

Protocol between Great Britain and Japan²

Whereas, a dispute has arisen between the Government of Japan on the one side and the Governments of Great Britain, France and Germany on the other, respecting the true intent and meaning of the following provisions of the Treaties and other engagements respectively existing between them, that is to say:

Paragraph 4, Article XVIII, of the Treaty of Commerce and Navigation of April 4, 1896, between Japan and Germany: “*Sobald diese Einverleibung erfolgt,*” [that is to say: when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes], “*sollen die bestehenden, zeitlich unbegrenzten Überlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt and hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind*”; and § 3 of the complementary communication of the same date from the German Secretary for Foreign Affairs to the Japanese Minister at Berlin “*3. dass, da das Eigenthum an den im Artikel XVIII des Vertrages [41] erwähnten Niederlassungsgrundstücken dem Japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden*”; and the clause in the reply of the Japanese Minister of the same date, to the foregoing communication: “*dass die darin unter Nummer I bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke, die in den Fremdenniederlassungen and die Erhaltung wohlervorbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind*”;

Paragraph 4, Article XXI, of the revised Treaty of August 4, 1896, between Japan and France : « *Lorsque les changements ci-dessus indiqués auront été effectués* », [that is to say: when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes and made a part of the municipal system of Japan; and when the competent Japanese Authorities shall have assumed all municipal obligations and duties, and the municipal funds and property belonging to such Settlements shall have been transferred to said Japanese Authorities], « *les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question* » ; and

Paragraph 4, Article XVIII, of the revised Treaty of July 16, 1894, between Japan and Great Britain: “When such incorporation takes place”, (that is to say: when the several foreign Settlements in Japan shall have been incorporated with the respective Japanese Communes), “existing leases in perpetuity under which property is now held in the said Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property”; and

Whereas, the controversy is not amenable to ordinary diplomatic methods; and

Whereas, the Powers at variance, co-Signatories of the Convention [42] of The Hague for the peaceful adjustment of international differences, have resolved to terminate the

¹ Page numbering in brackets refers to the text as it appears in THE HAGUE ARBITRATION CASES (Boston and London, Ginn and Company Publishers, 1915).

² Similar protocols were signed by Japan with Germany and with France.

controversy by referring the question at issue to impartial arbitration in accordance with the provisions of said Convention;

The said Powers have, with a view to carry out that resolution, authorized the following Representatives, that is to say:

The Government of Great Britain: Sir CLAUDE MAXWELL MACDONALD, G.C.M.G., K.C.B., His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary;

The Government of France: Monsieur G. DUBAIL, Minister Plenipotentiary, Chargé d'Affaires of France;

The Government of Germany: COUNT VON ARCO VALLEY, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the German Emperor, King of Prussia;

The Government of Japan: Baron KOMURA JUTARO, His Imperial Japanese Majesty's Minister of State for Foreign Affairs;

to conclude the following Protocol:

I. The Powers in difference agree that the Arbitral Tribunal, to which the question at issue is to be submitted for final decision, shall be composed of three members who are Members of the Permanent Court of Arbitration of The Hague, to be selected in the following manner:

Each Party, as soon as possible, and not later than two months after the date of this Protocol, to name one Arbitrator, and the two Arbitrators so named together to choose an Umpire. In case the two Arbitrators fail for the period of two months after their appointment to choose an Umpire, His Majesty the King of Sweden and Norway shall be requested to name an Umpire.

II. The question at issue upon which the Parties to this Arbitration request the Arbitral Tribunal to pronounce a final decision, is as follows:

Whether or not the provisions of the Treaties and other engagements above quoted exempt only land held under [43] leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description constructed or which may hereafter be constructed on such land, from any imposts, taxes, charges, contributions or conditions whatsoever, other than those expressly stipulated in the leases in question.

III. Within eight months after the date of this Protocol, each Party shall deliver to the several Members of the Arbitral Tribunal and to the other Party, complete written or printed copies of the Case, evidence and arguments upon which it relies in the present Arbitration. And not later than six months thereafter a similar delivery shall be made of written or printed copies of the Counter Cases, additional evidence, and final arguments of the two Parties; it being understood that such Counter-Cases, additional evidence, and final arguments shall be limited to answering the principal Cases, evidence, and arguments previously delivered.

IV. Each Party shall have the right to submit to the Arbitral Tribunal as evidence in the Case all such documents, records, official correspondences, and other official or public statements or acts bearing on the subject of this Arbitration as it may consider necessary. But if in its Case, Counter-Case, or arguments submitted to the Tribunal either Party shall have

specified or alluded to any document or paper in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof within thirty days after such application is made.

V. Either Party may, if it thinks fit, but subject to the right of reply on the part of the other Party within such time as may be fixed by the Arbitral Tribunal, present to the Tribunal for such action as the Tribunal may deem proper, a statement of objections to the Counter-Case, additional evidence, and final arguments of the other Party if it is of opinion that those documents or any of them are irrelevant, erroneous, or not strictly limited to answering its principal Case, evidence, and arguments. [44]

VI. No papers or communications other than those contemplated by Sections III and V of this Protocol, either written or oral, shall be admitted or considered in the present Arbitration unless the Arbitral Tribunal shall request from either Party additional or supplementary explanation or information to be given in writing. If the explanation or information is given, the other Party shall have the right to present a written reply within such time as may be fixed by the Arbitral Tribunal.

VII. The Tribunal shall meet at a place to be designated later by the Parties as soon as practicable, but not earlier than two months nor later than three months after the delivery of the Counter-Cases as provided in Section III of this Protocol, and shall proceed impartially and carefully to examine and decide the question at issue. The decision of the Tribunal shall, if possible, be pronounced within one month after the President thereof shall have declared the arbitral hearing closed.

VIII. For the purposes of this Arbitration, the Government of Japan shall be regarded as one Party, and the Governments of Great Britain, France, and Germany, jointly, shall be regarded as the other Party.

IX. So far as is not otherwise provided in this Protocol, the provisions of the Convention of The Hague for the peaceful adjustment of international differences shall apply to this Arbitration.

Done at Tokyo, this 28th day of August 1902, corresponding to the 28th day of the 8th month of the 35th year of Meiji.

(Signed) CLAUDE M. MACDONALD
JUTARO KOMURA