

第三節 治外法權撤廢問題

(一) 支那側要望

十一月二十五日
第十五日第二
六回總委員會

十一月二十五日極東問題總委員會第六回會議ヲ開ク

支那側要望
三ヶ條

「ヒューズ」氏提案

先ツ「ヒューズ」氏カ支那提案第五項ニ關シ支那ノ行動ノ自由ニ對スル制限問題ヲ附議スヘキヲ宣スルヤ支那全權王寵惠氏ハ支那ニ於ケル治外法權問題ヲ提起シ同國ニ於ケル治外法權ノ沿革及現時ニ於ケル支那法典ノ完成裁判所ノ構成司法行政ノ實況等ニ付縷々陳述シ特ニ英支條約米支條約及露支條約ニ於ケル領事裁判撤回ニ關スル豫約ヲ指摘シタル上支那政府ノ希望トシテ(一)即時ニ治外法權ノ撤廢ヲ要求スルモノニ非スト雖現在支那法制ノ改善セラレタル事態ニ鑑ミ外國ノ考慮ヲ煩シタキコト(二)關係各國代表者ハ一定ノ時期ニ治外法權ヲ撤廢ス可キコトヲ約スルコト(三)列國ハ右撤廢ニ至ル迄ノ過渡期ニ於テ漸次法權ヲ回復スルノ方法ニ付支那ト協力考究スルコトノ三條ヲ提議シタリ右ニ對シ「ヒューズ」氏ハ『法制ノ改善援助及治外法權撤廢ノ豫約ハ諸條約ニ明白ナル規定アリ依ツテ治外法權撤廢ノ主義ハ已ニ明白ニ定マレリ故ニ本件ハ今日ニ於テハ主義ノ問題ニ非スシテ寧ロ事實問題タリコノ見地ヨリ支那現下ノ情態如何ヲ考究ヲ要スル當面ノ問題ナリ即チ支那ニ於ケル司法行政ノ實況ハ如何又是等ノ改善セラレタル司法行政ノ行ハル範圍如何ヲ考究セサル可ラス余ハ支那行政カ改善セラレタルノ事實ハ之ヲ承知シ居リ且ツ支那側ノ希望ニ對シテハ同情ヲ有スルモ支那ノ現狀ハ未タ満足ナリト云フコトヲ得ス先ツ以テ現狀ニ付十分ノ考究ヲ爲スノ必要アルニ付本會議ニ參列セル各國代表者ヲ以テ一ノ特別委員會ヲ設クルヲ適當トスヘキモ差當リ本會議トシテハ英米日等ノ間ニ締結サレタル條約ニ依リ約束セルト同様ノ趣旨ヲ以テ一ノ決議ヲ爲スコト然ルヘク之カ爲メ分科會ヲ設置シ決議文ノ立案ヲ爲サシムヘシ』ト提言シタルニ佛英伊ノ三國ハ直ニ之ニ贊意ヲ表シタルカ埒原全權ハ『日本ノ治外法權撤廢ニ關スル方針ハ英米兩國ト同シク日支條約ニ明定セラレタル通ニシテ主義上何等異議ナキ所ナルモ特ニ一言シタキハ日本ハ支那ノ希望ニ對シテハ他ノ何レノ國ヨリモ一層多ク同情ス可キ理由

埒原全權
陳述

「ヒューズ」氏提案可決

ヲ有ス即チ日本ハ治外法權撤廢ニ關シ營テ支那ト同様ノ困難ヲ經驗シタルコトアルヲ以テ支那ノ正當ナル希望カ一日モ早ク實施セラレンコトヲ切望シ「ヒューズ」氏ノ提言ニ全然同意スル』旨ヲ述ヘ他國全權亦何レモ贊成シタル結果茲ニ滿場一致ヲ以テ分科會設置ニ關スル「ヒューズ」氏ノ提議ヲ可決セリ

(二) 「ロツヂ」氏決議案ニ關スル討議

十一月二十八日第二
一回分科會

前記「ヒューズ」氏ノ提議ニ依リ十一月二十八日午前治外法權分科會第一回會議ヲ開キタルカ各國委員次ノ如シ

米 國	「ロツヂ」氏
英 國	「ビアース」氏
佛 國	「サロー」氏
伊 國	「アルベルチニ」氏
白 國	「ウーテルス」氏
蘭 國	「カルネビーク」氏
葡 國	「ツアスコンセロス」氏
支 那	王寵惠氏
日 本	埒原全權

