セル本決議ニ対シ罰金刑ヲ併科スルモ可ナルベシトノ見地ヨリ前記声明ヲ為シタル次第ナリ

河合顧問官　台湾律令ノ規定ハ如何ニナリ居ルヤ

植場管理局長　懲役又ハ罰金刑ヲ科スベキ旨ヲ規定シ居レリ

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尚本件ニ引続キ関東州阿片令中改正ノ件ノ審議行ハレ別ニ質問ナク可決セラレタリ

六　雑　件

1　国際法典編纂会議

440　昭和2年9月27日　在ジュネーヴ連盟ニ全権より田中外務大臣宛（電報）

国際法典編纂会議の開催に関する連盟総会決議について

ジュネーヴ　9月27日後発
本　省　9月28日前着

第二三号

第八回連盟総会ハ九月二十七日終了セリ

今回ノ総会ニ於テ討議ノ中心トナリシ問題ハ軍縮問題並ニ国際経済会議ニ関スルモノナル処総会決議中重要ナルモノ左ノ通

㈠軍縮問題ニ関シテハ

㈠波蘭案提案通リ可決

㈡仏独蘭案ヲ折衷シ軍縮準備委員会内ニ安全保障問題研究ノ委員会ヲ新ニ設置スルコトトナレリ

㈢兵器民営問題ニ関シテハ特別委員会カ研究ヲ進メ成ルヘク速ニ国際会議ノ開催ヲ希望ス

㈡経済会議ニ関シテハ連盟経済部ノ改造問題討議ノ結果従来ノ経済委員会ノ人数ヲ十五名トシ存続スル外経済会議決議遂行ノ為新ニ約三十五名ヨリ成ル経済諮問委員会ヲ構成シ前者ト併立スルコトニ決定セリ

㈢国際法典編纂ノ為先ツ国籍、領水及国家責任ノ三問題ニ関シ国際条約締結ノ趣旨ヲ以テ一九二九年海牙ニ於テ連盟主催ノ下ニ会議開催ノコトニ決定セリ

㈣連盟会館築造ニ関シ既ニ提出セラレタル建築案第一等九中ヨリ一ヲ選フ目的ヲ以テ審査委員会設置セラレ安達大使右委員長トナレリ

尚其他ノ問題ニ関シテハ詳細文書報告ス

441　昭和2年9月29日　在ジュネーヴ佐藤連盟事務局長より
田中外務大臣宛（電報）

国際法典編纂会議準備委員会委員に邦人推薦について

ジュネーヴ　9月29日後発
本　　省　9月30日前着

第一八二号

三全権発電報第二三号㈢ニ関シ

海牙ニ於テ開カルヘキ国際法典編纂会議準備ノ為五人ヨリ成ル委員会ヲ至急設クルコトトナリ其中蘭仏独南米ヨリ各一名ヲ出スコトハ殆ト決定シ居リ残ル一名ヲ日、英、伊三国候補者中ヨリ出ス事トナルヘシト思考セラルル処本邦ヨリ候補者ヲ立テラルルニ於テハ当選ヲ期スル為右事業ノ性質ニ顧ミ相当世間ノ尊敬ヲ受ケ且他委員ト共ニ実際ノ仕事ヲ遂行シ得ル人物ヲ推薦スル必要アリトノ御意向ナリヤ若シ然リトセハ候補者名ト共ニ折返シ寿府宛御回電ヲ請フ

442　昭和2年12月28日　在パリ佐藤連盟事務局長より
田中外務大臣宛

連盟理事会による国際法典編纂会議準備委員会委員の任命について

（昭和3年1月18日接受）

普通連本公第六七四号

昭和二年十二月二十八日

在巴里

国際連盟帝国事務局長　佐藤　尚武（印）

外務大臣男爵　田中　義一殿

国際法典編纂会議準備委員会委員任命ニ関スル件

本年第八回連盟総会ニ於而決議セラレタル国際法典編纂会議準備ノ為委員ヲ任命スルコトトナリ九月ノ理事会ハ其ノ任命ヲ理事会議長ニ委ネタル次第ハ当時報告ノ通リナル処今般左記ノ通リ任命アリタル旨事務総長ヨリ通知アリタリ（C. 548. M. 196. 1927. V 五十一頁参照）（省略）右報告申進ス

Le Professeur Badevant（巴里法科大学教授、仏国外務省法律顧問）
Le Conseiller Carlos Castro Ruiz（駐英智利公使館法律顧問）
Le Professeur François（蘭国外務省連盟局長）
Sir Cecil Hurst（英国外務省法律顧問）
M. Massimo Pilotti（伊国大審院判事、賠償委員会法律顧問、伊国外務省法律顧問）

443　昭和3年3月2日　在パリ佐藤連盟事務局長より
田中外務大臣宛

国際法典編纂会議準備委員会作成の質問集について

（3月27日接受）

普通連本公第一五二号

昭和三年三月二日

在巴里

国際連盟帝国事務局長　佐藤　尚武（印）

外務大臣男爵　田中　義一殿

国際法典編纂会議準備委員会作成質問集送付ノ件

客年第八回総会ノ決議ニ基キ出来得レハ明年中ニ本件会議ヲ開催シ㈠国籍㈡領水及㈢外国人ノ身体及財産ニ関スル損害ニ対スル国家ノ責任ノ三問題ヲ議スル為準備委員会ヲ設クルコトトナリタル次第ハ既報ノ通ナル処右委員会ハ本年二月六日ヨリ十五日迄寿府ニ開催セラレ前記各問題ニ付各国政府ノ意見ヲ求ムヘキ点ニ関シ報告書ヲ作成セル趣ニテ今般事務総長ヨリ三月一日付貴大臣宛書翰（C.L.36-1928 V）（省略）ヲ以テ昨年総会決議（C.L.36.1928V. Annexe）（省略）及準備委員会報告（C.44.M.21-1928V）（省略）ヲ送付越スト共ニ帝国政府ニ於テ右報告書所載ノ各項目ニ付キ来ル十月三十一日迄ニ事務総長宛回答相成様致度ク右期日ノ決定ハ明年中ニ本会議開催ノ運ニ到ラシムル為各国政府ノ回答ヲ審査スル為ノ準備委員会ノ会合ヲ明年一月二十八日開催ニ決シ居レルト他方各国政府ニ考慮ノ為六ケ月ノ予猶ヲ与フル趣旨ニ出テタルモノナル旨並回答文ハ二部送付セラレ度キ旨ヲ付言セリ委細別紙（省略）ニ就キ御了悉相成度此段進達ス

444　昭和3年11月6日　田中外務大臣より
在パリ佐藤連盟事務局長宛

国際法典編纂会議準備委員会作成の質問集に対する我が方回答連盟事務総長へ提出方訓令

条二機密第二四八号

昭和二年十一月六日

外務大臣男爵　田中　義一

在巴里　国際連盟帝国事務局長　佐藤　尚武殿

国際法典編纂会議準備委員会作成質問集ニ対スル帝国政府回答送付ノ件

(欄外記入)

本年二月二日付普通連本公第一五二号ヲ以テ御送付ニ係ル国際法典編纂会議準備委員会作成質問集ニ対スル帝国政府ノ回答(英文)別添ノ通送付ス連盟事務総長ヘ転送方然ルベク御取計相成度シ

(別　添)

A. NATIONALITY.

I. The general principle that the acquisition and loss of the nationality of each State are matters which, by international law, fall solely within its domestic jurisdiction.

Each State should be free to enact such national legislation as it considers proper with regard to the acquisition and loss of its nationality. The possible conflict of nationalities that may in consequence occur can be avoided only by international agreement.

II. Case of a person who possesses two nationalities.

1. In case a question has arisen which necessitates the determination of the home country of the person concerned, for administrative or judicial reasons in the State which has given him one of his nationalities, he should, from the nature of the law of nationality, be regarded as a subject or citizen of that State, because of his being invested with its nationality, irrespective of whether he was invested with his different nationalities at the same time or at different times. This point of view accounts for the proviso of the First Paragraph, Article 27 of the "Hôrei" (the Japanese Law containing the general rules for the application of laws), which enacts that "if any of them (the conflicting nationalities) is Japanese, the Japanese law shall apply."

2. If a question has arisen between two States involving the right of diplomatic protection of a person who is invested with their respective nationalities, the principle that so long as the person concerned is resident in either of the two States, the other State shall not be entitled to exercise in his favour the right of diplomatic protection as against that State, may be a suitable manner of settlement. But, on account of the difficulties involved, very careful consideration is required in codifying this principle.

3. With regard to this question, the "Hôrei" gives preference to the nationality last acquired. (§ 1, articles 27 of the said Law).

III. Loss of nationality through naturalization abroad and authorization of the renunciation of nationality.

It is provided in Article 20 of the Japanese Law of Nationality (See Annex) that "a person who has voluntarily acquired a foreign nationality loses his Japanese nationality." This makes it clear that the loss of Japanese nationality automatically results from voluntary naturalization abroad. The acquisition of nationality abroad and the loss of nationality in Japan, theoretically, occur simultaneously, and therefore there can be no conflict of nationalities. In the case of a male of not less than 17 complete years of age, he does not lose Japanese nationality until after he has completed his military or naval service in cases where such is due, and as regards a person who occupies an official post, the loss of nationality is conditional on his being first relieved of such post. (See Article 24 of the Japanese Law of Nationality.)

It is also provided that notice of the loss of Japanese nationality shall be given within one month of the date when the head of the family or the heir shall have become acquainted with the fact, (see Articles 150 and 151 of the Japanese Law concerning Family Registries.)

IV. Effect of naturalization of parents upon the nationality of minors.

The naturalization of parents should properly be regarded as having the effect of altering the nationality

of minors (see Article 15 of the Japanese Law of Nationality).

Article 21 of the Japanese Law of Nationality provides that if, in the case of parents who have lost their Japanese nationality through naturalization abroad, their children acquire a foreign nationality in virtue of such naturalization of their parents, they shall lose their Japanese nationality.

V. Children of persons enjoying diplomatic privileges, and in general, of persons exercising official functions on behalf of a foreign Government.

Nationality governed by the principle of jus soli should not, of course, be attributed to the children of diplomatists who by international law enjoy the privileges of extraterritoriality. As, however, a right may be waived, such children may be given the opportunity of claiming the benefit of the principle of jus soli, in the absence of many provisions to the contrary in the Law of Nationality of the State where they were born. The children of persons who are recognized by the Government concerned as exercising official functions on behalf of a foreign Government (such as consuls de carrière, financial agents, etc.) should, in the same way as the case of children of diplomatists provided for in Article 2 of the preliminary draft of the Committee of Experts, be considered to have been born in the State of which their father is a subject or citizen, and should not be made compulsorily to acquire the nationality of the State in which they were actually born.

VI. Nationality of a child born while the parents were passing through a State.

It is commonly the case that a State adopting the principle of jus soli does not take into account the length of time during which the parents stay in its territory, but, in the case of a child born while the parents were merely passing through, it is advisable to abstain from the application of laws conferring nationality on the principle of jus soli.

VII. Nationality of a child of unknown parents, of parents having no nationality, or of parents of unknown nationality.

As the principle of jus sanguinis cannot be followed in determing the nationality of a child of unknown parents, namely a foundling, and of a child of known parents who have no nationality or whose nationality is unknown, it is advisable to confer on such a child nationality on the principle of jus soli, even in a country where the principle of jus sanguinis is followed as a rule. According to Article 4 of the Japanese Law of Nationality, Japanese nationality should, only in such a case, be conferred in accordance with the principle of jus soli, and it is thus intended to prevent persons from having no nationality. (See Article 3 of the preliminary draft of the Committee of Experts.)

VIII. Nationality of a child to whom the parents' nationality is not transmitted by operation of law.

If the law of a State to which the parents belong made the transmission of their nationality to their child conditional upon its birth in that State, a child born in a foreign State, which adopts the principle of jus sanguinis, would necessarily be without any nationality. In order to prevent this, it is advisable that a State which adopts the principle of jus soli, should recognize that a foreign-born child in the above case acquires the nationality of the parents on the principle of jus sanguinis. In Japan, Article 3 of the Law of Nationality enacts that if, in the case of the father being unknown or having no nationality, the mother is a Japanese, the child shall be regarded as a Japanese; and no notice is taken of the place of birth. Accordingly, even with regard to illegitimate children, no such case as is contemplated by the present questionnaire can occur. As regards the recognition of illegitimate children, however, recognition by the father and by the mother are considered to be on an equal footing, and Japanese nationality is to be acquired only when it is a Japanese

who has been the first to make the recognition. Therefore, if, after a mother who is a foreigner has made the recognition, the father, being a Japanese, also makes recognition, this does not confer Japanese nationality upon the child. (See Article 6 of the Japanese Law of Nationality.)

IX. Acquisition of nationality in virtue of birth on board a merchant ship.

(a) It is a generally recognized rule that a merchant ship on the high sea should be considered to be in the same position as the territory of the State whose flag the ship flies, and if, therefore, the principle of jus soli is strained, it may follow that a child born on board a merchant ship sailing the high sea should be regarded as acquiring the nationality of the State to which the ship belongs as if it were born within the territory of that State. It should be remarked, however, that the application of the principle of jus soli to such a child would involve a more unreasonable imposition of nationality than the application of that principle to a child born while the parents were transitory visitors.

Not only a merchant ship in a foreign port (c), but one which is in foreign territorial waters (b) is subject to the territorial sovereignty of the littoral State, and should not be regarded as forming part of the territory of the State whose flag the ship flies. Birth on board such a ship should not, of course, be treated in the same way as birth within the territory of the State to which the ship belongs. (See Article 75 of the Japanese Law concerning the Family Registries and (c), I.—(I.), Part I. of the British Nationality and Status of Aliens Act, August 7th, 1914.)

X. Option by a person invested with double nationality.

According to the Japanese Law of Nationality, a Japanese who, because of his birth in a foreign country, has acquired the nationality of that country and is permanently resident there, may renounce his Japanese nationality by permission of the Japanese Minister of Home Affairs (Article 20, Section 3, of the Japanese Law of Nationality). In case however, the nationality of any particular foreign country specially designated by Imperial Ordinance has been acquired by reason of birth in that country, his Japanese nationality shall be lost from the time of birth, unless expression is duly given to the intention of retaining it (Article 20, Section 2, of the Japanese Law of Nationality).

XI. Loss of nationality by a woman as the result of marriage with an alien.

A Japanese woman, as a rule, loses her Japanese nationality by the fact of her becoming the wife of an alien, but her loss of nationality is made conditional upon the law of the State to which her husband belongs conferring his nationality on her, a negative conflict of nationalities being thus prevented. (See Article 18 of the Japanese Law of Nationality and the first paragraph, Article 9 of the preliminary draft of the Committee of Experts).

The Japanese Law of Nationality provides that the wife of a person who has lost Japanese nationality shall lose her Japanese nationality on acquiring the new nationality of her husband (Article 21 of the said Law).

XII. Recovery of nationality lost by marriage.

According to the Japanese Law of Nationality, a woman, who has lost her Japanese nationality in consequence of her acquisition through marriage of her husband's nationality, may recover Japanese nationality by the dissolution of the marriage. Such recovery of nationality, however, does not automatically result by operation of law, but is conditional on the fulfilment of the following two conditions (Article 25 of the Japanese Law of Nationality):

(1) The woman must be permanently resident in Japan after the dissolution of the marriage.

(2) The woman must apply for the recovery of nationality, and must obtain permission in that behalf from the Japanese Minister of Home Affairs.

The Japanese Law of Nationality contains no specific provision as to whether such recovery of Japanese nationality is conditional on the loss of the nationality previously acquired by marriage.

It may be stated that the recovery of nationality in such a case results neither automatically from the dissolution of the marriage, nor merely from a declaration of intention by the woman concerned, but from an application by her and a grant of permission by the competent authorities.

