正縣知事審理訴訟暫行章程ノ定ムル所ニシテ法院編制法竝民事及刑事訴訟條例モ亦前記暫行章程ノ規定ニ抵觸セサル限リ補充的ニ適用アリ。實際ノ審理ハ承審員ノ面前ニテ行ハレ縣知事檢察官ノ職務ヲ行フ。民事被告人ハ二月以内、敗訴債務者及刑事被告人ハ三月以内之ヲ拘留スルコトヲ得ヘク右拘留期間ハ高等審判廳ニ申請シ其ノ許可ヲ得テ之ヲ延長スルコトヲ妨ケス。辯護士ハ縣知事法廷ニ出廷スルコトヲ許サレス唯書面ヲ以テ訴旨ヲ陳述シ得ルノミ。支那國本土ニ於テハ縣知事法廷ニ對スル控訴ハ原審カ初級審判廳（簡易廷）管轄ノ事件ナルトキハ最寄ノ地方審判廳ニ、原審カ地方審判廳管轄ノ事件ナルトキハ最寄ノ高等審判廳ノ管轄トス。熱河察哈爾、綏遠、蒙古及新疆ニ於ケル縣知事法廷ニ對スル控訴ハ審判處又ハ司法籌備處ニ之ヲ爲ス。縣知事法廷ニ於テ採用スル訴訟手續ハ總テ稍幼稚ナルモノナリ（第七十一、七十二及七十三節參照）。

(六) 特別裁判所

(1) 東三省特別區域法院

一四八 東三省（滿洲）特別區域法院ハ千九百二十年ノ設置ニ係リ曩ニ露國裁判所ノ管轄ニ屬シタル東支鐵道附屬地內在住ノ多數ノ露國人ニ對シ裁判ヲ行フモノトス。右法院ハ支那國ノ法權下ニ在ル外國人ヲ裁判シ及右外國人ト及支那人トノ間ノ事件ヲ審理スル爲ニ設置セラレタル點ニ於テ支那國裁判制度ニ於テ獨特ノ地位ヲ占ム。特別區域法院ハ現在五アリ。其ノ中高等審判廳及地方審判廳各一個ハ哈爾賓ニ在リ。他ノ三ハ地方審判分廷ニシテ滿洲里、海拉爾、橫道河子ニ存ス。

(イ) 構成及權限

一四九 特別區域法院ハ千九百二十三年十月三十一日ノ敎令ヲ以テ設立セラル。右敎令ノ規定ニ依レハ其ノ構成ハ新式裁判所ト同樣ナリ。哈爾賓ニ高等審判廳及地方審判廳各一箇ヲ置キ東支鐵道附屬地內ニ司法部ノ適當ト認ムル數箇ノ分廷ヲ置クモノトス。通常ノ司法職員ノ外ニ外國人顧問及外國語主トシテ露語ヲ語ル通譯アリ。哈爾賓所在ノ右審判廳ニハ特別ノ監獄及看守所（拘留場）ヲ、地方審判分廷ニハ特別ノ看守所ヲ附置ス。

一五〇 特別區域法院ハ當初東支鐵道附屬地內ノ露國人ニ對シ裁判ヲ行フ爲設置セラレタルモノカ現在ニ於テハ附屬地內ノミナラス附屬地ヨリ相當ノ距離ニ在ル地方ノ領事裁判權ナキ國ノ人民間竝領事裁判權ナキ國ノ人民ト支那人トノ間ノ事件ヲモ管轄ス。右法院ノ管轄ヲ附屬地外ニ在ル總テノ領事裁判權ナキ國ノ人民ニ擴張シタル根據ハ千九百二十年十二月二十一日ノ司法部

令ナリ。哈爾賓ノ地方審判廳及三箇ノ地方審判分廷ハ支那國新式裁判制度ニ於ケル地方審判廳ト同樣ノ管轄ヲ有シ哈爾賓ノ高等審判廳ハ右制度ニ於ケル高等審判廳ト同樣ノ管轄ヲ有ス。新式裁判制度ニ於ケル同樣ノ審判廳ニ對スルモノト同樣ニ特別區域地方審判廳及地方審判分廷ニ對スル上訴ハ特別區域高等審判廳、同高等審判廳ニ對スル上告ハ大理院ノ管轄トス。

(ロ) 訴訟手續

一五一　特別區域法院ニ於ケル訴訟手續ハ新式裁判所ニ於テ行ハルモノト同樣ナリ。新式裁判所ノ民事及刑事訴訟條例ハ實ニ新式裁判所ニ適用セラルル以前ニ於テ先ツ特別區域法院ニ於テ適用アルモノトシテ公布セラレタルモノナリ。