「ロツヂ」氏決議案

先ツ委員長「ロツヂ」氏ハ豫メ起草セル左ノ決議案ヲ提出シテ審議ヲ求メタリ

The representatives of the Power, hereinafter named, participating in the Conference on the Limitation of Armament, to wit, the United States of America, Belgium, the British Empire, France, Italy, Japan, the Netherlands and Portugal;

Having taken note of the fact that in the Treaty between the Great Britain and China, dated September 5, 1902, in the Treaty between the United States of America and China, dated October 8, 1903, and in the Treaty between Japan and China, dated October 8, 1903, these several Powers have agreed to give every assistance towards the attainment by the Chinese Government of its expressed desire to reform its judicial system and to bring it into accord with that of Western nations, and have declared that they are also "prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant" them in so doing;

Being sympathetically disposed towards furthering in this regard the aspiration to which the Chinese Delegation gave expression on November 16, 1921, to the effect that "immediately, or as soon as circumstances will permit, existing limitations upon China's political, jurisdictional and administrative freedom of action are to be removed";

Considering that any determination in regard to such action as might be appropriate to this end must depend upon the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial system and the methods of judicial administration of China, which the Conference is not in a position to determine;

Have resolved:

That the Government of the Powers above named shall establish a Commission of jurists (to which each of such Governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China,

with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality;

That the Commission of jurists herein contemplated shall be constituted within one month after the adjournment of the Conference with detailed arrangements to be hereafter agreed upon by the Governments of the Powers above named, and shall be instructed to submit its report and recommendations within one year after its appointment;

That each of the Powers above named shall be deemed free to accept or to reject all or any portion of the recommendations of the Commission herein contemplated, but that in no case shall any of the said Powers make its acceptance of all or any portion of such recommendations either directly or indirectly dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic.

(右譯文)

華盛頓ニ於ケル本會議ニ參加シタル諸國即チ亞米利加合衆國、白耳義國、英帝國、佛蘭西國、伊太利國、日本國、和蘭國及葡萄牙國ノ各代表者ハ英支間千九百二年九月五日ノ條約米支間千九百三年十月八日ノ條約並日支間千九百三年十月八日ノ條約ニ於テ當該國ハ支那國政府カ其ノ司法制度ヲ改正シテ之ヲ西洋諸國ノ同制度ニ適合セシムルコトニ付表示シタル希望ヲ同國政府ニ於テ達成スルコトニ對シ一切ノ援助ヲ與フヘキコトヲ約定シ且ツ「支那國法律ノ狀態其ノ施行ノ設備及其ノ他ノ要件ニシテ當該國カ満足スルトキハ治外法權ヲ撤去スルニ躊躇セサル」ヘキコトヲ聲明シタルノ事實ヲ

了承シタルニ因リ

右ニ關シテ千九百二十一年十一月十六日支那國委員ノ表示シタル「支那國ノ政治上、司法上及行政上ノ自由行動ニ對スル現存ノ制限ハ即時ニ又ハ事情ノ許ス限り速ニ撤廢セラルヘキモノナリ」トノ趣旨ノ願望ヲ成就セシムルニ付同情ヲ有スルニ因リ

右目的ニ適應スヘキ措置ニ關シ如何ナル決定ヲ爲スニ就テモ支那國ノ法律、司法制度及司法運用手續ニ關スル複雑ナル實狀ノ確認及理解ヲ前提トスヘク右實狀ハ本會議ニ於テ之ヲ決定スルニ由ナキコトヲ考慮シ

茲ニ左ノ如ク決議セリ

前記各國政府ハ法律專門家委員會(各一名ノ委員ヲ任命ス)ヲ組織シ支那國ニ於ケル治外法權制度ノ實施ノ現狀、支那國ノ法律司法制度及司法運用手續ヲ調査セシメ依テ以テ右事項ニ關スル委員會ノ事實調査書並支那國ニ於ケル司法運用ノ現狀ヲ改善スル爲及治外法權ニ關スル各自ノ權利ヲ漸次ニ又ハ其ノ他ノ方法ニ依リ撤去スルコトニ付各國ヲ首肯セシムヘキ立法上司法上ノ改正ヲ實行セムトスル支那國政府ノ努力ヲ援助促進スル爲適當ト思惟スル手段ニ關スル勸告ヲ前記各國政府ニ報告セシムルコト

前記法律專門家委員會ハ今後前記各國政府間ニ協定セラルヘキ細目取極ニ基キ會議終了後一箇月内ニ組織セラルヘク且ツ該委員會ハ其ノ任命後一箇年内ニ其ノ報告及勸告ヲ提出スヘキコトヲ命セラルルコト