In case a conflict of nationalities results from the recovery of nationality, it is advisable to adopt a rule in the sense of Article 8 of the preliminary draft of the Committee of Experts in order to prevent such a contingency.

XIII. Other effects of marriage upon nationality.

The fundamental rule is that the wife acquires by marriage the nationality of the husband, but an exception is made in a case where a foreigner marries the head of a Japanese family who is a Japanese woman, it being the husband who in this instance acquires Japanese nationality (2, Article 5 of the Japanese Law of Nationality).

XIV. Effect of a change in the status of an illegitimate child upon its nationality.

According to the provisions of the Japanese Law of Nationality, an illegitimate child who is an alien, if recognized by the father or mother, being a Japanese, acquires Japanese nationality subject to the following conditions

(Articles 5 and 6 of the Japanese Law of Nationality):

1. That he or she is a minor by the law of his or her home country,
2. That she is not the wife of an alien,
3. That the father or the mother as the case may be who has been the first of the two to make recognition is a Japanese and —
4. That the father is a Japanese, in case recognition is simultaneously made by the father and mother. (See Article 11 of the preliminary draft of the Committee of Experts.)

The Japanese Law of Nationality provides that, if a child who is a Japanese acquires foreign nationality in virtue of recognition, it loses its Japanese nationality (Article 23 of the said law).

XV. Effect of adoption upon the nationality of the adopted child.

According to the Japanese Law of Nationality, an alien who has been adopted by a Japanese acquires Japanese nationality (4, Article 5 of the Japanese Law of Nationality). Adoption requires the permission of the Minister of Home Affairs, but there is no specific provision as to whether adoption, as is the case with naturalization, is conditional on the loss of the former nationality. From the point of view, however, of the necessity of preventing conflicts of nationalities, it is appropriate that the adopted child should be made to acquire the nationality of the adopter only on condition that he is divested of his former nationality.

B. TERRITORIAL WATERS.

I. Nature and content of the rights possessed by a State over its territorial waters.

The principle that a State exercises sovereignty over its territorial waters has been, and is, recognized by Japan. This principle should be adopted in the codification of international law.

As regards the special right of another State to restrict or exclude the rights of the coastal State in its territorial waters, no question has arisen in Japan except in connection with points, IX. and XII. infra. It does not seem necessary to provide for any special rights of this description.

II. Application of the rights of the coastal State to the air above and the sea bed and subsoil covered by its territorial waters.

The sovereignty of the coastal State extends to the air above and the sea bed and subsoil covered by its territorial waters.

III. Breadth of territorial waters.

(a) Japan has upheld the limit of three nautical miles for territorial waters, as is clear from her declaration of neutrality at the time of the Franco-Prussian War of 1870, from the decisions in the cases of the S.S. "Michael" and S.S. "Russia" at the Sasebo Prize Court in 1894-5, from her declaration of opposition to Russia's claim for a 12-mile Customs area in 1909 and for a 12-mile fishing-area of a monopolistic character in 1911, and from various other facts.

As a matter of fact, many States have observed the limit of three nautical miles, and moreover the delimitation of territorial waters within such a narrow area renders it possible to broaden the extent of the open sea and to facilitate the use of the seas by various nations. It is advisable, therefore, that the limit of territorial waters should be fixed at three nautical miles.

(b) It is not advisable to entitle any State to claim, in virtue of usage, special geographical configuration or any other ground, a specially extensive breadth for its territorial waters by way of exception to the general rule concerning the limit of territorial waters.

(c) As to the claim of a State to exercise sovereignty outside its territorial waters with respect to particular matters, Japan has never made any such claim.

(d) Japan has never recognized any claim of this description on the part of any other State.

(e) (1) & (2) A uniform breadth (three nautical miles) for territorial waters should be fixed for all States and for all purposes.

(3) It is advisable not to entitle any State to exercise any special rights outside its territorial waters.

IV. Determination of the base line for calculation of the breadth of territorial waters.

(a) The base line is furnished by the low-water mark along the coasts of the mainland and islands. This general rule suffices even in the case of islands situated near the mainland.

(b) In the case of a bay or gulf, the coast of which belongs to a single State, the territorial waters extend seawards at right angles from a straight line drawn across the bay or gulf at the first points nearest the open sea where the distance between the two coasts does not exceed ten nautical miles. If the distance between the two coasts is so great that a straight line connecting a point on one coast with a point on the other cannot be drawn without exceeding ten nautical miles, the territorial waters follow the trend of the whole of the coast of the bay or gulf. In the case of a bay or gulf the whole of which is regarded, by time-honoured and generally accepted usage, as belonging to the coastal State in spite of the fact that the distance between the two coasts exceeds ten nautical miles, the territorial waters extend seawards at right angles from a straight line drawn across the bay or gulf at the entrance.

In the case of a bay or gulf the coast of which belongs to two or more States, the territorial waters follow the trend of the coast according to the general rule. In those portions of such bay or gulf where the distance between the two coasts does not amount to six nautical miles, the dividing line between the respective territorial waters shall, as a rule, be the middle line measured from the two coasts.

(c) As to the territorial waters lying in front of ports, the general rule suffices. If, however, special port equipment (such as breakwaters, wharves, etc.) exists, the base line is the low-water mark at such special equipment.

V. Territorial waters around islands.

In the case of an island which is situate in whole or part within the territorial waters of a State, the territorial waters extend seawards for another three nautical miles from the coast of the island. In case an

island is situate altogether outside the territorial waters of a State, the territorial waters extend for another three nautical miles from the coast of the island, irrespective of whether or not they overlap the territorial waters measured from the coast of the mainland. It is not necessary to make distinction between an island situated near the mainland and one existing at a distance therefrom. As regards a straight between the mainland and an island, however, point VII. infra should apply. In the case of a group of islands, the territorial waters, as a rule, extend seawards for three nautical miles from the coast of each island according to the general rule, and it does not seem necessary to make any special provision for such islands. If, however, the distance between no two adjacent islands among the outlying islands of the group exceeds ten nautical miles, the whole group may be considered as a single entity, the width of the territorial waters being measured outwards from the outlying islands of the group.

VI. For the purposes of points IV. and V., what is meant by an island?

An island, in order to afford the base line for the calculation of the breadth of territorial waters, must be one which is exposed above the water at low-water level.

Any island, whether consisting of earth, rock or sand, affords the above-mentioned base line, if only it is definitely established as belonging to a particular State.

VII. Straits.

If, in the case of a strait the coasts of which belong to a single State, the distance between the two coasts at each entrance does not exceed ten nautical miles, the whole of the strait, however broad its intermediate portions may be, is regarded as a belt of waters belonging to the coastal State, and the territorial waters extend outwards at right angles from the straight lines respectively drawn across each entrance of the strait at the first points nearest the open sea where the distance between the two coasts does not exceed ten nautical miles, except in the case of a strait the whole of which, in spite of the fact that the distance between the two coasts at each distance exceeds ten nautical miles, is regarded, by time-honoured and generally accepted usage, as belonging to the coastal State.

In the case of a strait the coasts of which belong to two or more States, the territorial waters follow the trend of the coasts according to the general rule; but in case the distance between the two coasts does not amount to six nautical miles, the dividing line between the respective territorial waters shall, as a rule, be the middle line measured from the two coasts.

VIII. Line of demarcation between inland waters and territorial waters. A port. A Bay. The mouth of a river.

The extent of a port is determined by national law, usage, geographical configuration, etc., and it is difficult to lay down a general rule in this respect. As to the base line for the calculation of the breadth of the territorial waters in front of ports, however, point IV., (c), supra should apply.

The line of demarcation in the case of a bay or gulf is the straight line referred to under point IV. (b), supra. In the case of the mouth of a river, the line of demarcation is, as a general rule, formed by a straight line connecting the two coasts at the points nearest the open sea at the entrance, and the territorial waters extend three nautical miles at right angles from that straight line. On account of geographical configuration or on other ground, however, it may not sometimes be possible to follow this general rule.

IX. Obligations of the coastal State in regard to innocent passage of foreign ships through its territorial waters.

(a) It may be regarded as having already been established by international law that a State must give to foreign merchant ships the right of innocent passage

through its territorial waters.

(b) Doubt exists as to whether the right of innocent passage should, by the existing law, be accorded to foreign warships, but, from the law-making point of view, such a right should, as a rule, be given them, subject to suitable restrictions.

(c) Merchant submarines should enjoy the right of innocent passage, but such merchant submarines, and a fortiori war submarines, should be subject to the restriction that, while passing through territorial waters, they must not be submerged.

A vessel, while passing through territorial waters, should not be considered to be within its right of innocent passage in anchoring in those waters, except in case of distress or in case of necessity for the purpose of passage. In cases other than that of distress or that of necessity for the purpose of passage, a vessel which anchors, though in territorial waters, need not be treated in the same way as a vessel exercising the right of innocent passage; such a vessel should, in regard to jurisdiction, taxes, etc., rather be given a treatment analogous to that of a foreign vessel in port. An exception is, of course, to be made in cases where a vessel anchors in distress or from necessity for the purpose of passage.

There is no objection to the grant of the right of innocent passage separately to persons and goods on board ship, as distinct from merchant ships, but it is considered necessary to subject such separate rights of innocent passage to suitable restrictions.

X. Regulation of the passage and the anchoring in territorial waters of foreign warships.

Point IX., (b), supra should apply to the passage of foreign warships through territorial waters. Such anchoring of warships as is not necessary for their innocent passage is not to be regarded as a matter of right; on the contrary, the coastal State should be able to lay down such restrictions in this regard as it deems necessary. In case of distress, however, the anchoring of warships must be permitted.

It is a natural consequence of the extra-territoriality enjoyed by foreign warships that, should they not observe the laws and regulations of the littoral State, no question of any penalty could arise.

If foreign warships, while passing through, or anchoring in, territorial waters, contravene the laws and regulations of the coastal State, or if the passage or stay of foreign warships is deemed to be menacing to the security of the coastal State, that State may require the State to which such foreign warships belong to cause them to depart; in case of urgent necessity, the authorities of the coastal State may themselves directly require the warships to depart.

XI. No reply is required.

XII. Limitations upon the exercise of the sovereignty of the coastal State as regards jurisdiction in the case of a foreign ship passing through its territorial waters.

The jurisdiction, both in civil and criminal cases, of the coastal State is not exercisable in regard to the movements, during passage, of the ship itself when merely passing through territorial waters or in regard to the acts, during its passage, of persons on board such ship, unless such movements or acts exercise a direct effect extending beyond the ship, or disturb the security and public order of the coastal State, or prejudice the rights of that State or of persons other than those on board the ship. There is no need to make any distinction in this respect according as the ship is passing through territorial waters on its way to or from a port of the coastal State or is merely passing through the territorial waters.

A foreign merchant ship anchoring in territorial waters, except in case of distress or from necessity for the purpose of passage, may be regarded as not being in the act of innocent passage, and as being in substantially

the same position as a foreign merchant ship anchoring in a port.

If a person on board a merchant ship which is merely passing through territorial waters does an act the direct effect of which extends beyond the ship, and if that act is regarded as constituting a contravention of the criminal law of the coastal State, its authorities should have power to arrest him on board the ship while she is in transit. The same right of arrest may be recognized in respect of a person who is accused of a serious contravention of criminal law, on account of an act committed not during passage but prior thereto.

XIII. Limitations upon the exercise of the sovereignty of the coastal State inffiscal matters.

Vessels innocently passing through territorial waters may be exempt from taxes and imposts of all descriptions. As to other foreign vessels within territorial waters, equality of treatment should be accorded them in regard to the collection of taxes and imposts, while those forced to take refuge by distress in territorial waters should be free from them.

XIV. Continuation on the high seas of pursuit of a foreign ship commended within territorial waters.

If the coastal State has commenced, within its territorial waters, the pursuit of a foreign ship which has committed an offence therein, it should be able to continue the pursuit on the high seas, to seize the ship there and to exact due penalties in its own Court. It may be provided that, on seizing a foreign ship on the high seas, the coastal State shall immediately give notice of the fact to the State to which that ship belongs. The right of pursuit should be deemed to cease to have effect on the entry of the ship into the territorial waters of the State to which she belongs or of a third State.

XV. Jurisdiction over foreign merchant ships within maritime ports.

There is no objection for making this point an object of a provision of the convention on territorial waters.

Under the existing law, vessels in ports and persons on board such ships should be regarded as coming under the jurisdiction, both civil and criminal, of the coastal State, except when otherwise specifically provided for by treaty.

From the law-making point of view, it seems advisable to recognize the fact that in some cases it is appropriate that the coastal State should not be allowed to interfere in the internal affairs of a vessel, and to make provisions to the following effect:

"Foreign merchant ships are, as a rule, subject to the jurisdiction of the coastal State while they are in its ports; provided, however,that, unless the aid of the local authorities is sought by the master of the ship or by the Consular Officer of the State to which she belongs, unless a subject or citizen of the coastal State or a person not belonging to the ship's company is concerned, or unless the disorder is of such a character as to disturb the tranquillity and public order of the coastal State, that State shall not interfere in matters relating to internal discipline or disputes arising between the master, officers and the crew.

The local authorities are entitled to arrest a criminal offender on board a foreign merchant ship in port, even when the arrest refers to an offence committed outside the said ship."

C. RESPONSIBILITY OF STATES FOR DAMAGE CAUSED IN THEIR TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS.

The Japanese Government in the course of a reply to the Questionnaires prepared by the Committee of Experts for the Progressive Codification of International Law (note addressed to the Secretary-General under date of March 4th, 1927), stated that they consider this question not yet ripe for

international codification. They are not yet able to express their views until after fuller consideration shall have been exercised on the matter.

Apart from the attitude of the Japanese Government, however, the results of the studies made of the Points enumerated under this matter by the Committee appointed by the Department of Foreign Affairs are herewith communicated in the annex for the information of the Preparatory Committee.

Annex

Responsibility of States for Damage Caused in their Territory to the Person or Property of Foreigners.

I. We concur in the proposition enunciated under point I., viz:- a State's responsibility under international law should be distinguished from that of the State under its Constitution or other municipal laws; with the consequence that the State cannot evade its international responsibility, if it exists, by appealing to the provisions of its municipal laws or to the internal organization of the State, in the case of damage caused in the State's territory to the person or property of foreigners.

II. We entertain no objection to adopting as the point of departure in determining the basis of the International responsibility of a State the proposition stated under point II., viz:-

When a State receives recognition from other States as a —— fit member of the family of Nations, it assumes an honorable obligation to conform to certain standards of organization and behaviour in its foreign relations and to observe the principles and rules of the Law of Nations. (see XVI infra.)

III. Acts of the legislative organ.

1. Enactment of legislation incompatible with the treaty rights of other States or with its other international obligations. Failure to enact the legislation necessary for the purpose of implementing the treaty obligations of the State or its other international obligations.

2. Enactment of legislation incompatible with the terms of concessions or contracts granted to or concluded with foreigners or of a nature calculated to obstruct their execution.

3. Enactment of legislation infringing the vested rights of foreigners.

4. Repudiation of debts.

As regards the responsibility of the State in the foregoing four cases, the answer should, in principle, be affirmative. The question of the precise content of vested rights is one liable to cause difficult problems and requires careful consideration.

IV. Acts relating to the operation of the tribunals.

1. Refusal to allow foreigners access to the tribunals to defend their rights.

2. Decisions of the tribunals irreconcilable with the treaty obligations or the international duties of the State.

3. Unconscionable delay on the part of the tribunals which are prompted by ill will against foreigners as such or as subjects of a particulars State.

4. Decisions of the tribunals which are prompted by ill will against foreigners as such or as subjects of a particular State.

