

MEETING OF JUNE 19, 1882.

Present:

- For Japan,
Mr. Inouye and Mr. Shioda;
- For Austria-Hungary,
The Chevalier Hoffer von Hoffenfels;
- For Belgium,
Mr. C. de Groote;
- For France,
Mr. Arthur Tricou, Envoy Extraordinary and Minister Plenipotentiary;
- For Germany and Switzerland,
Mr. von Eisendecker, and as Second Delegate for Germany, Mr. Zappe;
- For Great Britain,
Sir Harry S. Parkes;
- For Italy,
The Chevalier E. Martin Lanciarez;
- For Portugal,
Dom Joaquim José de Graça;
- For Russia,
Baron Rosen;
- For Spain,
The Chevalier Don Luis del Castillo y Trigueros;
- For the United States,
The Honourable John A. Bingham.

Mr Inouye expressed his regret that the work of the Conference should have been delayed owing to his indisposition, and also that he should have been obliged from the same cause to absent himself from the recent sittings. Mr. Shioda who had represented him on those occasions, had reported to him what had passed and he now took the opportunity of saying he fully adopted as his own the language used by Mr. Shioda on his behalf.

He would merely add with reference to the demand for improved arrangements for the water supply of Yokohama, that the care of the health of both foreigners and Japanese was one of the first duties of his Government. The Prefect and the Sanitary Bureau had specially devoted their attention to the subject, and were earnestly engaged in its consideration. He felt confident that the object which Sir Harry Parkes had at heart, namely the adoption of proper measures to ensure a supply of wholesome water, would be accomplished without delay, and on

his own part he was ready to undertake to forward the matter by every means in his power.

Sir Harry Parkes thanked the President for his assurances that no delay should occur in the adoption of the necessary measures, and begged to take note of those assurances.

Coming now to the order of the day, "Duration of the Treaties," the President observed that the existing Treaties between Japan and Foreign Powers contained no provision as to the term of their duration. Such a provision was generally inserted in all the Commercial Treaties between Western Powers, and not only in those concluded between themselves, but also in some of their Treaties with Asiatic Powers. Experience had shown that such a provision was very desirable.

In the revised treaties he therefore proposed to insert a clause providing for their expiration at a given period, in order that the two Contracting Parties might have the opportunity of treating and agreeing upon such modifications or other arrangements as might tend to the improvement of their mutual intercourse, or to the advancement of the interests of their respective subjects.

The Imperial Government thought it would be desirable to fix this period at eight years for the duration of the Tariff and the Commercial Convention, but regarding the other portion of the Treaty some longer period, say twelve years, might be agreed upon.

Sir Harry Parkes observed that the proposal of the President had such an important bearing on all the proceedings of this Conference that he could have wished that it had been brought forward at the earliest, instead of at the final, stage of those proceedings. When the Conference commenced its sittings the President proposed that the Austro-Hungarian Treaty should be taken as the basis of their deliberations. That Treaty like all the others was permanent and not terminable in its character—it was open to revision but not to abrogation, and the knowledge that the Treaties could be so revised from time to time, and amended as experience should prove desirable, but without being annulled, had given a stability to foreign relations with Japan which had proved of great value to all concerned. The present proposal of the Japanese Government was in effect a proposal to abrogate the Treaties, and if it should prove unacceptable to the Treaty Powers and be adhered to by Japan, then all the proceedings of the Conference would prove useless. The proposal necessarily involved a reference to the Governments of the Treaty Powers, for probably no Delegate was in a position to declare that his Government would be willing to entertain it, and he himself would find it difficult to recommend to his Government any basis for a revision of Treaties that contained a condition for their abrogation. He could only submit the proposal to his Government, if the President so desired, and await their decision on the subject.

The President replied that the question of the Duration of the Treaty had formed one of the Groups into which the subjects to be discussed were divided at the beginning of the Conference and consequently now came up in its natural order.

He admitted that it was a question of great importance to both parties, but the Imperial Government attached great value to its adoption, as it contained the recognition of a right accorded to independent States in general.