前記各國ハ前記委員會ノ勸告ノ全部又ハ一部ヲ受諾シ又ハ拒絕スルノ自由ヲ有スヘシ但シ如何ナル場合ニ於テモ右各國ハ右勸告ノ全部又ハ一部ノ受諾ヲ以テ支那國ヨリ政治上タルト經濟上タルト問ハス何等カノ特殊利權、恩典、利益又ハ免除ヲ直接間接ニ許與セシムルノ條件トナスヲ得サルコト

右決議案ハ大體ニ於テ各國委員ノ同意ヲ得タルカ左ノ四點ニ付疑義ヲ生セリ(一)法律家ヨリ成ル委員會ニ關シテハ英蘭兩國側ヨリ同委員會ノ委員ヲ法律家ニ限ルコトノ不必要且ツ不得策ナリトノ議論出テ審議ノ結果「法律家」ナル語ヲ除キ單ニ

委員會ト爲スコトナレリ(二)右委員會ノ組織ニ關スル支那ノ立場ニ關シ本決議中支那ヲモ含マシムヘキヤ否ヤニ付種々論議ノ結果支那モ亦同意員會設立ノ趣旨ヲ贊シ之ニ委員ヲ任命スルノ意アル旨ヲ宣言セル別ノ決議ヲ作製スルコトナレリ(三)本會議ニ參加國ニシテ支那ニ於ケル治外法權ヲ享有スル諸國ノ本會議ニ對スル關係ニ付テハ是等諸國ノ希望アルニ於テハ本決議ニ加入スルノ選擇權ヲ認ムル旨ノ獨立決議ヲ設クルコトナレリ(四)右委員會ノ報告提出期間ニ關シテハ蘭國委員ヨリ其ノ短少ニ失スルヲ以テ第一回ノ會合後一箇年ト改ムヘキ旨ヲ提議アリ全會異議ナク右ニ決定セリ

第二回分科會

然レトモ前記決議案ノ決定ニ關シテハ尙研究ヲ要スル然アルヲ以テ更ニ第二回會議ヲ開クコトナリテ一旦休會シ同日ノ第八回總委員會ニ於テ「ロツヂ」委員長ヨリ右ノ次第ヲ報告シタル上同日午後第二回分科會ヲ開會セリ

「ロツヂ」委員長ヨリ同日午前ノ分科會ニ於ケル修正ノ諸點ヲ報告アリタルニ支那委員ハ調査委員會開會期ヲ會議終了後三箇月ト改ムルコトヲ提議シ全會一致之ヲ可決セリ

追加決議案

次イテ本會議ニ對スル非參加國ノ選擇權ニ關シテハ種々論議ヲ加ヘタル結果本會議終了後三箇月内ニ書面ニ依ル加入通告ヲ米國政府ニ寄託スルコトニ依リテ本決議加入ヲ聽許セラルヘキコトニ決定シ追加決議ノ一トシテ採用スルコトナレリ

又調査委員會ニ對スル支那ノ立場ニ關シテハ支那委員ヨリ支那ハ右調査委員會設置ニ關スル決議ヲ了承シ該委員會ニ一名ノ代表者ヲ任命スヘク尤モ該委員會ノ勸告ノ全部又ハ一部ヲ受諾又ハ拒絕スルノ自由ヲ有スル趣旨ノ聲明アリタルヲ以テ右聲明ノ次第ヲ追加決議ノ二トシテ採用スルニ決定セリ

(三) 同上 決定

十一月二十九日第九回總委員會

以上ノ結果二回ノ分科會ニ於テ採決セル修正決議案ハ翌十一月二十九日ノ第九回總委員會ニ於テ報告アリタルカ全會一致ヲ以テ可決セラレタリ該決議案ハ越エテ十二月十日第四回總會議ニ於テ各國全權ノ正式承認ヲ得タルカ其ノ全文ヲ掲クレ

RESOLUTION REGARDING THE EXTRATERRITORIALITY IN CHINA.

The representatives of the Powers, hereinafter named, participating in the discussion of the Pacific and the Far Eastern questions in the Conference on the limitation of armament, to wit the United States of America, Belgium, the British Empire, France, Italy, Japan, Netherlands, and Portugal.

Having taken note of the fact that in the treaty between Great Britain and China, dated September 5, 1902, in the treaty between the United States of America and China, dated October 8, 1903 and in the treaty between Japan and China, dated October 8, 1903, these several powers have agreed to give every assistance towards the attainment by the Chinese Government of its expressed desire to reform its judicial system and to bring it to accord with that of the Western nations, and have declared that they are also "prepared to relinquish the extraterritorial rights when satisfied that the state of the Chinese laws, arrangements for their administration and other considerations warrant" them in so doing.