In each of the foregoing cases State resonsibility is involved.

5. In cases of intrinsically unjust decisions, a State should, in principle, not incur responsibility.

V. Acts of the executive organ.

1. Acts of the executive Government (higher authorities of the State).

(a) Acts incompatible with the terms of concessions or contracts granted to or concluded with foreigners or of a nature calculated to obstruct their execution.

(b) Repudiation of debts.

In the foregoing cases, the State is responsible on

the ground that the acts in question, being acts of commission or omission on the part of the executive Government (higher authorities), are to be considered acts of the State itself.

(c) Failure to exercise due diligence to protect individuals, more particularly those in respect of whom a special obligation of protection is recognised, — for example; persons invested with a public character recognized by the State.

A State is under an obligation to exercise special vigilance for the protection of foreign individuals in respect of whom a special obligation of protection is recognized; for example, persons invested with a recognized public character; the State is in consequence responsible for the failure to exercise such vigilance.

As to the protection of other individuals, the State is responsible for not using such diligence as is usually exercised by civilized States.

(d) Unwarrantable deprivation of a foreigner of his liberty.

No objection is raised to the idea of making a State responsible for such acts on the part of the executive Government, though the word "unwarrantable" seems not to be sufficiently clear.

2. Acts or omissions of officials.

(a) A State is responsible for damage done to the person or property of a foreigner by the acts or omissions of its officials when acting within the limits of their authority, if such acts or omissions are in contravention of the international obligation of the State.

(b) A State is also responsible for the acts of its officials in their public capacity (actes de fonction) but exceeding their authority, if such acts are in contravention of the international obligation of the State.

(c) Further, a State is responsible for the acts of officials in a foreign country, such as diplomatic agents or consuls acting within the apparent scope of, but in fact exceeding, their authority, if such acts are in contravention of the international obligation of the State.

(d) State responsibility is, however, to be denied in the case of such acts or omissions of officials as are not connected with their official duties.

(e) The answer is reserved on this point.

VI. Acts or omissions of bodies exercising public functions of a legislative or executive character (communes, provinees, etc.) involve the responsibility of the State in accordance with the foregoing paragraphs, in case such acts or omissions have caused damage to the person or property of foreigners.

VII. The acts of private persons causing damage to the person or property of a foreigner.

The State should not in principle be held responsible for acts of private persons. In case where international law or treaties have not determined differently, a State should apply to foreigners the same measures of protection as to its own pepole.

(a)-1-Failure on the part of the State authorities to do what is in their power to preserve order and prevent crime.

(a)-2-Failure on the part of the State to afford to the person or property of a foreigner such protection as is usually given in civilized States.

(b)-Failure to exercise reasonable diligence in punishing persons committing offences against the person or property of a foreigner.

In the three cases above mentioned, State responsibility is involved.

(c) If the acts were directed against a foreigner as such or as the subject of a particular State, this fact should be taken into account.

(d) If the foreigner who has suffered damage had displayed a provocative attitude against the persons who inflicted it, this fact should naturally

be taken into account.

VIII. Responsibility of the State in the case of damage done to the person or property of a foreigner at a time when the forces or officials of the State were engaged in suppressing insurrections, riots or mob violence; property destroyed during the struggle; closing of a port to commerce; requisitions, etc.

In the cases enumerated above, the State will not be liable, unless the acts in question are contrary to rules of international law or to the provisions of treaties (wanton or unnecessary acts of course excepted)

IX. Damage done to the person or property of foreigners by persons engaged in insurrection or riots, or through mob violence.

In general the State is not liable for damage in such cases. In the following cases, however, State responsibility is involved:

(a) where negligence on the part of the government or its officials can be established, or where connivance on the part of the latter can be shown.

(b) where the Government pays compensation for damage done in such case to its own people or to other foreigners.

(c) where a rebellion is successful and the insurgent party which did the damage is installed in power and becomes the de jure Government.

(d) where the movement is directed against foreigners as such or against persons of a particular nationality.

X. Responsibility of the State in the case of a subordinate or a protected state, a federal State and other unions of States.

In case a State undertakes by treaty or by its constitution to represent another State in international affairs, the former State takes upon itself to the extent of its representation, international responsibility for the acts of the latter State; accordingly, the state which stands in the place of another State for all purposes cannot evade the said responsibility on the ground of municipal law.

XI. Circumstances in which a State may be entitled to disclaim responsibility.

(a) When the State claims to have acted in self-defence.

(b) When the State claims to have acted in circumstances which justified a policy of reprisals.

In both cases mentioned above, the State is, in principle, entitled to disclaim responsibility, though it hardly seems proper to make express stipulations in these points in the agreement to be reached.

(c) Whether or not a State can disclaim responsibility on the ground that "circumstances justify the unilateral abrogation of its contractual engagements," is deemed a moot question, and in consequence not yet suited for codification.

(d) When the individual concerned has contracted not to have recourse to the diplomatic remedy. Such "renunciation of protection" on the part of the individual is deemed to be ineffective in affecting the State's right to diplomatic protection of its citizens or subjects.

XII. Is it the case that the enforcement of the responsibility of the State under international law is subordinated to the exhaustion by the individuals concerned of the remedies afforded by the municipal law of the State whose responsibility is in question?

The answer to the above question will be affirmative, with the understanding that the class of remedies to be exhausted by the individuals concerned prior to diplomatic interposition should be restricted to judicial remedies.

XIII. National character of the claim.

It is generally recognized that the international responsibility can only be enforced by the State of which the claimant — the sufferer in the damage — is its

citizen or subject, or sometimes by the State which affords the claimant diplomatic protection as its "protégé". In normal cases, a claim must be national in its origin, and must be continuously national in its pretension; that is, the claimant should preserve the same nationality throughout the whole period of diplomatic procedure and of judicial process; so that in the case where some change of nationality has occurred, the national character of the claim is lost, regardless of whether the said change has been caused by a voluntary act of the claimant or by mere operation of law.

If some only of the individuals concerned belong to a particular State, that State should support the claim of its own people only.

XIV. Reparation for the damage caused.

It is deemed appropriate that this point should form the object of a provision of the agreement to be reached.

As to the modes of reparation.

(a) Performance of the obligation may naturally be limited to making good the loss occasioned by such omission.

XV. Enquiry, conciliation, arbitration and judicial settlement.

When an international dispute has arisen concerning the State responsibility resulting from injuries caused in the territory of the State to the person or property of foreigners, and when diplomacy has not succeeded in adjusting the said dispute, should it be settled in a pacific way by submitting the same to either one of the means above-mentioned ?

We are in favour of the proposal to make this point an object of regulation in the agreement to be reached.

(a) No precedent, so far as this country is concerned.

(b) Japan is a signatory to some multilateral treaties binding the contracting Parties in a general or particular way to the pacific settlement of international disputes.

(c) It is desirable to make it obligatory, if diplomatic negotiations fail, to have recourse to one of the above four methods of procedure, the disputant parties reserving to themselves freedom of choice among the four.

(d) With an issue purely legal in character, preference should ordinarily be given to the Permanent Court of International Justice.

XVI. Responsibility of a special State.

The principle should be adopted that in case a State, by failing to maintain such a stabilized political organization as is sufficient to preserve internal tranquillity and order, or by failing to establish a proper system of laws and courts, is incapable of affording to the person or property of individuals such protection as is usually given in civilized States, that State should assume the responsibility for the said failure, and make proper reparation, for any damage which may occur through that failure to the person or property of

taken into consideration.

(b) Pecuniary reparation should also be recognized as an important mode of reparation.

For the purpose of ascertaining the amount of damages, actual and proved losses, loss of profits and even moral damage should be taken into consideration, though, as regards indirect damage the answer should in principle be negative.

As regards the remaining points of No.XIV., (b), the answer is reserved.

(c) Reparation other than pecuniary, apologies by the Government concerned as well as punishment of the guilty parties may be demanded and granted, if need be, according to the circumstances of the particular case;

(d) When the responsibility of the State arises only from a failure to take proper measures after the act causing damage had been committed, the pecuniary reparation due from it should be

foreigners.
（欄外記入）
十一月二日閣議決定

445
昭和4年10月23日　在パリ佐藤連盟事務局長より
幣原外務大臣宛

国際法典編纂会議への招請について

普通連本公第六七三号　（11月20日接受）
昭和四年十月二十三日
在巴里
国際連盟帝国事務局長　佐藤　尚武（印）
外務大臣男爵　幣原　喜重郎殿

国際法編纂会議ニ対スル正式招請状進達ノ件

曩ニ連盟事務総長ヨリ貴大臣宛本年七月十五日付書翰（C.L.142.1929.V.）（省略）ヲ以テ国際法編纂会議開催ノ由来並其準備ニ関スル経過ヲ説明シ本件会議ハ明年三月十三日ヨリ海牙ニ於テ開催セラルヘキ旨ヲ申来リ各種準備調書ヲ送付越セル次第ハ本年七月二十日付普通連本公第四七二号拙信ヲ以テ申進ノ通ナル処今般更ニ連盟事務総長ヨリ貴大臣宛別紙（C.L.271.1929.V.）（省略）ノ通リ来翰アリ前記事務総長来翰申越ノ次第ヲ繰返シ本件会議ニ対シ帝国政府ヲ正式ニ招請シ全権委任状ヲ有スル代表者ヲ派遣アリ度キ旨依頼シ来リ且ツ委員会ニ於テ各問題ヲ同時ニ討議シ得ル様相当数ノ代表者ヲ任命スルコト殊ニ各国代表部員カ了メ問題ヲ研究シ得ルカ為遅滞ナク之ヲ任命スルコト並第九回連盟総会決議ニ依リ右代表選定ニ当リテハ婦人カ国籍問題ニ大ナル利害ヲ有スルコト及連盟規約ニハ連盟ノ事務ニハ男女平等ニ参加セシムルノ規定アルコトヲ考慮スヘキコトノ諸点ニ付キ帝国政府ノ注意ヲ喚起シ来ルト共ニ本件ニ関スル本年九月二十五日ノ理事会決議及「シヤロイヤ」氏報告（C.L.271.1929.Anne x）（省略）ヲ送付シ来レリ而シテ理事会ハ本件会議々長トシテ前和蘭総理大臣「ヘメスケルク」氏ヲ任命セル次第及会議ハ海牙平和宮ニ開催セラルヘキモ三月十三日ノ開会式ハ午前十一時ヨリ「リーデルザール」ニ於テ挙行セラルヘキ旨並ニ本邦代表者氏名ハ明年二月末迄ニ通知アリ度キ旨申来レルニ付テハ委細別紙書翰（省略）ニ就キ御了悉相成度シ

本信写送付先　在和蘭公使

446
昭和5年1月10日　在ジュネーヴ伊藤連盟事務局長代理より
幣原外務大臣宛（電報）

国際法典編纂に関し大国間協議の必要性につき英国側係官と意見交換について

ジュネーヴ　1月10日後発
本　省　1月11日前着
第二号
巴里発往電第一七一号ニ関シ

英国外務省会議顧問（在英大使ノ調査ニ依レハ英国側代表ニ内定セル趣）ヨリ本官宛書翰ヲ以テ英国外務省側ニテハ今回ノ国際法編纂会議ハ一回ノ会合ヲ以テ直ニ各国代表ノ署名シ得ヘキ条約ニ達スルコト困難ト思考スルヲ以テ来ル三月ノ会議ニ於テハ条約案ヲ作成スルニ止メ各国政府ニ於テ之ヲ研究シタル上更ニ会合スルコト会議ノ成功ヲ期スル為得策ナルヘシト思考シ居ル処右ニ対スル本邦側ノ意向ヲ知リタキ旨申出アリタルヲ以テ本官ヨリ不取敢私見開示シ置ケリ

右英国側ノ態度ハ同国ノ都合ニ基クモノカト存セラルルモ当方ニ対スル申出ハ前記往電会談ノ際外国人待遇協定ノ経験ニ微シ海牙会議ニ於テハ多数小国側ノ意見ニ圧迫セラレサル為少クトモ重要問題ニ関シ大国間ニ意見交換ヲナシ置クコト必要ナルヘキ旨本官ヨリ申出英国、仏国、伊国、独逸会議顧問賛成セルニ基クモノニシテ斯ノ如キ意見交換ハ理事会等ノ機会ニ随時之ヲ行フコト然ルヘシト存セラルルニ付何等我方ニ於テ主張スヘキ御意見アラハ御電示相成様致度シ

447
昭和5年1月16日　幣原外務大臣より
在独国東郷（茂徳）臨時代理大使
在オランダ廣田公使
在パリ伊藤連盟事務局長代理　宛

領海問題および国籍問題に関する我が方訓令案送付

条二機密合第四二号
昭和五年一月十六日
外務大臣男爵　幣原　喜重郎

在独国　臨時代理大使　東郷　茂徳殿
在蘭国　特命全権公使　廣田　弘毅殿
在巴里　国際連盟帝国事務局長代理　伊藤　述史殿

国際法典編纂会議訓令案送付ニ関スル件

本件ニ関シ曩ニ省内準備委員会ニテ作成シタル訓令案巴里連盟事務局長宛送付シ置キタル処其ノ後各省協議会ニ於テ修正採択セラレタル訓令案（領海問題及国籍問題）別添ノ通三部宛送付ス本案ハ不日閣議ニ付議ノ上確定セラルヘキモノニシテ今後多少ノ修正有之ヘキモ不取敢右ニ基キ御準備相成様致度シ

国家責任問題ニ付テハ目下関係省ト協議中ナルニ付追テ訓令案送付ス尚基礎案等ノ訳文（省略）ハ既ニ送付済ナルモ準備用トシテ更ニ三部宛送付ス

（別　添）

領海問題訓令案

第一、「国家カ其ノ領海ニ付キ有スル諸権利ノ性質及内容」

基礎案第一

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ其ノ実質ニ於テ帝国政府ノ回答ト何等異ル所ナシ

第二、「領海ノ上空、領海ノ海底及地下ニ付有スル沿岸国ノ権利」

基礎案第二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト同趣旨ナリ

第三、「領海ノ範囲」

(イ)国家ノ主権ニ服スル領海ノ範囲（三浬、六浬着弾距離等）

基礎案第三

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－領海三海里ノ原則ハ我国ノ最モ強ク主張セントスル所ニシテ本案ハ飽ク迄之ヲ支持セサルヘカラス

(ロ)国家ハ外国カ慣習地理的形状其ノ他ノ理由ニ依リ自国カ其ノ沿岸ニ於テ主権ヲ行使スル水域ニ主権ノ行使ヲ主張スル場合之ヲ容認スルヤ

基礎案第四

本案ニ対シテハ絶対ニ反対セサルヘカラス

理由－本案ノ如ク特殊ノ国ニ対シテ普通ノ場合ヨリ広キ領海ヲ認ムルノ主張ハ主トシテ漁業ノ目的ノ為ナルニモ鑑ミ日本トシテハ絶対ニ之ヲ排除セサルヘカラス

(ハ)国家ハ其ノ主権ニ服スル領海外ニ権利ヲ行使スルコトヲ主張シ得ルヤ

基礎案第五

本案ヲ領海ニ関スル条約中ニ規定スルコトニ付テハ先ツ反対スルコトトシ会議ノ大勢カ斯ル特殊権利ヲ認ムルニ傾ク場合ニハ左ノ趣旨ニ基ク対案ヲ提出シ本案ヲ一層明確ナラシムルコトト致度シ

「関税衛生其ノ他ニ関シ国家カ其ノ領海ニ近接スル公海ノ部分ニ於テ警察的監視又ハ其ノ他ノ必要ナル措置ヲ行フヲ認メントスルニ当リテハ平時ニ於テハ左ノ方針ニ依ルヘキモノトス

