

The Treaty as to Yap and the Mandated North Pacific Islands

Author(s): Charles Noble Gregory

Source: *The American Journal of International Law*, Apr., 1922, Vol. 16, No. 2 (Apr., 1922), pp. 248-251

Published by: Cambridge University Press

Stable URL: <https://www.jstor.org/stable/2187716>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

Cambridge University Press is collaborating with JSTOR to digitize, preserve and extend access to *The American Journal of International Law*

one of expediency, and until the "big" Powers are as willing as the "small" Powers to allow their disputes to be settled by principles of justice expressed in rules of law administered by an international court of justice, there will be no difference between the Permanent Court of International Justice and the Permanent Court of Arbitration at The Hague in the matter of jurisdiction. The chief difference, although it is a very great and important one, will be that the Permanent Court of International Justice has a permanent board of judges chosen in advance of and without reference to the cases to be decided, whereas the judges of the so-called Permanent Court of Arbitration are chosen by the parties in issue for particular conflicts and generally after they have broken out.

Recognizing the importance of this subject, the Institute placed it upon the program of its next meeting and appointed as its reporter Philip Marshall Brown, Professor of International Law at Princeton. Other subjects doubtless will be proposed, and the next session of the Institute will be one of discussion and friendly suggestion.

The next session of the Institute will be held in the latter part of August, 1922, under the presidency of André Weiss, member of the Institute of France, Professor of International Law at the University of Paris, member of the Permanent Court of Arbitration at The Hague, member and Vice-President of the Permanent Court of International Justice at The Hague.

Held in the city of Grenoble in the south of France, under such auspices, the next session of the Institute should be a success.

JAMES BROWN SCOTT.

THE TREATY AS TO YAP AND THE MANDATED NORTH PACIFIC ISLANDS

In the July number of this JOURNAL (Vol. 15, pp. 419 to 427) this writer stated somewhat in detail the facts of the dispute as to the "Mandate over Yap." He further briefly submitted some principles of law as well as some authorities, which, in his opinion, fully upheld the attitude of the United States in the matter.

After the lapse of only eight months he is asked to analyze and outline the treaty happily adjusting the matter between the United States and Japan. It was negotiated and signed at Washington on February 11 by Mr. Secretary Hughes for the United States and Baron Shidehara for Japan. It was laid before President Harding by the Secretary of State on the same day and on that date transmitted by the President to the Senate for advice and consent to its ratification. This was duly accorded on March 1 by a vote of 67 to 22.

The document is brief, covering less than four pages. It devotes nearly one and a half pages to a preamble reciting and "considering" the facts. This shows the surrender by Germany under the Treaty of Versailles to "the Principal Allied and Associated Powers" of "all her rights and titles

over her oversea possessions"; that benefits accruing under said Treaty to the United States were confirmed by the Treaty between the United States and Germany of 1921; that the British Empire, France, Italy and Japan had agreed to confer on His Majesty the Emperor of Japan a Mandate over "all the former German islands, situated in the Pacific Ocean and lying north of the Equator." The seven articles of such agreement expressing the terms of such mandate and the rights and obligations of the Mandatory are also recited.

The Treaty adds:

Considering that the United States did not ratify the Treaty of Versailles and did not participate in the agreement respecting the aforesaid mandate; that the United States and Japan desiring to reach a definite understanding with regard to the rights of the two Governments and their respective nationals in the aforesaid islands, and in particular the Island of Yap, have resolved to conclude a convention for that purpose.

By Article I the United States consents to the administration of the said islands by Japan pursuant to the mandate but subject to certain conventions.

By Article II the United States and its nationals are to receive all the benefits of Japan's engagements in Articles 3, 4 and 5 of the Mandate (which require suppression of the slave trade and forced labor, control of traffic in arms and ammunition, and prohibit supplying intoxicating liquor to the natives, limit military training of the natives except for internal police and local defense, forbid establishing military or naval bases or erecting fortifications in these islands, require the mandatory to ensure to the territory freedom of conscience and the free exercise of all forms of worship and that missionaries, nationals of any state member of the League of Nations, shall be allowed to enter into, travel and reside in the territory for the purpose of prosecuting their calling).

Japan further directly in this treaty insures in the islands "complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality," allows American missionaries free right to enter the islands, to travel and reside there, to acquire and possess property, to erect religious buildings and open schools, Japan, however, retaining such control as may be necessary for public order. It may be noted that no express right to transmit property on the part of our nationals in these islands by devise, descent or like means is guaranteed, and like omission appears in the article as to the Island of Yap. The treaty, however, further provides that vested American property rights are to be respected.

Existing treaties between the two powers are applied to these islands. Japan agrees to furnish to the United States a duplicate of her annual report to the Council of the League of Nations and agrees that no modification of the mandate shall affect these conventions, unless expressly assented to by the United States.