(2) 特別會審衙門

一五二　上海、厦門、及漢口ニ於ケル特別會審衙門ノ構成、權限及訴訟手續ニ付テハ本報告第一部第二十一節乃至第三十節ニ於テ論議シタリ。

(六) 軍法會議

(1) 組織及權限

一五三　陸軍及海軍軍法會議ニハ常設及臨時ノ二種アリ。常設軍法會議ハ陸軍又ハ海軍高等軍法會議及陸軍又ハ海軍普通軍法會議ニシテ前者ハ陸海軍將官及同階級ノ軍人ニ對シ後者ハ陸海軍大佐以下ノ將校下士卒ニ對シ裁判權ヲ行使ス。前者ハ陸軍部又ハ海軍部ニ設ケ後者ハ陸軍ニ在リテハ督軍署、都統署及護軍使署竝各軍師旅巡防隊及高級軍長官ノ駐在スル場所ニ、海軍ニ在リテハ海軍部、海軍總司令公署又ハ各艦隊司令官ノ旗艦内ニ之ヲ置ク。陸軍臨時軍法會議ハ其ノ守備スル地方ニ於ケル大佐以下ノ將校及下士卒ノ犯罪ヲ審判スルモノニシテ其ノ地方ノ司令部ニ之ヲ置ク。海軍臨時軍法會議ハ艦内又ハ艦隊ノ駐泊地區ニ於ケル大佐以下ノ將校下士卒ノ犯罪ヲ審判スルモノニシテ各艦隊ノ旗艦又ハ鎮守府ニ臨時ニ之ヲ設ク。平時ニ於テハ軍法會議ノ管轄ハ非軍人ノ陸軍又ハ海軍刑事條例第二條ノ規定セラレタル特別ノ陸海軍法違反ノ場合ヲ除キ概ネ陸海軍ニ籍ヲ有スル者ノミニ限局セラル。戰時ノ場合又ハ戒嚴ノ宣告アリタル場合ニハ軍法會議ノ管轄ハ甚シク擴張セラルルニ至ル。

(2) 訴訟手續

一五四　陸軍及海軍軍法會議ニ於ケル訴訟手續ハ第六十八節及第六十九節記載ノ陸軍及海軍審判條例ノ規定スル所ナリ。審理ハ之ヲ公開セス又辯護士ノ出廷ヲ認メス。軍法會議カ通常ノ刑罰ニ換フルニ追放又ハ六百以下ノ梶刑ヲ以テスルヲ得ルコトニ付テモ亦第六十九節ニ說明シタ

リ。訴追ハ陸軍ニ在リテハ憲兵隊長、軍師旅副官又ハ巡防隊檢察官之ヲ行ヒ海軍ニ在リテハ海軍軍部副官、各艦隊旗艦副官、海軍局所警察官巡隊長、海軍練習艦隊ノ副長、學校學監及各海軍軍法會議ニ特派セラレタル者之ヲ行フ。軍法會議ニ於ケル審理ハ終審トシ控訴スルコトヲ得ス。但シ或ル場合ニハ新ナル審理ヲ命スルコトアリ。

(七) 行政裁判所（平政院）

一五五 行政裁判所ノ設立及其ノ訴訟手續ニ關シテハ千九百十四年六月二十日及同年七月二十日附ノ敎令ニ其ノ規定アリ。行政裁判所ハ唯一アルノミ。其ノ管轄ヲ略說スレハ左ノ如シ。

(イ) 中央又ハ地方ノ最高ノ行政官署ノ行政行爲カ違法ニシテ人民ノ利益ヲ侵害シタリト爲ス訴訟ノ提起セラレタルトキ

(ロ) 中央又ハ地方行政官署ニ於テ違法ニ人民ノ權利ヲ侵害シタリト爲ス訴願ニ付最高行政官廳ノ爲シタル決定ニ對シ不服ノ申立アリタルトキ

支那國ニ於テハ行政訴願ノ要旨ハ行政行爲ノ取消ニ在リ。下級行政官廳ノ處分ニ對スル不服ノ申立ハ訴願トシテ其ノ上級官廳ニ提出スヘク行政訴訟ハ右訴願ノ當該最高行政官廳ニ在リテ終局的ニ決定セラレタル後ニ於テノミ許サルルモノトス。行政裁判所ニハ之ニ提起セラレタル訴訟ヲ審理スル爲ニ特別ノ裁判官（評事）ヲ置ク。支那國政府ハ行政裁判所ヲ廢シ其ノ管轄ニ屬スル一切ノ訴訟事件ヲ普通裁判所ニ移管セムコトヲ企圖ツツアルモノノ如シ。