(イ)事項ヲ関税及衛生ニ限ルコト

(ロ)最大区域ヲ十二浬ニ限ルコト

(ハ)十二浬以内ニ於テハ当該国港ニ入港セントスル船舶ニ対シ臨検捜査ヲ行フヲ得ルモ拿捕ハ三浬以内ニ於テ行フヲ原則トスルコト

(ニ)船舶カ沿岸国領海内ニハ航入セサルモ十二浬以内ニ在リテ自己ノ所属舟艇又ハ他ノ舟艇若ハ船舶ヲ利用シテ犯則行為ヲナストキハ該船舶又ハ利用セラレタル舟艇又ハ船舶ハ之ヲ拿捕スルヲ得ルコト

沿岸海ニ接近スル公海ニ於ケル漁猟業ニ付他国人ヲ排除スルノ権利ヲ主張スル如キハ当該区域カ沿岸国ノ領域ニ属スルコトヲ前提トスルニ非サレハ認メ得サル排除的ノ権利ヲ主張スルモノナルヲ以テ之ヲ認ムルヲ得ス」

理由－本案ハ事実上領海ヲ拡張スル結果トナリ従テ我船舶ノ外国ニ於ケル活動又ハ外国領海付近ノ我漁業ノ発展ニ障害ヲ来ス虞アルヲ以テ一応之ニ反対スルコトトシ会議ノ大勢カ之ヲ認ムルニ傾ク場合ニ於テハ成ルヘク斯ル権利行使ノ範囲ヲ狭少明確ナラシメ且漁業権ニ影響ヲ及ホササルコトヲ明確ナラシムル為前記ノ如キ対案ヲ提出スルコトト致度シ尚右対案中ノ十二浬ノ範囲ヲ縮少セントスル案アル場合ニハ之ニ賛成スヘキコト勿論ナリ

第四、「領海ノ範囲ノ計算、基礎線ノ決定」

基礎案第六

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト全ク同趣旨ナリ

基礎案第七

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト全ク同趣旨ナリ

基礎案第八

本案ノ趣旨ニハ異存ナキモ其ノ理由タル慣習ハ永ク行ハレ且一般ニ認メラレタルモノナルコトヲ要スル旨主張スヘキモノトス

理由－本案ノ如ク所謂歴史的海湾ヲ認ムルコトニハ異存ナキモ其ノ理由トナルヘキ慣習ニ付テハ本案ノ如ク立証責任ヲ当該国ニ負ハシムルノミニテハ不十分ナルヲ以テ「永ク行ハレ且一般ニ認メラルルコト」ヲ要スル旨特ニ明確ニシ置クヲ可トス

基礎案第九

本案ハ其ノ儘之ヲ認メテ差支ナキモ両岸ノ距離六浬ニ達セサル部分ニ付テハ原則トシテ両岸ヨリノ中央線ニ依リ領海ノ境界ヲ分ツコトヲ明確ニスルヲ可トス

理由－本案ニ付テハ別段異存ナキモ帝国政府ノ回答ノ趣旨ヲ加味スル方一層明確ヲ期シ得ヘシ

基礎案第十

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ其ノ趣旨ニ於テ帝国政府ノ回答ト同様ナリ

基礎案第十一

本案ニ付テハ領海測定ノ一般原則ニ依ルヲ可トスヘシ

第五、「島嶼ノ周囲ノ領海」

基礎案第十二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト同趣旨ナリ

基礎案第十三

本案ハ其ノ儘之ヲ認メテ差支ナキモ群島内ニ包含セラルル水域ハ之ヲ内海トスル方一層適当ナルヘシ

理由－本案ハ(イ)群島ノ周囲ニ於ケル島嶼間ノ距離カ領海ノ広サノ二倍(六浬)トセル点(帝国政府ノ回答ハ十浬トセリ)及(ロ)本土ヨリ領海ノ二倍ヲ超エサル距離ニ位スル島嶼ニ付群島ト同様ノ原則ヲ適用セル点ニ於テ帝国政府ノ回答ト異レルモ大体同趣旨ナルヲ以テ反対ノ要ナキモ群島内ニ包含セラルル水域ハ之ヲ内海ト認ムル方一層事宜ニ適スヘシ

第六、「第四、第五ノ諸点ヲ決定スルニ付島嶼ノ意義如何」

基礎案第十四

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ其ノ趣旨ニ於テ帝国政府ノ回答ト同様ナリ

基礎案第十五

本案ハ其儘之ヲ認メテ差支ナキモ海峡ニ付テモ両岸ノ距離十哩ヲ超エサルモノニ付本案ノ如キ特例ヲ認ムルコト一層適当ナルヘク又歴史的海峡ナル観念ヲ認メントスル提案アルトキハ之ヲ支持スルコトト致度シ

理由－帝国政府ノ回答ハ入口ニ於ケル両岸ノ距離十哩ヲ超エサルモノニ付テ本案ノ如キ特例ヲ認メントスルモノナルカ本案ハ六哩以下ノ場合ニノミ之ヲ認メントス然レトモ此点ハ別段固執スルノ要ナキモノト認ム

基礎案第十六

本案第一項ノ場合ト第二項ノ場合トヲ区別スル理由乏シキニ付何レカニ統一スルヲ適当ト認ムルモ会議カ本案ノ如キ妥協案ヲ採用セントスル場合ニハ之ニ賛成シ差支ナシ

理由－本件ニ関スル帝国政府ノ回答ハ一律干潮時ヲ標準トスルコトトナリ居レルモ別段之ヲ固執スルノ要ナカルヘク唯本案ノ如ク第二項ノ場合ニ於テノミ干潮時ヲ標準トスル理由乏シキニ付何レカ一方ニ統一スルヲ可トスレトモ之亦固執スルノ要ナカルヘシ

第七、「海峡」

基礎案第十五

本案ハ其ノ儘之ヲ認メテ差支ナキモ海峡ニ付テモ両岸ノ距離十哩ヲ超エサルモノニ付本案ノ如キ特例ヲ認ムルコト一層適当ナルヘク又歴史的海峡ナル観念ヲ認メントスル提案アルトキハ之ヲ支持スルコトト致度シ

理由－帝国政府ノ回答ハ入口ニ於ケル両岸ノ距離十哩ヲ超エサルモノニ付テ本案ノ如キ特例ヲ認メントスルモノナルカ本案ハ六哩以下ノ場合ニノミ之ヲ認メントス然レトモ此点ハ別段固執スルノ要ナキモノト認ム

基礎案第十六

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ其ノ趣旨ニ於テ帝国政府ノ回答ト同様ナリ

基礎案第十七

本案ハ其ノ儘之ヲ認メテ差支ナキモ茲ニ所謂内海ノ意義明確ヲ欠ク

尚本案討議ノ機会ニ於テ我瀬戸内海ノ特殊地位ニ付適当ナル了解ヲ取付ケ置クコトトシ度シ

理由－本案ハ海峡カ単ニ内海トノ通路ヲ為ス場合ニ於テ斯ル海峡ニ海湾ニ関スル法則ヲ適用セントスルモノニシテ趣旨ニ於テ異存ナキモ内海ノ意義ニ関シテハ基礎案ノ何レニ於テモ決定セラレ居ラサルニ付之ヲ明確ナラシムルコトヲ要ス

第八、「内海ト領海トノ分界線、港津、海湾、河川ノ河口」

基礎案第十八

本案中港津ト領海トノ分界線ニ付テハ各国ノ国内法ノ規定ニ依ルコトト致度シ但基礎案第十ニ基キテ測定セラレタル領海ノ外ニ港域ヲ及ホスヲ得サルコトトシ度シ

理由－本案中港津ニ関スル部分以外ハ帝国政府ノ回答ト同趣旨ナルモ港津ニ付テハ領海測定ノ起算線ヲ分界線トスル

点ニ於テ帝国政府ノ回答ト異レルヲ以テ修正ヲ要ス
領海ノ範囲決定（基礎案第六及至第十八）ニ関連スル独逸国政府及和蘭国政府ノ意見ニ付執ルヘキ態度
一、独逸国政府ノ意見
(イ)沿岸線ノ調整
(ロ)海湾ノ範囲測定ニ関スル単一測定法則
右ニ関シテハ海軍専門家ノ意見ヲ提出スルコトトシ度シ
二、和蘭国政府ノ意見
(一)戦時法規トノ関係
会議ノ作成スヘキ条約ハ成ルヘク之ヲ平時ニ限ルヲ適当ト認ム
(二)趣旨ニ於テ異存ナシ
(三)司法的解決又ハ仲裁裁判
趣旨ニ於テ異存ナシ
(四)用語ノ一定
趣旨ニ於テ異存ナシ
第九、「領海内ニ於ケル外国船ノ無害航行ニ関シ沿岸国ノ負フ義務」
基礎案第十九
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ民事裁判権中強制執行ニ関スル部分ニ付テノミ規定スルモノニシテ帝国政府ノ回答ト異レトモ之ニテ実際上差支ナシ
第一三、「財政ニ関スル沿岸国ノ主権ノ行使ニ対スル制限」
基礎案第二十五
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ帝国政府ノ回答ト稍異レルモ根本的ノ相違ナキヲ以テ之ヲ承認シ差支ナカルヘシ
第一四、「領海内ニ於テ始メタル外国船ノ追躡ヲ公海ニ於テ継続シ得ルヤ」
基礎案第二十六
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ帝国政府ノ回答ト同趣旨ナリ
第一五、「海港ニ於ケル外国商船ニ対スル裁判権」
基礎案第二十七
本問題ニ付テハ帝国政府ノ回答中ニ掲ケタル案ヲ修正案トシテ提案スルコトトシ度
理由－本案ハ左ノ点ニ於テ日本案ト異リ不完全且不当ナル

本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ大体ニ於テ帝国政府ノ回答ト同趣旨ナリ
第一〇、「領海内ニ於ケル外国軍艦」
基礎案第二十及第二十一
右両案トモ其ノ儘之ヲ認メテ差支ナシ
理由－右両案トモ帝国政府ノ回答ト大体同趣旨ナリ
第一一、「第九及第十ノ問題ト戦時及中立トノ関係」
問題ナシ
第一二、「自国領域内ヲ通過スル外国船ノ裁判権ニ関スル沿岸国ノ主権ノ行使ニ対スル制限」
基礎案第二十二
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ其ノ趣旨ニ於テ帝国政府ノ回答ト同様ナリ
基礎案第二十三
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－帝国政府ノ回答ハ此ノ場合逮捕ノ目的トナル犯罪人ハ一定ノ重大ナル刑事法違反ノ犯罪人ニ限定シ居レトモ此点ハ固執スルノ要ナカルヘシ
基礎案第二十四
ヲ免レス
(一)民事裁判権ニ付規定ナキコト
(二)船内ノ規律ニ関スル事項ニ言及セサルコト
(三)港津所属国人民カ船員タル場合ノ事件ニ言及セサルコト
(四)直接害ヲ受ケタル私人ニ依リ要求セラルル場合ニモ管轄ヲ認メタルコト
依テ日本案ヲ修正案トシテ提出スルヲ可ナリト認ム
基礎案第二十八
本案ハ其ノ儘之ヲ認メテ差支ナシ
理由－本案ハ趣旨ニ於テ帝国政府ノ回答ト同様ナリ
国籍問題訓令案
第一、「国籍ノ得喪ハ国際法上専ラ各国ノ国内管轄ニ関スル事項タルノ原則」
基礎案第一
本案ハ其ノ儘之ヲ認メテ差支ナキモ第二項及第三項ハ条文トシテハ不適当ナルカ故ニ適当修正ヲ要ス尚第二項及第三項ニ関連シ左ノ趣旨ヲ付加セシムルコトト致度シ

「国家ハ国籍ノ取得又ハ喪失ニ関シ人種、国籍又ハ宗教ノ如何ニ依リ差別待遇ヲ為スコトヲ得ス」

理由－本案ハ帝国政府ノ回答ト其ノ見解ヲ同フスルモノナルヲ以テ之ヲ認メテ差支ナキモ第二項及第三項ハ条文トシテハ不適当ナルニ付討議ノ結果之ヲ適当修正スルノ要アルヘシ尚我国ノ特殊地位ヨリ第二項及第三項ニ関連シ差別待遇禁止ノ提案ヲ試ムルコトトシ度シ

基礎案第二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ「何人モ他ノ国籍ヲ取得スルニ非サレハ従前ノ国籍ヲ喪失セサルモノトス」ル原則ヲ認ムルニ於テハ不必要ナル規定ナルモ斯ル原則ヲ認メサル国ニ対スル関係ニ於テハ必要ナル規定ナリ

第二、「一人カ二個ノ国籍ヲ有スル場合」

基礎案第三

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト全ク同趣旨ナリ

基礎案第四

本案ハ尚考慮ノ余地アルモ代案ノ方ナラハ之ヲ認メテ差支ナシ

理由－帝国政府ノ回答ヨリスルトキハ本案又ハ其ノ代案ハ直ニ之ヲ認メ難キモ代案ノ主義ハ帝国政府ノ回答中ニ於テモ之ヲ認メ居レルモノナルヲ以テ会議ノ大勢カ之ヲ認ムル場合ニハ之ヲ認メテ差支ナカルヘシ

基礎案第五

本案中(イ)ノ場合ニ付テハ後段「其ノ場合ノ事情ヨリ推シテ該個人ノ現実ノ国籍ト認メラルル国籍」ナル標準ヲ更ニ明確ナラシメ（例ヘハ最後ニ常時居住ヲ有シタル国ヲ標準トスルコトヲ認ムル等ノ方法ニ依リ）之ヲ採用スルコトトシ(ロ)ノ場合ニ付テモ選択権ヲ認メス(イ)ノ場合ト同様常時居住ノ標準ニ拠ルコトト致度シ

理由－常時居住ノ標準ハ異時取得ノ場合ニ付テハ我法例第二十七条第一項ノ主義（最後ニ取得シタル国籍ニ拠ル主義）ト異レルモ最後ニ取得シタル国籍ハ大体常時居住ヲ有スル国ノ国籍ナルヘキヲ以テ其ノ間大ナル相違ナク且常時居住ノ標準ハ住所其ノ他ノ標準ニ比シ適当ナル標準ナルヲ以テ身分ノ問題ヲ決スル場合ト然ラサル場合トヲ問ハス此ノ標準ニ拠リ得ヘキ場合ニハ之ニ拠ルコトトシ此ノ標準ニ拠リ得サル場合ニ付テハ成ルヘク明確ナル他ノ標準ヲ設クルコトト致度シ

第三、「外国ニ於ケル帰化ニ因ル国籍ノ喪失及国籍放棄ノ許可」

基礎案第六

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト全ク同趣旨ニシテ又何等我国籍法ニ抵触スル所ナシ

基礎案第六ノ(二)

本案ハ基礎案第六カ採用セラレサル場合ノ代案ニシテ別段反対スヘキ理由ナシ

第四、「父母ノ帰化カ未成年ノ子ノ国籍ニ及ホス影響」

基礎案第七

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ未成年ニシテ未婚ノ子トアル点ニ於テ帝国政府ノ回答ト稍異レトモ之ヲ認メテ差支ナシ

基礎案第八及第九

右両案ハ其ノ儘之ヲ認メテ差支ナシ

理由－両案共我国籍法ト同趣旨ナリ

第五、「外交官ノ特権ヲ有スル者ノ子並一般ニ外国政府ノ為ニ公務ニ従事スル者ノ子」

基礎案第十

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ回答ト同趣旨ナリ

第六、「他国ノ領域ヲ通過中ニ生レタル子」

本件ニ付テハ基礎案ナキモ会議ニ於テ問題トナリタルトキハ一応帝国政府ノ回答ノ趣旨ニ依ルコトト致シ度シ

第七、「棄児、無国籍者及国籍不明者ノ子」

基礎案第十一

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ我国籍法ト其ノ原則ヲ同フス

基礎案第十二

本案ニ付テハ先ツ我国籍法ノ如ク無国籍者又ハ国籍不明ナル父母ノ子ニ付棄児ノ場合ト同一ニ取扱フコトヲ適当トスレトモ本案ハ別段我国籍法ニ抵触セサルニ依リ之ヲ認ムルモ差支ナシ