As to the Island of Yap, the United States and its nationals are given free access on a footing of entire equality with those of Japan or any other nation in all matters relating to landing or operating the existing Yap-Guam cable or any cable laid or operated by the United States or its nationals connecting with said island. Like rights are extended to radio-telegraphic communication, provided that while Japan maintains thereon an adequate station and cooperates effectively with the cables and other radio stations on ship or shore, without discrimination or preference, the right of the United States or its nationals to establish such station is suspended.

Further, in connection with the above cable and radio rights, nationals of the United States have an unrestricted right to reside in the island and to acquire and hold, on an equality with Japanese nationals or those of any nation, all kinds of property, real or personal. It is observed again that no specific provision for the right to transmit by testament or descent such property interests is expressed. The question suggests itself: What becomes of a house or lot or storehouse on this island on the death of its American owner? Does the right to take and hold, on a parity with citizens of Japan or of any nation, carry the right to transmit on death to heirs, devisees or legatees? Such rights are in the main statutory, generally held not natural rights. It would seem more satisfactory if they had been expressly recognized and assured.

The treaty provides that nationals of the United States can not be required to obtain permits or licenses to land and operate cables or radio-telegraphic service or to enjoy any of the rights stipulated: that "no censorship or supervision shall be exercised over cable or radio messages or operations and the nationals of the United States shall have complete freedom of entry and exit for their persons and property; that no taxes or port, harbor or landing charges shall be levied as to operation of cables or radio stations or as to persons, property or vessels. No discriminating police regulations shall be enforced. Japan agrees to exercise its power of expropriation to get for the United States or its nationals property and facilities for electrical communication, but property of the United States or its nationals is expressly exempt from expropriation.

Earnest efforts were made in the Senate to carry an amendment or reservation making the United States itself the exclusive judge as to whether the government of Japan has maintained radio-telegraphic communication on the Island of Yap as required in the treaty. Senators Underwood and Lodge maintained that to be the true and plain meaning of the treaty proviso and opposed such modification. The attempt was defeated by a vote of 54 to 27. In this discussion, Senator Pittman, who proposed the modification, said: "I do not think for a moment we had any claim on Japan to make concessions in the matter when we refused to take our seat at the table in Paris after we had refused to ratify the treaty of Versailles." This view contravened that expressed by Mr. Secretary Colby for the administration of

President Wilson in his protest of February 22, 1921 to the Council of the League of Nations. That protest insisted that the approval of the United States was essential to the validity of any determination respecting mandates over the territory ceded by Germany. It equally contravenes the opinion of Mr. Secretary Hughes, speaking for the present administration, on April 5, 1921, in reply to the Japanese note. The views of Senator Pittman seem to have met the approval of only a small minority of his fellow Senators.

Public interest has been so centered upon the Four-Power Treaty that this important and gratifying agreement with Japan has commanded but little general attention. It has been mentioned almost exclusively as adumbrating the vote of the Senate by which the Four-Power Treaty might be expected to be ratified. It is, however, it is submitted, a remarkable and complete adjustment of a very troublesome and irritating question arising between ourselves and our imperial *vis-a-vis* on the other side of the Pacific. By skilful draftsmanship, the agreement imposes no humiliating repudiations upon Japan, but "desiring to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid islands," the plenipotentiaries proceeded to effect what was desired. Mr. Hughes is to be congratulated in that the treaty accords all that he or his predecessor claimed for this country, or its nationals, in the premises.

As Mr. Albert W. Fox, in the *Washington Post* of March 2, 1922, the day after the final action by the Senate, said: "The ratification of the Yap treaty is important in this sense, that it ends a controversy with Japan by obtaining for the United States and its nationals such rights, relating to cables and radio communication, as have *been contended for by the preceding and present administration.*" It is difficult to see how any Secretary for Foreign Affairs could do more or could do better.

The attitude of the Island Empire and its honored Ambassador was most admirable, the achievement for our own country complete and satisfactory. Mr. Hughes has shown with what promptness and adequacy international disputes can be solved when they are placed in the hands of an able, resourceful, straightforward and courageous lawyer, eager for the rights of his own country, but entirely just to those of others. He is entitled to, and enjoys, the gratitude of all who desire to see the good relations of mankind assured by wise and firm negotiations consummated by just agreements tainted by no enduring bitterness and endangered by the exaction of no humiliations.

CHARLES NOBLE GREGORY.

THE DEPARTMENT OF STATE ON THE AMERICAN FLOTATION OF FOREIGN PUBLIC LOANS

The Department of State, on March 3, 1922, made announcement of its policy of requesting of American bankers information concerning the terms of prospective foreign public loans to be negotiated and underwritten by them.