一五六 支那國政府ニ對スル一個人又ハ商館ノ損害賠償ノ請求ニ付テハ當事者ヨリ普通ノ方法ヲ以テ管轄アル普通ノ裁判所ニ訴訟ヲ提起スルコトヲ得ヘキモ行政裁判所ニ之ヲ提起スルコトヲ得ス。之ニ關スル訴訟手續ハ民事訴訟條例第十六條ノ規定スル所ナリ。右ニ關聯シテ支那國委員ハ千九百二十六年二月十九日ノ會議ニ於テ左ノ如ク陳述シタリ。

「支那國ニ於テハ國庫ハ公法人ナリ。國家ヲ代表ス。私法的見地ヨリシテ國庫ハ權利ノ主體ト爲ルコトヲ得又完全ナル負擔能力ヲ有ス。從テ又其ノ認可ナクトモ之ニ對シテ訴訟ヲ提起スルコトヲ得。國庫ニ對スル債務履行ノ强制ハ個人ニ對スルト同樣ノ手續ヲ以テ之ヲ行ヒ得ヘシ」。

(九) 警察法廷

一五七 違警罰法違反及第六十五節ノ(ヘ)及(チ)ニ述ヘタルカ如キ方法ニ依リ大總統ノ賦與シタル權限ニ基キ警察官署ノ制定シタル規則ニ違反シタル罪ハ警察官署ノ警察法廷ニ於テ審判セラル。然レトモ支那國裁判組織ノ下ニ於テハ警察官吏ノ行爲ハ裁判行爲ト認メラレスシテ行政行爲ト認メラル。從テ警察官署ニ依リ其ノ管轄內ノ罪ニ付裁判ヲ受ケタル者ハ上級裁判所ニ裁判上ノ

上訴ヲ爲スコトヲ得スシテ上級ノ行政官廳ニ訴願ヲ爲シ然ル後警察官署ノ行爲カ法律ニ違反スルモノナルトキニ於テ行政裁判所ニ行政訴訟ヲ提起スルコトヲ得ルモノトス。此ノ結果トシテ支那國ニ於ケル警察官署ハ其ノ一定ノ管轄ノ範圍内ニ於テ稍特異ナル權力ヲ有スルモノトス蓋シ警察官署ハ人民ヲ三十日（北京一帶ノ區域ニ在リテハ六十日）ノ拘留ニ處スルコトヲ得而モ其ノ事件ノ事實點ニ付上訴ヲ爲スコトヲ許ササルヲ以テナリ。

一五八 支那國ノ警察官署ハ普通警察、司法警察、保安警察及北京憲兵隊、鐵道警察及水上警察ノ六種ニ分レタリ。普通警察ハ更ニ京師警察廳、地方警察廳及縣警察所ノ三種ニ分ツコトヲ得。京師警察廳ハ北京ニ設ケラレ千九百十四年八月二十九日公布ノ規則ニ準據シテ其ノ職務ヲ行フ。地方警察廳ハ省ノ首府竝通商港及重要都市ニ於ケラレ其ノ任務ニ關スル規則ハ千九百十四年八月二十九日制定セラレタリ。縣警察所ハ縣知事衙門ノ所在地タル都市ニ設立セラレ又必要ノ場所ニ其ノ分所ヲ設ク。縣警察所及其ノ分所ニ關スル規則ハ千九百十四年八月二十九日制定セラレタリ。司法警察ニ付テハ本章第七十一節ニ於テ既ニ說明セリ。保安警察ハ軍隊式ニ組織セラレ且武裝ヲ有スル警察ニシテ公安及秩序ノ維持ヲ其ノ職務トス。同警察ハ京師警察廳ノ指揮ニ屬シ其ノ任務及訓練ニ關スル規則ハ千九百十三年十月及千九百十四年八月十八日及同年十月ニ於テ制定セラレタリ。北京憲兵隊ハ陸軍部ニ隷屬スル司令官ノ指揮下ニ在リ陸軍警察トシテノ職務ヲ行フ外ニ隨時必要ニ應シ普通及司法警察ヲ補助スルモノトス。其ノ職務ニ關スル諸規則ハ千九百十七年九月二十六日ニ制定セラレタリ。鐵道警察ハ支那官設鐵道ノ指揮下ニ在リテ特ニ鐵道線路ノ警察ノ職務ヲ行フ。水上警察ハ支那ノ港灣内及水路上ニ於テ管轄權ヲ有シ千九百十五年四月三十日ニ制定セラレタル規則ニ依リ其ノ職務ヲ行フ。以上ノ如キ警察ノ各部門ハ行政及司法ノ事項ニ關シ同樣ナル權力ヲ行使スルモノニシテ京師警察ノミ（第六十九節チ參照）稍大ナル權力ヲ有ス。稅關、鹽務署及煙酒事務局等ノ各行政部ニハ特定ノ機關アリテ其ノ業務ニ關係アル事項ニ關シ警察權ヲ行使ス。