Being sympathetically disposed towards furthering in this regard aspiration to which the Chinese Delegation gave expression on November 16, 1921, to the effect that "immediately as soon as circumstances will permit the existing limitations upon China's political, jurisdictional and administrative freedom of action are to be removed",

Considering that any determination in regard to such action as might be appropriate to this end must depend upon the ascertainment and appreciation of the complicated states of fact in regard to the laws and

the judicial system and the methods of judicial administration of China which this Conference is not in position to determine;

Have resolved that the Governments of the Power above named shall establish a commission (to which each of such Government shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China and into the laws and judicial system and methods of judicial administration of China with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters and their recommendations as to such means as they may find suitable to improve the existing conditions of administration of justice in China and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Power in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality;

That the Commission herein contemplated shall be constituted within three months after the adjournment of the Conference with detailed arrangements to be hereafter agreed upon by the Governments of the Powers above named, and shall be instructed to submit its report and recommendations within one year after the first meeting of the Commission;

That each of the Powers above named shall be deemed free to accept or to reject all or any portion of the recommendations of the Commission herein contemplated but that in no case shall any of said Powers make its acceptance of all or any portion of such recommendations, either directly or indirectly, dependent on granting by China of any special concession, favor, benefit or immunity, whether political or economic.

ADDITIONAL RESOLUTION I.

That the non-signatory Powers having by the treaty extraterritorial rights in China may accede to the resolution affecting extraterritoriality and administration of justice in China, by depositing within three months after the adjournment of the Conference, written notice of accession with the Government of the United States for communication by it to each of the signatory Powers.

ADDITIONAL RESOLUTION II.

That China having taken note of the resolutions affecting the establishment of a Commission to investigate and report upon extraterritoriality and administration of justice in China expresses its satisfaction with the sympathetic disposition of the Powers hereinafter named, in regard to the aspiration of the Chinese Government to secure the abolition of extraterritoriality in China and declares its intention to appoint representatives who shall have right to sit as members of the said Commission, it being understood that China shall be deemed free to accept or to reject any or all of the recommendations of the Commission. Further China is prepared to cooperate in the work of this Commission and to afford to it every possible facility for successful accomplishment of its tasks.

(右譯文)

支那ニ於ケル治外法權ニ關スル決議

華盛頓ニ於ケル本會議ニ參加シタル諸國即チ亞米利加合衆國、白耳義國、英帝國、佛蘭西國、伊太利國、日本國、和蘭國及葡萄牙國ノ各代表者ハ英支間千九百二年九月五日ノ條約、米支間千九百三年十月八日ノ條約並日支間千九百三年十

月八日ノ條約ニ於テ當該國ハ支那國政府カ其ノ司法制度ヲ改正シテ之ヲ泰西諸國ノ同制度ニ適合セシムルコトニ付表示シタル希望ヲ同國政府ニ於テ達成スルコトニ對シ一切ノ援助ヲ與フヘキコトヲ約定シ且「支那國法律ノ狀態其ノ施行ノ設備及其ノ他ノ要件ニシテ當該國カ満足スルトキハ其ノ治外法權ヲ撤去スルニ躊躇セサルヘキコトヲ聲明シタルノ事實ヲ了承シタルニ因リ

右ニ關シテ千九百二十一年十一月十六日「支那國委員ノ表示シタル支那國ノ政治上、司法上及行政上ノ自由行動ニ對スル現存ノ制限ハ即時ニ又ハ事情ノ許ス限リ速ニ撤廢セラルヘキモノナリ」トノ趣旨ノ願望ヲ成就セシムルニ付同情ヲ有スルニ因リ

右目的ニ適應スヘキ措置ニ關スル如何ナル決定モ支那國ノ法律、司法制度及司法運用手續ニ關スル複雑ナル實狀ノ確認及理解ヲ前提トスヘク右實狀ハ本會議ニ於テ之ヲ決定スルニ由ナキコトヲ考慮シ

茲ニ右ノ通り決議セリ

前記各國政府ハ委員會(各國政府ハ各一名ノ委員ヲ任命ス)ヲ組織シ支那國ニ於ケル治外法權制度ノ實施ノ現狀支那國ノ法律司法制度及司法運用手續ヲ調査セシメ依テ右事項ニ關スル委員會ノ事實調査書茲支那國ニ於ケル司法運用ノ現狀ヲ改善スル爲治外法權ニ關スル各自ノ權利ヲ漸次ニ又ハ其ノ他ノ方法ニ依リ撤去スルコトニ付各國ヲ首肯セシムヘキ立法上司法上ノ改正ヲ實行セムトスル支那國政府ノ努力ヲ援助促進スル爲適當ト思惟スル手段ニ關スル勸告ヲ前記各國政府ニ報告セシムルコト