第八、「父母ノ国籍カ法律上当然子ノ国籍トナラサル場合ノ子ノ国籍」

基礎案第十三

本件即チ「父母ノ属スル国ノ法律上子カ父母ノ国籍ヲ取得スル為ニハ国内ニ於テ生レタルコトヲ条件トスル場合」ニ付テハ帝国政府ノ回答ノ如キ解決方法ヲ採ルコトヲ適当トス

理由ー帝国政府ノ回答ハ父母ノ属スル国ノ法律上子カ父母ノ国籍ヲ取得スル為ニハ国内ニ於テ生レタルコトヲ条件トスル場合外国ニ於テ生レタル子カ無国籍者トナルコトヲ防止セントスル問題ニ関シ其ノ場合ニハ血統主義ニ依ルコトヲ可トスル意見ナルヲ以テ本案ノ如ク一定ノ条件ノ下ニ出生地ノ国籍ヲ付与シテ国籍ノ消極的抵触ヲ防止セントスル案トハ根本主義ヲ異ニス而シテ現ニ出生地主義ヲ採ル諸国ニ於テモ斯ル場合ニ血統主義ヲ採ルモノ寧ロ多数ナルヲ以テ帝国政府ノ回答ノ主義ヲ条約中ニ掲クルコト必スシモ困難ニ非サルヘシ

第九、「商船内ニ於ケル出生ニ因ル国籍ノ取得」

基礎案第十四及基礎案第十四ノ㈡

右両案ノ場合ニ於テハ帝国政府ノ回答ノ如ク原則トシテ血統主義ニ依ルヲ可トス但シ公海ニ於ケル商船内ノ出生ニ付テハ出生地主義ヲ認ムルモ差支ナシ

第一〇、「二重国籍ヲ有スル者ノ選択権」

基礎案第十五

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由ー我カ国籍法ハ出生ニ依テ国籍カ積極的ニ抵触セル場合ニ於テノミ国籍ノ離脱ヲ認ム然レトモ出生後ノ事実ニ依テ国籍カ積極的ニ抵触セル場合ト雖モ其ノ一ヲ放棄スルコトヲ認ムル必要アルヲ以テ基礎案第十五ノ如ク広ク規定スルモ可ナルヘシ

我カ国籍法ハ国籍離脱ノ条件ヲ政府ノ許可及ヒ外国ニ住所ヲ有スルコトトスレトモ基礎案第十五ハ単ニ関係国政府ノ許可ヲ条件トスルノミナルヲ以テソノ条件ニ於テ多少ノ差異アリ然レトモ許可ヲ要スル以上ハ住所カ外国ニ在ルヲ条件トスルコトハ必スシモ絶対ニ必要トスヘキモノニアラサルヘシ又基礎案第十五ハ当該個人カ外国ニ常時居住ヲ有シ且ツ外国ニ於ケル帰化カ前国籍ヲ喪失セシムルニ必要ナル条件ヲ充セル場合ニハ許可ヲ拒否スヘカラサルコトヲ規定ス此ノ点我カ国籍法ト異ル然レトモ此ノ如キ条件ヲ充セル場合ニ於テハ寧ロ国籍ヲ放棄スルコトヲ得セシムルヲ適当

トスルカ故ニ基礎案第十五ヲ認メテ可ナルヘシ

第一一、「外国人トノ婚姻ニ因ル女子ノ国籍喪失」

基礎案第十六及第十七

右両案共其ノ儘之ヲ認メテ差支ナシ

理由ー右両案共帝国政府ノ回答ト全ク同趣旨ナリ

基礎案第十八

本案ハ会議ノ大勢之ヲ認ムルニ於テハ之ヲ認メテ差支ナシ

理由ー我国籍法ニ依レハ夫ノ帰化ハ妻ノ同意ヲ要セスシテ妻ノ国籍ヲ変更セシムルモ(第十三条第一項)会議ノ大勢カ本案ヲ認ムルニ於テハ之ニ反対スルノ要ナカルヘシ

第一二、「婚姻ニ因リ喪失シタル国籍ノ回復」

基礎案第十九

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由ー本案ハ我国籍法ト其ノ趣旨ヲ同フシ且国籍ノ抵触ヲ防止スル為妻カ婚姻ニ依リ取得セル国籍ヲ喪失スヘキ旨明定セルモノ(此点ニ付テハ我国籍法ニハ規定ナシ)ニシテ極メテ妥当ナリ

第一三、「国籍ニ及ホス婚姻ノ其ノ他ノ効果」

基礎案ナシ

第一四、「非嫡出子ノ身分ノ変更ノ子ノ国籍ニ及ホス効果」

基礎案第二十

本案ハ其ノ儘之ヲ認メテ差支ナキモ子カ外国人ノ妻ナル場合ニハ父ノ認知ハ子ノ国籍ニ何等ノ変更ヲ加ヘサルコトヲ適当トス

理由ー此ノ点ニ関シ我カ国籍法ニ於テハ私生子ハ父母ノ中先ツ認知セル者ノ国籍ヲ取得スヘキモノトス故ニ父ノ認知ニ優先的効力ヲ認ムル基礎案第二十ト其ノ主義ヲ異ニス然レトモ父母ノ認知ニ同等ノ効力ヲ付与スルヨリモ寧ロ父ノ認知ハ先後如何ニ拘ラス常ニ母ノ認知ニ優先スルコトヲ認ムルヲ可ナリトスルカ故ニ基礎案第二十ヲ認メテ我カ国籍法ヲ改正スルヲ可トス唯我カ国籍法ハ認知ニ依リ子カ其ノ認知者ノ国籍ヲ取得スルカ為ニハ外国人ノ妻ニアラサルコトヲ要スルモノトスレト基礎案第二十ハ唯子カ未成年ナルヘキコトヲ掲クルニ止ル此ノ点ハ我カ国籍法ノ如ク子カ外国人ノ妻ナル場合父ノ認知ハ子ノ国籍ニ何等ノ変更ヲ与ヘサルコトヲ適当トス

基礎案第二十ノ㈠

基礎案第二十カ採用セラレサル場合本案ヲ認メテ差支ナシ

理由―本案ハ新国籍取得ヲ条件トシテ非摘出子ノ前国籍ヲ喪失セシムルモノニシテ基礎案第二十カ採用セラレサル場合之ヲ認メテ差支ナシ

第十五、「養子縁組ノ養子ノ国籍ニ及ホス効果」

基礎案第二十一

本案ニ付テハ左記趣旨ノ修正案ヲ提議スルコトト致度シ

「養子縁組ノ結果トシテ養子カ養親ノ国籍ヲ取得スル場合ニ於テハ原国籍ヲ喪失ス」

理由―此点ニ関スル帝国政府ノ回答ハ国籍ノ抵触ヲ予防スル点ヨリ養子カ養親ノ国籍ヲ取得スル為ニハ旧国籍ヲ喪失スルコトヲ条件トスルヲ以テ正当トセリ然ルニ本案ハ養子カ国籍ヲ喪失スル場合ニハ養親ノ国籍ヲ取得スルヲ条件ト為スヘキコトヲ規定セルモノニシテ帝国政府ノ回答ノ場合ニ適合セス而シテ現在養子縁組ハ国籍変更ヲ伴ハサルコトヲ主義トセル国寧ロ多数ナルヲ以テ帝国政府ノ回答ノ趣旨ニ依リ規定ヲ設クルコト一層適切ナリ

448　昭和5年1月27日　幣原外務大臣より 在独国東郷臨時代理大使／在オランダ廣田公使／在パリ伊藤連盟事務局長代理 宛

国家責任問題に関する我が方訓令案送付

条二機密合第七九号

昭和五年一月二十七日

外務大臣男爵　幣原　喜重郎

在独国　臨時代理大使　東郷　茂徳殿

在蘭国　特命全権公使　廣田　弘毅殿

在巴里　国際連盟帝国事務局長代理　伊藤　述史殿

国際法典編纂会議国家責任問題訓令案送付ノ件

本件国家責任問題訓令案三部送付ス本訓令案ハ各省協議会ニ於テ決定不日閣議稟請ノ筈ナルニ付右御了知相成度シ

（別　添）

自国領内ニ於テ外国人ノ身体又ハ財産ニ加ヘタル損害ニ対スル国家ノ責任問題訓令案

第一、「国際責任ト国内責任」

基礎案第一

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由―本案ハ帝国政府ノ参考意見ト同趣旨ナリ

第二、「国家ノ国際法上ノ責任ノ根拠」

基礎案ナシ

会議ニ於テ「国家ノ義務ハ該国家カ国際団体ノ一員タリ且国際団体ハ法的規則ニ依リ支配セラルルノ事実ニ因テ生シ右規則ノ不遵守ヨリ生スル責任ハ右義務ノ結果ナリ」トスル思想ヲ条約ノ前文中ニ挿入セントスル議アリタルトキハ之ニ賛成シ差支ナシ

第三、「立法機関ノ行為」

(一)

基礎案第二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由―本案ハ帝国政府ノ参考意見ト同趣旨ナリ

(二)

基礎案第三

本案ハ其ノ儘之ヲ認メテ差支ナシ但シ字句ニ付テハ考慮ノ余地アリト認ム

理由―本案ハ帝国政府ノ参考意見ト同趣旨ナリ但シ第一項ノ場合ト第二項ノ場合トノ関係ヲ考慮シ字句ニ付適当ノ修正ヲ加フル余地アリ

(三)

既得権ノ侵害ニ関シテハ基礎案ナシ而シテ委員会ノ意見ニ依レハ既得権ノ侵害カ国際法ノ侵害ヲ含ム場合ニハ国家ハ基礎案第二ニ掲ケラレタル原則ニ従テ責任ヲ負フモノトナセリ右意見ハ大体ニ於テ妥当ナリト認ムルモ既得権ノ意義ヲ明確ナラシムルヲ要ス

(四)

基礎案第四

本案第一項及第二項本文ニ付テハ異議ナシ第二項但書ノ趣旨ハ頗ル明確ヲ欠クヲ以テ場合ヲ制限シ明確ナラシムルコトヲ要ス

理由―本案第一項及第二項本文ハ帝国政府ノ参考意見ト同趣旨ニシテ別段異存ナキモ第二項但書ハ其ノ意義不明確ニシテ濫用ノ虞大ナルヲ以テ災害事変等ノ際緊急已ムヲ得サルモノトシテ一定期間ヲ限リ施行セラルル「モラトリウム」

ノ如キ場合ニ限定スルヲ要ス

第四、「司法機能ニ関スル行為」

基礎案第五

本案ハ其ノ儘之ヲ認メテ差支ナキモ第二号ノ場合ニ付テハ司法上ノ決定カ条約上ノ義務其ノ他ノ国家ノ国際義務トシテ之ヲ見ルトキハ別段不可ナキモ字句ニ付テハ修正ノ余地アリ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ナルモ条約上ノ義務其ノ他ノ国家ノ国際義務ト相容レサル疑アル司法的決定ニ付責任ヲ負フコトハ不当ナルヲ以テ明白ナル場合ニ限定スルヲ要ス

基礎案第六

本案ハ文明国標準主義ヲ採レルモノトシテ之ヲ見ルトキハ別段不可ナキモ字句ニ付テハ修正ノ余地アリ

第五、「行政機関ノ行為」

基礎案第七

本案ハ其ノ儘之ヲ認メテ差支ナシ但シ本案ニ関連シ行政裁判所ノ行為ハ行政機関ノ行為ト看做スヘキヤ否ヤヲ明確ナラシムルコトヲ要ス

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ別段不可ナシ

基礎案第八

本案ニ付テハ基礎案第三ニ対スルト同様ノ態度ニ出ツヘキモノトス

基礎案第九

本案第一項及第二項本文ハ其ノ儘之ヲ認メテ差支ナシ第二項但書ニ付テハ基礎案第四ニ対スルト同様ノ措置ヲ執ルヘシ

理由－本案第一項及第二項本文ハ帝国政府ノ参考意見ト同趣旨ニシテ別段不可ナシ第二項但書ハ意義明確ヲ欠キ濫用ノ虞アリ

基礎案第十

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ文明国標準主義ヲ採リタルモノニシテ本項ニ関スル帝国政府ノ参考意見及同意見第十六項ノ趣旨ニ合致ス

基礎案第十一

本案ハ趣旨ニ於テ異存ナキモ本案ノ如キ規定ヲ行政官憲カ外国人ノ自由ヲ奪ヒタル場合ニノミ限定スルハ狭キニ失スルヲ以テ一般ニ行政官憲カ外国人ノ身体及財産ニ対シ侵害ヲ加ヘタル場合ニ付規定ヲ設クルヲ可トス又本案中ノ「不当ニ」(unwarrantable)ナル字句ハ不明確ナルヲ以テ之ヲ「不法ニ」ノ趣旨ニ改ムルヲ要ス又本案ノ実際ノ適用ニ付テハ文明国標準主義ヲ採ルヘキモノトス

基礎案第十二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ何等不可ナシ

基礎案第十三

本案ハ帝国政府ノ参考意見第五ノ二ノ(ロ)ノ通修正スルヲ要ス

理由－本案ハ帝国政府ノ参考意見ノ通改メ官吏カ公ノ資格ヲ以テ為シタルモ権限ヲ踰越セル場合ニ国家ニ責任アルコトヲ明ニスルコトヲ要ス

基礎案第十四

本案ハ其ノ儘之ヲ認メテ差支ナキモ国際義務ニ抵触スル場合ニ限ルコトヲ明確ニ為スヘシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ別段不可ナキモ国際義務ニ抵触スル場合ニ限ルコトヲ字句ノ上ニ於テ明確ナラシムル要アリ

基礎案第十五

本案ニ付テハ基礎案第十三トノ関係ニ付疑アルヲ以テ明ニスルコトヲ要ス

理由－本件ニ関シテハ帝国政府ノ意見ノ開陳ヲ留保シタルカ本案ニ付テモ解釈上不明ノ点アリ即チ本案ヲ以テ官吏ノ職権行為ニ関スルモノトセンカ基礎案第十三ニ依リ国家ノ負フヘキ責任トノ間ニ疑問ヲ生シ又職権外ノ行為トセンカ之私人ノ行為ト同一ニシテ基礎案第二十ヲ以テ足ルヘシ

基礎案第十六

本案ハ趣旨ニ於テ異存ナキモ本邦トシテハ地方団体以外ノモノノ行為ニ付之カ適用ヲ認メ難シ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ別段不可ナキモ地方団体以外ノモノノ行為ニ付国家ノ責任ヲ認ムルハ不穏当ナルヲ以テ之ヲ地方団体ノ行為ニ局限スルヲ可トス

基礎案第十七

本案ハ其ノ儘之ヲ認メテ差支ナキモ基礎案第十トノ関係ニ付テハ考慮ヲ要ス

理由－本案ハ帝国政府ノ参考意見ト大体同趣旨ニシテ且文明国標準主義ヲ採レルモノナルヲ以テ何等不可ナキモ基礎案第十ト重複スルヲ以テ適当整理ヲ要ス

基礎案第十八

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ナリ

基礎案第十九

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ大体帝国政府ノ参考意見ト同趣旨ナリ

基礎案第二十

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ別段不可ナシ

第八、「擾乱鎮圧ニ際シ負ヒタル損害」

基礎案第二十一

本案ハ其ノ儘之ヲ認メテ差支ナシ（第二号但書ニ戦闘行為トアルハ鎮圧ノ際ニ為ス行為ニシテ戦争ノ場合ニ於ケル戦闘行為ニ該当スル行為ヲ指スモノト解ス）

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ不可ナシ

第九、「叛乱、一揆又ハ暴動ニ依リ蒙リタル損害」

基礎案第二十二

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ何等不可ナシ

基礎案第二十二(イ)