（十） 裁判職員ノ考試

一五九 裁判職員ノ考試ニ關スル諸規則ヲ其ノ公布日附ト共ニ列記スレハ下ノ如シ。

（イ） 司法官考試令（千九百十七年十月十八日教令ヲ以テ公布セラレ千九百十九年五月十五日同令ニ依リ修正）

（ロ） 司法官初試合格人員學習規則（千九百二十一年十二月六日ノ司法部令ヲ以テ公布）

（ハ） 司法官再試免除規則（千九百十四年十一月十四日ノ司法部令ヲ以テ公布）

(ホ) 承發吏考試任用章程（千九百二十年五月二十七日司法部令ヲ以テ公布）
(ヘ) 縣司法公署審判考試任用章程（千九百十七年五月一日教令ヲ以テ公布）
(ト) 各縣承審員考試章程（千九百十九月六月二十日司法部令ヲ以テ公布）

(1) 推事及檢察官

一六〇 現今支那ノ新式裁判所及特別裁判所ニ配置セラレタル各種階級ノ推事（判事）及檢察官（檢事）ノ數ハ千二百人ニシテ（附錄第一參照）其ノ多クハ前揭(イ)(ロ)及(ハ)ニ述ヘタル規則ニ準據シテ任命セラレタルモノナリ。是等ノ諸規則ニ依レハ推事及檢察官ハ正規ノ試驗ヲ通過シタル者ヨリ任命セラルルモノトス。試驗ハ各省ニテ行フ豫備試驗及第一回試驗竝北京ニ於テ行フ第二回試驗トニ之ヲ分ツ。豫備試驗ノ科目ハ漢文及法學通論ニシテ之ニ合格シタル者ノミ第一回試驗ヲ受クルコトヲ得。豫備試驗ヲ受クルコトヲ得ル者ハ中華民國ノ國民タル男子ニシテ滿二十歲ニ達シ法律其ノ他ノ素養ニ關スル多數ノ資格要件ヲ具備スルコトヲ要ス。

一六一 第一回試驗ハ筆記口述ノ二者トス。筆記試驗科目ハ憲法、行政法、刑法、國際公法、民法、商法、民事訴訟法、法院編制法及國際私法ナリ。口述試驗ノ科目ハ民法、刑法、刑事訴訟法及民事訴訟法ナリ。第一回試驗ヲ通過シタル者ハ學修ノ爲之ヲ審判廳ニ送リ二年實習ノ後第二回試驗ヲ受ケシメ之ニ及第シタル者ハ候補推事又ハ候補檢察官ニ任命セラレ缺員ノ生スルヲ待チテ推事又ハ檢察官ニ任命セラル。

一六二 法院編制法ニ依レハ大理院推事及總檢察廳檢察官ハ十年以上法律學校ノ教授若ハ辯護士タリシ後推事若ハ檢察官ニ任命セラレタル者ヨリ之ヲ任用ス。高等審判廳ノ推事又ハ檢察官トシテ任命セラルル資格アル者ハ五年以上上ニ述ヘタル如キ地位ニ在リタル者ナルコトヲ要ス。

一六三 千九百二十六年三月ノ會議ニ於テ支那國委員ノ爲シタル說明ニ依レハ司法官試驗ハ民國建設以來五度擧行セラレ其ノ最後ノモノハ四年以前ナリシ趣ナリ。

(2) 書記官

一六四 各審判廳ニハ一人又ハ二人以上ノ書記官（書記）アリ。審理ノ際ノ供述ノ記錄、法廷記錄ノ保存、書類ノ編綴、會計及其ノ他ノ庶務ヲ掌ル。繁忙ナル審判廳ニハ書記官長ヲ置キ審判廳長ノ指揮ヲ受ケテ書記官ノ事務ノ分配ヲ定メ且書記官ヲ監督セシム。書記官ハ試驗合格者ヨリ之ヲ採用ス。試驗ハ有資格者ニ非サレハ之ヲ受クルコトヲ得ス。試驗ハ豫備試驗及本試驗トシ豫備試驗ハ漢文ノ論文ヲ以テ之ヲ爲シ本試驗ハ法學通論、民法及刑法ノ大意、民事及刑事訴

訟、訴訟ノ大意、統計竝書式ニ付テ之ヲ行フ。

(3) 承發吏

一六五 審判廳ニハ承發吏（執達吏）ヲ置ク。其ノ職務ハ裁判所ノ判決及命令ヲ送達シ檢察官ノ文書ヲ送達シ其ノ他類似ノ任務ヲ行フニ在リ。執達吏ハ原則トシテ口述及筆記ノ試驗ニ及第シタル者ヨリ之ヲ採用ス。試驗ノ科目ハ送達及執行ニ關スル民事及刑事訴訟ノ規定、執達吏ノ職務ニ關スル規定竝算術トス。