He thought that it was within the knowledge of all the Delegates that Termination clauses, similar to those which were now proposed by the Japanese Government, formed a regular part, not only of almost all the Treaties concluded between the Western Powers, but had also been introduced into several Treaties with Asiatic Powers.

Japan had by its incessant efforts in the direction of reform and progress, and by the liberal proposals for the admittance of foreigners to the full enjoyment of all civil rights in this Empire, assumed a position altogether altering the character of its international relations, and bringing the whole condition of foreigners into uniformity with that of resident aliens in Western States. Their rights would henceforth not merely rest upon concessions or exceptional privileges granted by Treaties, but on the full recognition on the part of Japan of the general principles of International Law.

It was of course superfluous for him to offer to the Treaty Powers any assurance that, at the expiration of the revised Treaties, it was not contemplated for a moment to return to a state of seclusion or to seek to terminate Japan's international relations with the rest of the world, as it would amount to annihilation of all the prosperity consequent upon the progress this country had attained, and of all the benefits it derived from Western civilization, to say nothing of the importance of the foreign interests which had come into existence in this country since the commencement of its foreign relations.

In order to avoid all misunderstanding, he would repeat that his proposition was, that the new Treaties (which would replace the old Treaties) should be in force for twelve years (in the case of the Tariff and other commercial arrangements, eight years) commencing from the date of ratification. After the termination of the said periods of twelve and eight years respectively, each of the contracting parties would be entitled to give notice to the other of its intention to terminate the Treaty or any portions thereof, in twelve months from the date of notice, either in part or as a whole, and the whole or part so denounced would then cease to have binding force on the contracting parties. This notice of abrogation however, it need scarcely be observed, could in no case be construed as having the effect of causing the vested rights of the subjects of the contracting Powers to suffer any injustice or prejudice, contrary to the principles of modern International Law and the generally recognized rules of the international intercourse of independent states.

He trusted therefore that a stipulation in the form adopted by most of the nations of the world and inserted, as already stated, in European Treaties and even in Treaties with some Powers among Asiatic Nations, could not in justice and equity be withheld from Japan.

In conclusion he desired to state that as the Imperial Government attached the greatest importance to the insertion in the new Treaties of such a clause as proposed, he would therefore again beg to urge the Delegates to submit his proposal to the earnest consideration of their respective Governments.

Sir Harry Parkes observed that many of the Treaties concluded between Western Powers were of a perpetual character and did not contain termination clauses. He requested the President to be so good as to name the Treaties with

Asiatic Powers which contained such clauses.

The President replied that he would only mention the Treaty of Commerce between the U. S. of America and Persia of 13 Dec. 1856, the Treaty of Friendship Commerce and Navigation between Austria and Persia signed at Paris 17 May, 1857; the Treaty of Friendship and Commerce between Prussia and the other states of the Zollverein and Persia of the 25 June 1857, and he might also mention the Treaty between the German Empire and the Hawaiian Kingdom signed ^{25 March}/_{19 September} 1879.

Mr. Bingham observed that the suggestion, that the proposals of the President Mr. Inouye now presented by him conflicted with the agreement made at the opening of the Conference that the Austro-Hungarian Treaty should be the basis of the discussions in conference, was not in his opinion tenable.

Nothing in the Protocols of the Conference could possibly be construed to preclude His Imperial Majesty's Government from making the proposals now presented for the consideration of the Conference.

As shown by the Protocols, this Conference was but preliminary, and was convened for the purpose "of concerting a basis" to be submitted to the several Treaty Powers with Japan for the revision of the existing Treaties. A revision by any one of the Treaty Powers of its existing Treaty with this Government could only be effected by the high contracting parties and not by the Conference.

Manifestly the agreement that the Austro-Hungarian Treaty should be the basis of *discussion here* neither restrained the Conference from the consideration of all propositions made by this Government touching Treaty revision, nor could it be held to restrain the Austro-Hungarian Government from concurring with that of Japan in any and every proposition for the revision and amendment of that Treaty. That Treaty in its text provided for such revision or amendment at any time after the 1st July 1872.

Such revision of that Treaty would *ex necessitate* abrogate every article therein, in so far as the same should be revised or amended by the two Contracting Powers.