前記委員會ハ今後前記各國政府間ニ協定セラルヘキ細目取極ニ基キ會議終了後三箇月内ニ組織セラルヘク且ツ該委員會ハ第一回會議後一箇年内ニ其ノ報告及勸告ヲ提出スヘキコトヲ命セラルルコト

前記各國ハ前記委員會ノ勸告ノ全部又ハ一部ヲ受諾シ又ハ拒絕スルノ自由ヲ有スヘシ但シ如何ナル場合ニ於テモ右各國ハ勸告ノ全部又ハ一部ノ受諾ヲ以テ支那國ヨリ政治上タルト經濟上タルト問ハス何等カノ特殊利權、恩典、利益又ハ

免除ヲ直接間接ニ許與セシムルノ條件トナスヲ得サルコト

追加決議ノ一

非署名國ニシテ條約ニ依リ支那國ニ於テ治外法權ヲ有スルモノハ本會議終了後三箇月内ニ書面ニ依ル加入ノ通告ヲ合衆國政府ニ寄託シテ支那國ニ於ケル治外法權及司法運用ニ關スル決議ニ加入スルコトヲ得右通告ハ合衆國政府ヨリ各署名國ニ通知セラルヘシ

追加決議ノ二

支那國ハ同國ニ於ケル治外法權及司法運用ノ調査及報告ニ當ル委員會ノ設置ニ關スル決議ヲ了承シタルニ因リ支那國ニ於ケル治外法權ノ廢止ヲ期セムトスル同國政府ノ願望ニ關スル前記各國ノ同情アル意嚮ニ満足ノ意ヲ表シ且ツ前記委員會ノ委員トシテ出席スルノ權利ヲ有スル一名ノ代表者ヲ任命スルノ意アルコトヲ聲明ス尤モ支那國ハ該委員會ノ勸告ノ全部又ハ一部ヲ受諾シ又ハ拒絕スルノ自由ヲ有スルモノトス支那國ハ又該委員會ノ事業ニ協力シ其ノ任務ヲ満足ニ完了セシメムカ爲有ラユル便宜ヲ之ニ供與セムトス

第四節 外國郵便局撤去問題

(一) 外國郵便局即時撤廢ニ關スル支那側要望

十一月二十五日第二十六回總委員會
支那委員陳述

十一月二十五日午前極東總委員會第六回會議ニ於テ治外法權ニ關スル論議アリタル後支那提案第五項ノ具體問題ノ一トシテ外國郵便局撤廢問題ニ關スル協議ニ入レリ

同日ノ會議ニ於テ劈頭支那全權施肇基氏ハ支那ニ於ケル領土的及行政的保全ニ對スル制限事例トシテ

(一) 外國郵便局

(二) 有線電信及無線電信

(三) 外國駐屯軍

(四) 外國鐵道守備隊

(五) 外國警察官

ノ五項ヲ舉ケタル上先ツ外國郵便局ハ何等支那ト當事國トノ條約又ハ「コンセツション」ニ根據スルモノニ非サルコトヲ論シ、續イテ支那郵政ノ沿革ヲ詳述シ最近千九百十四年萬國郵便條約加盟ノ事實ニ言及シ右條約ニ依レハ外國ハ加盟國內ニ郵便局ヲ設置シ得サル譯合ナル旨ヲ説キ而シテ支那ノ郵政ハ輓近顯著ナル發達ヲ遂ケ現ニ世界中最廉價ナル取扱ヲ爲シ居レル旨ヲモ述ヘタル上進シテ現在支那ニ於ケル外國郵便局ノ數ヲ舉示シ特ニ日本ノ數、百二十四ノ多キニ達スルニ反シ米國ハ僅カニ一、英國ハ十二、佛國ハ十三ノ郵便局ヲ有スルニ過キサルトヲ指摘シ縷々陳述スル所アリタルカ「ヒューズ」議長ハ支那全權ノ陳述尙長時間ヲ要スヘキヤニ認メラルル處成ルヘク右陳述要領ヲ全權ニ配布シ翌朝ノ會議迄ニ考慮ノ餘裕ヲ與ヘラルルヲ得ハ好都合ナル旨ヲ提議シテ散會セリ