(4) 縣司法公署ノ審判官

一六六 縣司法公署ニ配置セル審判官ハ豫備、口述及筆記試驗ニ及第シタル者ヨリ之ヲ採用ス。三十歳以上ニシテ特別ノ資格要件ヲ具備スル者ニ非サレハ試驗ヲ受クルコトヲ得ス。但シ右要件ハ推事若ハ檢察官ノ試驗ニ付定ムル如ク嚴格ニハ非ス。豫備試驗ハ漢文ノ論文ヲ科目トシ口述試驗ハ刑法、民法、商法竝刑事及民事訴訟法、筆記試驗ハ憲法、刑法、民法、商法、民事及刑事訴訟法、法院編制法竝司法例規ヲ以テ其ノ科目トス。

(5) 承審員

一六七 縣知事法廷ニ配置セラルル承審員ハ筆記ニ依ル豫備試驗及本試驗ニ及第シタル者ヨリ任命セラル。二十歳以上ノ者ニ非サレハ右受驗資格ナシ。豫備試驗ハ法學通論ノ初歩ヲ科目トシ本試驗ハ憲法、民法、刑法、商法、民事及刑事訴訟法、法院編制法、縣知事審理訴訟暫行章程、國際公法竝國際私法ヲ其ノ科目トス。承審員ハ試驗合格者ヨリ縣知事之ヲ任命ス（各縣承審員任用暫行章程第九條）。

(六) 司法官ノ官等及俸給

一六八 司法官ノ官等及俸給ニ關スル規則ヲ其ノ公布ノ日附ト共ニ列記スレハ次ノ如シ。

(イ) 司法官官俸條例（千九百十八年七月十九日大總統令ニ依リ公布千九百二十年十一月五日同令ニ依リ修正）

(ロ) 司法官官俸發給規則（千九百十八年八月十日司法部令ニ依リ公布千九百二十一年八月十一日同令ニ依リ修正）

(ハ) 法院書記官官俸條例（千九百十八年八月八日教令ヲ以テ公布千九百二十一年七月十日修正）

(ニ) 法院書記官官俸發給規則（千九百十八年八月十五日司法部令ニ依リ公布千九百二十一年七月十日同令ニ依リ修正）

(ホ) 承發吏等級薪金章程（千九百二十年五月二十七日司法部訓令ヲ以テ公布）

(1) 司法官

一六九 司法官ノ官等ハ概略次ノ如キモノナリ。大理院長ハ大總統之ヲ任命シ特任トス。總檢察長、大理院廷長、總檢察廳首席檢察官、高等審判廳長、高等檢察長、京師地方審判廳長及京師地方檢察廳長ハ大總統之ヲ任命シ簡任トス。其ノ他ノ大理院推事及總檢察廳檢察官ハ直接又ハ奏請ニ依リ大總統之ヲ任命ス。直接ノ任命ヲ受ケタル者ハ簡任ニシテ奏請ニ依ル任命ヲ受ケタル者ハ薦任トス。其ノ他ノ推事及檢察官ハ總テ大總統奏請ニ基キ之ヲ任命シ薦任トス。大理院長ノ俸給ハ月額一千元トス。大總統ノ直接任命スル推事及檢察官ノ俸給ハ五階級ニ分レ月額最高一級六百元ヨリ各級ノ差額五十元ヲ以テ最低五級四百元ニ至リ奏請ニ依リ任命セラレタル推事及檢察官ノ俸給ハ十四階級ニ分レ月額最高三百六十元ヨリ最低百元ニ至ル。最高俸給ヲ受ケ三年ヲ勤務シタル總檢察長ハ特任ニ昇敍シ之ニ相當スル俸給ヲ受クルコトヲ得。大理院廷長ニシテ五年以上最高俸給ヲ受ケタル者ハ月額八百元ニ昇給セシムルコトヲ得。司法官ニハ總テ年功加俸アリ又之ニ關シ恩給ノ制度アリ。

(2) 書記官

一七〇 書記官（書記）ハ八階級ニ之ヲ分ツ。第一階級ヨリ第四階級迄ハ薦任トシ第五階級ヨリ第八階級ニ至ル者ハ委任トス。書記官ノ俸給ハ薦任官ニ在リテハ月俸百三十五元ヨリ三百六十元ニ至リ委任官ニ在リテハ月俸三十元ヨリ百二十元ニ至ル。三年乃至五年間勤務ニ精勵シタル者ニハ月俸十元乃至二十元ヲ加給ス。

