch der zu Art. XV vorgeschlagenen Ausnahme,

betreffend die Rechtsstreitigkeiten über Statusfragen.)

Noch weitere Schranken zu ziehen liegt keine Veranlassung vor. Die Zuständigkeit der deutschen wie der japanischen Gerichtsbehörden für Klagen gegen deutschen Angehörige und Schutzgenossen wird sich daher im Uebrigen lediglich nach den für die betreffende Behörde sonst massgebenden Prozessgesetzen zu bestimmen haben. Das in einem solchen Rechtsstreit ergende Urtheil des deutschen Konsulargerichts wird innerhalb der "Foreign Settlements pp" das des japanischen Gerichts überall in Japan ausserhalb der "Foreign Settlements pp" ohne weiteres Vollstreckung finden.

Von dem dargelegten Standpunkt aus bedurfte nur die Frage einer näheren Regelung, inwieweit von den deutschen Konsulargerichts-Beörden zum Zwecke der Vollstreckung japanischer Urtheile, von den japanischen Gerichten zum Zweck der Vollstreckung der in Ausübung der Konsulargerichtsbarkeit ergangenen deutschen Urtheile Rechtshilfe zu leisten sein wird. Diese Regelung ist im Anschluss an die Bestimmungen der deutschen Civilprozessordnung §§ 660, 661

unter II des deutscherseits vorgeschlagenen Artikels XVI gegeben.

Hinsichtlich der Strafgerichtsbarkeit ferner erschien ebenfalls eine feste vertragsmässige Regelung der Gerichtsstände weder erforderlich noch zweckmässig. Deutschland wäre zwar mit Rücksicht auf die Grundsätze Rücksicht auf die Grundsätze seiner Strafgesetzgebung hier nicht in der Lage, Urtheile der Japanischen Gerichte gegen deutsche Angehörige und Schutzgenossen, welche in den "Foreign Settlements pp" wohnen oder sich aufhalten, durch seine Konsulargerichtsbehörden vollstrecken zu lassen. Gleiche Bedenken würden auch einer Bestimmung entgegenstehen, durch welche den deutschen Konsularbehörden in Japan die Verpflichtung auferlegt würde, solche Personen den Japanischen Behörden zur Bestrafung auszuliefern. Auf der anderen Seite ist aber nicht zu verkennen, dass der Anspruch Japans, Deutsche Angehörige und Schutzgenossen wegen der von ihnen auf Japanischen Boden ausserhalb der "Foreign Settlements pp" begangenen strafbaren Handlungen durch seine Behörden auch dann verfolgen zu lassen,

wenn sie in den "Foreign Settlements pp" wohnen oder sich aufhalten, ein berechtigter ist. Deutschland ist daher in Berücksichtigung der Sachlage bereit, insoweit von dem Grundsatz, dass die in den geöffneten Häfen fungierenden Japanischen Behörden gegen Deutsche Angehörige und Schutzgenossen keine Handlungen der Amtsgewalt vornehmen dürfen, eine Ausnahme eintreten zu lassen, jedoch mit der Massgabe, dass die Japanischen Behörden bei ihrem Vorgehen bis zu einem gewissen Grade an die Mitwirkung des deutschen Konsuls gebunden sind. Demist in dem Vorschlage unter III Rechnung getragen. Zu den beiden Noten-Entwürfen.

Was schliesslich die in dem Entwurf einer Note aufgeführten Garantien der Japanischen rechtsprechung zu Gunsten der deutschen Angehörigen und Schutzgenossen betrifft, so muss deutscherseits besonderer Werth darauf gelegt werden, dass diese Garantien noch einige Erweiterungen erfahren.

1) Nach dem früheren Jurisdiktionsvertrags-Entwurfe von 1887 Art. VII (zu vergleichen insbesondere No. 1, 3 und 4) war den Angehörigen der Ver-

2) Nach dem Vorgange des Jurisdiktionsvertrags-entwurfs von 1887 Artikel VII No 10 würde in die Note ferner die Zusicherung aufzunehmen sein, dass gegen Deutsche Angehörige und Schutzgenossen die Voruntersuchung wegen Verbrechen und Vergehen stets durch einen Richter fremder Nationalität geführt werden soll.

3) In Betreff der Richter fremder Nationalität würden in der Note mindestens die auf die Befähigung zum Richteramt und die Disziplinarverhältnisse bezüglichen Bestimmungen des Entwurfs von 1887 (Art. VIII No. 1 und 5) eine Stelle zu finden haben.

4) Endlich müsste durch die Note den Deutschen Angehörigen und Schutzgenossen hinsichtlich der Ausübung der Japanischen Gerichtsbarkeit das Recht der Meistbegünstigung gewährleistet werden. (zu vergleichen Art. XII des Entwurfs von 1887)

Die übrigen Artikel des Vertrags-entwurfs geben noch zu folgenden Anträgen und Wünschen Veranlassung: Zur Eingangsformel.

In der Einleitung wird, mit Rücksicht auf die Verfassung des Deutschen Reiches Zeile 6 anstatt Staaten

tragsmächte in allen Fällen die Möglichkeit geboten, ihre Angelegenheiten vor ein in seiner Mehrheit mit Richtern fremder Nationalität besetztes Gericht zu bringen. Die Note der Japanischen Regierung will den Deutschen Angehörigen und Schutzgenossen diese Möglichkeit nur für "Griminal cases in which the punishment exceede two months imprisonment and a fine of yen 50 or exceeds a fine of 100 without imprisonment" und für "civil cases where the amount involved exceeds you 100" lassen. Eine derartige Regelung würde den Deutschen Angehörigen keinen ausserordentlichen Rechtsschutz bieten und die Zusage der Note müsste deshalb unter Beseitigung der fraglichen Einschränkungen, dahin ausgedehnt werden, dass die Deutschen Angehörige und Schutzgenossen in allen bürgerlichen Rechtsstreitigkeiten, Strafsachen, Konkursachen, desgleichen in Angelegenheiten der nichtstreitigen Gerichtsbarkeit, soweit solche (wie z. B. Immobilienangelegenheiten) überhaupt zur Zuständigkeit der Japanischen Gerichte gehören, nach Massgabe des ersten Absatzes der Note befugt sein sollen, eine Entscheidung des obersten Gerichtshofs herbeizuführen.

("states") "Gebiete" und Zeile 8, 9 anstatt "durch Revision der bisher zwischen den beiden Ländern bestehenden Verträge (by revising the treaties hitherto existing between the two countries)" "durch Revision des bestehenden Vertrages" zu gagen sein.

Zu Art. I.

Im Artikel 1 wird Deutscherseits gewünscht, am Schlusse die Bestimmung des aus den Beratungen des Commercial Committee's im Jahre 1887 hervorgegangenen Entwurfs aufgenommen zu sehen, wonach Reichsangehörige in Japan von Einquartierungslast befreit sind. In den meisten von Deutschland abgeschlossenen Verträgen pflegt eine ähnliche Bestimmung vorgesehen zu sein.

Zu Art. V.

Am Schluss des ersten Absatzes des Artikels V empfiehlt es sich, dem Wortlaut des Commercial Committee Entwurfs wiederherzustellen. Die jetzige Fassung "may injuriously affect or endanger health, property, morals or public security" ist zu weit und gibt leicht zu nicht beabsichtigten Auslegungen Anlass.

Sodann wäre eine Ergänzung des Artikels dahin sachgemäss, dass beide kontrahierende Theile sich das Recht vorbehalten, nach Ablauf von 5 Jahren eine Revision der Werthberechnungen für die ausgeworfenen Zollsätze zu beantragen. Die Schwankungen, welchen die Preisverhältnisse einzelner Waarengattungen im Laufe der Zeit ausgesetzt sind, rechtfertigen, wie die Erfahrung beweist, eine derartige Bestimmung, welche für beide Theile gleich nützlich ist.

Zugleich hiermit empfiehlt es sich für die Berechnung der Zollgebühren einen dem früheren Artikel VI des Commercial Committee-Entwurfs entsprechende Bestimmung über die Umrechnung der fremden Münzen in Silber Yen dem Tarife beizufügen. Von einer Erwähnung dieser Verpflichtung im Vertrage kann wegen der inzwischen erlassenen Japanischen Verordnung vom 14 Juni 1888 abgesehen werden.

Zu Art. X.

Deutscherseits wird in dem Absatz 3 des Artikels X die Einfügung der Häfen Hiogo, Niigata und Hakodate beantragt. Dieselben gehören zu den jetzt geöffneten Häfen und war es stets beabsichtigt, dass

die Küstenschiffahrt in denselben gestattet bleiben sollte.

Wiederherstellung der Art. XV und XVII des commercial Committee Entwurfs.

Die früheren Artikel XV und XVII des Commercial Committee-Entwurfs können füglich nicht aus dem neuen Vertrag ausscheiden. Die gegenseitige Anerkennung der Nationalität der Schiffe ist völkerrechtlicher Brauch, legt beiden kontrahierenden Theilen keine andere, als eine in der Praxis bereits anerkannte Verbindlichkeit auf und findet sich in fast allen Verträgen ausgesprochen. Ebenso kommt in neueren Verträgen das Bestreben zum Ausdruck, die Seilung der Postschiffe in der in dem Korrespondirenden Art. XVII des Commercial Committee-Entwurfs formulirten Weise zu regeln. Die wissenschaftliche, neuere Völkerrechtslehre nimmt für Postdampfer diese Vorrechte allgemein in Anspruch.

Zu Art. XIV.

Im organischen Zusammenhange mit der Aufnahme des Art. XV des Commercial Committee-Entwurfs wäre an Stelle des zweiten Absatzes des Artikels XIV

im vorliegenden Entwurf der Wortlaut des ersten Satzes, wie derselbe im korrespondirenden Artikel XVIII des Commercial Committee-Entwurfs vereinbart wurde, zu setzen sein. Der Absatz würde dann einfach lauten: "The dutiable tonnage of.....Vessels shall be the net tonnage as shown by the.....certificates of registry or other papers." Da das Japanische Vermessungsverfahren nach Mittheilung der Japanischen Regierung identisch mit dem Deutschen ist, so ergeben sich daraus für Japan keinerlei Schwierigkeiten. Fälle, in welchen eine Nachvermessung zulässig sein soll, könnten im Wege des Notenaustausches ihre Regelung erfahren. Art. XXII des Commercial Committee-Entwurfs.

Es empfiehlt sich, den früheren Artikel XXII des Commercial Committee-Entwurfs über das Verfahren bei Erhebung von *Japan*(?), Steuern und Gebühren nicht zu streichen. Der Wegfall des Artikels, dessen Bestimmungen Japanische Rechte in Nichts Präjudiziren, entbehrt der Rechtfertigung.

Zu Art. XXI.

Die Verpflichtung der Reichsangehörigen zu En-

trichtung von Abgaben für industrielle und andere Unternehmungen findet sich unbeschadet der Japanischen Ansprüche entsprechend präzisirt im Artikel XXIV des Commercial Committee-Entwurfs. An Stelle des ersten Satzes des jetzigen Artikels XXI ist deshalb besser Artikel XXIV des Commercial Committee-Entwurfs zu wählen, welchem der letzte Absatz des vorliegenden Artikels XXI "From the date this treaty goes u. s. w." hinzufügen wäre.

Zu Art. XXIII.

Die Japanischen Regierung ist bereit, mittelst Note die Errichtung von Privat-Waarenlagern zu garantiren, sobald der Verkehr eine solche erfordert. Deutscherseits wird von diesen Erklärungen, ebenso wie von denjenigen, welche einzelne Bestimmungen in den Handelsregulativen und Sätze des Tarifs betreffen. Telegramm des Grafen Okuma, mitgetheilt vom Marquis Saionji unter dem 16. März c.....Akt genommen. Es erübrigt noch die Frage wegen der Hafen-Regulative, deren Aufnahme in den Vortrag Deutscherseits um so mehr gewünscht wird, als der Commercial Committee-Entwurf darüber eine Bestimmung enthält.

Die Regulative selbst würden später festzustellen sein.

Schliesslich bedarf es für Deutschland wegen des Zellverbandes mit Luxemburg der Einfügung einer Bestimmung, wonach "der gegenwärtige Vertrag sich auf die mit einem der vertragsschliessenden Theile gegenwärtig oder künftig zollvereinten Länder oder Landestheile erstreckt".

Dies könnte etwa in einem besonderen Artikel oder in einem Relativsätze hinter den Eingangsworten des Artikels XXIV "The present treaty" ausgesprochen werden.

(未終議決)

明治三十三年四月一日 駐米公使館書記官 齋藤實

Memorandum
Translation

His Majesty's Government sees no objection to accept the following articles of the new draft of the Treaty of Friendship, Commerce, and Navigation in the proposed form: namely, Articles II to IV, VI to IX, XI to XIII, XVII, XVIII, XX, XII, XXIV. Ad Art. XIX. The objections regarding Article XIX, the Most Favored Nation Clause, are satisfactorily solved.

Germany accepts the Japanese proposition to formulate this article in conformity with Article XI of the Anglo-Italian Commercial Treaty of 15 June, 1883.

General Observations. The next question of importance is that of Jurisdiction, which is hereby entered into.

Germany consents "on principle" to the arrangement of the question as proposed by Japan. It has been found, however, that the principal stipulations contained in Article XV and the executive stipulations contained in Article XVI taken in connections with the two notes have not sufficiently paid attention to the principles of law which are in force in Germany, a fact which we, on our side, can not lose sight of. In order to bring them into harmony with these requirements, it is necessary (to) add to Article XV a stipulation, and to give to Article XVI another composition. In this respect the following propositions are made with the corresponding motives. They are construed, however, in such a manner that by their acceptance the jurisdictional autonomy desired by Japan would in no way be impaired.

"I. The German Consular Courts in Japan shall in conformity with the laws incumbent on them (i.e. German Laws) render legal aid to the Japanese Courts. In the same manner, Japanese Courts will render legal aid to German Consular Courts.

II. In Civil cases the following special stipulations will be observed:

The enforcement (within the limits of the foreign settlements or Consular jurisdiction. Translator's notes) of judgment of Japanese Courts which shall have received force of law will be pronounced by a decree of the German Consular Courts. This decree has to be issued without any enquiry into questions of fact. It ("It" means the consular decree for enforcement) will be refused:

- 1) In case the performance of an action is to be enforced which is contrary to the laws which the German Consular Courts have to apply.
- 2) In case the Japanese Courts were, according to German Civil procedure, incompetent to pass judgment.
- 3) In case the adjudged person had not defended

Ad Art. XV. The stipulations in Article XV in regard to Japanese jurisdiction over German subjects outside the "Foreign Settlements etc." does not mention litigation in questions of Status. But as on our side, objections must prevail against recognizing the competence of the Japanese Courts in these questions, as long as these courts still apply the present Japanese civil law and procedure, which are altogether different from the European legal conceptions, it is proposed that as long as the Consular jurisdiction prevails in the open ports, German subjects (German text speaks of German citizens and subjects under German protection) in Japan, even if they live or reside in the Japanese territory outside of the "Foreign Settlements," shall remain exclusively under German Consular jurisdiction, in litigations regarding Status questions, especially in legal disputes which refer to legal capacity and "business capacity," marriage, relations between parents and infants, and questions of guardianship.

Ad Art. XVI. It is proposed that Article XVI should be worded as follows:

himself in the law suit and the writ of summons or decree which opened the process had not been served on him personally anywhere in Japan outside the limits defined in Article XV or by the cooperation of the German legal aid. Whenever a Civil case has been legally commenced in a Japanese Court or has been legally adjudged by the same the letspendence of the same or the legal force thereof may be duly enforced before a German Consular Court in Japan.

This rule will, however, not be applicable in those cases (1. 3) where a consular decree for the enforcement of judgment would have to be refused.

III. In criminal matters the following stipulations shall be observed :

German subjects who reside or are sojourning in the Foreign Settlement etc. defined in Article XV shall, in respect of punishable actions committed outside the said limits, be subject to Japanese criminal jurisdiction. The Japanese Authorities may, however, not within these limits enter the residences of German citizens or subjects who have committed the offences aforesaid without the assistance of the German Consul

or his representative. In the same manner, a summons to appear or arrest for the purpose of criminal prosecution, execution of punishment, or the coercive enforcement of a fine or costs of criminal procedure shall, in respect of the persons above mentioned, only be admissible in the presence of the Consul or his representative. German citizens or subjects under German protection who have committed a punishable offence within the foreign settlements shall, in case they are found outside the said limits, be arrested and delivered up by the Japanese authorities upon the requisition of the German Consular authorities."

Notes. The proposed wording of alinea I of Article XVI shall clearly express that the stipulations of this article have only force in the relations between the Japanese Courts, and the German Consular Court Authorities in Japan. The stipulation under I is in conformity with the last alinea of the Japanese draft with the limitation that the obligation for the rendering of legal aid in execution in not to be unlimited, but in conformity with the respective legislation. Such an understanding will be sufficient

to meet the necessity in case the more important cases of legal aid are specially defined.

Regarding the proposition under II the German Government could not accept, on account of legal reasons, the proposed limits of the respective Civil jurisdiction. The Japanese propositions are in this respect (compare especially the stipulations under II B, C2 and D) based on the English law of process without paying any consideration whatever to the German laws on this subject.

In reality, however, a regulation which would take equally into account the differences between the German and Japanese legislation in matters of process is scarcely possible, for the attempt to conciliate the above described differences by means of an agreement would almost certainly produce a result different from the general rules of competency of one or the other side and therefore unsatisfactory.

In the case of civil litigations such a limitation is unnecessary. For Article XV naturally has the result that.

- 1) Within the limits where German Consular Juris-

diction is exercised, the Japanese judicial authorities can not exercise any coercive legal measures against the persons or property of German protection.

2) That as far as by Japanese law, the competence of the Japanese Courts is based on the domicile or residence of the defendant within the jurisdiction of the court, this Competency cannot take place against a German citizen or subject who resides in the "foreign settlements &c."

The same stipulations are evidently also binding on the German Consular Authorities in their relation to German citizens or subjects under German protection residing outside the "foreign settlements &c." (excepted always the cases proposed as an addition to Article XV regarding the disputes in questions of Status).

There is no necessity for introducing more detailed limits. The competence of the German as well as the Japanese judicial authorities in cases against German citizens and subjects under German protection will be sufficiently defined by the usual rules of competence. The judgment of the German Court will be

enforced within the "Foreign Settlements etc.", and the judgment of the Japanese Court anywhere within Japan outside the "Foreign Settlements etc.", without any further steps being required. There remained therefore only to be taken into consideration the question how far the German Consular Authorities were to give aid in the execution of judgments of Japanese Courts and the Japanese Courts render aid in the execution of judgments enacted in conformity with the consular jurisdiction. This has been regulated in conformity with the stipulation of the German Civil procedure § 660, 661 and proposed under II of our draft of Article XVI.

Regarding the criminal jurisdiction again it seemed neither necessary nor desirable to introduce specific conventional stipulations. Germany would in consequence of its legal principles not be in a position to be able to execute by means of its Consular authorities judgments of Japanese Courts upon German subjects who resided in the "foreign settlements etc." The same objections would prevail against a stipulation by which the German Consular Authorities in

Japan would be placed under the obligation to deliver up such persons to the Japanese Authorities for the purpose of incurring punishment. On the other hand the justice of the claim of the Japanese Government cannot be denied to be able to prosecute by means of its judicial Courts German subjects for punishable actions committed on Japanese territory outside the "Foreign Settlements etc." even when the same reside in the "Foreign Settlements." Germany is therefore ready in consideration of the circumstances to depart from the principle that Japanese judicial authorities can exercise no official judicial action against German subjects, but under the provision that the Japanese Authorities should in their action be bound to a certain extent to the cooperation of the German Consul. This has been expressed under III. Regarding finally the guarantees in respect of Japanese jurisdiction contained in the Draft of a note Germany is obliged to attach special value to a further extension of these guarantees.

1) According to the former drafts of a jurisdictional convention of 1887 Article III (compare es-

pecially no. 1, 3 and 4) the subjects of the Treaty Powers had in all cases the possibility to bring their judicial affaire before a court composed in majority of judges of foreign nationality. According to the

crime and delicts against German subjects the preliminary examination be conducted by a judge of foreign nationality.

note of the Japanese Government, German subjects will only enjoy this advantage "in criminal cases in which the punishment exceeds two months' imprisonment and a fine of yen 50, or exceeds a fine of yen 100 without imprisonment" and "in civil cases where the amount involved exceeds yen 100." Such an arrangement would not give the German subjects sufficient legal protection and the engagement contained in

3) In regard to the judges of foreign nationality the note should contain at least the stipulations which refer to the qualification to judicial functions and the regulations in respect to questions of discipline of the draft of 1887 (Art. VIII, no. 1 and 5).

the note should be therefore extended that the German subjects would enjoy the right of appeal to the highest court in all civil and criminal matters, bankruptcy, also in affairs which do not belong to the *processual* jurisdiction as far as they (for instance, questions of real property) fall within the competency of Japanese Courts.

4) Finally the note should guaranty to German subjects the right of Most Favored Nation in respect to the exercise of Japanese jurisdiction (compare Art. XII of the Draft, 1887).

The other articles of the Draft of the Treaty give rise to the following propositions and wishes.

In the introductory part it is desirable that with reference to the Constitution of the German Empire

alinée 6 should in place of "States" contain dominions and alinea 8, 9 instead of "by revising the treaties hitherte existing between the two countries" simply the words "revision of existing treaties."

Ar Art. I. Germany desires in respect to Art. I to reintroduce at the end the stipulation which

2) In conformity with the Draft of the Jurisdictional Convention of 1887 Article VII, no 10, the note should contain the engagement that in all cases of

arose from the Draft prepared by the *l'avois* of the Commercial Committee in 1887, namely that German subjects should be exempted from the obligation of military billeting. In most treaties concluded by Germany such a stipulation exists.

Ad Art. V. At the end of the first alinea of Art. V it is recommended to reintroduce the wording of the draft of the Commercial Committee. The present wording "*may injuriously affect or endanger health, property, morals, or public security*" has too extended meaning and might easily give rise to misinterpretations. Besides a further addition to the article would be desirable to the effect that both Contracting parties reserved to themselves the right to submit the valuation of specific duties to a revision after five years. The fluctuations to which prices of certain goods are liable in course of time justifies as experience demonstrates such a stipulation which besides is useful to both parties.

At the same time it seems recommendable to add to the Tariff in conformity with Article VI of the Draft of the Commercial Committee a stipulation

national Law claims generally on behalf (of) mail steamers these rights.

Ad Article XIV. In organic connection with the adoption of Art. XV of the Draft of the Commercial Committee it would be desirable to place instead of the second alinea of Art. XIV of the present Draft the wording of the first sentence as it was in the corresponding Art. XVIII of the Draft of the Commercial Committee. This alinea would then read as follow:

The dutiable tonnage of.....vessels shall be the net tonnage as shown by the.....certificates of register register or other papers.

As the Japanese system of measurement, according to a communication of the Japanese Government, is identical with the German, there can arise from this stipulations no difficulties to Japan. The cases in which a remeasurement should be admissible might be regulated by means of an exchange of notes.

Ad Art. XXII of the Draft of the Commercial Committee. It is recommended not to leave out the former Art. XXII in respect to procedure in collection of

respecting the mode of fixing the comparative values of foreign coins and Japanese currency. It will, however, in view of the Japanese edict of the 12 June, 1888, not be necessary to introduce this in the text of the Treaty itself.

Ad Art. X. Germany desires the introduction in alinea 3 of Article X of the ports of Higo, Niigata and Hakodate. They belong to the number of present open ports and it was always the intention to continue the coasting trade between them. Reintroduction of Art. XV and XVII of the Draft of the Commercial Committee. The former Art. XV, XVII of the Draft of the Commercial Committee can not possibly be excluded from the Treaty. The reciprocal recognition of the nationality of vessels is a fully recognized usage and submits the contracting parties to no other obligations than are already recognized in practice, it is also included in most treaties. In the same manner in modern treaties the position of mail steamers should be regulated in the manner in which it was formulated in Art. XVII of the Commercial Committee's draft. The modern science of Inter-

taxes, duties, and fees. The omission of this article, which in no way prejudices Japanese rights, is not justifiable.

Ad Art. XXI. The obligation of German subjects to a payment of duties on account of industrial or other enterprises is clearly declared without detriment to the Japanese claims in Art. XXIV of the draft of the Commercial Committee. In the place therefore of the first alinea of Art. XXI of the present draft it would be better to take Art. XXIV of the Commercial Committee's draft to which the last alinea of the present Article XXI should be added beginning with "From the date this treaty goes etc. etc."

Ad Art. XXII. The Japanese Government is ready to guaranty by means of a note the election of private bonded warehouses wherever commerce should require it. Germany takes note of this declaration, as well as of those which refer to certain stipulations of the Commercial Regulations and the portions of the Tariff and which were contained in the telegram of Count Okuma communicated by the Marquis Satonji on the 16th March, 1889.

April 15, 1889. Okuma.

There remains only the question of harbor regulations, the introduction of which into the Treaty seems all the more desirable to Germany as the Commercial Committee's draft contained an identical stipulation.

Finally it is necessary for Germany in consequence of the Customs Union with Luxembourg to introduce a stipulation by which the present Treaty should be extended to those countries which are at present connected or will be hereafter connected by Customs Union with one of the Contracting Parties. This might be expressed in a special article or in a sentence behind the introductory passage of art. XXIV viz "The Present Treaty."

一五六 明治三十二年四月十五日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

意見報告催促ノ件

No. 130. Are you shortly telegraphing your opinion as stated in your telegram of April 10th? If not, I desire to telegraph our views.