The proposals now made by the President were in substance that the existing commercial conventions of Japan with the Foreign Powers might be revised as heretofore proposed to be considered by the Conference, with an express provision therein to the effect that such revised conventions should expire at the end of eight years after the exchange of the ratification thereof, and also that there might be a general revision of all existing Treaties with Japan on the basis heretofore proposed to and considered by the Conference, and that it might also be provided in such general revision of the Treaties that the general Treaties so revised should expire at the end of twelve years after the exchange of the ratifications thereof.

It was clearly implied by the President's propositions that upon the expiration of the revised Treaties as contemplated, the Japanese Government should thenceforward be free to regulate its internal trade and autonomy and also its foreign commerce, in accordance with the usages of civilized states. The inherent rights of nations, however they might be temporarily restricted by treaty stipulations voluntarily entered into, were incapable of absolute alienation. In commercial conventions it was not unusual for the contracting parties to provide, by express provision therein,

for their termination on a day and year named, or upon notice given by either party. Such provision was made in a commercial convention between the United States and H. B. M's. Canadian dominions, and also in a commercial convention between the United States and France. He considered the proposed limitation of eight years in the commercial convention to be reasonable and in no wise injurious to any foreign interest. He submitted that it could not be fairly inferred that the Japanese Government intended by providing the limitations in the proposed revised Treaties, to cut off thereafter all commercial or friendly relations with the foreign Treaty Powers. The proposed limitations in the revised Treaties must be deemed reasonable, unless it could be justly claimed that the several restrictions upon its inherent rightful sovereignty to which this Government proposed to submit voluntarily, by the revised Treaties, for the respective periods named, should be made perpetual. The Delegates were not here to concert a basis to be submitted to the several foreign Treaty Powers for the revision of existing Treaties with Japan to continue and operate in all the hereafter. While the official representatives of states are only temporary and last for the present, it must be remembered that the States represented are for all time. A state considered qualified and entitled to enter into treaty relations with other sovereign states ought to be held entitled to a provision for the termination of treaty stipulations which, for the time being, are a restriction of its inherent and essential rights. The propositions of the President were so reasonable and just, that it seemed to him they should command the approval of every civilized state on the globe.

Mr. Tricou expressed the surprise which this unexpected proposal had caused him. Referring to the general observations already made by him at the meeting of the 17th, he reaffirmed the permanent character of the existing Treaties, which were capable of being revised, but were not terminable on notice being given by either party.

In reply to Mr. Tricou's observations Mr. Shioda said that there were two points to be considered in connection with this subject; firstly, there was no express stipulation in the existing Treaty providing for or securing the perpetual nature of the obligation, and secondly, that there was no limitation of the nature of the intended revision, and consequently all propositions as to revision of whatever nature, including even a termination clause, were in his opinion legitimate. He thought therefore that the Japanese Government were perfectly entitled to claim the insertion in the new Treaties of a special clause providing for their termination or abrogation after the expiration of a certain term, in the same way as many other new subjects which were entertained at the Conference. He thought the opinion that revision was confined only to such modifications and amendments of the provisions contained in the original instrument was capable of being questioned. The fact that it was proposed to introduce into the existing Treaties changes calculated materially to alter the nature of the instruments deprived them of the quality of indelibility attributed to them by the French Delegate.

Mr. Tricou in order to demonstrate and support the permanent character of the Treaties quoted the French text of Articles XX and IX of the Treaty of 1858 and the tenor of Articles XXI and XIV of the Austro-Hungarian Treaty, which ran as follows:

ART. XX OF THE TREATY OF 1858.

"Each of the Contracting Parties shall be able, after having given a year's notice to the other, to demand on the 15 October 1872 or later the revision of the Treaty, in order to introduce into it such modifications or amendments as experience shall have shown to be necessary."

ART. IX.

"The Articles for the Regulation of Trade attached to the present Treaty shall be considered as forming an integral part of the same, and shall be equally binding on both the High Contracting Parties signatory thereto."

ART. XXI OF THE AUSTRO-HUNGARIAN TREATY.