(3) 承發吏

一七一 承發吏（執達吏）ニハ三階級アリ其ノ俸給ハ月俸十二圓ヨリ二十八圓ニ至ル。

(ㄊ) 司法官ノ懲戒

一七二 司法官ノ懲戒ニ關スル規則ヲ其ノ公布日附ト共ニ列記スレハ下ノ如シ。

(イ) 司法官懲戒法（千九百十五年十月十五日敎令ニ依リ公布）

(ロ) 司法官懲戒委員會審査規則（千九百十五年十二月十八日司法部令ニ依リ公布）

(ハ) 司法官懲戒處分執行令（千九百十八年五月十五日司法部令ニ依リ公布）

(ニ) 承發吏懲戒章程（千九百二十年五月二十七日司法部令ニ依リ公布）

一七三 是等ノ規則ハ司法官ニ對スル懲戒罰ノ形式及司法官懲戒委員會ニ依リテ審理裁決セラルル場合ノ手續ヲ規定セルモノナリ。此ノ委員會ハ大總統ノ最高司法官中ヨリ任命スル者ヲ以テ之ヲ組織ス。懲戒ハ司法裁判所ニ依リテ課セラルヘキ刑罰ト全然其ノ性質ヲ異ニスルモノニシ

テ法律ノ定ムル所ニ依レハ其ノ種別ハ官位褫奪、免職、降等、停職、轉職、減俸及譴責ナリ。

(十三) 律　師

一七四 律師（辯護士）及辯護ニ關スル諸規則ヲ其ノ公布日附ト共ニ列記スレハ次ノ如シ。

(イ) 律師考試令（千九百十七年十月十八日司法部令ニ依リ公布）

(ロ) 修正律師暫行章程（千九百二十三年八月十三日司法部令ニ依リ公布）

(ハ) 律師登錄暫行規則（千九百十二年九月十九日司法部令ニ依リ公布千九百十七年十一月二十七日同令ニ依リ修正）

(ニ) 律師懲戒委員會暫行規則（千九百十三年十二月二十七日司法部令ニ依リ公布千九百十六年十月二十七日同令ニ依リ修正）

(ホ) 無領事裁判權國律師出廷暫行章程（千九百二十年十二月二十四日司法部令ニ依リ公布千九百二十二年二月二十五日同令ニ依リ修正）

一七五 是等ノ規則ヲ見ルニ辯護士ノ職ニ就カントスル者ニ付定メタル要件ハ司法官ノ職務ニ就カムトスル者ニ付定メタルモノト實際ニ於テ同樣ニシテ辯護士及司法官志願者ニ對シテハ同一ノ試驗官試驗ヲ行フ。同規則ハ又免狀ノ交付、律師名簿、律師ノ義務、律師公會及律戒罰ニ關シテ規定ヲ設ク。領事裁判權ナキ國ノ人民タル外國辯護士ハ辯護ヲ爲スコトヲ許サルルト雖其ノ出廷シ得ルハ領事裁判權ナキ國ノ人民ニ關係アル事件ノミニ限定セラル。

(十四) 訴訟費用

一七六 訴訟費用規則ハ千九百二十年六月二十二日敎令ニ依リ初テ實施セラレタルカ後屢次修正ヲ受ク。卽チ千九百二十一年二月十二日同年十二月及千九百二十二年六月二十九日ニ於テ其ノ修正アリタリ。此ノ規則ハ普通ノ訴訟費用卽チ訴訟手數料、上訴費用、申請費用、執行費用、謄本下附料、證人呼出手數料及其ノ他ノモノノ額ヲ表記スルモノニシテ訴訟當事者ハ各其ノ行爲ニ依リ生シタル訴訟費用ヲ支拂フ義務アリ。但シ一切ノ費用ハ敗訴當事者ノ負擔トス。貧困ナル訴訟關係人ニハ裁判所ハ一切ノ訴訟費用ヲ免除スルコトヲ得。是等ノ費用ノ支拂ハ規定ノ訴訟費用ノ定額ニ依リ司法印紙ヲ購入シ之ヲ書類ニ添附シテ之ヲ爲ス。司法印紙ノ販賣ニ關シテハ千九百二十二年六月二十九日公布ノ二箇ノ敎令アリ。

(十五) 裁判組織ニ關スル一般的考察

一七七 此ノ標題ノ下ニ於テハ支那國ノ裁判制度其者ニ關スル考察ノミヲ取扱ヒ制度ノ實際的運用ニ付テハ第三部支那國ニ於ケル司法運用ニ於テ之ヲ述フヘシ。裁判制度ニ關聯シ第百八節ニ

於テ爲シタル批評ハ本節ニモ尙適用アリ。大體ニ於テ新式ノ支那國裁判制度ハ當初（支那國ノ新法律制度ト同シク）歐羅巴大陸諸國及日本國ノ制度ヲ模倣セムトシタルモノニシテ其ノ內容ハ相當滿足ナルモノナリシモ制度創設以來數多ノ變更アリ是等ハ多少行政事務ト司法事務トノ分界竝第一審裁判所ト上訴裁判所トノ管轄ノ分界ヲ紊ルニ至ラシメタリ。