ノミナフス右等ノ讓與ハ我國威ヲ汚スコト甚シキモノニ付到底我政府ニ於テ承諾難致若シ不幸ニシテ獨逸政府力頻リニ之ヲ主張シテ止マサレハ乍遺憾改正談判ヲ破ルノ外無之ト存候舊第十七條郵便船ニ特例ヲ付與スルノ條ヲ挿入スルコトモ甚タ困難ニ有之候他ニモ直チニ同意シカタキ箇條不勘候處右ハ多クハ文字上又ハ體式上ノ事ニ係ルモノニ付双方ノ讓合ニテ大抵折合ヒ得ヘクト存候尙ホ今明日ニテ貴官ノ意見接到ノ上ニテ全體ニ就キ熟考ヲ遂ケ又都合ニ因テハホルレーベン氏トモ一應協議ノ上確定ノ訓示ニ及フヘク候

(中略)

獨逸政府ト御談判ノ要領ハ追々御電報ニテ承知致候得處本件ニ關シ貴書ニ接シタルハ前後僅カニ一二回ニ過キス候電信ノミニテハ詳細ノ始末相分ラス往々隔靴ノ憾有之候ニ付更ラニ書面ヲ以テ補充敷衍スルハ頗ル緊要ノ事ニ有之候間向後ハ御談判ノ顛末時々詳細ニ御郵報可有之候右申進候也

明治三十二年四月十五日發遣

追テ先頃御申越相成候先年ノ會議ハ我政府ヨリ呈出シタル領事條約案一部今便及御送付候也

一五七 明治三十二年四月十五日 大隈外務大臣ヨリ
西園寺駐獨公使宛

獨逸政府ノ修正條項ニ關シ訓令ノ件

送第二六六號

條約改正案ニ付獨逸政府ニ於テ修正ヲ要スル廉々本月一日ヲ以テ公然該政府ヨリ照會有之候由ニテ七日ヨリ續々御電報ノ次第逐一致承知候然ルニ十日付貴電末文ニ右ニ關スル貴官ノ意見ハ次回ノ電信ヲ以テ可致被申越旨相見エ候ニ付爾後頻リニ相待居候處一向何等ノ貴報ニモ接セス候ニ付本日及御催促候

獨逸政府ノ要求中條約調印ノ際本大臣ヨリ差出スヘキ書翰中ニ第一獨逸人關係ノ訴訟事件ハ事ノ大小種類ヲ問ハス一切大審院ニ上訴ヲ許スコト第二獨逸人所犯重輕罪ハ外國判事ヲシテ豫審セシムルコト第三外國人判事ノ資格及罷免處分ノ一儀ニ關シ先年ノ案ニアリタル同様ノ規定ヲナスコトヲ保證スル一條ハ不日發布可相成裁判所構成法中獨逸人ノ爲メ特例ヲ設タルコトヲ要スルニ至リ法律上紛雜ヲ來ス

一五八 明治三十二年四月十六日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

意見上申ノ件

In conformity to my despatch of April 10th, I take the liberty of offering you my observations. I consider that, in regard to Art. XV, German proposal about personal status is reasonable and I do not believe German Government could, in view of public opinion, renounce this demand. Regarding(?) Art. 16, German proposal compromises (comprises?) in reality two distinct questions, first, execution of Japanese judgments(?) in foreign settlements(?), secondly, confederacy (cooperation?) of respective jurisdictions. Regarding German proposal about execution of criminal(?) judgments, it appears to me to be acceptable and respecting the execution of civil(?) judgments, it is in conformity to German law relative to execution of foreign civil judgments. See articles 660(?) and 661 of Civil Procedure(?). If you do not consider acceptable to adopt this system, I submit to your consideration the proposal to adopt the stipulations of (the) annex

to Art. VI of 1887, only, however, so far as execution of civil judgments are concerned, for, in regard to criminal, German proposal is more favorable. Art. XVI does not contain stipulations in regard to competency, but leaves it to be inferred by respective laws. Thus, in case of an execution of a Japanese civil judgment(?) by a German Consular Court, the competency will be determined according to German civil procedure. Therefore, please examine first book, section two of Civil Procedure. You will find that it is favorable *in bringing*(?) commercial and other questions in the interior, as far as possible, under our jurisdiction. See articles 19, 22, 24, 25, 27, 29, 32 and *especially*(?) 35(?). Regarding *appeal question*(?), (1?) consider German *question*(?) goes too far. If we, however, could make concession in the criminal part, we might perhaps *be able*(?) to insist upon limit of 100 yen in civil case.....? therefore *petpaps propose*(?) to extend appeals in criminal cases to crimes and misdemeanors and make some conciliatory proposition. Regarding judges of *instruction*(?), it appears to me difficult to refuse the demand respecting the conditions of en-

gagement and discipline of foreign judges. I shall not make any observation by telegraph in respect to the non-jurisdictional questions, but I call your attention especially to the latter part of Art. I and XVII. Berlin, April 16, 1889. Saionzi

一五九 明治三十二年四月十六日 大隈外務大臣ヨリ
西園寺駐獨公使宛(注電)

德國公使へ、貴員ニ於てハテ、貴國司法權令へ、件

No. 139. Express appreciation for friendly attitude manifested in Despatch and Memorandum. You are authorized to give assurance that Japanese Government will conclude Consular Convention on basis of draft submitted to Conference with few minor modifications. Presumption of German Government concerning eventual abrogation of treaty exactly correct. Preamble modification accepted. Article I, consent to make modification if reciprocal, hence insert in last paragraph words from billeting after, words personal service. Article V, first paragraph, modification accepted. Reservation of right to demand in-

terim revision of specific rates unacceptable because illusory, as such power would possess right of veto. Fixed period with right of denunciation preferable. Article VI, Treaty of Commerce and Navigation 1887 unnecessary. Japanese Government already adopted without objection proposed method. See official gazette July 9, 1888. Consent to insert last paragraph, same Article, at end of Tariff, under title money, weights and measures substituting word Tariff for Treaty and its annex. Article X, insert Hiogo, Hakodate. Foreign Settlement Niigata virtually ceased, therefore prefer to omit Niigata. However, question not vital. Consent to revive article XV, Treaty of Commerce and Navigation. Prefer to omit article XVII, same treaty, but will, if desired, guarantee by Despatch most favoured nation treatment. See observations, German Delegate, on this Subject, annex I, Protocol 27. Article XIV, modification accepted in principle but prefer to maintain second paragraph and at end thereof insert "and the certificates of register or other national papers shall be taken as the basis in calculating such tonnage." See article V,

German Mexican Treaty, 1882. Japanese and English systems of admeasurement same. Article XV, proposed additional clause, unless qualified, would invite conflict of jurisdiction when questions (of) personal status collaterally raised in Japanese Courts same as in Egypt, hence to obviate that danger propose following substitute. During the Continuance of Consular jurisdiction the German Consular Courts shall continue to exercise throughout Japan jurisdiction over German subjects in questions of personal status. It is however understood that if in proceedings before Japanese Courts questions of personal status are incidentally or collaterally raised, such Japanese Courts shall, for the purpose of such proceedings, have jurisdiction to determine the questions so raised in accordance with German law. Article XVI, scope and meaning of this article apparently misunderstood. No attempt made to determine competence of Courts, only international division of jurisdiction between Governments same as annex I, article VI, Jurisdictional Convention. National legal principles inapplicable to such division. After international division according to treaty, com-

petence of Courts will be determined by each Government according to respective laws. Therefore first two paragraphs essential to prevent conflict of jurisdiction where by national laws jurisdiction would overlap. Suggest in lieu of German proposals concerning legal aid following adjustment. Last paragraph, article XVI, strike out words be auxiliary, insert instead words so far as the laws of their respective Governments permit, render legal aid. This amendment enables German Government to determine independently when German legal aid is admissible and obviates necessity of detailed stipulations about arrests and domiciliary visits. See Constitution. Article XXI, modification accepted, substitute words territorial limits of Consular jurisdiction for word settlements. Article XXII, Treaty of Commerce and Navigation. Fail to perceive necessity of stipulation but consent to revive, if German Government insist, substituting words territorial limits of Consular jurisdiction for words present treaty limits. Article XXIII, prefer settlement Harbour Regulations by separate Protocol but will yield if German Gov-

ernment insist provided the Regulations expire at the same time as Consular jurisdiction. Draft annexed to Protocol 27, with few trifling but necessary modifications, acceptable. German proposal concerning Customs Union too comprehensive. Japanese Government accept article XXVII, German Hawaiian treaty, 1879. Judicial favored nation treatment. Japanese Government will engage by separate not to extend to Germany any privilege or advantage in the matter of the administration of justice that may hereafter be granted to any other Power. Essential to limit such engagement to future privileges and advantages because of peculiar relations with China and because new treaties may not be concluded with all Powers before February 11, 1890 and Status que in commercial as well as judicial matters will, pending new disposition, be maintained in respect of those Powers. Right of appeal to Supreme Court in all cases in which Germans are interested inadmissible because present jurisdiction (of) Supreme Court, very extensive, only very minor cases without right of appeal. Amplification of jurisdiction of Supreme Court as desired

would have had appearance as creating privileged class in matters of judicial rights and would disturb entire judicial system without corresponding advantage. Preliminary examination by foreign judges would necessitate employment of much large staff of foreign judges then Japanese Government prepared to employ having in view small interests involved, small number of crimes and delicts committed by Germans, besides with extensive right of appeal but small chance of miscarriage or denial of justice. Moreover, Japanese Government think their judicial organization and administration not such as to require this extensive guarantee. In above connection see articles 23, 24 and 25 of constitution and article I of Treaty which guarantees national treatment in judicial matters. Qualification and discipline of foreign judges. See article 58, constitution, coupled with assurance in despatch of fixity of tenure &c. These guarantees ought in our opinion to be sufficient, besides anything more explicit would be extremely distasteful to the nation. Same question one of chief causes of failure of Conference. Experience of Japa-

nese Government with foreign employees judiciously selected justifies conviction that with small number of foreign judges employed recourse to disciplinary court will be unnecessary, but to make this remote contingency still more remote Japanese Government consent to insert following in paragraph four of despatch after honorable positions "will be taken from among those who would be eligible for similar positions in their own countries, and they." Finally, Japanese Government not less concerned than other Powers to secure and retain good competent judges and to that end they pledge their good faith, but they wish to be allowed to act spontaneously. The manner in which Japan has fulfilled vague but burdensome treaty stipulations ought, we think, to be accepted as guarantee that she will be equally faithful to more liberal conditions. History of past negotiations clearly demonstrates that in matters of express judicial guarantees our proposals as herein modified reach extreme limit Japanese Government or nation can ever go, hence we earnestly hope German Government will not insist upon these points which are

not vital to them but are vital to us. Numerous concessions herein and in previous telegrams as well as friendly spirit of German Government on which rely justifies such hope.

April 24, 1889. Okuma.

一六〇 明治二十二年五月一日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

第五條復問ノ件

Could you explain your instructions regarding second part of Article V? Do not understand fully your meaning. I hear Holleben telegraphed (to) German Government rupture of negotiations probable if they insist upon jurisdictional changes.

Saionzi.

Received, May 2, 1889.

一六一 明治二十二年五月二日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

第五條ニ關シ回答ノ件

一六二 明治二十二年五月二日 大隈外務大臣ヨリ
西園寺駐獨公使宛

獨逸政府ノ修正條項ニ關シ訓令ノ件

附屬書 獨逸政府ノ修正ニ關スル我政府ノ覺書

送第三〇一號

改正條約案ニ對シ獨逸政府意見ノ條々御電報相成候ニ付右ニ對スル我政府ノ意見去四月二十四日別紙甲號¹ノ通申進候仍テ其趣意御了知ノ事ト存候ヘ共尙一層我意見ヲ明瞭ナラシムルカ爲メ右電信ノ趣旨ヲ詳細ニ説明シタル別紙乙號²和文覺書及御送付候右ニテ御承知可相成通り我政府ハ成ルヘク獨逸政府ノ申分ヲ立テテ満足ニ本件ヲ結了セントノ決心ヲ以テ出來得ル限りハ彼ノ意ニ應シテ數多ノ修正ヲ承諾致候然ルニ裁判上ノ事ニ關シ獨逸人ノ關係アル事件ハ一切大審院ヘ上告スルヲ得セシムルコト(第一)獨逸人ノ犯シタル重輕罪ハ一切外國人判事ヲシテ豫審セシムルコト(第二)及ヒ外國人判事ノ懲戒處分ハ外國人判事ヲ以テ組織シタル特別懲戒裁判所ヲシテ處分セシムルコト(第三)等ノ數項ハ別紙覺書ニ詳説シタル理由ニ因リ決シテ我政府ノ承諾シ能ハサルモノニ有之候間是非トモ獨逸政府ヲシテ右ニ係ル

No. 155. Right to demand interim revision or readjustment of specific rates illusory because although separats and independent right to demand would exist, no actual revision could take place without mutual affirmative consent to each change desired. Japan has right to demand revision of treaties, nevertheless all efforts to revise have hitherto failed because of failure to arrive at mutual understanding as to extent and direction of revision. If tariff is concluded for fixed period it may be readjusted at any time by mutual consent and revision clause would secure nothing more, hence fixed period is preferable in order to prevent misunderstandings. Read 71 first as bonosetta.

If asked about Holleben's telegram, say for yourself that Holleben has confidence of Japanese Government, knows situation and while you have no intimation of even possible rupture of negotiations, you presume Holleben accurately gauged probabilities. In negotiations you can make liberal reference to guarantees in Constitution.

May 2, 1889. Okuma.

修正ヲ取消サシムル様銳意御盡力可有之候

右四月二十四日ノ電信並最前數回ノ電信ヲ以テ我政府カ承諾シタル原案修正ノ廉々ヲ一目ニ看ルノ便ニ供セン爲メ當初獨逸政府ヘ差出シタル原案ニ右修正ノ條項ヲ書入レタル條約案別紙丙號和英文各一通並ニ同様修正ノ廉ヲ記入シタル「ヂブロマチック・ノート」案別紙丁號和英文各一通及御送付候將又港則ヘ元來條約ニ附屬セシムルコトヲ相好マス候處若シ獨逸政府ニ於テ尙ホ之ヲ望マハ其意ニ應スヘキ積ニ有之候處先年ノ會議ニ於テ大略決定シタル案ニハ數ヶ所字句ノ修正ヲ要スル廉有之候ニ付右變更ノ箇處ヲ書入レタルモノ別紙戊號和英文各一通ヲモ及御送附候右訓示旁申進候也

明治二十二年五月二日發遣

註 一五九文書

附屬書

乙號 二十二年五月二日附西園寺公使宛往信附屬覺書

和親通商及航海條約案ニ對シ獨逸政府ノ申出セル修正ニ關スル覺書(此覺書ハ在伯林帝國公使ヨリ獨逸政府發議ノ要領ヲ報告シタル電信ニ基キ起草ス)

領事條約ノコト 日本政府ハ獨逸政府ノ望ニ應シ先年ノ會議ヘ日本政府ヨリ呈出シタル草案ヲ基礎トシテ獨逸政府ト一ノ領事條約ヲ締結スヘキ旨ヲ保證スルコトヲ諾ス但シ該案ニ就キ一二修正ヲ爲スノ權利ハ保存シ置キタシ尤モ右修正ハ該案ノ主要ナル主義ヲ變スルモノニハアラサルヘシ新條約廢止ノコト 此項ニ關スル獨逸政府ノ推定ハ事實ニ適シタルモノナリ他國ノ爲メニ新條約中ニ含有シタル約束ヲ存續スル間ハ獨逸ノ爲メニモ之ヲ存スルハ勿論ノコトナリ緒言 此項ニ於テ獨逸政府ノ要スル變更即チ States ト云フ字ヲ改メテ Territories トスルコトハ日本政府ニ於テ異議ナシ

第一條 通商航海條約案(千八百八十七年)中ニアリシ宿舍徵發ニ係ル一項ハ互相ノ體裁ニアラス日本政府カ此項ニ異議ヲ挿入シタルハ右ノ一事ニ外ナラサリシナリ先年會議ノ通商委員會第拾壹回ノ記事ヲ見ルニ此事項ニ片務ノ體式ヲ與フルニ至リタルハ伊太利國カ日本人ニ宿舍徵發ヲ免除スルコト能ハサルニ基因シ他ニ理由ナカリシモノノ如シ然ルニ右ノ如ク獨逸ニ於テハ此約束ヲ互相トスルヲ妨クルモノナカルヘキニ因リ日本政府ハ第一條末條中「服役ノ代リ

トシテ取立ツル所ノ一切ノ納金ヲ免カレ」ノ後ヘ「宿舍ノ徵發ヲ免カレ」ノ一句ヲ入レンコトヲ發議ス

第五條 日本政府ハ此條ニ對スル第一ノ修正即チ「而シテ日本政府ハ健康財產風俗或ハ公ケノ安寧ニ有害ノ影響ヲ及ホシ若クハ之ヲ危害スルコトアルヘキ貨物ノ輸入ヲ制限シ或ハ之ヲ禁止スルノ權ヲ有スヘシ」ノ一節ヲ圖リ其代リトシテ「而シテ日本國政府ハ衛生上或ハ公衆ノ安寧ニ關シ危害ヲ生スルコトアルヘキ貨物ノ輸入ヲ制限シ或ハ一時之ヲ禁止スルノ事情アル時ハ軍用品ノ輸入ヲ制限シ或ハ一時之ヲ禁止スルノ權ヲ有スヘシ」トスルコトニ同意ス從量稅ヲ一方ノ請求ニ由リ五ヶ年後ニ改正スルコトヲ得ヘキモノトスル發議ニ對シテ同意ヲ表セシコトハ日本政府ノ最モ難シトスル所ナリ日本政府ハ常ニ條約各國ニ對シ均一ノ待遇ヲナサンコトヲ欲スルモノナルカ其實驗ニ因レハ凡ソ此種ノ問題ニシテ各國ノ利益各其趣ヲ異ニスルモノニ關シ其共同一致ヲ得ンコトハ稅率ヲ一般ニ減額スルコトノ外ハ殆ント爲シ得ヘカサルナリ加之ニ新稅目ノ從量稅ハ甚タ低クシテ此上正當ニ減額ヲ望ムコトヲ得サル度ニアルモノナリ且ツ稅目ノ一事ニ於ケル日本政府ノ利害ハ各國ヲ合シ

テ其利害ヲ總計シタルモノヨリ大ニシテ且ツ一方ニ於テハ右各國ノ利害大小各其度ヲ異ニスルモノナリ然ルニ本件ニ關スル利害ノ有無多少ニ關セスシテ各別ニ各國ノ稅目改正事項ニ於ケル權利ヲ同等ニ與フルハ不公平ナリト云ハサルヲ得ス然リト雖モ各國ヘ其相當ノ權利ノミヲ與フルコトヲ得ル様ニ改正條款ヲ起草スルコトハ出來難キコトナリ故ニ新稅目ヲ一定ノ期限間有效ノモノトスルハ各國ノ利益及權利ヲ保存スル爲メ適當ノモノナリト日本政府ハ確信ス然レトモ獨逸政府ニ於テ十二年ヲ長キニ過クルトセハ其期限ヲ短縮スルハ差支ナシ兎モ角稅目ヲ中途ニテ改ムルコトニ係ル約束アルモノ之ヲ改正セントスルニハ双方ノ合意ヲ必要トスヘキニ因リ一方ハ相手方ノ申出ニ對シ單純ノ否決權ヲ有スヘシ從テ右ノ如キ約束ハ有名無實ニシテ適々後日爭論ノ基ヲ爲スニ過キス双方ノ合意アラハ何時ニテモ稅目ヲ改ムルコトヲ得ヘシ假令ヘ改正ノ條款ヲ入ルルモ是ヨリ以上ノ效果ハアラサルヘシ加之ニ日本政府ハ獨逸政府ノ求メニ應シテ既ニ稅目ノ上ニテ若干ノ讓與ヲシタルコトヲ記憶シテ獨逸政府ハ本項ノ要求ヲ棄テシコトヲ希望ス

通商航海條約案(千八百八十七年)第六條

本條ヲ置クノ必要ハ今日ニテハ現存セス昨年七月九日日本政府ハ本條ニ規定シタル事項ニ關シテ一ノ告示ヲ發シタリ今其寫ヲ封入スルニ付キ就テ看ルヘキ通り右告示ニアル方法ハ全ク本條ニ定メタルモノト同シ且ツ外國貨幣ヲ日本通貨ニ換算スル右ノ新法ハ豫定ノ日ヨリ實行セラレ今日ニ至ル迄何等ノ故障若クハ苦情アルヲ聞カス獨逸政府此現況ヲ知ラハ同條ニ係ル發議ヲ取消スヘシト日本政府ハ確信ス然リ而シテ獨逸政府ニ於テ之ヲ必要トセハ日本政府ハ稅目終尾「度量衡」ノ表題ヲ「貨幣度量衡」ト改メ其欄ノ第一項トシテ「稅目ニ於テ圓ト稱スルモノハ純銀九百分量目四百十六「グレイン」ノ日本一圓銀貨ヲ云フ」ノ一節ヲ入ルルコトヲ諾スヘシ

第十條 日本政府ハ本條第三項「神戸」ノ後ヘ「兵庫、函館」ノ四字ヲ入ルルコトヲ諾ス然ルニ新潟ハ今日外國人モ居留セズ開港場ノ實ナキモノナルニ因リ之ヲ本條ニ入ルルコトヲ好マス但シ大切ノ問題ニアラサルヲ以テ若シ獨逸政府ニ於テ之ヲ主張セハ前文異議ヲ取消スヘシ

通商航海條約案(千八百八十七年)第十五條

日本政府ハ此條ヲ活カスコトニ就キ異議ナシ仍テ之ヲ新條

約ノ第十三條トスヘシ

通商航海條約案(千八百八十七年)第十七條

日本政府ハ此條ヲ新條約ヨリ除クコトヲ欲ス稅關ノ便利ニ關シテハ郵便汽船ハ新貿易規則ニ因リ特別ノ利益ヲ受クヘシ且ツ其他ノ特權ノコトニ就テハ日本政府ハ先年會議ノ通商委員報員(千八百八十七年七月十二日付會議錄第二十七ヲ看ルヘシ)中ニ獨、英、蘭諸國ノ全權委員カ吐露シタル意見ニ同意セント欲スルモノナリ即チ右各全權委員ノ說ニ曰ク今世郵便汽船ハ大ニ普通商船ノ性質ヲ帶ヒ來リ從テ昔日其享受シタル特典ヲ正當ニ要求スル能ハサルモノトナレリ故ニ郵便船ノ爲メニハ其發着ヲ自由ニスル一事ヲ除キ他ノ特典ヲ請ハス但シ日本カ佛國若クハ其他ノ國ノ郵船ヘ便利若クハ特權ヲ與フルコトアル場合ニ於テハ他國ノ郵便船ニモ之ヲ要求スヘシ云々右ハ獨、英、蘭全權委員ノ說ナリシカ日本政府ハ此種ノ事項ニ關シテハ各國ハ均一ノ待遇ヲ求ムルノ權アルコトヲ承認スルヲ憚ラサルヘシ

第十四條 日本政府ハ本條ニ關スル獨逸政府ノ修正ニハ主義上異論ナシ唯文字上聊カ異說アリ何トナレハ同政府發議ノ如クナサハ同政府ニ於テ其測定法ヲ變更シ以テ日本ニ於

ノ獨逸人ニ對シ日本裁判所ニ於テ之ヲ提起セリ然ルニ被告獨逸人ハ未丁年又ハ類似ノ原因ヨリ起ル所ノ不能力ヲ以テ之ヲ答辯トセリ

今獨逸政府ノ條項ニ因ルニ領事裁判所ハ身分ニ係ル偶然若クハ枝葉ノ問題ヲ決スルノ權ヲ有シ而シテ本訴ニ對シテハ日本裁判所ハ尙ホ管轄ヲ有スル乎又ハ右ノ如キ偶然若クハ枝葉ノ問題起リタルノ一事ハ該件ニ對スル全體ノ管轄權ヲ領事裁判所ニ移スニ至ルヘキ乎ト云ヘル疑問忽チ起ルヘシ右二箇ノ場合ハ何レモ甚タ不満足ナルハ熟慮ヲ要セスシテ明カナリ故ニ成ルヘク爭論ノ原因ヲ除クノ目的ヲ以テ日本政府ハ新項ノ文字ヲ左ノ如クセンコトヲ發議ス

領事裁判權繼續ノ間ハ獨逸領事裁判所ハ身分ノ問題ニ關シテ獨逸臣民ニ對シ日本全國ニ於テ裁判權ヲ引續キ施行スヘシ但シ日本裁判所ニ提起セラレタル訴訟ニ於テ偶然ニ若クハ支事トシテ身分ノ問題起リタル時ハ右日本裁判所ハ該訴訟ノ目的ノ爲メ獨逸法ニ從テ該問題ヲ決スルノ權ヲ有スヘシ

第十六條 本條ノ趣意ニ就キ純然タル誤解アルモノノ如シ本條ハ決シテ裁判所ノ權限ヲ規定セントスルモノニアラス

テ徵收スヘキ噸稅ノ稅率ヲ其隨意ニ變更スルコトヲ得ヘケレハナリ獨逸政府カ本條第二項ニ此修正ヲナサントスルモノハ該政府ニ於テ

第一 日本政府カ其測定法ヲ變更シ以テ獨逸船ヨリ徵收スヘキ噸稅ヲ増加スルコトヲ防キ

第二 日本ニ於テ獨逸船ノ再測定ヲナスノ必要ヲ除クコトヲ欲シタルモノナルヘシ果シテ然ラハ其目的ヲ遂クルニハ第十四條第二項ノ末ニ左ノ一節ヲ新タニ加フル方勝レルカ如シ

「而シテ右噸數ヲ算定スルニハ登簿證或ハ他ノ公書ヲ以テ基礎トスヘシ」

第十五條 日本政府ハ身分ノ事項ニ關シテ本國裁判權ノ主義ニ同意スヘシ但シ本件ニ係リ獨逸政府ノ發議シタル條項ニシテ何トカ明瞭ニ制限ヲ附スルコトナクハ日本裁判所ト領事裁判所トノ間ニ管轄ノ抵觸ヲ起スコト恰モ同様ノ件ニ付埃及ニ於ケル混合裁判所ト領事裁判所トノ間ニ爭論ヲ起シタル事例ノ如クナルヘキハ避クヘカラサル事ナルヘシ右ノ一例ヲ舉ケンニ

愛ニ契約ヨリ起リタル訴訟アリ一ノ日本人原告トナリ一

全ク關係兩締盟國ノ間ニ前條ニ云ヘル所ノ裁判管轄ヲ國際上ニ分割スルノ目的ヲ以テ作リタルモノナリ右ノ如ク裁判管轄ヲ分割スルコトハ日本政府ノ見ル所ニテハ必要缺クヘカラサルコトニシテ之ニ依ツテ以テ裁判管轄ノ抵觸ヲ防カントシタルモノナリ若シ其レ然ラサランニハ裁判所ノ權限及ヒ管轄ニ係ル法律ハ各國決シテ一樣ナラサルニ依リ管轄ノ抵觸ハ避ケ得ヘカラサルヘキナリ本條ニ定メタル規則ハ決シテ裁判所ノ權限若クハ管轄ヲ制限シ又ハ規定スルモノニアラサルカ故ニ或ル一國ノ法理トハ全ク獨立ニシテ毫モ關係ヲ有セス該規則ハ何レノ政府カ或ル犯罪若クハ訴訟ニ對シ管轄ヲ有スヘキヤヲ定メ右ノ一事決シタル上ニテ各政府ハ他國ニ拘ハラス全ク其隨意ニ獲得ノ裁判權ヲ其法理ニ照ラシ其裁判所ニ付與配分スルヲ得ヘシ管轄分割ハ國際ノコトナリ仍テ之ヲ條約ニ規定ス右分割ノ規則ニ因テ獲得セラレタル管轄ノ配分付與ハ國內ノコトナリ仍テ之ヲ條約ニ規定ス右分割ノ規則ニ因テ獲得セラレタル管轄ノ配分付與ハ國內ノコトナリ仍テ之ヲ各自政府ノ規定スル所ニ委ス一箇ノ裁判構成法ニ屬スル諸裁判所ノ權限ヲ定ムルカ爲メニ設ケラレタル規則ヲ直チニ適用シテ二箇ノ獨立裁判所ノ間

ニ管轄ヲ分割セントスルハ其宜ヲ得タルモノニアラス故ニ前記ノ規則ヲ作ルニ當リテハ日本ノ法律モ獨逸ノ法律モ均シク之ヲ顧ミルコトナク目下ノ特別ノ事情ニ應スル特別ノ規則ヲ設ケテ之ヲ用ヒタルナリ

獨逸政府ニ於テ以上ノ説明ヲ聞キタル上ハ第十六條ノ第一及第二兩項ニハ直チニ同意ヲ表スヘシト日本政府ハ確信ス書類執達及ヒ裁判執行ノ事項ニ於ケル互相法律上ノ助力ニ關シ第十六條第三項ニアル所ノ發案ハ特別ノモノタルハ日本政府カ承認スル所ナリ然ルニ其處理ヲ要シタル事體モ亦特別ノモノナルヲ以テ獨逸政府ニ於テモ之ヲ處分スルカ爲メ無類ノ方案ニ同意スルコトアルヘシトノ望ヲ抱キタルカ該政府ハ之ヲ好マサルモノノ如シ若シ四月二十四日ヲ以テ電信シタル發議ヲ獨逸政府ニ於テ承諾セサレハ更ニ左ノ案ヲ提出セントス即チ

「双方ノ補助タルヘシ」ヲ除キテ「法律上ノ助力ヲ與フヘシ」ノ一句ヲ入レ而シテ同項ノ末文ニ「右ノ助力ヲ與フル場合及ヒ方法ハ締盟兩國ノ間ニ締結スヘキ補助ノ取極ニ因テ之ヲ定ムヘシ」ト云ヘル新規ナル一節ヲ入ルヘシ領事裁判所ハ土地ニ屬スル裁判權ヲ施行スル所ノ土地固有

シムルノ條項ナシ然レトモ此事ニ關スル獨逸臣民ノ權利ハ是迄日本官吏ニ於テ深ク之ヲ重シタルコトナレハ日本政府ハ將來ニ於テモ同様ニ其權利ヲ重シセサルノ理由アルコトナシ

日本政府ハ領事裁判權ノ間ハ外國人居留地内ニ於テ其裁判權ヲ擴張スルノ意ナシ且ツ新條約ハ右ノ如キ擴張ヲ希圖スルモノニアラス新條約ノ第二十條ハ此種ノ問題ヲ包括スルノ意ヲ以テ之ヲ置キタルモノナリ