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ基礎案第十二掲ケタル原則ノ結果ニシテ何等不可ナシ

基礎案第二十二(ロ)

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ基礎案第二十一(四)ト同趣旨ノ規定ニシテ何等不可ナシ

基礎案第二十二(ハ)

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ成功シタル叛乱党派ニ正当政府ト同一ノ責任ヲ負ハシメントスルモノニシテ別段不可ナシ

基礎案第二十二(ニ)

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ニシテ別段不可ナシ

第十、「属国、保護国、連邦其ノ他ノ合同国ノ場合ニ於ケル国家ノ責任」

基礎案第二十三

本案ハ趣旨ニ於テ異存ナキモ左ノ点ニ付特ニ注意ヲ要ス

(一)英本国自治領間ノ関係ニ付テハ本案ノ適用ナキヲ以テ此ノ関係ヲ明ニスル様他ニ適当ノ方法ヲ講スヘキコト

(二)本案第二項ノ場合ハ合衆国ヲ「カヴァー」シ居レルモノト思考スルモ之ヲ一層明確ナラシムルコト

第十一、「国家カ正当ニ責任ヲ拒絶シ得ル場合」

基礎案第二十四

本案ニ付テハ何等異存ナキモ必要ナル規定ニ非ス

基礎案第二十五

前案ト同断（本案及前案ノ規定ノ有無ニ拘ハラス不可抗力ニ依ル侵害ニ付テハ国家カ正当ニ責任ヲ拒絶シ得ルコト勿論トス）

基礎案第二十六

本案第一項ハ其ノ儘之ヲ認メテ差支ナシ第二項ニ付テハ之カ削除ヲ主張スルコトト致度シ

理由－本案第一項ハ帝国政府ノ参考意見ト同趣旨ナリ第二項ハ英国回答ニ依リタル妥協的提案ナルモ第一項ノ主義ヲ著シク制限スルモノニシテ賛成シ難シ

第十二、「国内法カ許与スル救済方法ヲ尽スヘキヤ否ヤ」

基礎案第二十七

本案ハ其ノ儘之ヲ認メテ差支ナシ尚本案ニ関連シ時効完成ノ後ハ賠償ヲ請求シ得サラシムル様規定ヲ設クルヲ適当ト認ム

理由－帝国政府ノ参考意見ハ司法上ノ救済方法ニ限定スルヲ適当ナリト認メタルモ之ヲ固執スルノ要ナカルヘシ

第十三、「請求ノ国家的性質」

基礎案第二十八

本案ハ其ノ儘之ヲ認メテ差支ナシ

理由－本案ハ帝国政府ノ参考意見ト同趣旨ナリ

第十四、「損害ニ対スル救済」

基礎案第二十九

本案ハ大体ニ於テ之ヲ認メテ差支ナシ
理由―本案ハ大体ニ於テ帝国政府ノ参考意見ト同趣旨ナリ
第十五、「審査、和解、仲裁、司法的解決」
基礎案第三十
本案ヲ特別議定書トシテ挿入スルコトニ異存ナシ但シ国際司法裁判所ニ付託スル事件ハ法律問題ニ限ルヲ可トス
基礎案第三十一
本案ニ依ルコトヲ適当ト認ム

449　昭和5年2月(9)日　在独国長岡大使より　幣原外務大臣宛(電報)

国籍問題に関する我が方差別禁止提案差し控え方意見具申

ベルリン　発
本　省　2月9日前着

第一〇号
貴電第五号末段国籍及領海問題御訓令案接到シタルニ付一応研究ヲ遂ケタル処国籍ニ関スル分中
一、基礎案第一ニ於テ「国籍ノ得喪ニ関シ人種国籍宗教ノ如何ニ依リ差別待遇ヲ為スヲ得ス」トノ追加提議ノ御趣旨ハ本使ノ良ク諒解スル処ナルモ連盟質問ニ対スル各国ノ回答振ヲ見ルニ何レモ相当強ク国家主権ヲ主張シ居ルノミナラス「パレスチナ」委任統治条項第七条ハ或ル意味ノ差別待遇ヲ規定シ居リ又希臘、土耳古人民交換条約ノ如キモノスラ存スル次第ナルニモ鑑ミ右提案ハ到底通過ノ見込ナカルヘキノミナラス之ヲ提出シテ惨敗ヲ招クニ於テハ却テ同種類ノ他ノ問題ニモ悪影響ヲ及ホス虞アルニ付寧ロ提案セサル方可然ヤニ思考ス
二、朝鮮人ニハ国籍離脱ヲ許ササルヤニ聞キ居ル処右規定ハ其ノ後撤廃セラレタル次第ナリヤ若シ然ラストスル場合ニ基礎案第五第六第十五、十六及十七ハ我方ニトリ差支ナキヤ
二点ニ対スル何分ノ意見御回電ヲ請フ
連盟事務局、蘭、希ヘ転電セリ

450　昭和5年2月13日　幣原外務大臣より　在パリ伊藤連盟事務局長代理宛(電報)

国際法典編纂会議への我が方代表決定について

本　省　2月13日　発

第二一号
十二日付在独長岡大使、在瑞典武者小路公使、在希臘川島公使蘭国海牙ニ於テ開催ノ国際法典編纂会議ニ於ケル帝国代表者被仰付、同日佐久間(独)、大鷹(蘭)、日高、松本各書記官及小長谷官補(蘭)随員ヲ命セラレ中山、蓮沼、池田、竹中各書記生何レモ代表者付ヲ命セラル尚立博士ハ本会議ニ於ケル顧問ヲ命セラル
本電関係各公館長ニ電達セラレ度シ

451　昭和5年2月20日　幣原外務大臣より　在独国長岡大使宛(電報)

閣議決定された国際法典編纂会議に関する我が方訓令について

別　電　昭和五年二月二〇日付幣原外務大臣より在独国長岡大使宛第九号
閣議決定に際しての修正点

本　省　2月20日後発

第八号
往電第五号(二)及貴電第一〇号ニ関シ
三問題ニ関スル訓令案ハ領海問題及国籍問題訓令中別電第九号ノ通修正アリタル上閣議(二月十八日)ノ決裁ヲ経タリ訓令正文ハ郵送ス
尚別電二ノ(ロ)ヲ追加シタルハ国籍問題中基礎案第六其他ノ審議ニ際シ朝鮮人問題ヲ考慮ニ入レ将来我政府ヲ困難ナル地位ニ陥ラシムルコトナキ様適当ニ処理サレンコトヲ希望スル次第ニシテ我代表委員ノ心得迄ニ申進スルニ止リ我方ヨリハ本問題ニ言及スルノ必要アル場合ニモ及フ限リ朝鮮ナル地名ヲ指摘スルコトヲ避ケ例ヘハ「一国ノ管轄権内ニ於テ特殊ノ事情アル地域」ト云フカ如キ云ヒ顕ハシ方ニ依ル様御注意アリタシ為念
別電ト共ニ蘭、瑞典、希臘、連盟事務局へ転電アリ度

(別　電)

本　省　2月20日後発

第九号
一、領海問題訓令案中基礎案第十五ノ項左ノ通改ム

「本案ハ其儘之ヲ認メテ差支ナキモ両岸ノ距離十浬ヲ越エサル海峡ニ在リテハ歴史的海峡ナル観念ヲ有スルモノニ限リ特例ヲ認ムルコトト致度シ

(津軽海峡ハ一方ハ十浬ヲ超ユルヲ以テ直ニ本案ノ適用ヲ受ケサルモ原則トシテ歴史的海峡ノ観念ヲ認メシメ置クコトハ有利ナリトノ趣意ヨリ海軍側ノ主張ヲ容レタルモノナリ理論トシテハ徹底セス)

理由－帝国政府ノ回答ハ入口ニ於ケル両岸ノ距離十浬ヲ超エサルモノニ付テ本案ノ如キ特例ヲ認メントスルモノナルカ本案ハ六浬以下ノ場合ニノミ之ヲ認メントス此点ハ前段固執スルノ要ナキモノト認ムルモ我津軽海峡等ニ付歴史的海峡ナル観念ヲ認メ特例ヲ設ケント欲ス」

二、国籍問題訓令案ニ関シ

(イ)基礎案第一ニ対スル我方追加提議ハ訓令中ヨリ之ヲ削除ス

(ロ)訓令案ノ末尾ニ左ノ一項ヲ加フ

「朝鮮ニハ未タ国籍法施行セラレ居ラサルヲ以テ朝鮮人ノ国籍喪失ニ影響ヲ及ホスカ如キ条項ノ審議ニ当リテハ朝鮮人ニ付テハ帝国政府ハ国籍喪失ニ付許可主義ニ依ルヤ否ヤ又許可主義ニ依ル場合ニハ朝鮮ニ関スル特殊ノ事情ニ顧ミ許可ニ如何ナル条件ヲ付スルコトヲ必要トスルヤノ問題ニ関シ決定ノ自由ヲ保有スルコトニ措置アリ度シ」

〰〰〰〰〰〰〰〰〰〰

452

昭和5年2月21日　在独国長岡大使より
幣原外務大臣宛(電報)

国家責任問題に関する訓令案中中国などとの関係上留意すべき点に関し意見具申

ベルリン　2月21日後発
本　省　2月22日前着
第一七号

国家責任問題(1)御訓令案接到シタルニ付一応研究ヲ遂ケタルカ武者小路川島両代表ト親シク協議スル遑ナキニ付不取敢本使一己ノ気付ノ点左ニ稟申ス

本省御訓令案カ日本ノ責任問題トナル場合ト支露等外国ノ責任ヲ問フ場合トノ何レヲ主眼トスルモノナリヤ必スシモ明カナラサルモ本使ノ所見ニ依レハ前者ハ実際上希有ノ事例タルヘキニ反シ後者ハ露殊ニ支那ニ対スル関係上之ヲ援

用スヘキ場合相当多カルヘシト認メラレ殊ニ支那ハ現在治外法権撤廃関税自主等国家自主権ノ範囲ヲ拡張セント極力努力シ居ルモ去リトテ同国ニ対シ直ニ文明国並ノ待遇ヲ与フルハ諸般ノ関係上相当危険アルヘク且又国家責任問題ハ協定成立ノ望比較的尠キヤニ想像セラルル事情モアルニ依リ我方トシテハ外国ノ責任ヲ問フ場合ヲ主眼トスル方寧ロ有利ナルヤニ存セラル

右見地ヨリスレハ御訓令案中例ヘハ

一、(2)基礎案第三、第四、第八、第九ヲ個人間関係ニ於テ得タル権利ニモ拡張シ以テ基礎案第二ニ依リ「カバー」セラレサル虞アル場合ヲモ保護スルコトト為シ又同第四、第二項但書ノ場合ヲ新ナル契約成立ヲ要スルコトト為ス要ナキヤ

二、同第五第三号ニ対スル語追加及同第一一中「不当ニ」ヲ「不法ニ」ト変更スルコトハ対支関係上如何ナルヘキヤ

三、同第一六ハ対支関係上地方団体以外ニモ之ヲ適用スルコト却テ有利ナルヘク又同第一八ヲ「ボイコット」ノ責任ヲ問ヒ得ル様多少修正スル要ナキカ尚同第一九及第二五ハ不要且ツ有利ナラサルカ

四、司法ニ関スル行為及行政機関ノ行為中ニ軍憲及行政裁判所ノ行為ヲ適当包括セシムル要アルヘシ

而シテ以上諸点ハ帝国政府参考意見第一六項ヲ協定中適当ノ場所ニ適当ノ形式ヲ以テ挿入スルニ於テハ簡単ニ解決シ得タル儀ナルモ右第一六項挿入ノ主張ハ余リニ我方ノ目標ヲ暴露セシメ「デリケート」ナルノミナラス貫徹ノ望モ少ナキヤニ存セラルルニ付上述ノ如ク各場合ニ付卑見ヲ開陳セル次第ナリ

右ニ対スル何分ノ御意見回電ヲ請フ

希ニ転電シ瑞典、蘭、連盟事務局ニ暗送セリ

〰〰〰〰〰〰〰〰〰〰

453

昭和5年2月25日　在独国長岡大使より
幣原外務大臣宛(電報)

海峡問題などに関し意見具申

ベルリン　2月25日後発
本　省　2月26日前着
第一九号

貴電第九号ニ関シ

㈠津軽海峡ニ如何ナル歴史アリヤ承知致シタク若シ戦時閉鎖ノ関係ナルニ於テハ今次協定ハ平時ニノミ関スルモノナルト又戦時公海水雷布設ノ禁止及領公海ヲ連絡スル海峡ノ戦時閉鎖禁止ノ主張カ平和会議ノ際否決セラレタルコトニモアリ旁特ニ同海峡ノ為ニ提案スル必要ナキノミナラス却テ不測ノ遺憾ヲ招ク虞アル様存セラルルニ付基礎案第一五ニ対シテハ我最初ノ案通リ一般問題トシテ各出入港ノ距離十海里ヲ超ヘサル海峡ヲ沿岸国ノ領海ト主張シ之ヲ貫徹シ得サル場合ニハ六海里説ニ同意スル方却テ得策ナルカ如ク存セラル尚瀬戸内海ハ之ヲ別トシ基礎案第一三群島内水域ヲ内海ト主張スルハ寧ロ外国側ニ有利ナル様存セラルル処我国ニ於テモ具体的ニ之ヲ必要トスル事例アリヤ

㈡平和条約以来少数民族ニ対シ差別待遇ヲ与ヘサラントスルハ欧州一般ノ表面的風潮ナルハ御承知ノ通ナルニ鑑ミ如何ナル字句ヲ使用スルニセヨ鮮人ニ関シ特例ヲ留保スルハ面白カラスト存セラルルニ付右ハ万已ムヲ得サル場合ノ処置トシ現在ノ基礎案ニ付之ヲ研究スルニ其ノ第六 concernant ト la capacité トノ間ニ notamment ヲ又同第一五 pourra ト être refusée トノ間ニ en principe ヲ夫々挿入スル(右両案ノ規定カ余リ制限且具体的ニ過クルヲ理由トシ)コトトセハ我方ノ目的ヲ達シ得ルヤニ認メラレ又基礎案第二一ニ対スル我方修正案ハ鮮人ノ国籍喪失ト関係アルヲ以テ基礎原案ヲ認ムル方適当ナルヤニ存セラル

右諸点ニ関シ何分ノ儀御回電相成度シ

瑞典、希ヘ転電シ、蘭、連盟事務局ヘ暗送セリ

454 昭和5年3月12日 幣原外務大臣より在ハーグ国際法典編纂会議代表宛(電報)

国家責任問題に関する意見具申に関し訓令通り対処方回訓

本省 3月12日後発

第一号

長岡大使発本大臣宛第一七号ニ関シ

御来示ノ趣一応御尤ナルモ政府ニ於テハ訓令ノ作成ニ当リテハ一般的国際規定ヲ作ルコトヲ目的トシ特ニ支那等ヲ目

標トセス又本邦カ責任ヲ問ハルル場合ヲモ考慮ニ入レタリ且帝国政府参考意見第十六項ハ大体基礎案中ニ織込マレアルニ付訓令通御措置相成度シ

455 昭和5年3月14日 在ハーグ国際法典編纂会議代表より幣原外務大臣宛(電報)