"It is agreed that either of the High Contracting Parties may demand a Revision of this Treaty, of the Trade Regulations and the Tariff annexed thereto, on and after the 1st July 1872, with a view to the insertion therein of such modifications or amendments as experience shall prove to be expedient. It is necessary, however, that one year's notice must be given before such revision can be claimed."

ART. XIV.

"The Regulations of Trade and the Tariff annexed to this Treaty shall be considered as forming a part of the Treaty and therefore as binding on the High Contracting Parties."—

The German Minister declared his willingness to submit the request of the Japanese Government to those which he had the honour to represent at the Conference. The German Government, he believed, wished the general provisions relating to the duration of the Treaty to remain as they were. Evidently much depended on the wording of the clause in question, and he thought it was perhaps possible to reconcile divergent opinions by such wording. In forwarding the proposal to his Government he would not fail to add the explanations and reasons furnished by the President.

The Austro-Hungarian Minister said that he concurred with the German Minister.

Baron Rosen observed that he was without any special instructions with regard to the point raised by the President, but he was prepared to recommend to the favourable consideration of his Government that part of the proposal relating to the limitation of the duration of the Tariff Convention to a certain number of years.

The Italian, Portuguese and Spanish Delegates associated themselves with the declaration of the German Minister.

The Belgian Delegate declared that he concurred in the observations of Baron Rosen.

The President read the following draft of an article embodying his proposal

relative to the termination of the Treaties, subject to verbal alteration.

"The present Treaty shall come into force immediately after the exchange of the ratifications. In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such modifications or other arrangements as may tend to the improvement of their mutual intercourse or to the advancement of the interests of their respective subjects, it is agreed that at any time after the termination of (eight years or twelve years as the case may be) either of the Contracting Parties may give to the other party notice of its intention to terminate articles.....of the present Treaty or to terminate the Treaty as a whole, and that at the expiration of twelve months after the date of such notice, the said articles (if such notice shall have reference only to said articles) or the present Treaty (if such notice shall have been to that effect) and all the stipulations contained therein shall cease to be binding on the two Contracting Parties."

The foreign Delegates agreed to lay the foregoing before their respective Governments.

The President having now exhausted all the remarks he intended to make on the subjects of Treaty revision, requested the Foreign Delegates to bring before the Conference any questions they might desire to discuss. Owing to the lateness of the hour it was agreed to adjourn the Conference until the 27 inst., when the President would present a résumé of the proposals of the Japanese Government.

It was also agreed that the Conference should then close until the views of the Foreign Governments on those proposals should be known.

The meeting terminated at five o'clock.

PROTOCOL No. 16.

MEETING OF JULY 27, 1882.

Present ;
 For Japan,
 Mr. Inouye Kaoru ;
 For Austria-Hungary,
 The Chevalier Hoffer von Hoffenfels ;
 For Belgium,
 Mr. C. de Groot ;
 For France,
 Mr. Arthur Tricou ;
 For Germany and Switzerland,
 Mr. von Eisendecker, and as Second Delegate for Germany, Mr. Zappe ;
 For Great Britain,
 Sir Harry S. Parkes ;
 For Italy,
 The Chevalier E. Martin Lanciare ;
 For the Netherlands, for Sweden and Norway, and for Denmark,
 Mr. van der Pot ;
 For Portugal,
 Dom Joaquim José de Graça ;
 For Russia,
 Baron Rosen ;
 For Spain,
 The Chevalier Don Luis del Castillo y Trigueros ;
 For the United States,
 The Honourable John A. Bingham.

The sitting opened at half past nine o'clock in the forenoon.

In reference to the Treaties named by the President in the last Protocol as having been made by European States with Persia, Sir Harry Parkes wished to remark that the Treaties between Persia and Great Britain were not terminable and that they contained much more liberal conditions than the Treaty between Great Britain and Japan. He also begged to point out that the duration of one of the Persian Treaties named by the President (that with Austria-Hungary) was for twenty-five years. Also that in the Declaration signed by six Great Powers at London in January 1871 it was recognized as "an essential principle of the law of