第二十一條 日本政府ハ此項ニ關スル獨逸政府ノ修正ニ同意ス但シ通商航海條約案（千八百八十七年）第二十四條第一項中「外國人居留地」ノ文字ヲ「領事裁判權ノ管轄區域」ト改ムルコトヲ要ス

通商航海條約案（千八百八十七年）第二十二條 日本政府ハ本條ヲ置クノ必要ヲ認メス本條ニ定メタル手續ハ別段條約ノ取極ヲナササルモ本條約中ノ他ノ規程ヨリシテ自然ニ生スル所ノ結果ナリ且ツ本條ハ外國人ノ利益ヲ保存スルモノニアラス又日本政府ノ權利ヲ擴張スルニモアラサルナリ仍テ新案ニハ之ヲ除キタルカ若シ獨逸政府ニ於テ尙ホ之ニ入ルルコトヲ望マハ今ノ第二十一條ノ次條トシ

ノ裁判所ニアラス全ク條約ニ因テ設定セラレタル特別ノ治外裁判所ニシテ日本ヨリ交付セラレタル特別ノ裁判權ヲ施行スルモノナルニ因リ該裁判所カ日本裁判所ノ裁判ヲ以テ全ク外國ノ裁判ト同視スルハ其當ヲ得タルモノニアラス日本政府ハ帝國固有ノ裁判所ト領事裁判所ノ關係ニ就キ前項ノ意見ヲ有スルニ因リ電信ヲ以テ申シ送リタル案即チ一國ノ裁判所カ他國ノ裁判所ニ司法上ノ助力ヲ與フルノ方法ニ關シ各國自ラ之ヲ規定スルノ案ヲ前文ニ云ヘル兩國裁判體ノ互ニ連續アルモノナルコトヲ明カニ打消ス所ノ案ヨリ良シトスルハ勿論ナリ然レトモ獨逸政府ニ於テ若シ第二案ヲ望マハ日本政府ハ其好ム所ヲ棄ツヘシ但シ此場合ニ於テハ補助ノ取極ハ東京ニ於テ之ヲ締結スルコトトスヘシ

日本官吏カ獨逸人ノ住居ニ入ルノ權利ニ關シテハ日本政府ハ條約中ニ此權利ナキ旨ヲ明言スルコトヲ好マス此事項ニ關シテ宣言ヲ要セサルコトハ日本人住居ノ犯スヘカラサルコトヲ保證シタル憲法第二十五條及ヒ司法取扱ノコトニ關スル各般ノ事項ニ於テ獨逸人ニ國民ノ待遇ヲ與フル旨ヲ定メタル本條約ノ第一條ヲ看ハ之ヲ知ルニ足ルヘシ

現行ノ條約ニ於テハ獨逸人ノ家屋ヲシテ家宅侵入ヲ免カレ

テ之ヲ入ルルコトヲ諾スヘシ但シ本條中「現行條約界限地内」トアルヲ「領事裁判權管轄區域」ト改ムルコトヲ要ス第二十三條 日本政府ハ本條ニ係ル發議ニ對シ異論ナシト雖モ成ルヘクハ條約ト獨立シテ此問題ヲ結了スルコトヲ好ムニ依リ「プロトコール」ヲ以テ港則ヲ實施スルコトトシタシ

先年ノ會議通商委員ノ議決シタル港則案（會議錄第二十七號附錄ヲ看ルヘシ）ニ別紙草案ニ朱書シタル修正ヲ加ヘンコトヲ欲ス且ツ若シ港則ヲ以テ條約ノ一部トスル儀ナレハ領事裁判權ノ撤去ト同時ニ日本政府ノ隨意ニ之ヲ廢棄スルヲ得ルコトトスルヲ要ス

獨逸關稅同盟ニ屬スル諸國ニ對シ本條約ヲ適用スルコト此項ニ關スル獨逸ノ發議ハ日本政府ノ見ル所ニテハ廣漠ニ過ルモノトス何トナレハ或ル場合ニ於テ締盟國カ別段ノ條約的關係ヲ有スル國々ヲシテ新條約ヲ締結セシテ其利益ヲ享有スルコトヲ得セシムルノ結果アルヘケレハナリ故ニ日本政府ハ千八百七十九年締結獨逸布哇條約ノ第二十七條ヲ採用センコトヲ發議ス右ノ條ハ獨逸ノ望ム所ヲ包括シ且ツ日本ノ同意ヲ表シ得ル所ナリ仍テ之ヲ今ノ第二十四條ノ

前ニ入ルヘシ

裁判上ノ事項ニ關スル最惠國待遇

此事項ヲ満足ニ整理スルニハ大ナル困難アリ將來或ル他ノ國ニ對シ裁判取扱上ノコトニ關シ特權若クハ利益ヲ與フルコトアラハ獨逸モ之ヲ均有スルコトヲ得ル旨ヲ保證スルハ日本政府ニ於テ異議ナシト雖モ異日ノ爭論ヲ避ケンカ爲メ右ノ保證ハ最モ注意シテ其區域ヲ判明シ置クコトヲ要ス日本政府ハ支那人ノ商業及住居ノ爲メニ帝國ノ内地ヲ開放スルヲ好マサル場合アルヘキモ計リカタキニ付從テ支那ニ對シテ制限アル領事裁判權ノ方法ヲ繼續スルコトアルヘシ且ツ來年二月十一日迄ニ各國ト新條約ヲ締結スルヲ得サルコトアルヘキヲ以テ右締結ヲ延引スル諸國ニ對シテハ一時今日ノ現狀ヲ維持スルコトアルヘシ(尤モ此場合ニ於テ既ニ條約ニ關シタル諸國ノ利益ハ法律上ノ事項ニ就テモ害ヲ受クルコトナシ)

前掲ノ場合ノ何レニテモ起リタル時ニ當リ若シ裁判取扱上ノコトニ關シ無制限ノ最惠國條款ヲ約スルコトアラハ既ニ調印ヲ了シタル諸國ハ領事裁判權廢止ノ報酬トシテ日本ヨリ付與シタル特權ヲ十分ニ享有シ得ルニ拘ハラヌ新條約中

外國法律家若干名ヲ入ルルコトヲ約シタルトモ裁判上ノコトニ就キ階級ヲ爲スノ法律ヲ設クルノ觀ヲ呈スル事ハ勉メテ之ヲ避ケンコトヲ欲ス且ツ大審院ノ權限ハ既ニ甚タ廣大ナルヲ以テ此上獨逸政府ノ發議ニ應ジ法律ニ對シテ同等ナルヘシトノ主義ヲ傷クルハ正當ノコトニアラスト思惟ス獨逸人カ重罪輕罪ノ告訴ヲ受ケタル場合ニ於テ外國人判事ヲシテ豫審ヲナサシムルコト

日本政府ハ此項ニ於ケル發議ニモ亦同意ヲ表スルコト能ハス此發議ヲ實施セントスルニハ日本政府カ雇入ルルコトヲ諸シ得ヘキヨリハ遙カニ多數ノ外國人判事ヲ要シ且ツ其數ハ日本ニ在留スル獨逸人ノ少數ナルト彼等ノ犯スヘキ犯罪ノ少數ナルトヲ斟酌シテ相當ト見認メ得ヘキ數ヨリハ遙カニ大ナルヘシ

此發議ハ必ズ新憲法ヲ獨逸ニ於テ接スル前ニ決定シタルモノナルヘシ故ニ獨逸政府ニ於テ帝國大憲ノ條々中明ニ一箇人ノ權利及自由ヲ保固スルノ條々(特ニ第二十三條、第二十四條及第二十五條)ヲ熟讀シタル上ハ本項保證ノ無用ニシテ且ツ謂レナク帝國ノ國庫ニ重擔ヲ負ハシムルモノナルヲ知ルヘシ

ノ裁判事項ニ係ル約條ハ實際無効ニ歸スルコトナルヘシ故ニ右ノ保證ハ明カニ日本政府カ將來ニ於テ他ノ國ニ付與スルコトアルヘキ裁判取扱上ノ特權若クハ利益ニ限ルコトトセサルヘカラス

日本政府ハ「チブロマチツク、ノート」ノ體裁ヲ以テ右ノ保證ヲ與フヘシ之ヲ以テ條約ノ一箇條トナスヲ好マス右保證ヲ東京ニ於テ與フルト在伯林ノ帝國公使ヲシテ右書翰ニ署名セシムルトハ一ニ獨逸政府ノ撰ム所ニ任スヘシ

大審院ノ上告權限ヲ擴張シテ獨逸人ノ關係セル一切ノ事件ヲ包括セシムルコト

此事項ニ關スル獨逸政府ノ發達ハ日本政府カ到底承諾シ得サル所ノモノナリ唯右ノ發議ヲ實行スルノ困難ナル點ヨリ之ヲ看ルモ之ヲ採用スルコトヲ得サラシムルモノナリ即チ之ヲ採用スレハ大審院ノ重要ナル事務ニ滯滯ヲ起シ且ツ瑣細ナル罪人ハ右上告ノ途アルヲ奇貨トシテ裁判ノ履行ヲ妨クルコトヲ得ヘシ邊郷ニ於テ起ル瑣事ニ關シテハ殊ニ然リトス然ルニ右方法ヲ採用スルノ害ハ爰ニ止マラスシテ裁判上ノ權利ニ關シ特權ヲ有スル階級ヲ作ルノ結果ヲ生シ甚タ不體裁ナルヘシ日本政府ハ或目的ノ爲メニ日本ノ裁判所ニ

加之ニ日本政府ハ此項ニ就キ發議セラレタル外國原素ナキモ其司法部ハ何等ノ異議ヲ受クルコトナクシテ裁判上ノ事項ニ於テ完全無缺ノ自主權ヲ享有スル所ノ或ル國々ノ司法部ニ比シテ甚タ劣ラサルモノナルヲ自信スルモノナリ外國人判事資格及懲戒ノコト(千八百八十七年裁判管轄條約第八條ノ第一款及第五款)

第一款ニ就テハ日本政府ハ新條約ニ隨伴スヘキ各國人判事ノコトニ係ル「チブロマチツク、ノート」ノ第四項中「法律家ハ」ノ次ヘ「其本國ニ於テ同様ノ地位ニ任セララルコトヲ得ヘキ資格アル者ノ内ヨリ之ヲ撰ヒ而シテ」ノ數拾字ヲ入ルルコトヲ諾スヘシ歐羅巴若クハ亞米利加出身ノ判事ノ資格ノコトニ關シテハ右ノ約束ニテ獨逸政府ハ満足スヘシト日本政府ハ確信ス

然ルニ前文ニ云ヘル第五款ニ見エタル約束ヲ入ルルコトハ如何ナル體裁ヲ以テスルニ拘ハラヌ非常ニ國民ノ感情ヲ害シ其極必ス條約ヲ危害ノ地位ニ陷ルルニ至ルヘシ此問題ハ實ニ先年ノ會議ヲ失敗スルニ至ラシメタル原因ノ一ナリキ加之ニ「チブロマチツク、ノート」ノ内ニ外國人判事ニ在職ノ年限ト理由ヲシテ其勳カスヘカラサルコトヲ保證シ

且ツ新置ノ文字ニ因テ其適當ノ資格ヲ有スルモノナルヘキコトヲモ慥カメタル以上ハ本項ノ如キ約束ハ復タ何等ノ必要ナキモノトス是ヨリ以上ノ讓與ヲナスコトハ到底日本政府ニ於テ爲シ能ハサル處ナリ今度外國人判事ヲ雇入ルルノ際ニ施スヘキ注意ト同様ノ注意ヲ以テ從前雇入レタル雇外國人ニ對スル實驗ニ因リ日本政府ハ今度雇入ルヘキ少數ノ外國人判事ノコトニ就キ懲戒裁判所ノ處分ヲ要スル如キコトハ萬々之ナカルヘキヲ確信スルモノナリ

裁判管轄條約第八條第五款ニ定メタル方法ヲ以テ一ノ懲戒裁判所ヲ組成セントスルニハ全ク夫カ爲メノミニテ日本政府ノ發議シタル方案ニ因リ定メラレタル外外國人判事ニ加フルニ少ナクトモ六名ノ外國出身判事ヲ任用スルヲ要スルニ至ルヘシ此現象ニ外國人判事ノ懲戒所ニ召喚サルルカ如キ場合ハ實際ニ起ルコトアルマシキ事實ヲ併セテ之ヲ熟思セハ此ノ如キ裁判所ヲ設クルカ爲メ二國民ノ正當ナル自敬心ヲ損害スルコトヲ勘定ノ外トスルモ此裁判所ニ依テ保固スヘキ利益及權利ト日本政府ノ蒙ムル所ノ負擔トハ其權衡ヲ得サルモノナルコトヲ明知スルニ足ルヘシ

且善良ニシテ堪能ナル判事ヲ雇入ルルコトニ係ル日本政府

スルコトヲ證スルモノトス

一六三 明治三十二年五月十二日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

我修正案ニ對スル獨逸政府ノ態度報告方訓令ノ件

No. 172. Report stops taken under my telegram of 24th April also attitude of German Government.

May 11, 1889. Okuma.

一六四 明治三十二年五月十二日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ハ覺書提示ノ件

Have prepared and presented detailed memorandum on the basis of your telegrams. Not yet possible to ascertain German Government's attitude. Hear judicial portion very difficult.

Received, May 12, 1889.

Saionzi.

大隈外務大臣時代 對獨交涉 一六三、一六四、一六四

ノ利害ハ條約各國ニ比シテ讓ル所ナキハ無論ノコトナルノミナラス日本政府ハ其信用ヲ致シテ之ヲ擔保スルモノナリ然レトモ該政府ハ其隨意ニ之ヲ爲サンコトヲ欲シ且ツ其働キヲ束縛セラルルカ爲メ善良ノ效果アルコトヲ信セサルナリ日本政府ハ將來負擔ノ稍ヤ輕キ條件ヲ履行スルニ吝ナラサルヘシトノ保證ヲ幫助スルカ爲メニハ從來空漠ナルニ拘ハラス負擔ノ重キ條約ノ約束ヲ遵守シタル形跡ニ訴フルヲ以テ足レリト確信ス

貿易規則ニハ左ノ表題ヲ付シ終尾ニ條約ヲ締結スル双方全權委員署名スヘシ

「明治二十二年 月 日日本帝國ト獨逸帝國トノ間ニ締結シタル和親通商及航海條約ニ附屬スル貿易規則」

官設倉庫規則、税目及港則(若シ條約ニ附屬セシムルコトナラハ)モ貿易規則同様ニ表題ヲ付シ且ツ署名ヲナスヘキモノトス新案ニ關シ獨逸政府ノ申出ニ係ル問題ニ關スル日本政府ノ意見及決定ヲ看レハ日本政府ハ獨逸トノ談判ニ就キ調和ノ精神ヲ抱クモノナルコトヲ證明スルニ足リ又日本政府力承諾ヲ表シタル數多ノ讓與ハ追々長引キタル談判ヲシテ迅速且ツ満足ノ結果ヲ得セシメンコトヲ該政府ノ熱望

一六五 明治三十二年五月十三日

西園寺駐獨公使宛
大隈外務大臣ヨリ

獨逸政府ハ覺書提出ノ件

附屬書 明治三十二年五月八日西園寺公使ヨリ獨逸政府

ハ提出ノ覺書

第十二號

六月二十八日到

條約改正我新案ニ對シ當政府返答ノ要旨ハ既ニ數回ノ電信ヲ以テ不取敢申報ニ及ヒ置續テ去月十日附公信¹ヲ以テ當政府ヨリ交付ノ公翰並ニモランダム等關係書類寫御回送仕置候ニ付既ニ夫々御査閱相成候コトト存候就テハ四月二十四日以來引續キ御發電御訓令ノ旨趣ニ從ヒ該モランダムニ對シ其答議トシテ別冊ノ寫通英文ヲ以テ當館ニ於テ尙等シクメモランダムヲ調成シ本月八日本官右携帶ノ上改正係ミルベルヒ氏ヘ面會交付致置候依テ其旨御電問ノ趣ニ對シ一昨十一日電信ヲ以テ不取敢御報道仕置候猶當政府意見ノ模様等ハ追々確知候次第發電具申可仕候此段別冊相添ヘ申報仕候 敬具

明治三十二年五月十三日

在獨特命全權公使侯 西園寺公望印
外務大臣伯 大隈重信殿

註 一 一五五

② 外務大臣ヨリノ問合電報(五月十一日附第一七二號)又
ノリ歸スル五月十一日附西國寺公使ノ返電ノ末々一六
三及一六四ハ

抄圖書

昭和二十二年五月八日西國寺公使ヨリ獨逸海邊ニ提田ノ電書

Copy.

Memorandum.

Marquis Saionji, having had the honor to report by telegraph to His Imperial Japanese Majesty's Government the contents of the Despatch of Count Berchem dated the 1st April 1889 and of the Memorandum attached thereto, has been instructed by telegram to convey to the Imperial German Government the expression of the gratification of the Japanese Government for the friendly disposition manifested in the above Despatch and Memorandum towards an understanding on the question of Treaty Revision.

In reply, Marquis Saionji is authorized to declare that the Japanese Government is, in conformity with the desire expressed by the Imperial German Government, disposed to conclude a Consular Convention

in the introduction.

Regarding Article I the Japanese Government is willing to admit the alteration proposed, provided the concession becomes reciprocal. It is therefore suggested to re-introduce the exemption from billeting by the insertion of these words in the text, after the words "personal service."

In regard to Article V, the Imperial German Government had, in respect to the first paragraph, expressed the desire to return to the old text of the Draft Convention of the Commercial Committee of 1887 which the Japanese Government is also willing to accede to. In regard however to the subsequent suggestion that an additional stipulation should be introduced to the effect that both the Contracting Parties should have the right, after five years, to claim a revision of the values of the specific duties, the Japanese Government is unable to see the advantage of introducing such a stipulation as they consider the same, from a practical point of view, entirely illusive, because each of the Contracting Parties would have the right to suspend the operation

三六四

on the basis of the Draft submitted to the Conference in 1887 with a few minor modifications which seem necessary. In regard to the observation contained in the above-named Despatch that the Imperial German Government are of opinion that in consideration of the fact that the new Treaty is to be concluded for a shorter period than was originally expected the same is accepted by the German Government under the presumption that the eventual abrogation of the German Treaty would not take place whilst other Treaties to the same effect remain in force, Marquis Saionji is instructed to state that this view fully corresponds with the opinion of the Japanese Government.

In respect to the propositions contained in the Memorandum, Marquis Saionji has the honor hereby to give the substance of the *principle*(?) instructions he has now received by telegraph from his Government.

Taking the Articles in succession, the Japanese Government in the first instance signifies its acceptance of the verbal changes proposed by Germany

of the Tariff after five years without there being any security that the subsequent negotiation would have the result of arriving at a new understanding. The experience gained hitherto by the difficulties met during the negotiations for the revision of the present Treaties forcibly lead to the conclusion that it would be greatly preferable to adhere to the proposed plan of fixing a determined period with a subsequent right of denunciation and not expose an important portion of the Tariff to the hazards of repeated negotiations.

In respect to the desire of the Imperial German Government to revive Article VI of the Committee Draft of 1887, the Japanese Government are happy to have already met this wish by anticipation. By an Imperial Decree published in the Official Gazette of the 9th July 1888, the principle of fixing the comparative values of foreign currencies in the determination of duties has been regulated in conformity with the said Article VI and the necessity of its re-introduction would therefore be no longer required. (Compare enclosed translation of the Decree of the 9 July 1888).

Respecting however the last portion of the said Article which determines the fineness of the Silver Yen, the Japanese Government sees no difficulty in complying with the wishes of the Imperial German Government. It is however desired to introduce this at the end of the Tariff under the title of "money, weights and measures" substituting thereby in consequence the word "Tariff" for "Treaty and its Annexes."

In regard to Article X, the Japanese Government agree to insert the additional ports of Hiogo and Hakodate, but do not see the utility of inserting the port of Niigata also where the foreign settlement has virtually ceased.

The Japanese Government comment to revive, in deference to the wishes of the Imperial German Government, Article XV of the Committee Draft of 1887.

In regard to Article XVII of the same draft, at the Conference of 1887 and principally upon the urgent request of the French Delegate. The German Delegate, as well as the Delegates of Great Britain and Netherlands, did not see the necessity of according to

mail steamers any special treatment. The Japanese Government trust, therefore, that the German Government will, in conformity with the views expressed by its Delegate at the said Conference, not insist upon claiming any special privilege and be satisfied by an engagement on the part of the Japanese Government for the treatment of German mail steamers according to the most favored nation clause. (Compare protocol 27. Meeting of the 18th July 1887. Page 10.)

In regard to Article XIV, the modification proposed is accepted by the Japanese Government in principle. The Japanese Government would, however, prefer to maintain the second paragraph and at the end thereof insert: "and the Certificates of register or other national papers shall be taken as the basis in calculating such tonnage." This principle has been already adopted in the German Treaty with Mexico of 1882. In regard to this, it may be well to observe that the Japanese and English systems of tonnage measurement of ships are the same.

In regard to Article XV, the Japanese Government are of opinion that the additional clause, proposed by

Germany in respect to the reservation of Status questions to the jurisdiction of Consular Courts, would invite a conflict of jurisdictions as has been experienced in Egypt, unless the addition is duly qualified. As this danger would arise in cases when questions of personal Status are collaterally raised in Japanese Courts in the course of a lawsuit, it is proposed to introduce the following stipulation: "During the continuance of Consular Jurisdiction the German Consular Courts shall continue to exercise throughout Japan jurisdiction over German Subjects in questions of personal status. It is, however, understood that if, in proceedings before Japanese Courts, questions of personal status are incidentally or collaterally raised, such Japanese Courts shall, for the purpose of such proceedings, have jurisdiction to determine questions so raised in accordance with German law."

The Japanese Government hope that this amendment, which, whilst leaving intact the principal object which the German amendment had in view, avoids the danger of a conflict of jurisdiction, will not fail to

meet the approval of His Imperial Majesty's Government.

In respect to the amendment proposed in Article XVI, the Japanese Government are of opinion that the Imperial German Government has apparently misunderstood the scope and meaning of this Article. No attempt has been made to determine the competency of the respective courts. It was only intended to establish rules for an international division of the jurisdiction between them as was originally determined by Annex I to Article VI of the Jurisdictional Convention of 1887.

The Japanese Government are of opinion that, in divisions of this sort, national legal principles are inapplicable, for, after the international division takes place according to treaty, the competency of the respective Courts will be determined by each Government on its own account according to the respective laws. The Japanese Government consider, therefore, the two first paragraphs essential to prevent conflicts of jurisdiction which arise in those cases where jurisdiction by the national laws would overlap, i. e.

where both the Consular and the territorial Courts would, by their own rules of competency, have jurisdiction. The Japanese Government therefore suggest, in lieu of German proposal concerning legal aid, the following adjustment, viz. to strike out in last paragraph of Article XVI the words "be auxiliary etc." and insert instead, the words "so far as the laws of their respective Governments permit render legal aid."

This amendment would enable the German Government to determine independently when German legal aid is admissible and would obviate necessity for detailed stipulations about arrests and domiciliary visits.

It may be noticed here that the liberty of person from arrest and the inviolability of domicile is already fully guaranteed by the Constitution of the Japanese Empire of the 11th February 1889 which declares (in) Art. XXIII, "No Japanese subject shall be arrested, detained, tried or punished, unless according to law." and (in) Art. XXV, "Except in such cases, provided for in the law, the house of no Japanese subject

shall be entered or searched without his consent."

The Japanese Government signifies its acceptance of the modification proposed by the German Government in regard to Article XXI; however it is desirable that instead of the word "settlements" the words "territorial limits of Consular Jurisdiction" should be substituted.

Respecting the expressed wish on the part of the German Government to reintroduce the old Article XXII of the Committee Draft of 1887, the Japanese Government cannot quite perceive the necessity of the stipulations being revived, but is disposed to consent to reintroduce this article, if the Imperial German Government would attach special value to it. In this case, a verbal alteration will be required, namely in place of the words "present treaty limits" the term "territorial limits of Consular Jurisdiction" should be taken which refers to the limits as defined in Article XV.

In regard to the with expressed by the Imperial German Government to introduce in Art. XXIII Harbour Regulations, the Japanese Government are of

opinion that this part of the Administrative Regulations would be better settled by a special protocol.

The regulations which were placed before the Conference in 1887 and which are annexed to Protocol 27 of the 18th July 1887 could, with a few but necessary change, serve, in the opinion of the Japanese Government, as a basis for such agreement.

Respecting the German proposal to extend the treaty rights to all Powers which at present or hereafter may conclude a Customs Union with the German Empire, the Japanese Government are of opinion that this stipulation should not be generally stated, but in the form adopted in Article 27 of the German Hawaiian Treaty of 1879 which article the Japanese Government are ready to accept.

The Imperial German Government has also expressed the desire that in judicial matters the advantages of the Most Favored Nation Clause shall apply to Germanu. In respect to this, this, the Japanese Government will engage by separate note to extend to Germany any privilege or advantage in the matter of administration of justice that may hereafter be

granted to any other Power.

In regard to the extension of the guarantees detailed in the notes of the Department of Foreign Affairs, the Japanese Government have had under their careful consideration the wish of the German Government that the right of appeal to the Supreme Court should be extended to all cases in which German subjects are interested. This question, to the great regret of the Japanese Government, is one where the practical and political objections are such as to make it impossible to comply with the suggestion. The right of appeal, as now defined, is very extensive both in criminal and civil cases, in fact, only very minor cases are excepted. The further extension of this right of appeal would, besides the danger of over-burdening a court intended for the safeguarding of the highest interests with trifling questions, have the serious objection that it would create an extraordinarily privileged class in the matter of judicial rights and disturb the entire judicial system of the country without offering any corresponding advantage. Considering the further desire of the German Gov-

ernment that the preliminary examination should be conducted by a judge of foreign nationality, the Japanese Government maintain that this would necessitate the engagement of a much larger staff of foreign judges than the Japanese Government are prepared to employ. It is observed therefore that, in consideration of the probable rare instances of crimes and delicts in which German subjects would be involved and the extensive right of appeal which already exists, there is no fear that German interests would in any way be injuriously effected by a miscarriage or denial of justice. The Japanese Government moreover trust that their judicial organization and administration will be in fact such as would be deserving of sufficient confidence and not be in need of the extensive guarantees required. Respecting these points, it should be observed that considerable guarantees are also given in the Constitution of the Japanese Empire which declares (in) Art. XXIII, "No Japanese subject shall be arrested, detained, tried or punished unless according to law", and in Art. XXIV, "No Japanese subject shall be deprived of his right

of being tried by the judges determined by law.", and finally, in Art. XXV, "Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

It is evident that these rights will, be the Article I of the new treaty, be fully extended and guaranteed to German subjects.

The Japanese Government are also of opinion that, in regard to the additional guarantees regarding the discipline and qualification of the foreign judges, the condition already given, supported by the already proclaimed fundamental rules, should be sufficient to inspire confidence. In respect to this, Article 58 of the Imperial Constitution declares:—

"The judges shall be appointed from among those who possess proper qualifications according to law. No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment. Rules for disciplinary punishment shall be determined by law."

The Japanese Government are convinced that any more explicit clause in the treaty would be extremely

distasteful to the nation and beg to recall that it was exactly questions of this character which, in consequence of the opposition they raised, materially and directly contributed to the failure of the Conference of 1887. By a judicious selection of a small number of foreign judges, the Japanese Government are of opinion that any recourse to a disciplinary court will be superfluous, but, to make this remote contingency still more improbable, the Japanese Government consent to insert the following passage in paragraph 4 of the note, namely to add after "honorable positions" the words "will be taken from among those who would be eligible for similar positions in their own country and they."

The Japanese Government are not less concerned than the other Powers to secure and retain good and competent judges and to that end they pledge their good faith, but they wish to be allowed to act spontaneously in this respect.

The Japanese Government trust that the manner in which Japan has hitherto fulfilled vague but burdensome treaty stipulations, should not fail to inspire

confidence and be accepted as a guarantee that she will be equally faithful to more liberal conditions in future.