会議開会について

ハーグ 3月14日後発
本省 3月15日前着

第五号

法典会議予定通十三日開会参加国英米仏独伊支伯剌西爾(露ハ「オブザーバー」)等四十五ケ国ニ達シ議事規則第十九条迄及第二十二条ヲ可決シ十四日副議長選挙ヲ行ヒタルカ長岡及米墨(墨西哥)両代表之ニ当選セリ十七日ヨリ委員会討議ニ入ル筈

希、連盟ヘ転電セリ

456 昭和5年3月17日 幣原外務大臣より在ハーグ国際法典編纂会議代表宛(電報)

津軽海峡の歴史的海峡性などに関し回訓

付記 昭和五年三月五日付堀(悌吉)海軍省軍務局長より松永条約局長宛軍務一機密第九五号

津軽海峡の歴史的海峡性について

本省 3月17日前発

第二号

長岡大使発本大臣宛第十九号ニ関シ

㈠(イ)津軽海峡ニ関シテハ明治三十七年一月二十二日防禦海面令ニ基キ明治三十八年四月十八日海軍省告示第十四号ニ依リ防禦海面ト指定セラレタリ又同海峡ハ伝統的ニ日本ニ属スルモノト考ヘラレ北海道トノ連絡モ陸続キト同様ニ行ハレ居ルニ鑑ミ平時ニ於テモ外国船舶ニ適当ナル監督権ヲ行使シ得ル権利ヲ保有スル必要アルニ付同海峡ニ付歴史的海峡トシテ特例ヲ認メシメンコトヲ欲ス

(ロ)我国ニハ基礎案第十三ノ群島内水域ニ該当スルモノナキモ之ヲ内海ト主張スルコト適当ナリト思考ス

㈡基礎案第六ニ Notamment ヲ挿入スルモ効果ナカルヘシ第十五ニ en principe ヲ挿入スレハ幾分良クナルモ充分トハ思ハレス且此等特別ノ条項ニ関シ留保ヲ為スハ目立チ易キヲ以テ出来得レハ概括的ニ国籍法ノ施行セラレサル地域（朝鮮及南洋群島ヲ考慮ス）ニハ本条約ノ規定ノ適用ナキ旨ヲ明ニスル様可然御措置相成度基礎案第二一ニ関シテハ右概括的留保ノ方法ニヨリ措置スルコトトシ若シ右カ困難ナル場合ハ御請訓相成度シ

（付　記）

軍務一機密第九五号
昭和五年三月五日
海軍省軍務局長　堀　悌吉（印）
外務省条約局長　松永　直吉殿

長岡大使発領海問題ニ関スル電報ニ対スル回訓要旨案ノ件通牒

客月二十六日着長岡大使発外務大臣宛領海問題ニ関スル電報中前段ニ対スル回訓ニ関シ当省意見別紙ノ通ニ有之候

（別　紙）

長岡大使宛外務大臣回訓要旨案

一、明治三十七年一月二十二日防禦海面令ヲ公布セラレ明治三十八年四月十八日海軍省告示第十四号ニヨリ津軽海峡ヲ防禦海面ト指定シタルニ列国ヨリ何等ノ抗議無カリシハ之明ニ列国カ同海面ヲ我領海ト認メシ証左ナリ

二、群島ニヨリ成立スル帝国本土三千年来ノ歴史ハ津軽海峡カ帝国領海タルヲ確信セシモノト認メラレ鉄道ノ連絡等全ク陸地同様ニ行ハレ居ルニ顧ミルモ本邦ノ領海トナスヘキ性質ノモノナリ

三、戦時閉鎖ノ関係ハ別トシ平時ニ於テモ外国船舶ニ依ル我安全ノ侵害ノ防禦スルニ必要ナル監督権ノ行使スルノ権利ヲ保有スルタメ本海峡ヲ我領海タラシムルコト絶対ニ必要ナリ

明治三十一年岡本柳之助氏纂
日露交渉北海道史稿下篇第四十七頁ニ

函館ノ開港ハ安政二年三月ヲ以テスルノ約束ナレハ幕府ハ安政元年七月函館奉行ヲ置キ竹内下野守保徳ヲ以テ之ニ任シ松前藩ニ令シテ函館及其四方五六里ノ地ヲ画シテ幕府ノ直轄トセリ

トアルハ開港ノ事ナル故「四方五六里ノ地」ハ勿論海上ヲ

モ含ムモノニシテ文意ニヨリ其レ以前久シク同方面海上カ松前藩ニテ領有セラレタルモノナルコトヲ知ルヘシ

斯ノ如ク津軽海峡ハ当然我領海ナリトノ伝統的観念ニ基キテ明治三十七年防禦海面令ノ公布アリ之レニ依ツテ該海峡通航ノ艦船ニ就テハ国籍ノ内外ヲ問ハス之ヲ同令ノ適用下ニ置キタル処列国ヨリ何等ノ抗議無カリシハ之明ニ列国カ同海面ヲ我領海ト認メシ証左ナリ

457　昭和5年4月10日　在ハーグ国際法典編纂会議代表より幣原外務大臣宛（電報）

会議の討議状況について

ハーグ　4月10日前発
本　省　4月11日前着

第一一号

会議ハ三委員会ノ討議略終了シ大体来ル十二日ヲ以テ終了ノ予定ナルカ国籍条約ノ成案ヲ得タル外領海国家責任両問題ニ付遂ニ意見ノ合致ヲ見ス結局「レポート」中ニ或種ノ条項ヲ取入レ結末ヲ付クルコトトナルヤニ存セラルル処条約調印期間ハ本年末迄トナル見込ニ付帝国政府ニ於テ篤ト

条約ノ内容ヲ研究シタル上之ニ調印セラルルコトトシ当方ニ於テハ会議ノ経緯ヲ記述スルニ止マル最終議定書ニ調印スルニ止ムル予定ニ付右御含置相成度将又国籍問題ニ付テハ基礎案大体本案大多数ヲ以テ可決セラレ常時居住ノ条件ヲ付加セシメ得サリシ外殆ト全部御訓令ノ趣旨ヲ貫徹スルコトヲ得朝鮮人問題モ我方ニトリ支障ナキコトトナレリ尚留保ハ調印批准何レノ際ナルヲ問ハス又各条ノミナラス其ノ一部ニ付テモ之ヲ認ムルコトトナル予定ナリ尚又会議終了後モ報告書取リ纏メノ為一同数日間当地ニ滞在ノ筈

瑞典、希臘ヘ転電シ連盟ヘ暗送セリ

458　昭和5年4月12日　在ハーグ国際法典編纂会議代表より幣原外務大臣宛（電報）

国籍条約のみの成立をもって会議閉会について

ハーグ　4月12日後発
本　省　4月13日前着

第一三号

往電[1]第一一号ノ為条約トシテ纏リタルハ国籍問題ノミニシ

テ十二日閉会式ヲ挙行セリ国籍条約ハ本条約ノ外二重国籍者ノ兵役義務問題ニ関スル議定書及無国籍若ハ国籍ノ知レサル父ノ子ノ国籍ニ関スル議定書(国籍法第二条関係)並ニ無国籍者ト前国籍国トノ関係ニ関スル特別議定書(基礎案第二関係)ヨリ成ル之等議定書ヲ作成セルハ留保国数相当多数ナルカ為ナリ

尚[2]本条約ニ調印セルハ独、白、英、仏、伊等三十ケ国(日、米、伯刺西爾、加奈陀、支那等ハ調印セス)兵役議定書ニ調印セルハ独逸、白耳義、英国、仏国等二十ケ国(日、米、伯刺西爾、加奈陀、支那、伊国等ハ調印セス)無国籍議定書ニ調印セルハ白耳義、英国、仏国等二十四ケ国(日、独、米、伯刺西爾、加奈陀、支那、伊国等ハ調印セス)特別議定書ニ調印セルハ英国、西班牙等十五ケ国(日、独、米、白、伯刺西爾、加奈陀、支那、仏国、伊国等ハ調印セス)ナリナリ

瑞典、希臘へ転電シ連盟、独へ暗送セリ

459 昭和5年7月8日　在パリ佐藤連盟事務局長より幣原外務大臣宛

国際法典編纂会議に関する会議事務総長の所感について

機密連本公第三九八号
昭和五年七月八日
在巴里
国際連盟帝国事務局長　佐藤　尚武(印)
外務大臣男爵　幣原　喜重郎殿

国際法典編纂会議事務総長ノ感想送付ノ件

本年三月―四月海牙ニ開催セラレタル本件会議ノ事務総長タリシ連盟事務局法律顧問「ブエロ」氏ヨリ本会議ニ関スル感想ヲ摘記シ事務局幹部ニ提出シタル報告書ハ同会議及国際法典編纂事業ニ対スル連盟事務局関係当局者ノ意向ヲ知ルニ好個ノ資料ト認メラレタルニ依リ在寿府杉村公使ニ於テ原田事務官ヲシテ抄訳セシメラレタルモノ別紙ノ通リ同公使ノ依頼ニヨリ送付ス御査閲ノ上適当関係方面ニ配布方可然御取計相煩度尚右報告書ハ連盟事務局ニ於テ機密扱トナリ居ルモノニ付右御含置相成度シ

本信写送付先　在瑞典公使

(別　紙)

国際法典編纂会議ニ関スル感想(抄訳)

国際法典編纂会議事務総長
国際連盟法律顧問「ブエロ」

会議ノ結果ノ検討

本年四月海牙ニ於テ開催セラレタル本会議カ不幸ニシテ不首尾ニ終リタルコトハ恐ラク何人モ否定シ得サル所ナルカ其原因ノ奈辺ニ存スルヤヲ検討スルハ将来ノ為ニ必スシモ無益ニ非サルヘシ抑々上議三題中㈠唯国籍問題ノミハ曲リナリニモ条約ノ調印ヲ了シタルモ㈡領海問題ハ単ニ条約仮案ヲ起草シタルニ止マリ㈢外国人ノ生命又ハ財産ニ及ホシタル損害ニ対スル国家ノ責任ニ関スル問題ハ実質的報告書作成ニスラ一致ヲ見スシテ止ミタリ

㈠国籍法ニ関連シテ法ノ抵触、無国籍者又ハ兵役等ニ関スル諸議定書ハ大多数国ニ依リ調印セラレ将来ノ国際法上確カニ或程度ノ法律的価値ヲ有スルモノナルモ本会議ノ収穫ニ付テハ茲ニ多ク述ヘス

㈡領海ニ関シテハ当初或程度ノ協定ニ到達スヘシト思考セラレタルモ本問題ノ鍵タル「領海ノ範囲」(Etendue des eaux territoriales)ニ関シ各国交々相異ナレル主義見解ヲ持シテ下ラサルヲ以テ如何トモ為シ難ク遂ニ決裂ノ已ムナキニ至レリ然レトモ今回ノ討議ニ依リ国際法上最モ重要且困難ナル本問題ノ焦点カ益々明確トナリ将来外交的交渉ニ依ルトキハ必スシモ協定困難ナラサルヲ想ハシムルニ至リタルハセメテモノ獲物ナルヘシ

曩ニ専門家委員会ニ於テハ本問題ハ法典編纂ニ熟セリト認メタリ而モ連盟総会及理事会共ニ之ニ対シ何等ノ反対ヲ唱ヘス一般ニ極メテ楽観的予想ヲ有セリ即チ会議参加国中日、独、墺、伯、英、勃、玖馬、丁抹、「エストニア」、米、芬、希、印度、愛蘭、葡、羅馬尼、「サルヴァドル」、塞、瑞典、智恵古、「ヴェネヅエラ」ノ諸国ハ予テ概括的賛意ヲ表明シ来リ其法典編纂ヲ以テ敢テ不可能トハ看做ササレトモ至難ナルヘシト回答シタルハ仏、伊、波蘭ノ三国ノミナリキ果シテ然ラハ隣接水域(zone)ノ問題ハ別トシテ少クトモ主要事項ニ関スル条約成立ハ必スシモ不可能ナラスト思考セラレタルモ後ニ及ヒ重要事項ヲ未解決ノ儘ニ存セル条約ハ寧ロ将来ニ禍根ヲ残シ批難ノ的トナル虞アリ法律上利益スル所又尠カラムトノ理由ノ下ニ条約ノ形式ヲ採ラス数種事項ヲ付属書類トシテ採択ス

ルコトトナレリ抑々当初ヨリ条約ノ完璧ヲ期セサレハ満足セストナスハ大ナル誤謬ナリ吾人ノ経験ニ徴スルモ先ツ一部的又ハ漸進的協定ヲ以テ始ムルハ其将来ノ完成ヲ図ルカ為ニモ極メテ賢明ノ策ナリ国内法典編纂ニ於テスラ漸進的ニシテ慎重ナルヲ以テ最大要件トナス況ンヤ国際法典編纂ニ於テヲヤ

(三)国家責任ニ関シテハ其根本問題ニ付全然相容レサル異論発生セリ伯、智利、支、「コロンビア」、「ダンチツヒ」、愛蘭、墨、「ニカラガ」、秘露、波斯、葡、波蘭、「ウルガイ」、羅馬尼、「サルヴアドル」、智恵古等ノ諸国ハ主義トシテ外国人ニ本国人以上ノ権利ヲ賦与スルコトナク苟モ一国トシテ外国人ヲ本国人同様ニ取扱ヒタルコトヲ立証シ得タル場合ハ国家トシテ何等ノ責ニ任スルコトナシト主張シタルニ反シ諸大国ヲ網羅スル他ノ一国ハ絶対ニ該主張ヲ容レス之ニ対抗セリ斯ル異論ノアルコトハ会議ノ当初ハ殆ト何人モ気付カス寧ロ或程度ノ協定成立スヘシト思ハレタル節アリタリ尤モ第三委員会ハ長期ニ亘ル討論ノ末国家責任ノ概則ニ関スル第一読会ヲ終了シタリト雖モ右ハ単ニ外観ニ過キス一度其適用問題ニ逢着スルヤ一大異論ヲ生シ遂ニ協定ノ余地ナキニ至レリ即チ常設国際司法裁判所又ハ仲裁裁判所ニ於ケル国際法適用ノ原則ノ何ナリヤニ関シ国際法ノ淵源ハ何ソヤトノ根本問題ニ帰着シ少数派(十九ケ国)ハ所謂国際慣習ヲ国際法ノ淵源トナスコトヲ否認セシヲ以テ委員会ハ劃然タル分裂ヲ来シ一時ハ二個ノ併立セル条約案起草ノ気運ニ向ヒツツアリシモ遂ニ協定絶対ニ不可能ナルコト明白トナレリ

抑々本問題ノ法典編纂ニ熟セルコトヲ予テ専門家委員会ニ回答シタルハ独、亜、豪州、白、伯、英、勃、伊、西、「エストニア」、米、芬、希、印度、諾威、波蘭、葡、羅馬尼、「サルヴアドル」、塞、瑞典、瑞西、智恵古(但シ墺、丁抹、伊ハ留保付)ノ諸国ニシテ反之日、玖瑪、仏、蘭、「ヴエネヅエラ」ハ絶対反対ヲ表明シタリ然レトモ苟モ国家ノ「ヴアイタル・インテレスト」ニ関スル国際法ノ問題ヲ何等予備的交渉ヲ試ムルコトナクシテ国際会議ノ席上ニ於テ決定シ得ヘシト思惟シタルコトカ非常ナル誤謬ナリシハ少クトモ今回得タル尊キ教訓ナリキ国家責任ニ関スル問題ハ政治上及学術上実ニ複雑ナル問題ニシテ一国ノ内政及外政並他国トノ政治的経済的関係ニ至大

ノ影響ヲ及ホスモノナレハ本来本問題ヲ選択上程セサリシ方寧ロ得策ナリシナラン余ハ個人トシテハ本問題ニ関スル条約制定ハ未タ尚早ニシテ之カ為ニ長年月ト慎重ナル準備ヲ要スルモノト確信ス要スルニ第三委員会決裂ノ主因ハ問題カ政治的分子ヲ多分ニ包含セシコトニ存ス特ニ内外人同権論ニ一致セル南米諸国トシテハ歴史的事実ニ徴スルモ其多年ノ所論ヲ直ニ放棄スルコトハ殆ト望ミ難キコトニ属ス