(1) 行政官憲ニ依ル裁判所ノ監督及司法事務ノ處理

一七八 司法部カ各省司法機關ニ對スル監督權ノ大部分ヲ省長ニ委任シ省ノ最高裁判機關ニ之ヲ委ネサルハ司法事務ト行政事務トノ分界ヲ紊ラシムル素因タリ。卽チ省長ハ行政官ニシテ而モ司法部又ハ省ノ最高裁判機關ニ依リテノミ行使セラルヘキ省裁判所ニ對スル監督權ヲ自ラ行使スルモノナリ。尙省長ノ右監督權ノ行使ハ法院編制法第十六章第百五十七條及第百五十八條ト牴觸スルノ嫌アリ蓋シ同條ハ省長ヲ以テ司法事項ニ關スル監督官憲ト規定スルコトナキヲ以テナリ。省長カ罰金ヨリ六月ノ懲役ニ至ル刑罰ノ規定ヲ伴フ諸規則ヲ制定スルノ權ヲモ有スルコトハ既ニ之ヲ述ヘタリ（第六五節ノ(チ)參照）。尙縣知事ハ今日モ尙司法事項ニ關シ監督權ヲ有スルニ止マラス實際ニ於テ司法官トシテ行動ス。右ハ行政事務及司法事務ノ分界ヲ紊ル一例ナリ。警察法廷カ行政行爲トシテ特定ノ犯罪ヲ審理スルコト及警察ノ長ニ檢察官ト同樣ノ廣キ權限ヲ委任スルコトニ關スル規定亦然リ

(2) 管轄ノ分界ノ不明ナルコト

一七九 現在ノ裁判制度ニ在リテハ當初第一審及上訴ノ兩者ニ付明瞭ナル管轄ノ範圍ヲ有スル大理院、高等審判廳、地方審判廳及初級審判廳ヲ豫想セルモノナリ。支那國支府ノ緊縮政策及司法職員不足ノ結果ハ地方審判廳ヲシテ漸次初級審判廳ニ代ラシムルニ至リ一方高等審判分廳モ亦或ル場合ニ其ノ本來ノ上訴管轄ノ外ニ地方審判廳及初級審判廳トシテノ作用ヲモ兼掌セシメラルルニ至レリ。（司法條例第四百七十四頁千九百十五年五月十八日附ノ大總統ノ訓令及司法例規補遺第一卷十九頁千九百二十三年五月三日附司法部訓令參照）

(3) 縣知事法廷

一八〇 縣知事法廷ノ不滿足ナルコトハ一般ノ認ムル所ナリ。蓋シ縣知事カ檢察官及推事トシテ行政官ノ實行スルコトヲ不可トスル裁判事務ヲ處理シツツアル上之ニ配屬スル承審員ハ新式裁判所ノ推事ト同樣ナル訓練及地位ヲ有スルコトナキヲ以テナリ。更ニ承審員ハ試驗合格者ヨリ縣知事自身ノ選任セルモノナリ。又右法廷ニ在リテハ辯護ノ權利カ最モ必要ト認メラルルニ拘ラス却テ禁止セラレ民事事件ニ於ケル拘留ハ尙容認セラル。縣知事ハ初級管轄事件ニ付テハ假

令右事件カ五年以下ノ懲役ニ該當スルトキト雖判決書ヲ交付セスシテ判決ルコトヲ得トセラル。斯ノ如キ免除ハ他ノ裁判機關ニハ存セサル所ナリ。縣知事ノ不當ナル裁判ニ對シテハ上訴及覆審（刑事事件ニ於テノミ）ノ方法ニ依リ之ヲ救正スルノ制度アレトモ之ヲ以テ未タ充分トハ認メ難シ。之ニ加フルニ縣知事ハ其ノ行政官タル資格ニ於テ六十元迄ノ罰金及三十日迄ノ拘留ノ判決ヲ爲スコトヲ得。之ニ對シテハ上級行政官廳及北京ニ於ケル行政裁判所ニ行政上ノ不服ノ申立ヲ爲スコトヲ得ルノ外何等司法裁判所ニ對スル不服申立ヲ認ルコトナシ。支那國ニ於ケル訴訟ノ殆ト大部分カ縣知事法廷ノ管轄ニ歸スル事實ニ基因スル事態ハ須ラク之ヲ改善セサルヘカラス。