The experience of the past negotiations clearly show that, in the matter of express judicial guarantees, the Japanese proposals, as now modified, reach the extreme limit to which the Japanese nation can ever go.

The Japanese Government are earnestly hoping that the spirit of friendship and equity which has always distinguished the policy of the Imperial German Government towards Japan will, in the present instance, not fail to exercise a due influence on the resolutions of the Imperial German Government and cause them to perceive the difficulties under which a continued insistence on these further guarantees would place the Japanese Government. These questions which to Japan represent vital principles are not by any means vital to German interests in Japan, which it has been the sincere desire of the Japanese Government to secure by its first propositions and still further to safeguard by the present considerably

modified concessions and amendments and which, it is confidently hoped, will now open the way to a satisfactory and prompt conclusion of the negotiations at issue.

May 8th 1889.

一六六 明治三十二年五月六日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

船舶測量ニ關スル件

Regarding article XIV, is it your wish to maintain the words from "according" to "vessels"? For if so, Fernan Government say that then it would be contrary to sense of German Mexican treaty you cite and would be contrary to desire which is to fix tonnage dues according to German tonnage measurement without remeasurement or recalculation.

Saionzi.

Received, May 18, 1889.

一六七 明治三十二年五月二十一日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

ebold and Commissioner (of) Imperial Judicial Department, the latter has consented to accept your amendment to Status question, also your amendment to Article XV provided the part defining respective international jurisdictions is omitted, namely from the beginning of article to the word jurisdiction in the second paragraph. Commissioner equally consents to withdraw the demand for appeal in all cases, also the demand about foreign judges of instruction and further demands about discipline and nomination of judges. All these questions will be regulated conforming to your last propositions. Tomorrow definitive council will take place between Foreign Office and Imperial Judicial Department after which I hope to give you officially satisfactory result.

Berlin, May 22, 1889. Saionzi.

一六九 明治三十二年五月二十三日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

我修正ニ對スル獨逸政府ノ意向ニ關スル件

I can confirm my telegram of yesterday. The council held to-day have decided to accept all the

大隈外務大臣時代 對獨逸交渉

一六九・一七〇

船隻噸量ニ關シ回答ニ付

No. 187. Japanese Government desire to maintain words mentioned in your last last telegram in order to prevent possible discriminations. Discrimination would result if net tonnage of each country without additions or deductions was taken as dutiable tonnage because even under same system such additions and deductions are not uniform. Japanese Government desire to have their tonnage unit universally accepted as basis for Japanese tonnage dues. To arrive at such unit additions to and deductions from not registered tonnage may in some cases be necessary but in respect of countries using Moorsen system no remeasurement necessary. See British Order in Council, January 27, 1885.

May 21, 1889. Okuma.

一六八 明治三十二年五月二十一日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

我修正案ニ對スル獨逸政府ノ態度回報ニ付

At a confidential conference between Muhlberg, Si-

Japanese amendments and to renounce all the former contrary German demands in jurisdiction and commerce with a few exceptions which are of no fundamental importance. I shall receive official written answer to-morrow.

Berlin, May 23, 1889. Saionzi.

一七〇 明治三十二年五月二十五日

西園寺駐獨公使ヨリ
大隈外務大臣宛

條約案文ノ疑義ニ關シ照會ノ件

ホルレーベン

外務大臣伯 大隈 重信閣下

以手紙致啓上候陳者獨日條約ノ改正ニ關シ兩國政府ノ商議漸次好景況ニ趣候儀滿悅ノ至御座候拙者ハ尙ホ左記ノ諸點ニ就キ謹テ閣下ニ質議致度右ハ敢テ原案文意ニ變更ヲ望候ニハ無之唯拙者ノ代表スル利益ヲ保固スルカ爲メニ確實ナル御説明ヲ仰候儀ニ御座候

(一) 原案第十五條ニ領事裁判權ハ直チニ外國人居留地
フォーレーン、セツトレメント)内ニ限ラシムヘシト
在之候處或ル向キヨリ拙者ノ聞及候處ニテハ此ノ字儀

ハ現時曖昧ニ屬シ多年ノ因習ニ由リ攪亂致候哉ニ付此際更ラニ勅命若クハ他ノ適切ナル方法ヲ以テ外國人ノ現時一般安全ニ居住スル土地ヲ稱スルニアル旨ヲ確定在之候儀必要ト被考候右ノ外ニ現今ノ開港ノ税關或ハ官庫ニ在ル貨物ハ假令其建設物外國人居留地ノ境域外ニ在ルモ領事裁判權ノ存立スル間ハ其管轄ヲ離レサラシムヘキ保證ヲ獨逸帝國ノ臣民ニ與ヘラレンコトヲ希望致候

(11) 原案第二條第三項及第五條(第十條ノ誤)第二項ニハ獨逸帝國臣民ノ商業ハ依然從來ノ通り開港場ニ限ラルルヤト誤解シ易キ文面在之候行政上ニ於テハ實際此ノ如キ制限ヲ設ケラルルヤモ期シ難ク且此ノ問題ハ獨日貿易利害ノ關係スル所ニ付左ノ點ニ就キ官ノ保證ヲ被與候儀必要ト存候

即ハチ

(イ) 前記ノ條款中外國貿易(フオーレーン、コンメルス)ナル語ハ沿岸貿易ニ對シテ海外貿易ヲ指スニアルコト是レ第二條ニ載セタルカ如ク外國人ト日本人トヲ同等ノ地位ニ置ク他ノ一般ノ保證ト一

Tokio, den 25 Mai 1889.

Herr Graf!

Nachdem die zwischen unsern hohen Regierungen schwebenden Verhandlungen wegen Revision des deutsch-japanischen Vertrages erfreulicher Weise eine günstige Wendung genommen haben, wollen, Euer Excellenz mir gestatten, die noch auf die folgenden Punkte ganz ergebnis auf-merk- sam zu machen, hinsichtlich welcher, wenn nicht eine Veränderung des vorgeschlagenen Textes so doch eine authentischen Interpretation desselben zur Sicherung der von mir vertretenen Interessen erforderlich erscheint.

1) Im Artikel XV des Entwurfs ist gesagt, dass die Konsularjurisdiktion sich fortan auf die "Foreign Settlements" zu beschränken habe. Wie mir von unterrichteter Seite mitgeteilt wird, ist dieser Begriff in zur Zeit nicht genau feststehender oder wenigstens durch langjährigen Gebrauch durch brochener. Es wird sich deshalb empfehlen, diesen Begriff auf dem Verordnungswege oder in einer sonst geeignet erscheinenden Form von Neuem und zwar dahin zu bestimmen, dass er alle solchen Plätze begreift, an

致シ獨逸帝國ノ臣民ハ總テ日本國ノ臣民ニ許可セラレタル場所ニ於テ海外貿易殊ニ外國ノ物貨ヲ陸揚シ又ハ物貨ヲ外國ニ積出シ得ルト否トニ關係スル所ナレハナリ

(ロ) 前記ノ所謂ユル開港場ニ屬セサル場所ニ於テ外國ノ物貨ヲ陸揚シ又ハ物貨ヲ外國ニ輸出スルヲ以テ獨逸帝國臣民ノ利益タルコト明白ナル場合ニ於テ關係者ヨリ税關吏派遣費等ノ負擔ヲ承諾シテ請求スル時ハ其請求ニ應セラルヘキコト

前陳ノ懸念ハ閣下容易ニ御賢察可在之畢竟實際ノ須要上ヨリ生シ此ノ須要ヲ満足セシムルト否トハ大ニ條約ノ傾向ニ影響致候儀ニ付特ニ建議ナキモ日本帝國政府ニ於テハ拙者ノ具陳通り御處置可相成且閣下ハ御懸念ナク右等ノ諸點ニ關シ希望セル保證ヲ被與候儀ト致思考候ニ付拙者ハ是レカ爲メニ大ニ双方一樣ニ理解シタル條約書ノ調整ヲ促進セシムヘキ信憑ヲ相増候右謹テ貴答ヲ俟候 敬具

東京千八百八十九年五月二十五

(右原文)

明治二十二年五月二十五日附獨逸公使來翰原文

denen Fremde derzeit üblicher und unangefochener Weise ihren Wohnsitz haben. Ausserdem dürfte es erforderlich erscheinen, den deutschen Reichsangehörigen eine Bürgerschaft dafür zu geben, dass ihre in den Zollhäusern oder Regierungsdépôts der heutigen offenen Häfen lagernden Waren, auch wenn jene Gebäude ausserhalb der Grenzen der "Foreign Settlements" liegen sollten, während des Bestehens der Konsularjurisdiktion dieser nicht entzogen werden sollen.

2) Artikel II Alinea 3 und Artikel X Alinea 2 enthalten Sätzen, welche dahin missdeutet werden könnten, als ob die deutschen Reichsangehörigen in ihren Handelsoperationen nach wie vor auf gewisse "offene" Häfen beschränkt seien. Indem ich die administrativen Rücksichten nicht verkenne, welche für die Aufnahme solcher einschränkender Bestimmungen in praxi sprechen mögen und im übrigen der Meinung bin, dass in der Regeldie deutschen und japanischen Handelsinteressen in diesen Fragen einander entgegenkommen werden, halte ich doch eine amtliche Zusicherung für erforderlich;

a) dass die Worte "foreign commerce" in den gedachten Artikeln den Begriff "überseeischer Handel" im Gegensatz zum Küstenhandel bezeichnen. Es würde daraus, im Zusammenhang mit den sonstigen allgemeinen Zusicherungen hinsichtlich der Gleichstellung der Fremden mit den Landesangehörigen, wie sie insbesondere Artikel II enthält, folgen, dass deutsche Reichsangehörige in allen solchen Plätzen überseeischen Handel zu treiben, insbesondere nach und von überseeischen Plätzen zu laden und zu löschen befugt sind, an welchen dies Japanischen Staatsangehörigen gestattet ist.

b) dass in Fällen, in denen für deutsche Reichsangehörige ein nachweisbares Interesse besteht, nach resp. von überseeischen Plätzen an solchen Orten zu laden und zu löschen, welche zu den im obigen Sinn als geöffnet bezeichneten nicht gehören, einen von den Interessenten gestellten bezüglichen Antrag entsprechen werden wird, falls der Antragsteller die daraus entstehenden Kosten für Entsendung von Zollbeamten etc. Zu übernehmen bereist.

Die vorstehend berührten Bedenken entspringen,

獨逸文ニテ公使ヘハ送ル、此反譯文ハ本省保存ノ爲メニ作リタルモノナリ

獨逸帝國特命全權公使 フォン・ホルレン閣下

外務大臣伯 大隈 重信

本日附貴簡致拜見候陳ハ貴簡中ニ御記載ノ廉々概シテ懸念無之拙者モ御同意ニ在之候第一ニ御注意在之候外國人居留地ノ責義ハ勅命若クハ他ノ方法ニ依リ總テ貴簡中ニ御記載ノ如キ責義ナルコトヲ確定相成候唯外國人居留地外ニ在ル税關或ハ官庫中ノ物貨ハ該當領事裁判權内ニ屬スルモノト見做スヘキノ一事ハ拙者不條理ノ様相考候ニ付決行致兼候乍去此等ノ物貨ニ關シテハ我政府ハ特ニ從來ノ仕來リヲ妨害セサルノミナラス獨逸帝國臣民ノ商業ヲ満足セシムヘキ方法ヲ相定可申候

貴簡中第二間(ロ)ニ御記載在之候外國貿易ナル語意ハ沿岸貿易ニ對シテ海外貿易ヲ指スモノニ在之候

又總テ日本ノ臣民ニ許可セラレタル場所ニ於テ外國ノ物貨ヲ陸揚シ或ハ物貨ヲ船積スルヲ以テ獨逸帝國臣民ノ利益上必要タルコト明白ナル場合ニ於テハ關係者ノ請求ニ應ヌヘキハ今既ニ我關係者ノ利益明白ナレハ前記ノ例外ヲ許可致

wie Euer Excellenz Sich leicht überzeugen werden, lediglich praktischen Bedürfnissen, deren Erfüllung so sehr in der allgemeinen Tendenz des Vertrages liegt, dass sie aller Wahrscheinlichkeit nach ohne besonderen Antrag in demvon mir angeregten Sinne erledigt worden sein würden. Indem ich mich deshalb um so mehr der Hoffnung hingeben, dass Euer Excellenz keine Bedenken trangen werden, mir bezüglich dieser Punkte die gewünschten Bürgschaften zu ertheilen, hege ich die Ueberzeugung, dass damit das von uns beiderseits gleichmässig ersuchte Zustandekommen des Vertragwerkes wesentlich gefördert werden wird.

Einer geneigten Rückausserung entgegenschend benutze ich mit Vergnügen diesen Anlass Euer Excellens die Versicherung meier ausgezeichnetsten Hochachtung zu erneuern.

Holleben.

一七一 明治二十二年五月二十五日 大隈外務大臣

獨逸公使宛

條約案文ハ疑義ニ付回答ハ付

候通り許可可致候右拜答迄如此座候 敬具

東京千八百八十九年五月二十五日

(右原文)

明治二十二年五月二十五日附獨逸公使宛往翰原文

Tokio, den 25 Mai 1889.

Herr Gesandter!

In Erwiderung auf die sehr gefällige Note vom heutigen Datum beehre ich mich, Ihnen ganz ergebenst mitzutheilen, dass ich zu den in derselben erwähnten Punkten in dem von Ihnen angeregten Sinne im Ganzen kein Bedenken trage, mich zustimmend zu erklären.

Was zunächst den Beriff der "Foreign Settlement" anbetrifft, so wird er entweder durch Verordnung oder in anderen Form dahin bestimmt werden, dass er alle solche begreift, die in der gefälligen Note erwähnt sind, Die Waaren hin gegen, die sich in den Zollhäusern oder in Regierungsdepts ausserhalb der Grenze des Foreign Settlements befinden, als der betreffenden Consular-jurisdiktion angehörig zu betrachten, erscheint mir unlegisch zu sein, und daher muss

ich es für unthunlich halten. Doch wird meine Regierung in Bezug auf diese Waaren eine Form beobachten, welche nicht allein die bisherige Praxis beeinträchtigt, sondern die Angehörigen des Deutschen Reichs in ihrer Operation des Handels befriedigen wird.

Indem ich schliesslich ganz ergebenst hinzufüge, dass in Fällen, in denen für deutsche Reichsangehörige ein nachweisbares Interesse besteht, nach resp. von uberscischen Plätzen an solchen Oten zu laden und zu löschen, an denen die Landung und Löschung den Japanischen Staatsangehörigen gestattet, seitens meiner Regierung einen von den Interessenten gestellten bezüglichen Antrag gern entsprochen werden, wie in Fällen, wo das Interesse für die betreffenden Interessanten von einer nachweisbar vitalen Natur ist, die erwähnte Ausnahme schon jetzt gestattet werden wird, benutze ich zugleich auch diesen Anlass zur erneuten Versicherung meiner ausgezeichnetsten Hochachtung.

An

Okuma.

words of our draft from "according" to "vessels." It is understood that Japanese ton is units for dues and that German tonnage as shown by ships' papers is recalculated into Japanese ten by Japanese authorities. Regarding Art. XV(?). Germany accepts Japanese Amendment about status. Regarding Art. XVI. Germany considers limitation of jurisdiction proposed by Japan to be in contradiction with German laws(?). Germany, however, renounces all its former detailed propositions and accepts Japanese amendment to last paragraph, provided present text from beginning of the article to the word "jurisdiction" is suppressed. Germany believes(?) these questions will naturally arrange themselves by practice(?) without complicated stipulations. Regarding Art. XXIII, Germany consent to suppress Harbour Regulations to be settled by special protocol. Germany also accepts Japanese proposition about customs union in conformity to Article of German-Hawaiian Treaty. Regarding special guarantees contained in diplomatic notes, Germany, renounces its demands for extension of appeal, also(?) for foreign judges of instruction(?) as well as those

den Kaiserlich Deutschen
ausserordentlichen Gesandten und
bevollmächtigten Minister,
Herrn von Holleben
Excellenz.

1411 照会 明治三十二年四月 西園寺公使(大隈外務大臣宛(來電))

關稅協定ノ回答關係ニ付

Have received official answer. Germany accepts all the concessions offered in your last instructions. Regarding Art. I, Germany renounces its demands about billeting. Regarding Art. V, German proposition for revaluation was intended to be subject mutual new agreement in default of which old valuation would naturally continue. Germany renounces its demands for reinserction of old articles VI, VII(?) and XXII.

Regarding Art. X, Germany renounces Niigata. Regarding Art. XIV, Germany accepts inserction of German Mexican Article, objects to inserction of the

regarding selection and discipline of foreign judges and accepts Japanese Amendment. Regarding most favored nation treatment in jurisdiction, Germany desires this to be expressed in the same terms as most favored nation clause in commercial(?) questions, namely(?) for concessions granted or hereafter to be granted. In reporting the above I may also add that Muhlberg verbally said that Germany would not insist upon clause for revaluation in Art. V(?). Regarding tonnage, German views seem identical with yours. Consider as cancelled last two words of my telegram of May 16. I and Siebold believe(?) it hopeless at present to attempt to obtain *and further* (any further?) concessions in Art. XVI as Minister for Justice strongly opposed. Regarding most favored nation treatment in jurisdiction, German proposition is not in conformity to you instructions, but Muhlberg verbally declared that ancient *treavies*(?) with Consular jurisdiction *could never*(?) be claimed on its *strength*(?) Will you authorize me to accept German proposition and to sign both definite treaty and diplomatic notes. German Department for Foreign Affairs will then

upon my verbal acceptance obtain the approval (of) Chancellor and imperial sanction. Before signing specially instruct me also whether tariff concession contained in your telegram of March 8, should be formally granted and in what terms to be expressed. Muhlberg consented verbally to give up German text and to sign with me English text only, if we renounce Japanese text. Authorize me therefore to sign English text without Japanese or German. However official translation can be made afterwards, by each party. Considering Germany has accepted almost altogether our last proposition, I strongly recommend to conclude now negotiations and to propose no further alterations in text, for they would entail(?) new council with possible complications and risks. Any reservation on our part might be make as Muhlberg suggests by note or memorandum and leave the text intact.

Berlin (via Petersburg), May 26, 1889.
Saionzi.

to protect themselves in the direction verbally indicated by Muhlberg. The following note would, it is believed, secure the desired result.

"The undersigned &c. is authorized to declare in the name and on behalf of the Imperial Japanese Government that any privilege or immunity in connection with the administration of justice in Japan which the Japanese Government has already granted or may hereafter grant to any other Power in consideration or anticipation of the abolition of Consular jurisdiction in Japan shall be immediately and unconditionally extended to the Imperial German Government and to German subjects should the Government of Germany at any time express a wish to that effect."

If this note is acceptable you are authorized upon conclusion of treaty to address it to Minister for Foreign Affairs. Regarding tariff concessions in my telegram of March 8, Japanese Government would prefer for reasons already given to maintain secrecy for the present, hence you are authorized upon conclusion of treaty to address an official confidential

一 十三 明治三十三年五月二十六日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往書)
關稅協定ニ回答ニ關シ福金ニ付

No. 191. Accept German amendment to article XIV so that second paragraph will be read, "The dutiable tonnage of German vessels shall be the net tonnage. The capacity of the vessels as stated in their registers shall serve as the basis upon which the tonnage and light dues are to be calculated." Regarding Article XVI, if it is intended to suppress entirely first two paragraphs maintaining only last paragraph as amended, then we accept German proposal with suggestion that last paragraph be inserted in Article XV before personal status clause. We are firmly convinced that revaluation clause in Article V would be useless, at the same time it might invite discussion with other Powers, hence we earnestly hope German Government will not insist. Regarding judicial most favored nation treatment, the Japanese Government on one hand are perfectly willing a guarantee to Germany equality of treatment in judicial matters but on the other hand they are anxious

note to Minister for Foreign Affairs to the effect that before the treaty goes into operation Japanese Government will transfer the three articles named from the specific to the advalorem list. Fifty-first word of your last telegram read(?), we assume it should read(?).

The foregoing are it is believed the only questions outstanding. If so and if the proposals herein are acceptable as we confidently hope they will be as they are practically identical with the German proposals you are authorized to sign the treaty, annexes, notes and declaration in the English language alone modifying accordingly the stipulation in the last article of the treaty relating to language. In announcing this fact to the German Government you will say that a fair and equitable revision of the treaties is a consummation which the Japanese Government have anxiously desired and that friendly and conciliatory spirit manifested by Germany during the protracted negotiations has profoundly impressed the Cabinet of Tokio and I am sure that the conclusion of the treaty will cement the bonds of friendship and good neigh-

bouhhood at present existing.

May 28, 1889. Okuma.

一七四 明治三十三年六月一日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

貿易規則倉庫規則ニ關シテ訓示ノ件

Regarding the position of German Government contained in my telegram¹ of January 31 that *Regulation*(?) of Trade and Bonded Warehouse should be left for settlement in Japan, I have not received your definite instructions. I hope you will approve this considering German Government are unable to examine here about details. Besides there is risk of losing time and delaying conclusion of treaty. Would it not be better therefore to propose to leave out Art. XXIII and include about engagement in the text of the note²? Please answer as soon as possible.

Berlin, May 31, 1889. Saionzi.

附 一三四五六號

consider(?) is very satisfactory, namely Germany will, in accepting word by word your version, declare in reply by note as follows:

As long as Japan does not admit the subjects of a third Power to the interior of Japan, Germany can not claim any privileges which Japan grants to this Power in jurisdictional matters, especially a continuance of Consular jurisdiction, but Germany will *have right*(?) to claim all the privileges which Japan has granted or *will grant*(?) to another state in jurisdictional matters if the subjects of such state are admitted to the interior. *I hope you will*(?) see no difficulty (objection to) my accepting the above declaration when it is given.

Berlin, June 2, 1889. Saionzi.

一七七 明治三十三年六月三日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

最惠國條款承認並ニ二三三條ノ取扱ニ關シテ訓示ノ件

No. 196. Your telegram of June 2nd received. Adjustment of judicial most favored nation treatment

大隈外務大臣時代 對獨交渉 一七五 明治三十三年六月二日

一七五 明治三十三年六月二日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

二三三條ニ關スル件

No. 195. Time is very important and you are hereby authorized to adopt, concerning Article XXIII, whichever course will expedite conclusion of Treaty. What steps have you taken under my telegram of May 28 and when will treaty be signed? Answer by telegram as soon as possible.

June 2, 1889. Okuma.

一七六 明治三十三年六月二日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸政府ノ我提議承認ニ關スル件

Germany accepts all your last proposals. However in regard to Most Favored Nation Clause in jurisdictional question, the Judiciary Department at first raised objections because not sufficiently clear. Muhlberg requested Siebold to try and arrange difficulty directly and he has succeeded in a manner which, I

is accepted. Fix date for signature of treaty as soon as possible. Upon re-examination of question concerning article XXIII, I am of opinion that German Government intended by Memorandum (of) April 1st to definitely accept Trade and Warehouse Regulations as amended by my telegram of March 8th. If this opinion is correct you better not propose suppression of Article XXIII unless it is clearly apparent that its retention would cause delay. If German Government propose its suppression you are authorized to accept.

June 3, 1889. Okuma.

一七八 明治三十三年六月四日

大隈外務大臣ヨリ
西園寺駐獨公使宛

獨逸側ノ修正要求並ニ之ニ對スル當方ノ意圖ニ付訓

令ノ件

送第四一二號

條約改正事件ニ付獨逸政府ヨリ回答有之候由ニテ其趣旨去ル五月二十六日ヲ以テ別紙甲號寫^(レ)ノ通御電報相成致承知候仍テ右ニ對スル當方ノ意見別紙乙號寫^(レ)ノ通及電報候

本月一日ニ到リ別紙内號電^(一七四)到來致候ニ付別紙丁號ノ通及
回電候然ルニ右貴電ノ趣旨ニ關シテハ當方ニ於テ大ニ不審
ノ次第有之候何ントナレハ去ル一月三十一日付貴電^(一三五)ノ中ニ
ハ貿易規則ト官設倉庫規則トニ關スル談判ハ之ヲ東京ニ移
ス云々ノ儀相見エ候處該電報ニ記載ノ件々ハ悉クシーボ
ル^(一三六)トカ獨逸政府ノ本件主任官ヨリ聞得タル私話ヲ報告セラレ
タルモノニシテ當時公然獨逸政府ヨリ右件々ニ關スル發議
ヲ爲シタルモノニ無之候仍テ見官ノ電信中ニ「是ヲ以テ公
然ノモノ若シクハ完全ノ回答ト見做スヘカラス」ト態々御
明記相成候其後ホルレーベン氏歸任後早々獨逸政府ニ於テ
ハ貿易規則中某々ノ點ニ關シ修正ヲ欲セル旨申出テ候ニ付
協議ノ上彼ノ望ニ應シテ數箇ノ修正ヲ承諾シ其次第詳細去
ル三月八日附ノ電信ヲ以テ及御報候而シテ去ル四月一日付
ヲ以テ獨逸政府力貴官ニ送リタル覺書中條約第二十三條ニ
説キ及ホシタル處ヲ見ルニ獨逸政府ハ「貿易規則中或ル約
款ニ係ル日本政府ノ提議ヲ了承ス」中略 港則ヲモ本條中
ニ加ヘンコトヲ欲ス云々ト有之ノミニテ右兩規則ニ修正ヲ
要スル等ノ儀ハ一切記載無之候仍テ思フニ獨逸政府ハ貿易
規則及倉庫規則ハ勿論港則ヲモ本條約ト共ニ伯林ニ於テ締

結センコトヲ欲スルモノニシテ且ツ貿易規則及倉庫規則ニ
就キ此迄別段ノ修正ヲ申出ツルコトナク我政府提議ノ儘ニ
テ同意ヲ表シタルコトト存候右ノ次第ニテ去ル一月三十一
日付貴電ヲ以テ本件ニ關シ御申越ノ趣ハ遂ニ一場ノ私語ニ
止マリ獨逸政府ニ於テ之ヲ發議スルニ到ラサリシコトト存
候處今ニ到リ突然前文電信御送り相成候事頗ル意外ニ出候
然ルニ前文申述候次第モ有之且ツ右兩規則ハ先年通商委員
ノ議決シタルモノト大體差異無之モノニ付今更獨逸政府ニ
於テ右兩規則調査ノ爲メ此上ノ時日ヲ要スル儀ハ萬々有之
間敷ト存候ニ付貴電ノ意味如何ニモ不審ニ存シ候得共實際
其地ニ於テ如何ナル事情出來シタルヤモ不相分且ツ畢竟右
兩規則ヲ條約ト共ニ其地ニ於テ締結スルモ又ハ右ニ係ル談
判丈ヲ東京ニ移スモ事ノ利害ニ於テ格別ノ差異無之儀ニ付
取捨ヲ貴官ノ御見込ニ任シタル次第ニ有之候

右回答電信發送ノ翌日別紙戊號^(一七五)ノ貴電接受致候獨逸政府ハ
總テ我提議ニ同意シタル由誠ニ欣喜之至ニ候裁判事項ニ係
ル最惠國待遇ノ問題モ獨逸政府發議ノ通りニテ一向差支無
之ト存候ニ付其旨別紙己號^(一七六)ノ通り申進候然ルニ條約第二十
三條ニ係ル一件ハ尙ホ再思スルニ獨逸政府ヨリ其創除ヲ發

議スル場合ニ於テハ勿論之ニ同意ヲ表シ可然候得共彼ヨリ
發議ナキニ當方ヨリ該案創除ノコトヲ申出サハ又々夫力爲
メ多少ノ談判ヲ重ヌルノ必要ヲ生シ徒ラニ條約締結ノ時日
ヲ遅延スルコトナシトモ難申ニ付右條ヲ存シ置カシカ爲メ
ニ條約締結ヲ遅延スルニ到ルヘキコトナシトノコト明瞭ナ
ルニアラサレハ當方ヨリ求メテ右件ヲ發議スヘカラス但シ
彼方ヨリ創除ノ發議アラハ之ニ同意ヲ表シ不苦旨ヲ右電信
中ニ申進シ候次第ニ有之候
條約首尾克締結濟之吉報ニ接スルモ今ヨリ數日ノ内ニ可有
之ト頻リニ期望罷在候
右申進候也

明治二十二年六月四日發遣

註 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

一七九 明治二十二年六月五日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

二十三條創除ニ關スル件

Regarding Art. XXIII, it has been agreed to leave(?)