会議ノ準備及組織

一、専門家委員会ノ準備

本会議不首尾ノ原因ヲ一ニ専門家委員会ノ責任ニ帰セムトスル傾向アリ然レトモ如何ニ同委員会カ各種問題ノ法典編纂ニ熟セル旨ヲ声明シタリトハ雖モ同委員会ヲシテ一種ノ錯誤ニ陥ラシメタル理由ナキニシモ非ス現ニ各国中ニハ質問書ニ対シ何等ノ回答ヲ発セサルモノアリタリ特ニ南米諸国ノ大半ハ之ニ属ス又回答其物ノ内必スシモ当テニナルモノ許リニ非スシテ現ニ某国代表中ニハ本国回答ノ主旨ニ反スル行動ニ出テタル者アリタリ故ニ徒ニ委員会ノ責任ヲ誇張スルコトハ之ヲ避ケサルヘカラス仮ニ委員会ニシテ其責ニ任スヘキモノアリトセハ夫ハ数ケ国ノ沈黙及不完全ナル回答ヲ過信シ楽観視シタルコトニアリ然レトモ夫ヨリモ各国間ニ於テ抱ケル大ナル謬見ハ国家ノ「ヴアイタル・インテレスト」ニ関スル問題ニ付非常ナル異見ノ存在セルヲ承知シナカラ之ヲ会議ニ持出シ何トカ解決セムトノ手続ヲ採リタルコトニアリト云フヘキカ

将来第二回編纂会議ノ準備ニ際シテハ質問書ニ代フルニ条約案又ハ両者ヲ混ヘタルモノヲ各国政府ニ回示スル様ニシテハ如何カト思考セラル而シテ如何ナル手続ニ依ルモ各国間ニ於テ重要事項ニ関シ予備的交渉ノ必要アルハ言ヲ俟タス又調査ニ際シテハ質問書ニ回答セサル国ノ態度ヲモ充分考慮ニ入ルルコト及漠然タル概括的回答ヲ同意ナリト看做ササルコト亦肝要ナリ

二、会期ノ短キニ失シタルコト

斯ル重要会議ヲ四週間内ニ終了スルコトハ当初ヨリ全然不可能事ニ属ス三討議事項ノ一ノミニテ優ニ一個ノ独立セル国際会議ヲ構成スル訳ナルヲ以テ今回ハ事実上三ノ国際会議カ併行シテ行ハレタル次第ナリ従テ各国代表部

ニ多数ノ人員ヲ具フノ要アリタルニ不拘国際会議ニ関スル経験及政治的手腕ニ富メル人士ヲ一時ニ多数網羅スルコトハ国ニヨリテハ殆ト不可能ナルモノアリ従テ少数ノ代表部ヲ有スルモノノ多忙ナルハ想像ニ難カラス之ニ依テ良好ナル結果ハ到底期待シ得サルナリ加之時間ノ欠乏急行列車的会議ハ却テ不幸ナル結果ヲ齎スヤ言ヲ俟タス益々代表ヲ駆ツテ疲労ノ極ニ達セシメ現ニ第三委員会ノ如キハ単ナル誤解ニ基ク(或ハ未経験ニモ因ラム)不祥ナル小事件ヲ惹起シタルコトアリ

時日足ラサル為会議幹部ハ当初ヨリ討議ノ基礎ノ全部ニ触ルルコトヲ禁スルコトノ已ムナキニ至リ(第三委員会ハ討議ノ三分ノ二ヲ割愛シ問題ノ性質ヲ非常ニ変更スルニ至レリ)不図モ一般ニ面白カラサル印象ヲ与ヘ甚タシキハ会議幹部会ノ動機ヲ疑ハシムルニ至レルコトモアリ又会議ヲ通シ常ニ発言ノ時間ヲ制限シ又ハ性急ニ討論終結ヲ決シ或ハ議場外ニ於ケル内交渉ノ機会ヲ奪ヒタル等ハ最モ不幸ナリキ

三、各国代表ノ態度

各国代表中往々ニシテ討議ノ基礎タルヘキ専門家委員会ノ準備書類ヲ無視セル印象ヲ与ヘタル向アリタルハ遺憾ナリ又新聞其他ニ於テ本国政府回答ノ主旨ニ反スル所論ヲ発表セル者アリシヲ数次目撃セリ特ニ領海委員会ニ於テハ各国回答ニ関スル周密ナル調査ヲ蔵スル準備書類ヲ利用セルコト尠カリシハ事実ナリ

四、表決方法

最後ニ表決方法ニ関スル起草委員会ノ決定カ本会議不成功ノ最大原因ノ一トナリタルモノト云ハサルヘカラス条約ノ表決ニ際シ単ナル過半数ニ依ルヘキヤ又ハ全会一致若ハ三分ノ二ノ多数ニ依ルヘキヤニ付講究ヲ委託セラレタル起草委員会ハ条約ノ表決ハ三分ノ二ノ多数ニ依ルコトニ決シ但シ五ケ国ノ発議及三分ノ二ノ多数ノ同意アルトキハ単ナル過半数ノ表決ニ依リ特別議定書ヲ採択シ得ルコトトナシタルニ総会ハ激論ノ末僅ニ一票ノ差ヲ以テ過半数ノ表決ニ依ルコトヲ決議セリ(此一事ノミニテモ会議ノ空気全般ヲ語ルニ足ル)爾来第三委員会ノ雰囲気ハ頓ニ険悪トナリ全会一致ノ望ヲ繋クコトハ益々困難トナレリ僅ニ一票ノ差ヲ以テ破ラレタル少数派(十九ケ国)ハ自己ノ主張タル三分ノ二表決説ノ容レラレサルヲ見ルヤ爾後協力ヲ拒ムニ至リ代表者中ニハ如何ニカシテ条約ノ採択ヲ妨害セムト企テタル者サヘアリシヲ明ニ認メタリ

結　論

一、此種会議ノ準備ニハ(イ)技術的準備及(ロ)政治的準備ヲ要ス(イ)専門家委員会ノ準備ハ決シテ無駄ニ非ス向後モ此先例ニ倣フヘキモノト信スルモ(ロ)将来ハ更ニ政治的準備ヲ心懸ケサルヘカラス即チ予備的交渉ヲ試ムルコト及各国政府ニ条約案ヲ提示シ予メ内交渉ニ依リ大多数国ノ同意ヲ取付ケタル上ニ非サレハ会議ニ付議セサル様スルコト是ナリ条約案ヲ以テ討議ノ基礎トナストキハ問題ノ重点ヲ明確ニシ得ルハ言フヲ俟タス現ニ今回ノ経験ニ徴スルモ雑然タル材料ノ過多ニ苦シミタルモノ多カリシ

二、条約ノ表決ニ関シテハ其将来仲裁裁判所又ハ常設国際裁判所ニ於テ適用サルヘキ法則ヲ制定スルモノニシテ不可争ノ法律的権威ヲ有スルモノナルニ顧ミ単ナル過半数ヲ以テ之ヲ表決スルコトハ頗ル危険ナリト思考セラル

三、今回ハ政治的ニ見テ其時機ノ有利ナラサリシヲ思ハシム故ニ第二回会議ノ召集ハ大ニ慎重ナルヲ要シ充分其成功ヲ確認シタル上ニ非サレハ之ヲ為ササルヲ要ス

四、失敗ヲ単ニ準備ノ不足ニ帰スルハ大ニ誤レリ会議ノ名称其物カ既ニ誤解ヲ招クコトナキニシモ非ス即チ本会議ハ仲裁裁判所又ハ常設国際司法裁判所ニヨリ適用セラルヘキ法規ヲ制定スル厳カナル国際的立法事業ヲ行フモノナリトノ観念ハ一種ノ期待ト緊張ヲ与フルモノニシテ現ニ大多数ノ代表者ハ第一回会議ノ決定ハ将来ノ国際生活ノ規範ヲ制定スルモノト確信シタルモノノ如ク右ハ本会議ヲ通シ最モ顕著ナル現象ナリキ従テ斯ル決定ニ反対スル国々ニトリテハ是一種ノ脅威ナルヤ論ヲ俟タス抑々「法典編纂」ハ成文法ノ存在ヲ前提トスルモノニ非スヤ吾人ヲシテ言ハシムレハ本会議ノ旨トスル所ハ法律ヲ déclarer スルコトニアリ又其任務ハ mise au point 又ハ adaptation 若ハ création juridique ト解釈スヘキニ非スヤト

（一九三〇年五月二十八日）

460　昭和5年12月20日　幣原外務大臣より在スウェーデン武者小路（公共）公使宛（電報）

国籍条約および同議定書の署名に関し訓令

本　省　12月20日後発

第二二号

往電第二一号ニ関シ

左記ニ依リ署名アリ度シ

一、「国籍法ノ抵触ニ付テノ或種問題ニ関スル条約」ハ第四条及第十条ヲ全部留保、第十三条中「帰化ヲ許ス国ノ法律ニ依リ」

d'après la loi de l'Etat qui accorde la naturalisation ナル字句ヲ留保シテ署名ノコト

二、「無国籍ノ一ノ場合ニ関スル議定書」ハ其儘著名ノコト

三、「無国籍ニ関スル特別議定書」及「二重国籍ノ或種ノ場合ニ於ケル兵役義務ニ関スル議定書」ハ此際署名セサルコトトセリ

尚殖民地ニ関シテハ此際留保ノ要ナシ右貴官ノ御含迄

海牙、連盟帝国事務局へ転電アリ度シ

461　昭和5年12月26日　在ジュネーヴ佐藤連盟事務局長より幣原外務大臣宛（電報）

国籍条約への署名について

ジュネーヴ　12月26日後発

本　省　12月27日前着

第一六五号

瑞典宛貴電第二二号ニ関シ

武者小路ヨリ

二十六日当地ニ於テ御訓令通リ署名セリ

瑞、蘭及巴里事務局ニ郵送セリ

462　昭和6年5月20日　幣原外務大臣より在パリ澤田連盟事務局長宛

今後の国際法典編纂に関する我が方意見について

条二機密第一〇一号

昭和六年五月二十日

外務大臣男爵　幣原　喜重郎

在巴里

国際連盟帝国事務局長　澤田　節蔵殿

国際法典編纂問題ニ関スル帝国政府ノ意見照合ニ対シ措置方ノ件

本件ニ関シ三月五日付普通連本公第一八二号ヲ以テ御申越ノ趣了承本件ニ対スル当方大体ノ意向ハ客年九月三日付ヲ以テ電報致置タル処右貴信ノ次第モアリ其ノ後研究ノ結果ハ左記ノ通ナルニ付右御含ミノ上左記ノ内二ノ点ニ付国際連盟事務総長宛可然通告方御取計相成度シ尤モ該二ノ点中(ロ)ニ掲記ノ法系代表云々ノ点ハ今直チニ我ヨリ之ヲ言ヒ出ストキハ諸小邦ノ神経ヲ刺激スルヤモ計ラレス従テ或ハ此点ニ触レサル方結局ニ於テ我邦ノ為有利ナルヘキカトモ思考セラルルニ付貴官ノ御裁量ニヨリ差当リノ処之ヲ省カレタシ

記

一、客年連盟総会第一委員会ニ於テ各国代表ヨリ提出セル決議案中五国案（英、仏、独、希、伊案）（A.82.1930.V.参照）ノ如キハ国際慣習法トシテ存在スル一般国際法規ヲ「編纂」ヨリ除外セントスルモノナルモ何カ慣習法ナリヤノ認定ハ困難ニシテ又仮令慣習法トシテ存在スルモノモ之ヲ改訂スルノ要アルヘキニ依リ帝国トシテハ寧ロ慣習法モ編纂事業ノ範囲内ニ入ルルヲ可トス但右ハ本件ニ関スル根本論ナルニ付差当リ貴官ノ御含ミ迄トシ次回総会等ニ於テ右根本論カ問題トナリタル際右ノ趣旨ニテ応酬セラレ度シ

二、法典編纂ノ手続ノ問題トシテハ大体海牙会議ノ採択セル勧告第四ニ依ルコトニ賛成ナルモ特ニ左ノ点ニ付注意ヲ要ス

(イ)右勧告第四ノ(二)ニ所載ノ条約予備案ヲ作成スルコトハ海牙会議ニ於ケル基礎案ノ経験ニ徴スルニ会議ニ於ケル纏リヲ容易ナラシムヘシト思考セラルルニ付此意味ニ於テ同勧告ニ賛成ナリ

(ロ)会議ノ成否ハ該条約予備案ノ如何ニ懸ルコト大ナルヲ以テ之カ作成ノ任ニ当ル委員会ノ構成問題ハ最モ肝要ナリトス帝国トシテハ該委員会ハ常設国際司法裁判所裁判官指定ノ例（同裁判所規程第九条参照）ニ従ヒ世界ノ主タル法系ヲ代表スル各委員ヲ以テ組織セシムルコトトシ従テ帝国モ当然該委員会ニ参加セサルヘカラサルモノト思考ス

(ハ)海牙会議ノ際ハ其ノ準備委員会(五人ヨリ成レルモノ)ハ会議ニ於テハ余リ有力ナラサリシカ次回会議ニ於テハ条約予備案ヲ作成セル委員会ハ会議ニ於テ該案ノ説明弁護ニカムルコト必要ナリ

(ニ)条約予備案ヲ作成スルニ当リ各国学界ノ意見ヲモ徴スルコト必要ナリトス

三、一般ニ国際法典編纂ニハ比較的容易且簡単ナル問題ヨリ着手スルコト必要ナルヘク海牙会議ノ第三議題タリシ「国家責任」ノ如キハ時機尚早ナリシヤノ憾アリタリ

463 昭和6年7月11日 幣原外務大臣より 在パリ澤田連盟事務局長宛

領海制度の研究続行に関する我が方意見連盟事務総長へ通告方訓令

条二機密第一五九号

昭和六年七月十一日

外務大臣男爵 幣原喜重郎

在巴里

国際連盟帝国事務局長 澤田節蔵殿

領海問題ニ関スル国際法典編纂事業ニ関スル件

本件ニ関シ昭和五年七月二十一日付普通連本公第四三一号ヲ以テ御申越ノ趣了承当方ノ意向ハ左記ノ通ナルニ付国際連盟事務総長宛可然回答方御取計相成度シ

一、領海ノ範囲決定ノ為採用スヘキ基礎線ニ関スル帝国ノ見解ヲ連盟事務局ヘ通告スルコトハ差支ナシ右基礎線ニ関スル各国ノ見解ヲ通告スルコトニ関シ各国ノ合意アリタル上ニテ之ヲ行フコトトセハ可ナルヘシ

二、近キ将来ニ於テ本件ニ関スル国際会議ヲ開催スルコトニ異議ナシ尤モ会議ノ議題ハ「領海ノ法律制度ニ関スル規定」(The Legal Status of the territorial sea)ニ限ラスシテ領海問題一般トスルコト適当ナリ

三、「領海ノ法律制度ニ関スル規定」ニ関シテハ

(イ)該規定ノ条項中ニハ相当考慮ヲ要スル点アルモ右ニ関シテハ将来拘束力アル条約ヲ締結スル際更ニ考究スヘシ

(ロ)該規定カ根本的且先決的事項トモ称スヘキ領海ノ範囲ヲ明定シ居ラサル欠陥アリ該範囲ヲ国際的ニ一致セシムルヲ要ス

四、領海ノ範囲ニ関シテハ帝国ハ従来通三浬説ヲ極メテ強硬ニ保持主張ス