大隈外務大臣時代 對獨交渉 一七九、一八〇

it out to save time. Now too late to make changes
as definite draft has gone to Chancellor and Emperor.
Regarding signature of Trade(?) Harbour and Bonded
Warehouse Regulations in Japan, Holleben will re-
ceive instructions to settle this smoothly and promptly.
I have been warned that protocols of former(?) Con-
ferences must be kept secret as their falling in the
hands of the parliamentary opposition might create
trouble. The decision of Chancellor expected in a
few days. Signature will take place probably in ten
days, if by that time Imperial sanction is obtained.
Pending, therefore, formality of signature, you can
consider the negotiations as terminated.

Berlin, May 5, 1889. Saionzi.

一八〇 明治二十二年六月八日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

稅則ニ關スル件

No. 204. In tariff annexed to Treaty, the following
three columns that appear in draft forwarded to you
January 7 might be omitted.

"Number counter project" "dutiable values" "ad-

valorem basis," also Explanatory Remarks at end. The following typographical errors might also be corrected.

No. 129. quindine should read quindidine. No. 320 carenine should read cerosine. No. 438 liquour should read liquer.

These changes not absolutely necessary. consequently you need not make them or propose to make them if it would cause delay or misunderstanding (misunderstanding?). Exercise your discretion.

June 8, 1889. Okuma.

一八一 明治三十二年六月十二日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

日獨條約調印ノ件

I have signed the treaty and tariff in English to-day with Count Bismark. Your instruction in your telegram of June 6 arrived too late to effect changes but number(?) counter-project and explanatory remarks have already been omitted. German Government will not make the new treaty immediately public but will

leave the time of publication at the option of Japanese Government.

Berlin, June 11 1889. Saionji.

註 六月八日東京發翌九日柏林着ノ外務大臣訓電ハ前田ニ付

参照

一八二 明治三十二年六月十二日 西園寺駐獨公使ヨリ
大隈外務大臣宛

日獨條約調印済ノ件

附屬書一 日獨和親通商及航海條約

二 獨逸外務大臣宛書翰(一)

(裁判權ニ關スル宣言)

三 獨逸外務大臣宛書翰(二)

(法典編纂ニ關スル宣言)

四 獨逸外務大臣宛書翰(三)

(追加締約ニ關スル宣言)

五 獨逸外務大臣來翰

第十四號

當政府ト條約改正ノ談判既ニ満足ニ結了尙獨逸皇帝陛下ノ勅裁ヲ得ルニ於テハ條約書ヘ記名調印ノ儀不日ノ事ニ可有之旨去五日電報仕置候處愈々昨日則チ六月十一日尙外務省

註 括弧内ハ原案中削除ノ部分下線ノ箇所ハ獨逸側ノ修正

Treaty

of Amity, Commerce and Navigation.

His Majesty the Emperor of Japan and His Majesty the German Emperor, King of Prussia, in the name of the German Empire being equally desirous of maintaining the relations of good understanding which happily exist between them, by extending and increasing the intercourse-between their respective countries (states), and being convinced that this object cannot better be accomplished than by the revision of the existing Treaties (revising the Treaties hitherto existing between the two countries), have resolved to complete such a revision, based upon principles of equity and mutual benefit, and, for that purpose, have named as Their Plenipotentiaries, that is to say: His Majesty the Emperor of Japan, the Marquis Kimmoti Saionji, Shosammi, His Envoy Extraordinary and Minister Plenipotentiary at the Court of Berlin, and His Majesty the German Emperor, King of Prussia, Count Herbert von Bismarck, His Minister of State

ニ於テ獨逸國全權委員外務大臣ビスマルク伯ト今般改正ノ別冊英文新條約書並其附屬輸入税目書合セテ貳通(尤モ壹通ハ先方ニ於テ保存)ヘ互相記名調印致候ニ付其旨直チニ昨十一日ノ電報ヲ以テ具申仕置候ニ付既ニ御了悉相成候事ト存候就テハ其際豫テ御訓示ノ旨趣ニ據リ我ヨリ附與スルキ覺書三通別紙寫之通調成同時ニ外務大臣ヘ交附ニ及ヒ置キ又外務大臣ヨリハ我カ覺書ノ中裁判上ノ事項ニ關係ノ最惠國待遇ニ關スル分ニ對シ別紙獨逸本文ノ返答ヲ交付有之候

猶本件ニ關シ當初ヨリ今日迄ノ事務顛末ニ關スル報告ハ取調ノ上不日更ニ具申可仕候依テ此段別冊本條約書壹通附輸入税目並ニ覺書四通(但壹通獨逸本文三通英文寫)相添ヘ具申仕候 敬具

明治三十二年六月十二日

在獨特命全權公使侯 西園寺公望印

外務大臣伯 大隈 重信 殿

註 一七九、二二八

附屬書一

明治三十二年六月十一日調印ノ日獨和親通商及航海條約

大隈外務大臣時代 對獨交渉 一八二

Secretary of State for Foreign Affairs, who, after having Communicated to each other their Full Powers, found to be in good and due form, have agreed upon and concluded the following Articles :

Article I.

The subjects or citizens of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property.

They shall have free and easy access to the Courts of Justice in pursuit and defence of their rights; they shall be at liberty equally with native subjects to choose and employ lawyers, advocates and representatives, to pursue and defend their rights before such Courts and in all other matters connected with the administration of justice, they shall enjoy all the rights and privileges enjoyed by native subjects.

In whatever relates to rights of residence, to the possession of real estate, goods and effects of any kind, to the succession to real or personal estate, by

will or otherwise, and the disposal of property of any sort and in any manner whatsoever, the subjects or citizens of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties, and rights, and shall be subject to no higher imposts or charges in these respects than native subjects or citizens.

The subjects or citizens of each of the Contracting Parties shall enjoy in the dominions of the other entire liberty of conscience, and, subject to the laws and regulations, shall enjoy the right of private or public exercise of their worship, and also the right of burying their respective countrymen according to their religious customs, in such suitable and convenient places as may be established and maintained for that purpose.

They shall not be compelled, under any pretext whatsoever, to pay any charges or taxes other or higher than those that are, or may be paid by native subjects.

The subjects or citizens of either of the Contracting Parties residing in the territories of the other shall

be exempted from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service; and from all forced loans or military exactions or contributions. The duties and charges connecte with the ownership or leasing of lands and other real property, to which all subjects of the country may be liable, are excepted.

Article II.

There shall be entire freedom of commerce and navigation between the dominions of the two High Contracting Parties.

The subjects or citizens of each of the Contracting Parties may trade in any part of the dominions of the other by wholesale or retail in all kinds of produce, manufactures, and merchandize of lawful commerce, either in person or by agents, singly or in partnerships with foreigners or native subjects, conforming themselves to the laws, police and customs regulations of the country like native subjects or citizens.

They shall have liberty freely to come with their

ships and cargoes to all piques, ports, and rivers in the territories of the other which are or may be opened to foreign commerce, and shall enjoy, respectively, the same treatment in matters of industry, manufacture, commerce, and navigation as native subjects or citizens, without having to pay taxes, imposts, or duties, of whatever nature or under whatever denomination levied in the name or for the profit of the Government, public functionaries, private individuals, corporations, or establishments of any kind, other or greater than those paid by native subjects or citizens.

Article III.

The subjects or citizens of each of the Contracting Parties shall enjoy in the dominions of the other the same protection as native subjects in regard to patents, trade marks, and designs, upon fulfilment of the formalities prescribed by law.

Such protection shall mutually be granted by each of the Contracting Parties to the subjects or citizens of the other, as far and as long as they are protected in their own country, provided such protection shall,

in no case, exceed the period prescribed by the laws of the country affording such protection.

Article IV.

No other or higher duties shall be imposed on the importation into the dominions of His Majesty the Emperor of Japan of any article, the produce or manufacture of the dominions of His Majesty the German Emperor, King of Prussia, from whatever place arriving; and no other or higher duties shall be imposed on the importation into the dominions of His Majesty the German Emperor King of Prussia, of any article, the produce or manufacture of the dominions of His Majesty the Emperor of Japan, from whatever place arriving, than on the like article (article) produced or manufactured in any other foreign country; nor shall any prohibition be maintained or imposed on the importation of any article, the produce or manufacture of the dominions of either of the Contracting Parties, into the dominions of the other, from whatever place arriving, which shall not equally extend to the importation of the like article being the

produce or manufacture of any other country. This (The) last provision is not applicable to the sanitary and other prohibitions occasioned by the necessity of protecting the safety of persons, or of cattle, or of plants useful to agriculture.

Article V.

It is agreed by the High Contracting Parties that, in lieu of the import duties hitherto levied and collected, the duties specified in the tariff hereunto annexed may be levied by the Japanese Government on all goods the growth, produce or manufacture of Germany upon importation into Japan. The Japanese Government, however, reserves to itself the right to restrict or temporarily prohibit the importation of any article which, for sanitary reasons, or in view of public security, might offer any danger, and, under exceptional circumstances, the importation of munitions of war (prohibit the importation of any article which may induriously affect or endanger health, property, morals or public security).

It is understood by the Contracting Parties that the

pay ad valorem duty of five per centum.

Article VI.

No other or higher duties or charges shall be imposed in the territories of either of the Contracting Parties on the exportation of any article to the territories of the other, than such as are, or may be payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation of any article from the territories of either of the two Contracting Parties to the territories of the other, which shall not equally extend to the exportation of the like articles to any other country.

Article VII.

The subjects or citizens of each of the Contracting Parties shall enjoy in the dominions of the other in respect to exemption from transit duties, and in all that relates to warehousing, bounties, facilities, and drawbacks, all the advantages which have been, or may be hereafter granted to the most favoured nation.

Japanese Government, in the event of its imposing or augmenting any internal duty on sake, shoyu, mirin, or tobacco, may impose a compensatory duty on such articles imported into Japan, provided such compensatory duty, with the Customs duty added, shall not exceed the internal tax or duty.

Import duties payable ad valorem in Japan shall be calculated on the actual cost of the goods at the place of purchase, production, or fabrication, with the addition of the cost of insurance, and transportation from the place of purchase, production, or fabrication to the port of discharge, as well as commission, if any exists. The sum thus obtained shall be regarded as the dutiable value of the goods, upon which the rats of duty provided in the tariff shall be paid.

Goods of foreign production or manufacture reimported into Japan, after having been exported therefrom, shall pay import duty in accordance with the tariff, notwithstanding duty may have been paid upon such goods when originally imported.

Goods of Japanese production or manufacture brought back from foreign countries to Japan shall

It is however understood that all goods imported into Japan by German subjects or citizens, on which the duty shall have been paid according to the Tariff annexed to this Treaty, may be conveyed to any Japanese port free of duty, and when transported into the interior, shall not, except as herein otherwise provided, be subject to any additional tax, excise, or transit duty whatsoever in any part of the Japanese Empire.

Article VIII.

When goods of foreign production or manufacture, which have been removed from the custody and control of the Customs are, within two years from the date of their importation, exported from Japan, such goods shall be allowed to pass the Customs free of export duty, and the importer thereof shall, in addition, be entitled to receive a drawback certificate for the amount of the import duties paid thereon, provided that all charges upon the said goods to the Customs shall have been paid, that they are bonafide exported to a foreign country; that they are so exported in the

casks, cases, boxes, trunks or packages in which they were originally imported, without having been opened or unpacked except by the Customs or with their permission; that the original import permit shall accompany the application for drawback of duty and be retained by the Customs Authorities, and that the said goods shall be, at the time of their exportation, subject to such examination and inspection as the Customs Authorities may deem necessary to determine their identity with the goods described in the import permit. These drawback certificates shall either be redeemed on demand, or be, at any time, accepted by the Customs Authorities in payment of duties.

Article IX.

The same duties shall be paid on the importation into the dominions of either of High Contracting Parties of any article which is, or may be legally importable therein by native or foreign subjects or citizens, whether such importation shall be in Japanese or German vessels. The same duties shall be paid on the exportation from the dominions of either

of the High Contracting Parties of any article which is or may be legally exportable therefrom by native or foreign subjects or citizens, whether such exportation shall be in Japanese or German vessels.

Article X.

The coasting trade of both the Contracting Parties is excepted from the provisions of the present Treaty; and shall be regulated according to the laws of German and of Japan, respectively. It is, however, understood that German subjects or citizens in Japan, and Japanese subjects in Germany shall enjoy in this respect the rights which are, or may be granted, under such laws, to the subjects or citizens of any other country. A Japanese vessel, laden in a foreign country with cargo destined for two or more ports in.....and a.....vessel, laden in a foreign country with cargo destined for two or more ports in Japan, may discharge a portion of her cargo at one port, and continue her voyage to the other port or ports of destination where foreign trade is permitted, for the purpose of landing the remainder of her original cargo there,

subject always to the laws and custom house regulations of the two countries.

But the Imperial Japanese Government makes the following concession in addition, that German vessels may carry cargoes between any of the ports herein-after mentioned namely: Yokohama, Kobe, Nagasaki, Hiogo and Hakodate (Kobe and Nagasaki).

Article XI.

The Imperial Japanese Government agree that for a period of ten years from the time the present Treaty comes into force, German subjects or citizens shall be entitled to charter ships to Japanese subjects for employment in the coasting trade of Japan, subject, however, to the observance of the following stipulations.

No German vessel shall be permitted to engage in the coasting trade of Japan under the provisions of this Article, except such as are bonafide, and in whole, chartered by Japanese subjects alone.

Any Japanese subjects desiring to charter a foreign vessel shall apply in writing to the Customs Authorities of the port of charter, setting forth in his appli-

cation all the particulars relating to the vessel, so far as it is possible to give them, and the name and nationality of the master. The application shall be accompanied by a draft of the charter party, to be signed by the owner, master, or agent of the vessel; this draft shall mention the object of the charter, its duration, and the amount of charter money to be paid. Upon the receipt of this application the Customs Authorities shall, upon the payment of a fee of 50 yen, issue a permit to be called the "charter permit".

The term for which German vessels may be chartered shall not exceed twelve calendar months. At the expiration of the charter, the charter-permit shall be returned to the Customs Authorities of the port of charter. The charter may, however, be renewed and a new charter-permit obtained upon the payment of a further fee of 50 yen, and upon application being made in the same manner as in the case of the original charter.

In addition to the foregoing free, chartered German vessels shall pay from the date of first clearance under charter tonnage and light dues at the rate of a sen per ton for every month, or fraction of a month,

during which their charters continue.

Chartered German vessels shall carry a distinguishing flag, to indicate that the vessel is (vessels are) chartered by Japanese subjects.

They shall, in the same manner as Japanese vessels, be obliged to carry mails, when required to do so by the Japanese Postale Authorities. But such vessels shall, under no circumstances, be allowed to carry mails without permission from the said authorities.

Chartered German vessels shall only be permitted to engage in the coasting trade. When going abroad the charter-permit shall be surrendered to the Customs Authorities of the port of clearance, and all such goods as may have been shipped at any port while the vessel was so chartered, shall be subject to the prescribed export duties.

Chartered German vessels are subject to the Trade Regulations, in so far as such Regulations are applicable, but their charter-permits shall, when in port, be deposited with the Customs Authorities.

Article XII.

waters of the Japanese Empire, shall take place in accordance with the laws of Japan; and reciprocally all measures of salvage relative to Japanese vessels, wrecked or cast on shore in the territorial waters of Germany, shall take place in accordance with the laws of Germany.

Such stranded or wrecked ship or vessel and all parts thereof, and all furnitures and appurtenances belonging thereunto, and all goods and merchandise saved therefrom, including those which may have been cast into the sea, or the proceeds thereof if sold, as well as all papers found on board such stranded or wrecked ship or vessel, shall be given up to the owners or their agents, when claimed by them. If such owners or agents are not on the spot, the same shall be delivered to the respective Consuls-General, Consuls, Vice-Consuls, or Consular Agents, upon being claimed by them within the period fixed by the laws of the country, and such Consular Officers, owners, or agents shall pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses, which whould have been payable

Any ship of war or merchant vessel of either of the Contracting Parties which may be compelled by stress of weathes, or by reason of any other distress, to take shelter in a port of the other shall be at liberty to refit thereien, to procure all necessary supplies, and to put to sea again, without paying any dues other than such as would be payable by national vessels. In case, however, the master of a merchant vessel should be under the necessity of disposing of a part of his cargo in order to defray the expenses he shall be bound to conform to the regulations and tariffs of the place to which he may have come.

If any ship of war or merchant vessel of one of the Contracting Parties should run aground or be wrecked upon the coasts of the other, the local authorities shall inform the Consul-General, Consul, Vice Consul, or Consular Agent of the district of the occurrence, or, if there be no such Consular Officers, they shall inform the Consul-General, Consul, Vice-Consul, or Consular Agent of the nearest district.

All proceedings relative to the salvage of German vessels, wrecked or cast on shore in the territorial

in the case of a wreck of a national vessel.

The goods and merchandise saved from the wreck shall be exempt from all the duties of the Customs, unless cleared for consumption, in which case they shall pay the ordinary duties.

When a vessel belonging to the subjects of one of the Contracting Parties is stranded or wrecked in the territories of the other, the respective Consuls-General, Consuls, Vice-Consuls, and Consular Agents shall be authorized, in case the owner or master, or other agent of the owner, is not present, to lend their official assistance in order to afford the necessary assistance to the subjects of the respective State. The same rule shall apply in case the owner or master, or other agent is present, but requires such assistance to be given.

Article XIII.

All vessels which according to Japanese law are to be considered Japanese vessels, and all vessels which according to German law are to be considered German vessels, shall, for the purposes of this Treaty, be

1. 25 sen per ton for one Japanese port of call only.
2. 30 sen per ton for a period of two months, with the option to call at any number of Japanese ports, but at no foreign port or ports.
3. 80 sen per ton for a period of 6 months, with the option to call at any Japanese or foreign port or ports.
4. Mail companies may, if they desire, free their vessels from tonnage and light dues for seven consecutive schedule voyages, on paying a duty of 80 sen per ton on the average tonnage of the vessels making such voyages. This payment must be made at the time of the first entry. It shall be calculated according to the schedule arrangement of the company, on condition that reimbursement shall be made either by the Customs Authorities or by the mail companies, as the case may be, at the time of the seventh entry, of any excess or deficiency in the dues paid, arising from any changes which may have taken place in the vessels employed.

The dutiable tonnage of German vessels shall be

deemed Japanese and German vessels respectively.

Article XIV (XIII).

If any seaman should desert from any man-of-war or merchant ship belonging to either of the Contracting Parties within the territory of the other, the local authorities shall be bound to give every assistance in their power for the apprehension and handing over of such deserter, on application to that effect being made to them by the Consul of the country to which the ship of the deserter may belong, or by the deputy or representative of the Consul.

It is understood that this stipulation shall not apply to the subjects or citizens of the country where the desertion takes place.

Article XV (XIV).

German vessels entering Japanese ports shall pay tonnage and light dues at the time of entry at the Customs House according to one of the following rates, at the option of the masters, owners, or agents of such vessels;

the net tonnage (according to the rules adopted by the Japanese Government for the measurement of vessels). The capacity of the vessels as stated in their registers shall serve as the basis upon which the tonnage and light dues are to be calculated.

The following vessels shall be exempt from the payment of tonnage and light dues:

1. Men-of-war.
2. Pleasure yachts.
3. Fishing vessels having no cargo on board.
4. Vessels of less than 20 tons burthen.
5. Vessels putting into port in distress or for repairs, provided they do not engage in trade.
6. Vessels entering and clearing in ballast.
7. Vessels leaving port within 48 hours after anchoring, provided they do not land, ship or tranship cargo or land or take on board passengers or mail. Such vessels shall, however, pay a customs' fees of 15 yen.

The fees hitherto paid on the entrance and clearance of German vessels in Japanese ports shall be no longer levied.

Article XVI (XV).

For the period of 5 years from the date this Treaty goes into operation, the jurisdiction exercisable by German Courts over German subjects or citizens and property shall be territorially limited to the Foreign Settlements of Hakodate, Tokio, Yokohama, Osaka, Kobe, and Nagasaki and to such of the ports and harbours thereof as are now open to German vessels and to other localities adjacent to such Foreign Settlements where by treat or other express arrangements German subjects or citizens are now permitted permanently to reside and rent land, and from the same date everywhere in Japan outside of the limits of the above-named Foreign Settlements, ports, harbours, and localities, Japanese Courts shall have and exercise complete and exclusive jurisdiction, both civil and criminal over German subjects or citizens and property in accordance with the laws of Japan. At the expiration of the 5 years aforesaid all the jurisdiction then exercised by German Courts in Japan and all the exceptional privileges, exemptions and

immunities then enjoyed by German subjects or citizens as a part of or as appurtenant to such jurisdiction shall absolutely and without notice, wholly cease and determine and thereafter all such jurisdiction shall be assumed and exercised by Japanese Courts. The jurisdiction of German Courts shall be continued until final decision in respect of all actions lis pendens in said German Courts at the time fixed for the abolition of Consular Jurisdiction.

In the matter of the service of process and the execution of judgments, decrees and sentences, Japanese and German Consular Courts, shall, so far as the laws of their respective countries permit, render legal aid.

During the continuance of Consular Jurisdiction, the German Consular Courts shall continue to exercise throughout Japan jurisdiction over German subjects or citizens in questions of personal status. It is, however, understood, that if in proceedings before Japanese Courts questions of personal status are incidentally or collaterally raised such Japanese Courts shall, for the purpose of such proceedings, have

jurisdiction to determine the questions so raised in accordance with German law.

(Article XVI)

(The following rules are laid down for the purpose of determining internationally the jurisdiction of Japanese Courts and the Consular Courts of the

I. In criminal matters, jurisdiction shall be determined by the place of commission of the offence.
II. In civil matter, jurisdiction shall be determined alternatively in the order named:

A) In action *ex contractu*.

- 1st. By the place place of performance,
- 2nd. By the domicile of the defendant, or
- 3rd. By the place of sojourn of the defendant at the time the summons is served,

B) In actions *ex delicto*.

- 1st. By the place where the damages are suffered or
- 2nd. By the place where the articles are situa-

ted;

C) In all other personal actions,

- 1st. By the domicile of the defendant or
- 2nd. By the place of sojourn of the defendant at the time the summons is served.

D) In real and mixed actions and in probate, administration and bankruptcy proceedings: By the place where the property is situated.

In the event Japanese Courts and the Consular Courts of the United States should in any case, have, under the foregoing rules, concurrent jurisdiction, such concurrent jurisdiction shall become exclusive in the Courts first taking jurisdiction.

In the matter of the service of process and the execution of judgements, decrees and sentences, Japanese Courts and the Consular Courts of the United States shall be auxiliary to each other.)

Article XVII.

In case any German subjects or citizens should at any time in advance of the final abolition of German Consular Jurisdiction desire to submit themselves ex-

clusively to Japanese civil jurisdiction, they may do so by making and filing with their own proper Consular Authorities and with the proper local Japanese Authorities formal declarations to that effect, but no such submissions shall deprive the German Consular Courts of jurisdiction over such subjects or citizens which they would otherwise have in connection with liabilities incurred and offences committed prior to such submission.

Article XVIII.

Each of the Contracting Parties may appoint Consuls-General, Consuls, Vice-Consuls, Proconsuls, and Consular Agents in all the ports, cities, and places of the other, except in those where it may not be convenient to recognize such officers.

This exception, however, shall not be made in regard to one of the Contracting Parties, without being made likewise in regard to every other Power.

The Consuls-General, Consuls, Vice-Consuls, Proconsuls, and Consular Agents shall exercise whatever functions, and enjoy whatever privileges, exemptions,

and immunities are, or may hereafter be granted there to Consular Officers of the most favoured nation.

Article XIX.

The Contracting Parties agree that in all matters relating to commerce and navigation (to travel through, or to residence in their respective dominions), any privilege, favour, or immunity whatever, which either Contracting Party has actually granted, or may hereafter grant to the (Government) subjects, or citizens of any other State shall be extended immediately and unconditionally to the (Government) subjects, or citizens of.....Party; (gratuitously, if the concession in favour of that state shall have been gratuitous; and on the same or equivalent conditions, if the concession shall have been conditional) it being their intention that the trade and navigation of each country shall be placed, in all respects, by the other on the footing of the most favoured nation.

Article XX.

All privileges and immunities which German subjects or citizens have hitherto enjoyed in Japan, in-virtue of the existing treaties and arrangements, are maintained during the continuance of Consular Jurisdiction in so far as they are not abrogated by the stipulations of this Treaty, and from the date Consular Jurisdiction ceases to exist, all such privileges and immunities shall be regarded as abrogated, unless maintained by this Treaty.

Article XXI.

If, during the period Consular Jurisdiction still continues, German subjects or citizens manufacture, fabricate, or prepare within the territorial limits of Consular Jurisdiction fish, sake, tobacco, shoyu, mirin, wine, beer or spirits, they shall pay the same dues and taxes as Japanese subjects engaged in a similar business. Any German subject or citizen who desires to retail wine, beer or spirits must take out the same license and pay the same license fee as Japanese subjects; this license can never be refused without just and reasonable cause.

(During the continuance of Consular Jurisdictionsubject or citizens in Japan shall, within the territorial limits of such jurisdiction, be liable only to such taxes, rates, fees, duties and charges as are imposed upon Japanese subjects in respect of industrial and manufacturing enterprises.) From the date (of the exchange of ratification of) this Treaty goes into operation, outside of the territorial limits of Consular Jurisdiction and from the date Consular Jurisdiction ceases to exist, throughout the entire Empire, German subjects or citizens shall be liable to the same taxes, rates, fees, duties and charges as Japanese subjects.

Article XXII.

Simultaneously with the abolition of Consular Jurisdiction in Japan, in conformity with Art. XVI of this Treaty, the titles to all real property then held or rented by German subjects or citizens, either jointly or severally, in trust or otherwise, from the Japanese Government under leases in perpetuity, shall be converted into absolute titles, and the leases of such real

property shall thereupon become absolute owners thereof, and shall, upon surrendering their leases, obtain title deeds from the Japanese Government. The rents hitherto paid on such real property shall then cease to be collected, and, in lieu thereof, such real property shall be subject to the same Imperial and local taxes as are imposed in respect of similar real property owned by native subjects, and shall also, in all other respects, be subject to the laws of Japan relating to real property.

It is, however, understood that, in all cases where a reduction in rent on land held under leases in perpetuity has been made by the Japanese Government on account of the uses to which such land has been devoted, the taxes hereafter to be levied in lieu of such rent shall not exceed the amount of such reduced rent.

When the foregoing changes in the tenure of real property have been effected, the several foreign settlements shall be completely incorporated with the respective Japanese communes. They shall thenceforth form integral portions of the municipal system

The present Treaty shall (come into force one month after the exchange of the ratification) be ratified as soon as possible and the ratifications shall be exchanged at Tokio. It shall go into operation on the 11th day of February 1890, and shall remain in force for the full period of 12 years.

Either High Contracting Parties shall have the right at any time after 11 years shall have elapsed from the date (of the exchange of ratifications) the Treaty goes into operation, to give notice to the other of its intention to terminate this Treaty, and at the expiration of 12 months after such notice is given, this Treaty shall wholly cease and determine.

In witness whereof, the respective Plenipotentiaries have signed and sealed this Treaty in (quadruplicate, two.....shall decide) duplicate.

Done at the City of (Tokio) Berlin this eleventh day (of the.....month of the.....year of Meiji, corresponding to the day) of June, of (in) the year 1889 (of the Christian Era) corresponding to the eleventh day of the 6th Month of 22nd Year Meiji.

of Japan, and the competent authorities shall assume all municipal obligations and duties in respect thereof. At the same time the municipal funds and property belonging to such settlements shall be transferred to the said Japanese Authorities.

All lands which have been hitherto given by the Japanese Government free of rent for public purposes in the foreign settlements shall, subject to the right of eminent domain, be permanently reserved, free of all taxes and charges, for the public purposes for which they were originally set apart.

Article XXIII.

(The High Contracting Parties agree that the Regulation annexed to this Treaty, namely the Trade and Government Bonded Warehouse Regulations shall be regarded as forming a portion of the same.)

The present Treaty shall be also extended to the Grand Duchy of Luxembourg; so long as the same shall belong to the German Customs-Union.

Article XXIV.

(signed) Marquis Salozzi.
(L. S.)
(signed) Graf Bismarck.
(L. S.)

宣讀條約

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Copy Imperial Japanese Legation
Berlin, 11th June 1889

The undersigned, His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary has the honour to announce in the name and on behalf of the Imperial Japanese Government that the Imperial Government have reached the determination to appoint a number of foreign jurists to act in the capacity of Judges in the Supreme Court (Daishin In), and the undersigned is authorized to state on behalf of His Imperial Majesty's Government that when any proceedings, either civil or criminal in which a..... subject or citizen is directly interested as a defendant or accused are heard in the Supreme Court, either in

last or first and last instance, a majority of the Judges hearing such proceedings will be Judges of European or American origin.

In order to indicate the extent to which German subjects or citizens will be able to take advantage of the proposed system, it is proper for the undersigned to say that under the new judicial organization of the Empire, all criminal cases in which the punishment exceeds two months imprisonment and a fine of Yen 50 or exceeds a fine of Yen 100 without imprisonment may be taken either on appeal or in first and last instance to the Supreme Court, and that generally all civil cases where the amount involved exceeds Yen 100 may in like manner be carried on appeal to the Supreme Court.

It is impossible for the Imperial Government to declare in advance how many foreign jurists will be thus appointed as Japanese Judges, but the undersigned does not hesitate to assure the Imperial German Government that a sufficient number will be employed to perform with thoroughness and promptitude the duties which will be assigned to them.

operation at the same time the Treaty above referred to takes effect, and it will be continued in force without circumscription for the period of 12 years.

While His Imperial Majesty's Government will be fully prepared to maintain the new system beyond the period named, in the event it is found that that course is necessary, they would nevertheless desire to have it understood that they reserve to themselves the faculty of determining at the proper moment whether or not such necessity actually exists.

The undersigned begs to add in conclusion that this measure has been adopted primarily for the purpose of improving the judicial system of the Empire. His Imperial Majesty's Government, however, venture to hope that it will be regarded as a sufficient guarantee that under the new Treaty the rights and interests of the Imperial German Government and subjects will be fully respected and protected.

The undersigned avails himself &c., &c., &c.

(s. g.) Marquis Saionji.

His Excellency

Count Bismarck-Schönhausen,

大隈外務大臣時代 對獨交渉 一〇二

The gentlemen to be selected to fill these honourable positions will be taken from among those who would be eligible for similar positions in their own countries and they will, subject only to the exception of dismissal for cause, be given a fixed tenure of not less than 4 years, and in all other directions equal care will be taken to secure and encourage their complete independence and impartiality. His Imperial Majesty's Government are, moreover, of opinion that it would be extremely undesirable to permit the Judges of European or American origin to remain even for a limited period subject to the jurisdiction of courts foreign to those in which they will be called upon to sit as Judges, and for this reason His Imperial Majesty's Government deem it essential that the persons selected for the positions should in pursuance of the stipulations contained in the Treaty which has this day been concluded between the Governments of Japan and Germany make formal submission to the jurisdiction of the Imperial Japanese Courts of Justice.

The new system which the undersigned has had the honour briefly to outline will be put into active

Secretary of State for the Department
of Foreign Affairs

駐日公使館

明治三十一年六月十一日 駐日公使館 外務大臣 閣下 謹啓
(11)

英領事館 駐日公使館

Copy

Imperial Japanese Legation,

Berlin, 11th June 1899.

The undersigned, His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary, taking into consideration, the stipulations contained in the Treaty this day concluded between the Governments of Japan and Germany in reference to the final abolition of German Consular Jurisdiction in Japan, (deems it proper to announce) is authorized to declare in the name and on behalf of the Imperial Japanese Government that His Imperial Majesty's Government are now actively engaged in the labour of elaborating the following Codes:

- 1.—Criminal Code;
- 2.—Code of Criminal Procedure;
- 3.—Civil Code;

四二四

4.—Commercial Code, including bankruptcy laws and laws relating to shipping and bills of exchange;

5.—Code of Civil Procedure, including the procedure to be followed in commercial matters.

It is confidently expected that this great work will be completed not later than next year. The Imperial Government fully appreciate the necessity of bringing the work of codification to a successful conclusion sometime in advance of the final abolition of German Consular Courts, and in the event it is found impossible from any cause to complete and issue the Codes above enumerated within two years after the new Treaty shall have gone into operation, His Imperial Majesty's Government will then be compelled to request the Imperial German Government to consent to the postponement of the date named in the Treaty for totally abolishing German Consular Jurisdiction, until at least 3 years after the Codes in question shall have been promulgated.

The determination of His Imperial Majesty's Government to employ for some years a number of

foreign jurists to act in the capacity of Japanese Judges has convinced the Imperial Government of the necessity of rendering the substantive laws of the Empire into some European language being the European language in most common use in Japan, the undersigned begs to state on behalf of His Imperial Majesty's Government that authentic English translations of the Codes in question will be made public, not later than one year and a half after they are promulgated.

The undersigned has the honour to add in conclusion that the system of issuing authentic translations of the laws will be maintained so long at least as the services of Judges of European or American origin are continued.

The undersigned avails himself &c., &c., &c.

(Signed) Marquis Saionji

His Excellency

Count Bismarck-Schönhausen

Secretary of State for the Department of Foreign Affairs.

帝國總理

明治二十一年六月十一日附西國特公使ヨリ郵遞外務大臣宛書翰
(附)

追加條約ニ關スル書翰

Copy

Berlin, 11th June 1889.

With reference to the Treaty of Amity, Commerce and Navigation, which has been signed this day, the Undersigned, His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary, is authorized to declare in the name and on behalf of the Imperial Japanese Government that:

1. The Japanese Government is prepared to conclude a Consular Convention with the Imperial German Government on the basis of the Draft submitted to the Conference in 1887, with a few modifications which may be deemed necessary.
2. That in consideration of the fact that the present Treaty being concluded for a shorter period than was originally expected, it is understood that the Japanese Government shall not make use of their right of abrogation as long as other Treaties to the same effect remain in force.

3. That any privilege or immunity in Connection with the administration of justice in Japan, which the Japanese Government has already granted or may hereafter grant to any other Power in consideration or in anticipation of the abolition of Consular Jurisdiction in Japan, shall be immediately and unconditionally extended to the Imperial German Government and to German subjects, should the Government of Germany at any time express a wish to that effect.

4. The Japanese Government engages itself to conclude with the Imperial German Representative in Tokio, a convention for the Trade and Government Bonded Warehouse Regulations on the basis of the Draft already communicated to the Imperial German Government, and of the modifications and concessions contained in the telegram of Count Okuma Shigenobu, His Imperial Japanese Majesty's Minister for Foreign Affairs, to the Undersigned dated Tokio 8 March 1889, a Copy of which was also Communicated

to the Imperial German Foreign Office.

5. The Japanese Government is also prepared to settle the question of the Harbor Regulations with the Imperial German Representative in Tokio, by a special protocol, on the basis of the Draft Regulations annexed to Protocol 27 of 18 July 1887, with a few modifications which may be deemed necessary.

6. The Japanese Government is prepared to consent to the following modifications in the Tariff: Numbers 128, 149 and 340, viz, Quinine, Blue and Printing Paper to be transferred from specific to Ad valorem duties.

These concessions will come into force on the same date as the Tariff by spontaneous Decree on the part of the Japanese Government, but with a view of avoiding and unnecessary Complications, it is however understood, that these concessions shall, until further arrangement, be kept secret.

7. The Japanese Government is further prepared to extend to His Imperial German Majesty's

den darin gemachten Zugeständnissen Kenntniss genommen und stimmt denselben zu.

Was die bezüglich der Rechtsprechung zugesicherte Meistbegünstigung betrifft, so wird dieselbe Deutschseits in dem Sinne verstanden, dass, solange den Angehörigen eines dritten Staates das Innere von Japan nicht eröffnet ist, auch Deutschland keinen Anspruch auf Begünstigungen—*privileges and immunities*—erheben kann, welche diesem Staat in Angelegenheiten der Rechtspflege, insbesondere hinsichtlich der Fortdauer der Konsulargerichtsbarkeit, von Seiten Japans gewährt werden. Dagegen hat Deutschland ein Recht auf alle diejenigen Begünstigungen—*privileges and immunities*—, welche Japan in Angelegenheiten der Rechtspflege einem Staat gewährt hat oder gewähren wird, dessen Angehörigen das Innere von Japan eröffnet ist oder eröffnet werden wird.

Der Unterzeichnete benutzt auch diesen Anlass, um dem Herrn Gesandten den Ausdruck seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) H. Bismarck

An

Government, whatever privileges, exemptions and immunitica which are or may be granted to the mail steamers of the most favored nation.

The Undersigned avails himself etc. etc.

(Signed) Marquis Saionzi

His Excellency

Count Bismarck-Schönhausen

Secretary of State for the Department of Foreign Affairs

帝國總理

西曆一千八百八十九年六月十一日
德意志帝國駐日公使 薩義樂 謹啟

Berlin, den 11ten Juni 1889.

Der Unterzeichnete beehrt sich, dem Kaiserlich Japanischen ausserordentlichen Gesandten und bevollmächtigten Minister, Herrn Marquis Saionzi, den Empfang der drei Noten vom 11. ten Juni d. Js., welche zur Ergänzuzung des am gleichen Tage zwischen Deutschland und Japan abgeschlossenen Freundschafts-, Handels- und Schifffahrts-vertrags bestimmt sind, zu bestätigen.

Die Regierung Seiner Majestät des Kaisers hat

den Kaiserlich Japanischen ausserordentlichen Gesandten und bevollmächtigten

Minister,

Herrn Marquis Saionzi.

(附錄譯文)

西曆一千八百八十九年六月十一日
德意志帝國駐日公使 薩義樂 謹啟

Berlin, June 11, 1889.

The Undersigned has the honour to confirm to Marquis Saionji, Envoy Extraordinary and Minister Plenipotentiary of Japan, the receipt of the three notes of the 11th June, 1889, which are intended to be supplementary to the Treaty of Amity, Commerce and Navigation concluded between Germany and Japan on the same date.

His Imperial Majesty's Government have taken cognizance of the concessions contained in the aforesaid notes and have agreed to the same. In reference to the most favored treatment in matters affecting jurisdiction, it is to be understood on the part of Germany, that so long as the interior of Japan is not opened to the subjects of a third Power, Germany

have likewise no right to claim the privileges and immunities, which are granted by Japan to such third Power in respect to matters affecting jurisdiction, especially the continuation of Consular Jurisdiction.

On the contrary, Germany shall have the right to claim all privileges and immunities, which are or may be granted by Japan to any Power, to whose subjects the interior of Japan is or may be opened, in respect to matters affecting jurisdiction.

The undersigned avails himself of this occasion to convey to Marquis Saionji the assurance of highest consideration.

(Signed) H. Bismark.

To Marquis Saionji,
Envoy Extraordinary and Minister
Plenipotentiary of the Empire of Japan.

一八三 明治三十二年六月十二日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

謝意表明方ノ件

No. 211. Express to German Government our warm

附屬書

明治三十二年六月二十七日附西園寺公使來信附屬報告書

註 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

條約改正始末記事報告

明治二十一年十二月三十日我外務大臣ノ條約改正ニ關スル
訓示並ニ新草案等書類ニ接ス

是ヨリ先キ同月六日ホレーベン氏へ通知スヘシ云々ノ我
外務大臣ノ電信ニ接セシニ曰ク條約改正新草案ハ東京ニ
於テ獨逸國代理公使へ既ニ授與相成タルニ付云々ト此ニ
於テ始テ條約改正ノ議再起シタルヲ知ヲ得タリ

翌三十一日我外務大臣ノ電信ニ接ス即チ米國ハ既ニ承諾セ
シヲ以テ獨逸ニ於テモ同時ニ調印相成様ノ運ヒニ盡力スヘ
シ云々ナリ

本年一月二日シイボルト氏來館ニテホレーベンノ言ヲ傳ヘ
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外ニ早ク運ヒタルヲ以テ獨逸政府ハ大ニ之ヲ怪ミ頗ル不滿
ノ意アリ且外務省中議論二三ニ分レ果シテ好果ヲ得ヘキハ
未タ之ヲトスルコトアタワス併シ已レハ充分ニ盡力スルノ
覺悟ナリ云々

appreciation of their friendly attitude and accept for yourself my congratulations and thanks, also convey my thanks to Siebold for his assistance. Japanese Government would prefer to await ratification before making text of treaty public. We have however made public, fact of signing treaty.

Okuma.

June 12, 1889.

一八四 明治三十二年六月十三日 西園寺駐獨公使ヨリ
大隈外務大臣宛

條約締結始末報告ノ件

附屬書 條約改正始末記事報告

第十六號 八月十五日到

條約改正ニ關スル始末記事報告別冊ノ通ニ有之候間右相添
へ此段具申候 敬具

二十二年六月二十七日

在獨特命全權公使侯 西園寺公望印

外務大臣伯 大隈重信殿

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ベンニ面會セサリシ

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會スルコト能ハサリキ

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出サス五日モ兼約ニテビスマルク伯來館十時過マテ談話
センカト亦互ニ此事ヲ云ハスベルヘム伯ハ理アリテ來ラ
ス只ライハルド氏ニ少シク端緒ヲ開キタレトモ元ヨリ彼
ノ意ヲ窺フニ足ラス

五日、外務省ニ行キベルヘム伯ニ面會ヲ乞ヒタリ是ハ以前ヨリノ約束ナレトモ俄ニ用事出來ノ趣ニテ面會ヲ理リタリ六日、日曜日

七日、外務省ニ到リベルヘム伯ニ面會シ我外務大臣ノ訓示ニ基キ條約改正一件ハ昨年來會議中止ナルニ關ハラス我政府ハ一ノ改正案ヲ起草シ各別ニ諸大國ト協議スヘキニ決定シ云々並ニ獨逸政府ハ先年來關係モ有之我邦ニ對スル好意モ一方ニ付他國ニ先チ内議ヲ遂クルニ付云々且今度ノ草案ハ我日本帝國最後ノ決心故更ニ一步モ讓ルコト能ハサル旨云々及ヒ我帝國政府ヨリ別段ノ照會アル迄ハ決シテ他國政府ヘ通知無之様堅ク約束致度等ヲ縷々微細ニ述ヘタリ猶又三十一日接手ノ電信ニ基キ日本政府ヨリ他ノ諸大國ヘモ獨逸政府ヘ出シタルト同様ノモノヲ出シ且米政府ハ既ニ承諾セリ日本政府ハ兼テノ獨逸好意ニ對シ米ト同時ニ調印センコトヲ欲シ同意ヲ希望ス云々等ヲ述フ猶又昨日接收ノ電信ノ趣等ヲ述フ

是ヨリ先キホレーベン氏ノ傳言有リテシーボルト男ヨリ聞込タル事モアリ成ルヘク米國ノ事ヲ持出ササル方彼ノ感觸ヲ損セサルトノ事ニ付米國ノ事ハ輕々ニ述ヘ去リ強

去ル十二月三十日我外務大臣ノ訓令ニ接收セシヨリ今日

ニ到リ一週日余ハ獨逸政府ト直チニ掛合フコト能ハサリシヲ以テ余ハ大ニ苦心シ偏ニシーボルト男ヲシテホレーベン氏ヲ説得セシムルコトニ盡力セリシーボルトモ非常ニ憤發シテホレーベン氏ヲシテ強ク獨逸政府ニ向テ建言セシムルコトニ與テ大ニ力アリキ

余ノシーボルト男ヲシテ説カシメタルハ我日本國今日ニ在リテハ猶外國ニ向ヒ多少歩ヲ讓リ能フモ來年議院開設ノ日ニ至ラハ決シテ一步モ讓與スルコト能ハサルノ勢ニ至ルヘシ故ニ外國人ニシテ日本内地ニ入ルノ利益ヲ占メント欲セハ只今日條約改正ヲ速成スルニ在ルノミ機會決シテ失フ可カラス云々

シーボルトハ更ニ左ノ事ヲ加ヘテホレーベンニ説タリ曰ク此度若シ條約改正獨逸ヨリ破レハ獨逸ノ勢力ハ日本ニ於テ頓ニ地ニ落別ニ勢力ヲ振フ國出來スヘシ然ラハ則チ閣下ハ辭シテ日本ニ行ヘカラス閣下若シ日本ニ於テ前日ノ如ク獨逸ノ勢力ヲ保タント欲セハ速ニ改正ニ着手スルコトヲ諾スルニ在而巳

此時ニ方リ獨逸政府ノ議ハ三種ニ分レタル趣ナリ第一ハ全

テ主張セサリキ蓋シ當國政府ニテ米ノ事ヲ嫌フ譯ハ此節サモア一件ニテ殊更該國ト折合惡ク頗ル憤リヲ含ミ居ルニ因ルノ趣ナリ

ベルヘム伯ハ右申込ニ對シ返答ハ猶篤ト勘考ノ上之ヲ致スヘキ趣ナリ且ツ彼一箇ノ意ヲ以テ且ツ余ニ限り告ル趣ニテ曰ク貴政府ノ此度ノ申込方ハ急劇ニシテ且ツ米國ト約束調ヒタルヲ口實トシテ我ヲ壓迫セントスルニ似タリ殊ニ貴政府ヨリ改テ照會ノアル迄ハ他國政府ニ對シ秘密ヲ保チ吳レヨト約束シナカラ諸歐洲政府ヘ新案ヲ持出ストハ何事ソ譬ヘハ英國ヨリ内々相談ヲ受ケタル時頗ル返答ニ困却スルノ譯ナラスヤトノ意旨ニテ氣色甚佳ナラス

余曰ク元來米國ヘ新案ヲ出スコトハ貴國任東京代理公使モ承知ノ譯ナリ其他ノ政府ヘ出セシコトハ定テ深キ故有事ナラント察ス或ハ他ヨリ漏レンコトヲ恐レ寧ロ我ヨリ速ニ出シタルモ亦知ルヘカラス決シテ我政府ノ意嚮變シテ獨逸ヲ疎外スル等ノ事ナキハ萬々小官ノ保スル處ナリ云々猶又此度ノ議ハ實ニ最終ノ議ニテ其事調ハサレハ到底近キ内ニハ改正ノ目途ナシ願クハ兩國ノ爲メ閣下ノ好意ヲ以テ事ノ成ランコトヲ盡力セヨ云々ノ言ヲ殘シ別レテ去ル

ク我國ニ反對スル説即チ兎モ角モ一應ハ日本ノ提出案ヲ跳ネ付置キ徐々ニ英國ト相談スヘシ云々第二ハ是迄通リ諸國連帶ニテ會議ヲ和蘭陀國ニ開クヘシ此説ハラシユダウ氏(是迄我國ト條約改正ニ掛リタル人)ヨリ外務大臣ヘ建白セシ説ナル由仄ニ聞ク但シ眞偽ハ保セス第三ハ即チホレーベン氏ノ建白ニテ大ヒニ我國ヨリ提出ノ新案ニ向テ盡力セリ十六日ニ至リ獨逸政府ノ返答ヲ得タリ即チ翌日電信ニテ報告セシ如ク曰ク日本帝國ヨリ提出セシ新案ニ基キ其議談判スルコトヲ承諾ス然レトモ獨逸政府ハ諸國連帶ニテ議センコト却テ日本ノ利益ナラント考フ云々既ニ本年機密信第一號一月十八日附ノ報告ニ細微之ヲ述ヘ猶彼ノ口上書取ハ同月二十五日附ニテ差出ス

是ヨリ先キ十日ベルヘム伯ニ面會シ昨日接手ノ我外務大臣ノ電文ノ趣ヲ述ヘ且彼ノ意嚮ヲ尋ネタレト彼ハ始終好意ヲ示サス偏ニ我國ヨリ諸外國ヘ相談ナク新案ヲ出セシヲ怒ルノ意ヲ示シ且米國トノ條約二日ノ間ニ調ヒタルヲ疑ヘリ故ニ未タ成否ヲトスルコト能ハサリキ

十五日ニ至リ漸ク談判ヲ開クコトヲ承諾スルノ旨且在東京代理公使ヘ返答アリ云々ヲ聞タリ同日電信報告セシ如

シ

十七日早朝ホレーベン氏ヲ訪ヒ此度獨逸政府カ我提出案ニ基キ談判ヲ開シコトヲ承諾セシヲ以テ日本政府ハ大ヒニ満足ノ意ヲ以テ余ニ電信ヲ投シ閣下ノ盡力アルコトニ對シ謝辭ヲ致セトノ訓示ヲ得タル旨ヲ述ヘ猶又余ノ意ヲ以テ一日以來ノ盡力ヲ謝シタリ且ツ愈々明日ヨリ發足ノ趣ニ付最後今一應獨逸政府ニ向ヒ速ニ落着センコトヲ迫リ吳レヨト述ヘ且又彼ノ熟知スル如ク日本モ來年ヨリ議院開設ニ至レハ其以前ニ改正ノ議ヲ決セサレハ今一層困難ヲ見ルヘシトノ意ヲ致スホレーベン氏ハ既ニ獨逸政府ヨリ日本提出ノ新案ニ基キ談判センコトヲ承諾セシ上ハ此上ハ容易ニ運フヘシ余ハ東京ニ着シテ既ニ調印濟ノ新報ニ接センコトヲ望ム云々シイボルトノ事ニ付公然條約ニ關係セシムルコトハ甚タ得策ニシテ實ハ獨逸政府ニ東洋ノ事情ニ明ナルモノ之ナキヲ以テ常ニ疑念多ク困却セリ是等ニ向テ説諭セシムルニモ妙ナリ且ベルヘム伯モ之ヲ望ム云々

ホレーベン氏又曰過日閣下トベルヘム伯トノ談判ノ様子ヲ聞クニベルヘムハ日本ヨリ他國ニ向テ新案ヲ出セシコトヲ怒リ稍々過激ノ議論ニ向ハントセシ趣ナリ閣下願クハ日本

信報告ニ對スル我外務大臣ノ返答ナリ獨逸政府ノ様子ヲ知ルコトヲ得テ満足云々ホレーベン氏ヘ禮意ヲ述ルコト云々

十八日兩度電信ニ接ス

十八日兩度電信ニ接ス一ハ十七日ニ出シタル電信報告

ノ返答ナリ即チ全權ヲ與フル以前ニ伯林ニ於テ談判スルコト獨逸政府ヨリ承諾ノ旨公然ノ通知ヲ要ス云々シイボルト一件及在英代理公使ヘ書類ヲ送ル云々一ハ我日本政府ハ條約改正ハ諸國格別ニ談判スルノ要用ナルヲ云々最惠國ノ事ニ關シテ遺憾ナカラ無條件ヲ承諾シ英伊條約ノ文例ニ倣フ云々ナリ

二十七日我外務大臣ノ電信訓示ニ接ス即チ二十五日ニ報告

セシ吾電信ニ對スル返答ナリ我外務大臣ハ獨逸ノ修正返答ヲ得ルハ猶一二週間ヲ要スルヲ遺憾トシ更ニ獨逸政府ニ迫リ其返答ヲ促スヘシ云々且米國ハ日々ニ條約修正局スルヲ促スヲ以テ更ニ延引スルコトヲ苦シムトノ意ナリ又曰ク我新草案ハ既ニ二三週日以前獨逸政府ノ手ニアリ然ルニ猶數週日ヲ要スルトハ其理由ヲ解スルニ苦シム云々並ニ領事權限ノ約束等ナリ

然ルニ余ノ獨逸政府ニ迫ルハ殆ント毎日ニシテ種々ノ手段ヲ

政府ヘ是等ノ事ヲ告グルコト勿レ且御互ニ中間ニ立チ事ヲ成スヲ目的トス幸ニ注意セヨト余大ヒニ其好意ヲ謝シタリ猶又東京ヘノ傳言等ヲ依頼シ別レテ去ル翌日ホレーベン來館面會セシニ獨逸政府ハ愈々好意ニ向キタリ自身ヨリセ迫置キタリ云々余ハ一路平安ヲ祝シ彼ハ余ノ好結果ヲ得シコトヲ祝シ分手ス

十九日ベルヘム伯ニ面會昨日電信訓令ノ事ヲ申込ム

二十日シイボルト男ヲ外務省ニ伴ヒベルヘム伯ニ紹介シ我政府ノ許可ヲ得タルヲ以テ該男ヲシテ條約改正ノ事ニ關係セシメ且時々本省ニ來ラシムルコトアル可シ或ハ疑問相談等ノ事アラハ遠慮ナク同男ヲ呼出シ吳レヨト述タリ伯ハ日本ノ事ナト談話シ此度ノ條約一件ハミユルベルヒ氏其掛ナル故同氏ト隔意ナク相談シ吳レヨト答タリ

シイボルト男ノ事ニ付テ本年第二號機密信ヲ以テ報告セシ如シ二十五日電信報告ヲ出ス即伯林ニ於テ余ト共議談判スルコトヲ承諾ス且千八百八十七年ノ會議ニ基キ領事權限ヲ約束スル云々等ナリ此ニ到テ始テ第一着ノ地步ヲ占ムルコトヲ得タリ

是ヨリ先キ十六日ニ電信ニ接ス即チ十五日ニ出シタル電

用ユレトモ彼ハ常ニ此度突然我政府ヨリ壓迫スルヲ疑ヒ且米國ト結約ノ濟タルヲ怪ミ殊ニ米國ト同時ニ記名セント欲スルヲ怒リ頑乎トシテ動カス常ニ米國ト同一視セラルルヲ嫌フノ意ヲ示セリ余ハ大ニ苦ミタレトモ猶遊説ヲ試ント欲シ翌二十八日外務省ニ行キベルヘム伯ニ面會シ又々我政府ノ訓令ヲ得タル趣ヲ縷々説話シタレトモ彼ハ我獨逸ハ米國ノ如クハ往カストノ意ヲ示シ且ツ曰ク貴政府モ米國ニ對シ調印延引ノ言譯ニハ御迷惑ナルヘシ貴公使ノ中間ニ在テ苦シムモ余ハ能ク之ヲ察ス余ノ如キハ常々如此苦シニアルナリト既ニシテ容ヲ改テ曰ク獨逸政府ハ日本國ニ向テ好意ヲ持ツハ勿論ナリ但シ此條約改正ノ事タルヤ關係スル處少ナラス既ニ貴國ニ於テ八九年ノ星霜ヲ費シ未タ成ラス然ルニ突然二三週間ニ結了セント欲スルハ亦甚壓迫ニ非ラスヤ願クハ此意ヲ貴政府ニ通セヨト余ハ更ニ二三日ヲ待テ再ヒ迫ルヘシト告テ去ル

同日電信ニ接ス即來二月十一日憲法發布云々ナリ

二十九日我外務大臣ニ向テ電信報告ス即チ昨日ベルヘム伯ト談話ノ結局ニテ二十七日返答ヲ兼ルモノナリ

同日又々ベルヘム伯ニ面會シ憲法發布迄ニ調印ヲ濟セタキ

云々ノ趣ヲ以テ速ニ事ノ運ハンコトヲ迫ルト雖モ遂ニ決答ヲ得ルコト能ハス因テ更ニシイボルト男ニ命シミルベルヒ氏ニ面會シテ委細ニ我情實ヲ述ヘ且ツ彼ノ模様ヲ探ラシムシイボルト男種々談話ノ末彼ノ決意ノ大略ヲ聞得タリ即チ第五條十條十五條十六條二十一條二十三條等ニ關係セル議ニシテ三十一日附ノ電信^(二三五)ニテ報告セシ如シ

ベルヘム伯ニ面會ノ節我ノ政治ニ涉ルノ談話アリシヲ以テ左ニ略記ス

彼曰ク貴政府ニ於テ是非憲法發布ノ日迄ニ條約改正ヲ要セラルルハ抑何ノ故ソ

余曰訓令中ニ理由ヲ示サスト雖モ尤モ見易キ事ト信ス如何トナレハ我ノ憲法發布ノ如キハ從來臣民ノ舉テ以テ渴望スル所ニシテ實ニ千載吾カ歷史上ノ一大紀念日ト謂ハサルヲ得ス故ラニ神武天皇即位ノ日ヲ撰ハレタルモ亦此意ニ外ナラサルヘシ此時ニ當テ亞米利加ニ在テハ合衆國既ニ我ト親密ノ好意ヲ示シ歐羅巴ニ在テハ獨逸帝國カ他ノ諸國ニ先タチ條約改正ヲ承諾シ記名ヲ終リタリト謂ハハ内外ニ對シ豈一大盛觀ヲ添ユルニ非スヤ我政府ノ貴國ヲシテ此盛典ニ際シ調印ヲ終ラシメントスルハ眞實貴國ヲ敬愛スルノ意ニ出

改進黨ハ大隈伯ト其意見略々同シキヲ以テ隱然之ヲ頭ニ戴キ周旋盡力セシハ明カナレトモ伯カ改進黨總理ノ名ヲ帶ヒタルニ非ラス實ニ又之ヲ總理セシモ非ラス伯ノ内閣ニ入リタルハ余ノ日本ヲ出シ後ナレハ親シク如何ヲ知ル能ハスト雖モ必スヤ我政府ノ充分堅固ナルヲ以テ政府モ之ヲ容レ伯亦之ニ入リタルモノニテ其結果タルヤ是迄幾分カ政府ニ反對セシ改進黨モ從テ政府ヲ助クル譯ナリ即チ勢力ヲ増ス所以ナリ故ニ政府ノ力衰エテ改進黨ニ傾キタルニ非ラス時機ノ熟スルニ因テ改進黨カ政府ニ一致セシナリ且吾政府ハ維新以來繼續ノ一政府ニシテ外國ノ如ク一人一己ノ爲メ變更アルニ非ラス豈勢力ヲ減シタル徵候アラシヤトベルヘム伯ハ意外ノ様子ニテ成程ト覺ヘシモノノ如シ

彼曰貴國續々米國ニ向テ人ヲ出スト是等ノ人他日歸國セハ又々方向ヲ一變スルコトアラン余大ヒニ之ヲ恐ル

余曰米國ニ向テハ我國人勞力又ハ商用ノ爲メニ涉航スルモノ多シ而シテ政事等ヲ勉強スルモノハ至テ少シ且我國ニモ亦固陋ニシテ古昔未開ノ風ヲ戀フモノ少カラス是等ニ向テハ幾分カ米國風ノ劇藥ヲ用ヒ平均ヲ取ルモ亦妙ナリ余ハ決シテ恐レサルナリ彼曰今日ノ談話ハ五ノ間ニ止メ置カンコ

テタルヤ明々白々ナリ

彼曰貴政府ノ意ハ條約改正結局等ヲ口實トシテ其弱點ヲ柱持スルノ謀ニハ非ラスヤ然レトモ別ニ自今是等ノ要用アルヲ見ス且ツ縱令ヒ條約結了スルモ批准並ニ實施スルハ遙ニ數月ノ後ニ在リ然ラハ憲法發布ノ前後ニ因テ大ナル利害アルヲ覺ヘス

余曰條約改正一日速ニナラハ一日速ニ我權利ヲ回復スル道理ナレハ利害ニ於テ大ナル關係アルハ勿論ナレトモ我政府ニ弱點アリテ之ヲ粧ハンカ爲メニ條約改正終結ヲ假テ之ヲ口實トナスカ如キニ非サルヤ萬々ナリ如何トナレハ余ヲ以テ之ヲ見ルニ我政府カ近來其勢力ヲ増スモ之ヲ減シタル痕ヲ見サレハナリ

余又曰余ハ一ノ疑團ナキ能ハス萬々之レ有マシトハ思ヘトモ憲法ノ立カタニ因テハ發布後ノ條約ハ議院ノ批准ヲ經ルノ定ニテ而テ來年ヲ待タス速ニ議院ヲ召集スル事トナリタルモ亦知ル可カラス然ル時ハ其得失實ニ重大ナリ

彼曰改進黨ノ總理ヲ内閣ニ入レタルヤ則チ勢力ヲ減シタルノ徵候ニ非ラスヤ

余曰是余ノ増スヲ見ルモ減スヲ見スト謂フ所以ナリ勿論

トヲ乞フ余之ヲ諾シテ去ル

二月一日我外務大臣ノ電信^(二三六)ニ接ス即チ余ニ全權ヲ與ル云々ノ長文訓示ナリ

二日又接ス^(二三七)即チ余カ一月三十一日ノ電信報告ニ對スル返答ナリ

八日電信ヲ出ス即チ獨政府ノ返答ハ猶十日計リヲ要ス云々三省並ニブンテスラート評議中云々ノ報告ナリ

二十一日我外務大臣ノ電信^(二三八)ニ接ス即チ米國ト調印ノ濟タル報ナリ因テ直チニベルヘム伯ニ面會シ之ヲ通知ス同日電信^(二三九)ヲ出ス即チ略々獨政府ノ修正ヲ聞得タルコト並ニ彼ヨリ公然ノ返答アラハ悉皆電報スヘキヤ否ヤノ伺

三月六日何故ニ獨逸政府ノ修正ヲ報セサルヤトノ我外務大臣ノ催促ノ電信^(三四〇)ニ接ス

同日右ニ對スル返答ヲ出ス即チ未タ公然ノ返答ヲ得ス云々二月初旬ヨリ數々諸方ノ夜食夜會等ニテミルベルヒ氏ニ會セリ其度ニ獨政府ノ返答如此ニ延引スル所以ヲ質問スレトモ常ニ内務大藏殊ニ司法省ノ折合惡ク未タ決答スルノ遲ヒニ到ラサル趣ヲ述ヘタリ

此頃ニ至リ余ハ種々ノ委敷報告ヲ待モノナラント考ヘ其趣

ヲ探リタレトモ要ヲ得ス第二ニ英國ヨリハ日本ヨリ提出ノ新案ニハ一切同意スヘカラストノ通知アリタレトモ獨逸ハ之ニ關係セストノ趣ナリ

此ヨリ遙ニ後チ四月二十六日シイボルト男カ外務省ニテミユルベルヒ氏ヨリ内々聞込ミタル趣ニヨレハ三月六日附ニテ英政府ハ日本提出ノ新草案ニ對スル回文ヲ出シタリト然ル時ハ初ニ噤サノ有リシハ在伯林大使ノ意見カ又ハ取リ敢ニス獨政府計リヘ對シ同意スヘカラスト止メ置キ後ニ回文ヲ出セシモノナルカ木ヲ知ル可カラス英政府ノ意見ハ四月二十六日附ニテ電報ヲ出シ猶又同日附ヲ以テ英文ニテ郵送セリ即チ三月二十七日附ノ訓令ニ從フモノナリ

第三ニハ或ハ我國來年議院ノ開設ヲ待テ新ニ條約ヲ結ハントノ企ニ非ラスヤトモ考ヘタリ後ニ思フニ之ハ全ク空想ニテ英國ノ意見ハ幾分力遲延セシメタルモノナリ而シテホレ一ベン氏ノ報告ハ最後ニ必ラス與テ力アリシト思フ此ヨリ先キシイボルド男ハ余ニ向テ種々ノ内報ヲ爲セリ曰ク獨外務省ノ官吏中日本今日ノ政府ハ明年ハ必ス倒レテ米國風ノ主義流行シ獨逸ハ必スヘケト爲ルヘシト謂モノアリト曰

條約ニ記名スルノ時ニ臨ミ多少變更スルノ下苦心ヨリ出タルニハ萬々之レ無シト信ス但シ貴政府ニテハ右我政府ノ申立ヲ承諾スルヤ否ヤミユルベルヒ氏曰ク多分承諾ハスヘケレトモ本條約ヲ英文ニテ結フコトニ於テ我政府ハ故障アルマシト信ス且ニ重々間ニモアリ是等ノ形チ上ノ事ニテ彼是ト疑ヲ起サシムルハ目下得策ニモアラス若シ貴公使ニ於テ不都合ナクハ今一應電信ニテ貴政府ヘ尋ネ置キ愈々改正結了ニ至ラハ如何様トモ運フヘキニ付其時ノ事トシテハ如何余ハ右ニ同意シ即チ翌十日報告セシ電信是ナリ

十二日我外務大臣ノ電信ニ接ス即チ十日ノ我電報ノ返答ナリ猶又十五日ニモ右ニ關シ電訓ニ接ス

十六日電信ヲ出ス即チ獨逸政府返答ノ延引スルハ司法省ニ於テ異議アルニ因ル云々ノ報告ナリ

二十七日電信ニ接ス即チシイボルト男ヲシテ内々ミユルベルヒ氏ニ司法省ノ異議ヲ尋ネシムル云々並ニ英國力意見ヲ各國ニ出シタル云々等ノ訓示ナリ

二十八日電信ヲ出ス即チ昨日ノ電訓ニ對スル返答ナリ

四月二日獨逸政府ノ返答ヲ得タリ即チ電信ニテ單ニ返答アリシ趣キヲ報道シ置キ七日ヨリ十日ニ至リ五回ニ分チテ委

豈獨逸ノミナランヤ頑固黨ノ勝利トナリテ總テ西洋風ハ地ヲ拂フニ至ルヘシ故ニ獨逸ニ在テハ餘リ日本ニ向テ力ヲ入レサルヲ得策トスト謂フモノアリト其他縷々ノ奇談アリシシイボルド男ハ婚姻ノ爲一ヶ月計リノ旅中シタキ旨ヲ告ケシヲ以テ三月一日ヨリ休暇ヲ與ヘ四月二日伯林ニ歸府ス三月八日電信ニ接ス即チ我外務大臣カホレーベン氏ニ面會アリテ云々且ツ伯林ニ於テ英語ヲ以テ假條約ヲ結ヒ更ニ東京ニ於テ日本英語ヲ以テ本條約ヲ結フ云々ノ訓示ナリ

余ハ翌九日直チニ右ノ趣ヲ獨政府ヘ申込ント欲セシカト元來獨政府ハ既ニ先年ノ中止ニ懲リ常ニ疑ヲ懷クノ模様之レアルヲ以テ假ノ一字ヨリ又々一片ノ疑心ヲ惹起シ改正結了ニ遲延ヲ來サンコトヲ恐レ即チミユルベルヒ氏ニ面會シ先ツ改正ニ關スル項計リヲ述ヘリ既ニシテ彼ヨリホレーベン氏ノ電文ヲ得タレトモ充分ニ意ノアル處ヲ解スルコト能ハストテ之ヲ出シ余ヲシテ一見セシメタリ果シテベルヒム伯ノ手跡ニテ假字ノ下ニ線ヲ引且ツ疑點ヲ打タリ

余曰ク余モ亦同様ノ電文ヲ得タレトモ少々疑ヒアルヲ以テ本日ハ攜帶セス考フルニ獨文ノ條約書ヲ調成スルニハ日時ヲ費スコトヲ恐ルルヨリ出タルコトニテ更ニ東京ニ於テ本細ノ報告ヲ終ル(以下省略)

獨逸政府ノ返答書中ニハ一日ノ日附ナレトモミユルベルヒ氏ノ公使館ヘ持參セシハ二日ノ午後ナリキ余ハ直チニシイボルト男ニ英文ニ翻譯スルコトヲ命シタリシイボルトハ井上書記官ト相談シ速ニ着手シ非常ニ勉強シテ頭痛ヲ病ムニ至リタレトモ三日ヲ費シタリ余ハ獨英兩語トモ不通ナルヲ以テ天野書記官ヲシテ更ニ佛文ニ返譯セシム天野書記官ハ英文ノ出來タルニ一日後レテ譯ヲ終リタリ

余ハ獨逸返答ヲ熟讀セシ處法律ニ關シテ頗ル了解ニ苦シミ奇異ノ感ヲ爲シタリシイボルト氏並ニ井上書記官トモ相談セシカ皆々妙ナラストノ評ヲ下セリ因テ再應ミユルベルヒ氏ニ答辯ヲ乞ヒ然ル後電報セント考ヘタレトモ餘リニ時日ノ遲延センコトヲ恐レ先ツ報告ヲ出シ置キ後ニ余ノ考ヲ上申スルコトト定メタリ

會テ二月二十一日附ノ電信ニテ伺ヒタリシ時ノ訓示ニ據レハ全文ヲ電報スヘシトノ意ト了解シタレトモ如何ニモ長文故ニ要處ヲ節略シ且ツ電信局ニテ誤ヲ生センコトニ注意シ數回ニ分チテ電報スルコトニ決シ更ニシイボルト氏ニ英文ニテ右ノ電信文ヲ作ラシメ且ツ天野書記官ヲシテ英文作ル

ニ從ヒ之ヲ佛文ニ翻譯セシメ原書即チ獨逸政府ノ全文ト引合セ反復討論シテ註誤並ニ脱略ナキヲ期シ我外務大臣ニ向テ發電セリ

右ノ作文翻譯討論等ノ爲又々大ヒニ日時ヲ費スヲ以テ一節ナルニ從ヒ直チニ符合ニ組ミ七日ニ二回八日九日十日十三日間ニ一回ツツ發電スルニ至レリ(以下省略)

余既ニ了解ニ苦ミタルヲ以テ注釋ノ心持ニテ余ノ意見ト題シ猶五日ヲ費シテ最後ノ報告ヲ終リタリ此如五日ヲ費シタルモ矢張り英文ノ原作ト佛譯トニ在リ而シテ最モ費シタルハ獨逸法律ヲ取調ヘ且ツ余ハ猶誤リノアランコトヲ恐レシイボルト氏ヲシテミユルベルヒ氏ニ面會セシメ如此ニ解釋センカ誤リナキヤ否ヤヲ質問セシメタルニアリキ右意見報告ハ四月十六日ニテ第十五條第十六條云々ノモノ是ナリ是ニ先キタチ四月十日意見電報ノ催促來ル

同日獨逸政府ノ返答書寫ヲ郵便ニテ出ス

四月二十五日並ニ二十六日兩日ニ分チ我外務大臣ヨリ獨逸政府ノ修正ニ對スル返答訓電ニ接ス(以下省略)

二十六日英國ヨリ諸國ニ出シタル意見ノ大略ヲ手ニ入ルルコトヲ得テ之ヲ電報シ又郵便ニテ報告ス

ル返答ヲ得テ無限ニ延引スルヤモ亦測ル可カラスト考ヘ若シ如此ノ勢ヒニ陥ル時ハ到底外務省ノ俗吏ト舌戰スルモ其效アルナシ若カス最後ノ手段ヲ用ヒビスマルク公ニ面會シ理論ヲ以テ我ノ權理ヲ主張シ且ツ東洋ノ大勢ヲ說キ彼ノ口吻ニ因テ臨機ノ遊說ヲ試ムルヨリ外ナシ彼若シ聽カسنハ余ハ辭職シテ去ルヘシト思惟シ一日シイボルト氏ニ謂テ曰ク此度ノ返答ニ因リテ獨逸外務省ノ意見全ク反對ニ決スルモ猶ビスヲ說クノ手段アリト考フ貴意如何トシイボルト曰只此一途アルノミト此ニ於テ余ハ右ノ策ニ決意シ豫メ其地ヲナサント欲シビスマルク伯ニ面會シ余曰ク過日既ニ概略ハミユルベルヒ氏ニ話シタリ今右ノ返答ヲ表向閣下ニ出ス爲メ覺ヘ書キヲ調製スルノ最中ナリ閣下モ既ニ大略ハ御聞取ナルヘシ細節ハ置テ論セス到底貴意ノアル處ハ如何ト然ルニ伯ハ意外ニ好意ヲ示シ右ニ關シテハ段々ト延引シ誠ニ御氣毒ナリ余亦速ニ好果ヲ得ント欲ス何卒遠慮ナクベルヒム伯並ニミユルベルヒ氏ニ迫リ吳レヨト余ハ彼ノ口吻頗溫和ナルヲ以テ未タ破格ノ舉ニ出テ老ビスマルクニ面會ヲ乞フノ時ニ非ラスト考ヘ相當ノ挨拶シテ去ル

因ミニ曰フビスマルク伯トハ是迄別段ニ條約改正ニ關シ

三十日第五條ニ關シ疑問シ併セテホレーベン氏ノ電信ノコトヲ報告ス

五月三日我外務大臣ノ返答ノ電信ニ接ス定價稅ノ事ナリ(以下省略)

七月ミユルベルヒ氏ニ面會ヲ望ミタレトモ外務省中會議アル様子ニテ之ヲ理リタリ翌七日外務省ニ到リ同氏ニ面會シテ我覺ヘ書キヲ附シ速カニ熟讀アリテ諸答ノ決答ヲ得タキ趣旨ヲ縷述シ猶ホ不審ノ點アラハ何時ニテモ外務省ニ到リ答辭スヘキ旨ヲ示ス右覺書ノ點ハ我外務大臣ヘ向テ十三日郵便ニテ出ス

十日シイボルト男ヲシテ外務省ニ往キミユルベルヒ氏ニ面會シテ返答ヲ促サシム

十二日外務省ニ往キベルヒム伯ニ面會シ段々事ノ延引スルヲ歎シ且外國人豫審裁判官ヲ置キ並ニ違警罪ニ至ルマテ大審院ニ上告ヲ許ス等は等ノ條ハ實際成スヘカラサルノ請求ニテ苟モ彼ヨリ此度ノ條約改正ヲ破ルノ意アルニ非ラサレハ主張シ能ハサルノ意ヲ含ミテ迫ル

余ハ我外務大臣ノ四月二十五六兩日ノ返答ニ接スルヤ此度ノ條約改正モ亦タ破ルルカ又ハ獨逸政府ヨリ非常ニ冷淡ナ

テハ談判セシコトナシ只金曜日ノ逢ヒ日ニ時々面會スルノ序ヲ以テ條約改正ノ事ヲ宜敷頼ムトノ意ヲ述ヘタルノミ此後モ亦遂ニ一度モ談判セシコトナシ

覺書ヲ出シタル前後ニ於テ余ハ非常ニ心配セリ如何トナレハ成否ハ只此一舉ニ在レハナリ然ルニベルヒム伯ハ始終余ニ向テ好意ヲ示サス何カ我政府ニ向テ不平アルカ如ク遠カラシシテ亞米利加主義ノ政府トナルヘキヤトノ疑念ヲ懷クカ如シト思ヘハ又頑固古風ノ主義ヲ變シ西洋風ハ地ヲ拂フ可シトノ疑念ヲ懷クカ如クニモ有リ然レトモ違警罪ヲ大審院マテ持出スト豫審裁判官ニ歐米人ヲ用ユルトノ議ハ自カラ其非理ヲ悟リ居モノノ如ク此點ハ余モ稍々安心セリミユルベルヒ氏ハ之ニ反シ始終非常ニ好意ヲ示シ彼ハ此度始メテ亞細亞掛トナリタレハ數年間纏ラサル日本トノ條約改正ヲナシトクルハ殊ニ自家ノ榮譽ニテ他日昇進ノ地位ニモナルトノ意ヲ數々余ニ向テ悟ラシメタリ且大ヒニシイボルト氏ヲ信用セシハ頗ル余ニ向テ便益ヲ與ヘタリ

ホレーベン氏ヨリ獨逸政府ヘ向テ電報即チ若シ獨逸政府ニ於テ裁判ノ事ヲ承諾セサルニ於テハ此度ノ條約破ルベシト且最惠國ノ簡條アレハ獨逸ニ於テ恐ルルノ點ナシトノ意ヲ示

シタルハ余ニ在テハ大ニ力ヲ得タリ蓋シ獨逸政府ニ向テハ甚シキ效力ハナカリシモノノ如シ
 デルンベルヒ男ノ歸國ヲ聞キ余ハ大ニ悦ミタレトモ僅々數日伯林ニ在テ速ニ新任處ニ向テ出發セリ余ハ直チニベルヘム伯ニ逢ヒデルンベルヒ男ニ面會セシナルヘクホレーベン氏ノ傳言モアル可シ東京近況ハ如何ト尋ネタルニ伯ノ返答ニハ終ニ一度モ同男ニ面會セス且ホレーベン氏ヨリハ何タル報告モ到達セスト余ハ大ニ失望セリ然レトモ此頃又ハ少シク後レテホレーベン氏ヨリ委細ノ報告到達シ大ニ外務省ノ議ヲ動シタルニ相違ナシト察ス

デルンベルヒ氏ニ關シベルヘム伯ノ言語アマリ冷淡ナルヲ以テ余ハ疑ヲ起シ酒間懇話ノ際ニ乘シミュルベルヒ氏ニ尋ネタリ氏曰ク元來ホレーベン氏トデルンベルヒ氏ハ其間甚佳ナラス故ニ別段ニ親懇ナル傳言アルコトナシ余ハデルンベルヒ男ノ歸國ヲ悦ヒ一臂ノ力トナサント欲セシカ男ハ又又外務省ノ生捕トナランコトヲ恐レ速ニ去テ任處ニ赴キタリ然レトモ日本ノ事ハ頗ル稱譽シテ條約改正ノ速ナルハ却テ獨國ノ利ナリトノ意ヲ述テ去リタリト

後ニ此事ヲ聞キタリシニデルンベルヒ氏曰ク何ソ獨逸外

是ヨリ先キミュルベルヒ氏ハ數々司法省ノ委員ト議論セシカト終ニ彼ヲシテ承諾セシムルコト能ハストテ大ニ心配セリ因テ内々シイボルト氏ヲシテ其席ニ列セシメ答辭ノ任ニ當ラシメハ如何トノ意ヲ述タルニ是ハ最モ妙策ナリ甘ク次官ニ説テ此事ヲ承諾セシムヘシト云ヘリ其後終ニ司法委員ヲ承服セシムルコト能ハサル由ニテ猶ミユルベルヒ氏ハシイボルトニ乞テ外務省ニ來ラシメ熟談ノ上此運ニ至リシナリ此舉ハ非常ニ好結果ヲ呈シタリ

二十三日ニ到リ總テ我政府ノ請永ニ應シ獨ヨリ出シタル修正ヲ取消スコトニ議ヲ決セリ

二十五日公然獨逸政府ノ返答ヲ得タリ即チ電信報告セシ如シ三十日我外務大臣ノ訓示ニ接ス此ニ於テ條約改正ハ既ニ結了ヲ告ケタリト云フ可シ

三十一日貿易並ニ倉庫規則調印ノ事ニ付我外務大臣ニ向テ訓令ヲ發ス

六月二日電信ヲ出ス即チユリスデクシヨ最惠國云々ニ關シ司法省ヨリ故障申立一件ナリ右ニ關シ余ハ更ニ一驚ヲ與シタリ因テシイボルト男ト相談シ到底纏リノ付カサル時ハ裁判權限ノ事ノミホレーベン氏ト東京ニ於テ別ニ談判ヲ開

務省ノ官吏ハ小膽ナルヤ今獨國盛大ノ運ニ乘シ東洋ノ一小兒ヲ苦惱セシムルノ時ニ非ラス區々ノ議論ヲ去リ速ニ條約ヲ結了スヘシ他日萬一彼ヨリ不都合ヲナサハ實際デプロマシイ上ヨリ掛合ヒ彼レヲ壓服スルノ道ハイクラモアリト當時此論ヲ聞キデルンベルヒ男僅ニ日本ヨリ來ル仍チ東洋風ノ議論ヲナスコト皆一笑セリト

五月十一日ニ四月二十四日出シタル電信ニ向テ如何ナル手續ヲ爲セシヤ獨逸政府ノ模様ハ如何トノ我外務大臣ヨリノ電問ニ接ス

同日右ニ對スル返答ヲ出ス即チメモランダムヲ出シタルコトヲ報告ス

十六日船舶測量ニ關シ電信ヲ出スメキシコ條約云々はナリ二十一日右返答來ル且千八百八十五年英國閣令ヲ見ルヘシトノ訓示ニ接ス因テ之ヲ英國ヨリ取寄セ一見ヲ了

二十二日シイボルト男ヲシテ外務省ニ往カシメ該省會議ノ席ニ列セシムル男ハ司法省ノ委員ト反覆辯論シ終ニベルンネールノコトアツベルノコト豫審裁判云々ノコト等盡ク彼ヲシテ其請求ヲ取消サシムルニ至レリ右ニ關シテハ同日電報ヲ出ス

キ此簡條ハ條約書ヨリ取除ク事トノ動議ヲ起ス事ニ内決セリミュルベルヒ氏ハ甚タ失望ノ様子ニテ法律家ノ事ヲ解セサル此期ニ及ヒ區々代言人ノ如キ言ヲ鳴ストテ敷恩セリシイルト男ト司法委員又々反覆辯論セシ處終ニ好結果ヲ得テ電信報告セシ如クニ決シ彼ヨリノツツヲ出ス事トナレリ但右ノツツヲ出ス事ハミュルベルヒ氏ハ始終之ヲ嘲笑ニ附シタリ

三日我外務大臣ノ電信ニ接ス即第二十三條云々並五月二十八日ノ電信ニ對シ如何ナル手續ヲ爲セシヤ云々ノ訓示ナリ

四日又接ス即チ六月二日ノ電報ニ接セリ云々ノ訓示ナリ五日我外務大臣ニ向テ電信ヲ出ス即チ二十三條削除云々且ツ新條約書ハ十日以内ニ記名相濟スヘシトノ報告ナリ

六日條約改正ハ既ニ成ルヲ告ケタルヲ以テシイボルト氏ハ暇ヲ乞テ歸郷ス蓋シ同氏ノ妻過日來病氣ニテ一日モ早ク田舎ノ空氣ニ浴セサルヲ得サレハナリ

十日我外務大臣ノ電信ニ接ス即チ稅則中云々ノ訓示ナリ十一日早朝ヨリ井上書記官外務省ニ往キ條約書類ノ讀ミ合ヲナス午後二時頃ニ至リ之ヲ終ルニ本日ハ幸ヒビスマルク伯外務省ニ出テ居ルヲ以テ直チニ記名セントノ相談調ヒ午

後四時十五分外務省ニ至リ雙方記名ス

委任狀ノ事ニ付兼テ打合セヲナセシニ獨逸國ノ習慣ニテ外務大臣並ニ大使ハ委任狀之ナシト申込ニ付其議ヲ承諾シ我委任狀ノ寫並ニ佛文ノ反譯ヲ彼ニ渡シタルノミ彼ヨリハ別ニ之ヲ出サスシテ止ム

此ニ至テ獨逸國トノ條約改正結局ヲ結フ偶々我憲法發布ノ日ニ當リタル亦偶然ニ非ル可シ

新條約書並ニノツト等ハ十二日附ヲ以テ之ヲ郵送ス

最初條約改正ノ再燃スルヤホレーベン氏非常ニ盡力シ自家出立ノ以前ニ於テ獨逸政府ヨリ大體上承諾ノ返答ヲナサシメタルハ與テ力アリ而シテ出立以後雙方ノ便宜ヲ計リベルヘム伯ト余ニ說テシイボルト男ヲシテ條約改正ニ公然與ラシメタルハ他日最モ便利ヲ與ヘタリ

ホレーベン出立後ハ半ハミユルベルヒ氏半ハシイボルト男ニ功ヲ歸セサルヲ得スミユルベルヒ氏ノ熱心ナリシト城府ヲ設ケス虛心余ト内話シ只事ノ成就スルヲ期シ如此人物此度ノ掛リ役トナリシハ余ニ於テ大ニ仕合せナリキシイボルト男モ亦往來周旋余カ公使ノ資格ヲ帶ヒテ言出シ難キ事ハ彼ヲシテ之ヲ遊説ヒシメタリ且彼ハ頗ル愛敬アル性質ナル

ノ談判満足ニ結了ヲ告ケ新條約並ニ税目ヲ同月十一日獨逸國全權委員ビスマルク伯ト互相記名調印被致候趣具申相成併セテ右條約及税目並ニ往復書翰四通(但シ壹通獨逸本文三通英文字)御送付相成正ニ致受領候

初メ獨逸政府ニ於テハ我案ニ對シ種々ノ異議アリタルニ談判ノ上其内ノ重要ナルモノハ悉ク之ヲ取消シテ修正ヲ比較的ニ重要ナラサル條項ノミニ止メ遂ニ満足ノ結局ヲ告グルニ至リタルハ全ク貴官ノ談判力終始其宜ヲ得タルニ由ルト深く敬服致シ爰ニ爲國家御成功ヲ祝シ候

右申進度如此候也

二十二年八月二日

外務大臣伯 大隈重信

在獨特命全權公使侯 西園寺公望殿

註 一八二

一八六 明治三十三年八月二日

大隈外務大臣ヨリ
西園寺駐獨公使宛

條約書及附屬書類ノ誤記其他ニ關シ訓令ノ件

大隈外務大臣時代 對獨交涉 一八六

ヲ以テ圓滑ニ事ヲ處シ殊ニミユルベルヒ氏ノ信用ヲ受ケ數回司法委員トノ會議ニ列シ好果ヲ得タルモ盡ク他ノ力ナリ最後ニ至リ意外ニ容易ニ運ヒタルハ我外務大臣ノ四月二十(五九)五六日ノ訓示明白適切ニシテ理ヲ盡シタルノ致ス處ナルハ言フ俟タスト雖モ察スルニ此頃ニ在テホレーベン氏ヨリ詳細ノ報告到達セシモノナラント信ス

右今般條約改正ニ付此地ニ於テ我外務大臣ノ訓示ニ從ヒ輪旋候始末ニ御座候一月以來往復ノ電文訓示及双方ヨリ出シタル覺書書翰等一切ノ書類ヲ和文ニ翻譯シ前文中處々ニ挿入致シ候得ハ其手續一目瞭然ト存候得共右書類ハ既ニ本省ヘ差出シ有之候事故纂ヲ略キ不贅干此何卒右書類ト御對看有之候様願度候右及報告候

一八五 明治三十三年八月二日

大隈外務大臣ヨリ
西園寺駐獨公使宛

調印済ノ條約書及附屬書類領收ノ件

送第五五四號

本年六月十二日付第十四號信ヲ以テ獨逸國政府ト條約改正

附屬書一 獨逸政府ヘ提出スヘキ覺書案文

二 右覺書案譯文

送第五五五號

去ル六月十一日獨逸國ト調印相整候新條約並往復書翰ニ關シ種々申進度義有之左ニ陳述致候

一、貴官ヨリ送ラレタル三箇ノ書翰ニ對スル獨逸外務大臣ノ返書ニ右三箇ノ書翰即チ同日付ノ「和親通商及航海條約」ノ補充(Ergaenzung 即チ Supplementary)ニ關スルモノヲ受領シタル旨ヲ證明ス皇帝陛下ノ政府ハ右ノ書類中ニ記載セル許與(Zugestandnis 即チ Concession)ノ件ヲ了知シテ之ニ同意ス「ト有之候處右三通ノ内外國出身判事任命ノコトニ係ル書翰及法典編纂ノコトニ係ル書翰ハ兩ナカラ帝國政府カ是々ノ決心ヲ有スト云フコトヲ豫メ獨逸政府ニ報道シテ新條約ヲ結フモ彼國人民ノ利益ハ損害ヲ蒙ルコトナキ旨ノ安心ヲ與フル爲メニシテ決シテ帝國政府ハ之カ爲メ條約ノ義務ヲ負フ積ニハ無之勿論一國ノ政府カ他國ニ對シ公然ノ書翰ヲ以テ是々ノ事ヲ與行スヘント告知シタルニハ德義上之ヲ履行スヘキ筈ニ付實際ノ效果ニ於テハ條約的ノ約束ト同一ナレトモ事體上帝國政府ノ任意ニ出テ

タル報道ヲ以テ條約補充ト見做スハ穩當ナラス仍テ此書面落手次第早速別紙申號英文案ノ通り此儀ニ付獨逸外務大臣ヘ書面可被相送候帝國政府ハ國ノ威嚴ヲ保存セン爲メ外國出身判事任命ノコトト法典編纂ノコトヲ條約文中ニ加ヘス任意ノ公文ヲ以テ其事ヲ報道スルコトトセリ右ノ趣意ハ獨逸政府ノ熟知スル所ナルヘキニ因リ前文ノ書面ニ接スルモ該政府ニ於テ別段異議無之答ト存候併シ其模様ニ因リ幾分カ異論有之様ナレハ帝國政府ノ意ハ決シテ右ニ通ノ書翰ノ效力ニ消長ヲナサントスルモノニアラス全ク國ノ威嚴ヲ保チ國民ノ感情ヲ傷ケサランカ爲メ形式上條約トハ直接ノ縁故ナキモノトスルノ趣意ニ外ナラサル旨ヲ可然御説明可相成候

一、法典編纂ノコトヲ報道スル書面中草案ニハ (deems it proper to announce) トプリシ處ヲ (is authorized to declare in the name and on behalf of the Imperial Japanese Government.....) ト改メラレ候ハ如何ノ次第ニ因リシ哉此書面ハ法典編纂ノ儀ヲ獨逸政府ヘ報道スル爲メナルカ故ニ特ニ (announce) (告知若クハ報道ノ意) ノ字ヲ使ヒ置候處 (is authorized to declare) (宣言スルコト

一、條約第二十四條條約實施期限ヲ示ス所ニ西曆ノ年月日ノミヲ記載シ我年月日ヲ記入セス又同條末文ノ年月日ヲ記スニ彼我年月日ノ順序顛倒致居候

一、我條約原案ニハ「某國臣民或ハ人民」ト記載シタル處數ケ所有之候處本條約ニハ右ニ語トモニ存シテ (German subjects or citizens) ト有之候御承知ノ通 (Citizen) ナル語ハ主トシテ共和國ノ人民ヲ指シ帝國ノ臣民ハ單ニ (subjects) ト名稱スヘキ慣例ノ處獨逸政府カ (citizen) ナル語ヲ省カサリシハ不注意カ或ハ意味アル事カ乍些事序ヲ以テ及御尋候

一、新税目實施ハ他國ニ向テ現行税目ヲ維持スル間ハ之ヲ見合スヘキ旨ノ宣言 (Declaration) ヲモ貴官ニ於テ可被成旨去ル五月二十八日付ノ電報ヲ以テ申進置候處今般御差越ノ書類中右宣言ノ寫不相見候右ハ最前申進候通り本大臣ヨリ在東京ノ獨逸公使ヘ送ルヘキ御考ニテ之ヲ省カレ獨逸政府ニ於テモ其事ニ了解致居ル儀ニ候哉否御申越可有之候右訓示旁申進候也

追テ本文第一項獨逸外務大臣ヘ送ラルヘキ英文書翰ノ邦文反譯爲御參考別紙乙號寫差進候也

ヲ委任セラレタリト) ト御改メ相成候ニ付テハ幾分カ書翰ノ意味ヲ強メ候尤モ實際ニ於テハ我ニ取リ效力ヲ異ニスルコト無之候ヘキ體裁上原案ノ方相勝リ候一體此書翰ハ甚タ大切ノモノニ付右等字句ヲ變更スル場合ニハ一應御申越ノ上指揮ヲ乞ハルヘキ筈ニ候處其事ナカリシハ遺憾ノ至ニ候右ハ何故ニ變更ヲ要スルニ至リ候哉詳細ノ理由可被申越候一、貴官ヨリ獨逸外務大臣ヘ被相送候第三書翰ニハ裁判上最惠國ノ待遇、領事條約、税目變更ノコト其他彼は全ク別種類ノコトヲ一書ノ内ニ盡ク書集メラレ候處右ハ甚タ不體裁ニ有之候餘事ハ姑ク置キ裁判上最惠國ノ待遇並ニ税目變更ノ二事ノ如キハ一ハ頗ル重要ノ問題ニ係リ一ハ全ク祕密ノ約束ニ付各別箇ノ書翰ニ認メラルヘキ筈ノ處其事ナカリシハ遺憾ニ有之候

一、條約第九條中我方ニ保存スヘキ條約書ニハ「日本」ヲ先ニシ「獨逸」ヲ後ニスヘキヲ前後順序ヲ誤リテ獨逸ヲ先ニシタルハ體裁其宜ヲ得ス候其他條約中右同様ノ順序顛倒數所ニ相見エ候

明治二十二年八月二日

外務大臣伯 大隈重信

在獨特命全權公使侯 西園寺公望殿

註 一八二附屬書

附屬書一

甲號 獨逸政府ノ提出メヘキ書案文

Imperial Japanese Legation

Berlin,

The undersigned, His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honor to acquaint His Excellency the Secretary of State for the Department of Foreign Affairs, that he transmitted to his Government the Treaty of Amity, Commerce and Navigation, which was concluded by His Excellency Count Bismark and himself in the name of their respective Governments, on the 11th June last, and that at the same time he forwarded copies of the three Notes which he did himself the honor to address to His Excellency on the same day, as well as Count Bismark's esteemed reply thereto. The undersigned is now instructed by his Govern-

ment to state that the two Notes, one in reference to the appointment of a number of Judges of European or American origin, and the other, concerning the elaboration, promulgation and translation of the Codes, were not intended to be supplementary to the Treaty. The measures therein announced are to be adopted spontaneously and independently of Conventional stipulations or considerations, and consequently they cannot be regarded in the light of concessions.

The undersigned is to add that this correction, which is deemed important principally in an historical sense, is not intended in any respect or degree to derogate from the effect of importance to be attached to the announcements contained in these two Notes.

The undersigned &c &c &c.

His Excellency

Count Bismark-Schoenhausen

Secretary of State for the

Department of Foreign Affairs.

附屬書二

乙號 獨逸政府へ提出ス可キ覺書案譯文

日本皇帝陛下ノ特命全權公使タル下名ハ外務大臣閣下ニ下

一八七

明治三二年九月二十日

西園寺駐獨公使ヨリ
大隈外務大臣宛

條約書及附屬書類ノ誤記其他ニ關スル件

第三十號

本年八月二十二日付第五五號信ヲ以テ先般本使ト當國外務大臣トノ間ニ締結シタル新條約ニ付縷々御申越且御訓示相成委曲領承仕候陳者御訓示ノ當國政府ヘ照會ノ儀ハ熟考仕候處若シ我ニ於テ突然御訓示案ノ如キ書簡ヲ當國政府ヘ差遣ハシ彼是談論ノ末獨逸政府ニ於テ我ヲ疑ヒ或ハ我條約調印ノ際差遣シタル事項ヲ以テ條約ノ補充ト認ムル旨公然回答致來候様ノ場合ニ立至リ候テハ他日非常ノ困難ヲ生シ候哉モ難圖ト存候依之取敢ヘス シーボルト男ヲシテ當國外務省條約改正掛ミユルベルヒ氏(但昨今外務大臣次官共不在)ヲ訪問セシメ御訓示ノ旨ヲ内々通牒シ其模様爲相探候處同氏ノ談ニ獨逸政府ハ日獨新條約ニ付近今數多ノ報告留議ニ接シ且締盟各國特ニ英國政府ノ如キハ獨逸政府ハ何カ故ニ此ノ如キ多分ノ讓與ヲ日本ニ爲シタルカトノ質問ヲ致來候有様ニテ甚タ迷惑困難ノ地位ニ相立チ居候乍去我獨逸政府ニ於テハ此ノ如キ問題ニ對シテハ何時モ獨逸政府

大隈外務大臣時代 對獨逸 一八七

名カ其政府ヘ去ル六月十一日ヲ以テ兩國政府ノ名ニ於テビスマーク伯閣下ト下名トノ間ニ締結シタル和親通商及航海條約ヲ進達シタルコト並ニ右同時ニ下名カ同日ヲ以テ閣下ニ進呈シタル三箇ノ書翰並ニ右ニ對スルビスマーク伯ノ回答書寫ヲモ進達シタルコトヲ報道致度候下名ハ今般其政府ヨリ訓令ニ接シタルニ二箇ノ書翰(即チ歐米出身判事若干名任命ノコトニ係ルモノト法律ノ編纂發布及反譯ノコトニ係モノ是ナリ)ハ條約ノ補充タラシムル積ニアラスシテ右書翰ヲ以テ告知シタル事項ハ條約的ノ約束及原因ニ關係ナク任意ニ施行スヘキモノナルニ由リ之ヲ以テ讓與ト見做スヘカラサル旨ヲ貴政府ニ申進スヘキ様被命候

下名ハ重ニ歷史上ノ意味ニテ大切ナル此正誤ハ右二箇ノ書翰ニ記載シタル報道ノ趣意及效力ニ如何様ニモ又何程モ消長ヲ及ボスモノニアラサルコトヲ爰ニ付言致度候
右得貴意候 敬具

伯林 日本帝國公使館

ハ日本ヲ信スルカ故ニ此ク多分ノ讓與ヲ爲シ容易ニ條約ヲ締結シタルナリトノ答辭ヲ爲シ居候此ノ如キ事情ニ付我獨逸政府ニ於テハ假令ヒ日本政府ヨリ今後該件ニ付幾分カガランテ一ヲ減スルカ如キ形跡アル新書簡ニ接シ兼テ我獨逸政府ノ固ク認メテ條約ノ補充ト決シ居タル事項ヲモ單ニ日本政府任意ノ事項ト認ムヘキ旨申出テラルルトモ是ハ到底御希望通りノ好結果ヲ得ラルル事ハ六ヶ敷却テ獨逸政府中物議ヲ發生シ且議院ニ於テモ經過無覺束ナキ事ト被存候獨逸政府ハ最前申進候通り昨今非常ニ困難ナル地位ニ立チ居候ノミナラス近來日本ヨリノ通報ニ依レハ日本ニ於テハ再ヒ非條約改正黨派燃出シ此黨派モ隨分盛大ナルカ故ニ獨逸政府ニ於テハ日本ト各外國トノ條約改正ハ今後如何様ノ結果ヲ生スヘキヤ稍ヤ疑惑ナキ能ハサルノ感情ヲ惹起致シ居候有様ニ有之候故ニ此際日本政府ヨリ更ニ又新書簡ヲ差遣ハサルルモ到底満足ノ結果ヲ見ル事ハ意想ノ外ニ有之候乍去若シ強テ日本政府ヨリ此新書簡ヲ我獨逸政府ニ差遣ハサルトキハ獨逸政府ハ多分左ノ二段ノ一ヲ擇ヒ之カ處置ヲ爲スヘシ即チ(第一)獨逸政府ハ該書簡(條約附隨)ヲ以テ日本ヨリ讓與シタル事項ト認定スル旨ヲ明言スルカ然ラ

サレハ(第二)獨逸政府ハ日本政府ノ書簡ヲ取り置クノミニテ別ニ何等ノ言辭ヲ發出セス却テ日本政府カ他ノ外國政府トノ間ニ談判セル條約改正ノ關係ヲ傍觀視察シ其都合ヲ見テ是非ノ議ヲ日本政府ニ申出ツヘシ今此第二段ヲ取ルトキハ獨逸政府ハ到底新條約ヲ當年ノ國會ニ提出スル譯ニハ固ヨリ至リ兼候次第ニ有之候將又最前申陳シタルカ如ク獨ハ他國ニ向ヒ日本ヲ信スルカ故ニ云々ト陳辨スレトモ日本ト他國トノ關係ニ就テハ獨逸政府ハ別ニ干涉斡旋セサル事ニ決シ候故ニホレーベン氏ヘモ日本ト外國トノ關係ニ就テハ可成干涉斡旋セサル様訓示ヲ發シ置候次第ニ有之候之ヲ要スルニ獨逸政府ニ於テハ條約締結ノ際日本政府ヨリ發セラレタル書簡記載ノ事項ハ徹頭徹尾條約ノ擔保ト認メ居候事ニ御座候將又「ツীগステンデニス」(Zugestandnis)ノ字義ハ之ヲ「コンセツション」ノ字ト比スルトキハ稍ヤ輕キ意味ニ有之候間是モ其儘ニテ差支無之事ト存候云々有之候以上ミユルベルヒ氏ヨリシーボルト氏ヘ内話有之候趣ニ付本使ハ最初ヨリ考案シタルカ如ク御訓示ノ書簡發送ノ儀ハ先ツ見合ハセ置キ別紙寫ノ通り電信ヲ以テ伺出候次第ニ有之候尙右談話ノ儀ハ相互ニ全ク内事ト見做シミユルベ

キ旨ニ付兼テ本使ノ御訓示ニ接セサリシハ遺憾ノ至リニ存候

條約第九條中日本ヲ先ニシ獨逸ヲ後ニスヘキヲ其前後順序ヲ誤マリ並ニ和西兩曆ノ順序ヲ顛倒致居候儀ニ付云々御申越有之候處本使ニ於テハ充分注意ヲ加ヘブレアンブル(序言)及調印ノ場所ハ何レモ日本ノ方ヲ先ニ致シ候得共何分至急ヲ要シ候故條約文中一二其前後ヲ誤マリ候假國權ノ伸縮ニモ重大ノ關係ヲ及ホスヘキ御政旨ニ戻リ候段幾重ニモ恐レ入候次第ニ有之候

條約第十六條中 *render legal aid* ノトニ *to each other* ノ三語脫落ノ旨ニ有之候得共本年四月二十六日日本使接受ノ電信ニハ右見當不申候

我條約原案ニハ某國臣民或ハ人民ト記載シタル處數ヶ所有之候處日獨條約ニハ右二語トモ *German subjects or citizens* ト記載致候儀ニ付云々御申越有之奏曲領承仕候然ルニ本使ノ從來傳承スル處ニ依レハ其「シチゼン」ト云ヒ「サブゼクト」ト云フハ共和政體立君政體ヲ以テ彼是名稱ヲ決スルモノニハ無之却テ其國ノ憲法ニ依リ決定スルモノトス塊地利國ハ帝國且王國ナリ然レトモ其民ハ千八百六十七

ルヒ氏ニ於テモ御訓示案ノ書簡ハ未タ一見セサル積ニ相約束爲致置是又御承知被置度候也
次ニ又法典編纂ノ事ヲ報道スル書簡中ノ草案ニハ *deems it proper to announce* トアリシハ *is authorized to declare in the name and on behalf of the Imperial Japanese Government* ト改メ候儀ニ付御申越相成奏曲領承右ハ仰ノ如ク幾分カ其意味ヲ強メ候哉ノ嫌有之候得共本使ノ身分ハ外務大臣自カラ宣言スルトハ固ヨリ同一ノ地位ニアラス候故本使ニ於テ單ニ法典編纂ノ事ヲ報道スルヲ至當ト認ムトノミ記述シ其權限ノ有無ヲ記セサル譯ニハ難相成候且右字句變換ノ場合ニハ一應指揮ヲ乞フヘキ筈ニ有之候得共本年五月三十日付貴電中ニモ裁判權最惠國條款ニ付 *is authorized to declare* 云々ト有之候ニ付本使ニ於テハ此例ニ倣ヒ書記爲致候次第ニ有之候

又本使ヨリ獨逸政府ヘ差出候第三書簡ハ諸種ノ事項ヲ一書簡ニ記載セルカ右ハ何レモ別箇ニ認ムヘク殊ニ一ハ頗ル重要一ハ全ク祕密云々ニ付縷々御申越相成誠ニ恐入候次第ニ有之候乍去本使ニ於テハ該書簡中記載ノ事項ハ何レモ同時ニ祕密且重要ノ約束ト確信仕候將又右事項ヲ別箇ニ認ムヘ

年十二月二十一日國基法ニ依リ *staatsburger* (citizen) ト稱スルノ權ヲ得タリ故ニ其「シヤム」國ト締結セル條約(英文ヲ原文トス)ニハ第一條以下專ラ *Austro-Hungarian citizens* ノ語句ヲ記載セルヲ見ルナリ又千八百七十六年一月十二日江戸ニ於テ批准交換シタル塊條約ニモ均シク *Austro-Hungarian citizens* ノ文字ヲ使用致居候日獨現行條約ハ未タ獨逸帝國ノ起生セサル以前日普兩國間ニ成立シタルモノナルカ故ニ條約上其民ヲ呼稱スルニモ普漏西憲法ニ示スカ如ク *unterthanen* 乃チ「サブゼクト」ノ語ヲ以テセリ之ニ反シ今日ノ獨逸帝國ハ王、公、侯等ノ諸國及自由市府(リユベック、ブレメン及ハンブルグ)ヨリ成立シ隨テ其民ハ帝國憲法第三條ニ依リ各聯邦ノ國民(臣民、人民)(即チ *angehörige* (unterthane und 原文ナシ) *staatsbürger*) ト稱シ候故ニ日獨新條約ニ獨逸國人民又ハ臣民トノ英文字ヲ併用致候ハ全ク此儀ニ出候章ト存候

終ニ又新稅目實施ハ他國ニ向テ現行稅ヲ維持スル間ハ之ヲ見合ハスヘキ旨ノ宣言ヲ本使ヨリ當國政府ヘ可差出旨本年五月二十八日付ヲ以テ御電訓有之候旨ニ候處該電信中ニハ本件ニ就テハ何等御訓示ノ事項不相見候故ニ本年一月七日

付ノ貴電訓ニアルカ如ク貴大臣ヨリ在東京獨逸公使へ送ラルヘキ事ト了知仕候夫レカ爲メ本使ヨリハ別ニ獨逸政府へ差出ササリシ次第ニ有之候
此段申進候也

明治二十二年九月二十日

特命全權公使侯 西園寺公望印

外務大臣 伯 大隈重信 殿

註 一八六

一八八 明治二十二年九月六日

西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

獨逸提出ニツイテ意見上申ノ件

With reference to your instructions dated August 2nd and the enclosed letter addressed to German Government, I have thought it well first to sound disposition of German Government. Muhlberg, confidentially consulted, has declared that the letter would create very unfortunate impression and even prevent ratification of the Treaty. Instruct me there-

fore whether you still insist upon the letter being sent. I strongly advise you not.

Berlin, September 18, 1889. Saionzi.

Rec'd Sept. 20, 1889. (Via Peters.)

一八九 明治二十二年九月二十日

大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)

獨逸提出ノ件

No. 308. Under the circumstances you need not present the letter until further instruction is given.
September 20, 1889. Okuma.

一九〇 明治二十二年十月七日

大隈外務大臣ヨリ
西園寺駐獨公使宛

船舶測度相互免除ノ件

以書簡致啓上候陳者日本皇帝陛下ノ外務大臣タル下名ハ明治二十二年三月八日付ヲ以テ在柏林ノ帝國特命全權公使ニ送リタル電信中船舶測度ノ件ニ係ル部分ト同伴ニ就キ獨逸皇帝陛下ノ特命全權公使ト爲シタル數回ノ面晤トニ關係シ

獨逸皇帝陛下ノ特命全權公使

ドクトル、ホオン、ホルレーベン閣下

註 第十號布告及第十號布達本文及英譯文ハ之ヲ省略ス

一九一 明治二十二年十月七日

大隈外務大臣ヨリ
西園寺駐獨公使宛

私設倉庫設立ノ件

此發議ハ日本及獨逸兩國ニ於ケル船舶測度ノ方法ハ大體上同一ニシテ獨逸國船舶ノ登簿證又ハ公書ハ日本政府ノ發スル同様ノ書類ト均シク船舶ノ純噸數ヲ査定スルコトニ係ル英國法即チムールソム法ニ依リ船舶ノ純噸數ヲ明瞭ニ指示スルモノナリトノ假定ニ基キ爲スモノナルコトヲ下名ハ愛ニ付言致候
下名ハ明治十七年四月第十號布告船舶積量測度規則及同年四月第十號布達船舶積量測度方法ノ本文及英譯文各二部ヲ愛ニ及御送附候
右得貴意候 敬具

明治二十二年十月七日

東京外務省ニ於テ

外務大臣 伯 大隈重信

大隈外務大臣時代 對獨交渉 一九一

以書簡致啓上候陳者日本皇帝陛下ノ外務大臣タル下名ハ皇帝陛下ノ名儀ニ於テ獨逸皇帝陛下ノ特命全權公使閣下ニ對シ下名カ明治二十二年三月八日ヲ以テ在柏林ノ帝國特命全權公使ニ送リタル電信中ニ記載シタル日本ニ於テ私設倉庫設立ノ件ニ關スル保證ヲ愛ニ確認シ將來帝國貿易上ノ都合ニ因リ右設立ヲ必要トスル場合ニ於テハ其必要ニ應スル爲メ日本政府ハ私設倉庫ノ方法ヲ設クヘキコトヲ愛ニ復言スルノ榮ヲ有シ候
右得貴意候 敬具

明治二十二年十月七日

東京外務省於テ

外務大臣 伯 大隈重信

四五三

獨逸皇帝陛下ノ特命全權公使

ドクトル、フォン、ホルレーベン閣下

一九二 明治二十二年十月七日 大隈外務大臣ヨリ
西園寺駐獨公使宛

貿易規則官設倉庫規則及港則約定ノ件

送第六八六號

先般條約案ト同時ニ獨逸政府ヘ差出候貿易規則及官設倉庫規則ハ後日本邦ニ於テ議定書ノ體裁ヲ以テ約定スヘキ筈ニ相成居候處本日ヲ以テ獨逸公使ト調印相濟マセ候夫ト同時ニ港則モ別ニ議定書ノ體裁ヲ以テ調印シ併セテ私設倉庫ノコト並ニ船舶測度免除ノコトニ關スル書翰モ相送り候何レ右書類寫ハ次便ヲ以テ可差進候得共不取敢右ノ次第御報道ノ爲メ如此候也

明治二十二年十月七日

外務大臣伯 大隈 重信
在獨特命全權公使侯 西園寺公望殿

unofficially, whether treaty has been or will be submitted to Diet.

November 28, 1889. Okuma.

一九五 明治二十二年十二月一日 西園寺駐獨公使ヨリ
大隈外務大臣宛(來電)

前電回答ノ件

Treaty not yet submitted, but Foreign Office is

第四節 對露交渉

一九六 明治二十二年一月二十二日 大隈外務大臣ヨリ
西駐露公使宛(往電)

露國政府ヘノ交渉開始ト同政府ノ態度ニ對シ謝意傳達方訓令ノ件

No. 31. On 30th December I presented new treaty revision proposals to Russian Minister who telegraphed outline to Russian Government. Russian Government answered by telegraph that they would be ready

大隈外務大臣時代 對露交渉 一九五、一九六

一九三 明治二十三年十月三十一日 大隈外務大臣ヨリ
西園寺駐獨公使宛
議定書及公文寫送附ノ件

送第七〇八號

貿易規則及官設倉庫規則並ニ港則判定ノ儀ニ關シ本月七日本官ト獨逸公使トノ間ニ於テ議定書二通ニ調印シ同時ニ外務大臣ヨリ私設倉庫規則並ニ船舶測度互相免除ノコトニ係ル書翰二通ヲ同公使ニ送りタル儀ハ先便機密第六八六號ヲ以テ申進候處今便右書類寫一切爲御心得及御送附候將又右議定書ハ別段批准ヲ要セサル筈ニ有之候右夫是申進候也
明治二十二年十月二十一日

外務大臣伯 大隈 重信
在獨特命全權公使侯 西園寺公望殿
註 議定書寫ハ省略、公文寫ハ前出ニ付參照

一九四 明治二十三年十二月二十八日 大隈外務大臣ヨリ
西園寺駐獨公使宛(往電)
日獨條約獨逸議會ニ提出ノ有無問合セノ件

No. 383. Ascertain, if you can do so privately and

ready to do so as soon as business in Reichstag remits, *if not (?) during the winter (or ?) next spring (?)*. Am very confidentially told German Government watch carefully the movement of political affairs in Japan in connection with submitting treaty to Reichstag.

Berlin, Nov. 30 (?), 1889. Saionji.
Rec'd Dec. 1, 1889. Via Peters.)

to accept proposals as soon as general situation is made clear. Say to Minister for Foreign Affairs that I expect to make further communication to Russian Government on this subject within the next few days, but that in meantime I hasten to express to him and his Government out cordial thanks for their prompt and favorable response. Saionji who had drafts of proposals in advance has been instructed to send you