(4) 過渡的法廷及縣司法公署

一八一 縣知事衙門ニ附置セラルル司法公署其ノ他ノ過渡的法廷ハ暫行的ノ性質ノモノニシテ從テ充分トハ認メ難シ。蓋シ檢察官ノ事務ハ縣知事ニ委ネラルル所ニシテ其ノ審判官ハ普通ノ裁判所ニ於ケル裁判官ノ如キ法律上ノ素養ヲ有スルコトナキヲ以テナリ。上訴ニ關スル規定ニ付テモ亦非難アリ。卽チ特別ノ事情ニ依リ初級審判廳管轄事件ノ上訴ハ縣知事法廷、他ノ司法公署、地方審判廳及地方審判廳トシテ行動スル高等審判分廳ニ於テ之ヲ管轄ス。

(5) 軍法會議

一八二 陸軍及海軍軍法會議ハ軍役ニ在ル者ノ軍事的及非軍事的犯罪並違警罪ノ事件ニ付管轄權ヲ有ス。此ノ結果トシテ軍人ニ非サル一般人ヨリ軍人ニ對シテ提出スル刑事訴訟ハ之ヲ陸軍又ハ海軍ノ軍法會議ニ提起セサルヘカラサルモノトス。軍役ニ在ル一切ノ者ヲ普通裁判所ノ管轄ヨリ除外シタルコトハ動モスレハ軍人ニ非サル一般人ニ對シ裁判權ヲ行使スル軍隊ノ權力ヲ增大セシムルノ結果ヲ招來スルモノナリ。軍法會議ハ又平時ニ時テモ多數ノ事件ニ對シ一般人ニ對シ裁判權ヲ行使スルモノニシテ緊急ノ場合ニ於テハ一切ノ事件ニ對シ裁判權ヲ行使ス。而シテ審理ハ之ヲ公開セサルノミナラス辯護士ヲ禁止シ上訴ヲ禁シ又六百打迄ノ笞刑ヲ科シ得ルコトヲ容認ス。平時ニ於テ一般人民ノ關係アル事件ヲ普通裁判所ニ非サル機關ヲシテ管轄セシムルコトハ一般人ニ對スル軍隊ノ權力ヲ一層强大ナラシムルモノタリ。而シテ緊急ノ場合ニ於テ爲シタル軍法會議ノ裁判ニ付テモ戒嚴撤去後普通裁判所ニ於テ之ヲ再審セシムルコトナシ。戒嚴期間中又ハ其ノ後ニ於テ一般人民ノ受ケタル損害ハ軍法會議ニ私訴ヲ提起スル以外救正ノ途ナシ。

(6) 警察法廷

一八三 支那國ニ於ケル警察ハ特別ノ地位ヲ占メ他國ノ警察ニ依リ行使セラルルヨリモ甚タ大ナ

ル權力ヲ有ス。警察法廷ノ行爲ハ司法警察トシテ行動シタル場合ノ外總テ行政行爲ト認メラレ從テ警察官署ノ行爲ニ對シテハ上級行政官廳及行政裁判所ニ行政上ノ不服ノ申立ヲ爲ス以外ニ上訴ノ途ナシ。加之支那國ノ警察官署ハ立法及司法ノ範圍ニモ其ノ權力ヲ及ホスコトアリ。即チ警察官署ハ規則ヲ設ケ同規則違反ニ對シ三十日（北京ニ在リテハ六十日）以內ノ拘留ノ罰ヲ科スルコトヲ得。右處罰ニ對シテハ普通裁判所ニ上訴ノ途ナシ。違警罰法ノ違反ニ付テモ警察法廷之ヲ審理シ普通裁判所ニ上訴スルコトヲ認メス。

一八四 上ニ述ヘタル警察ノ權力ハ是等ノ警察官吏カ法規ノ授權ニ依リ司法警察ト爲リ且檢察官ノ資格ニ於テ犯罪ノ取調ヲ行フ場合ニ於テ更ニ擴大セラル。警察官吏ハ檢察官ノ資格ニ於テ人ヲ逮捕シ且何等普通裁判所ノ指揮ヲ受クスシテ取調ヲ爲スコトヲ得ルモノナルカ斯ノ如キ事態ハ之ヲ改善スルコトヲ要ス。

(7) 行政裁判所

一八五 支那國ノ制度ノ下ニ在リテハ官吏ノ違法行政行爲ニ對シテハ北京ニ在ル行政裁判所（平政院）ニ行政訴訟ヲ提起スル外救正ノ途ナシ。支那國ノ廣大ナルニ加フルニ支那國全土ニ唯一箇ノ行政裁判所アルニ過キサルカ爲官吏ノ不法ナル行政行爲ニ對スル賠償ノ要求ハ被害者ニ取リテ至難ナリトス。茲ニ注意スヘキコトアリ卽チ千九百二十三年ノ憲法第九十九條ハ行政裁判事件ハ普通ノ裁判所ニ於テ管轄スヘシト定ムルコト之ナリ。

(八) 領事裁判權ナキ國ノ人民ニ對スル特別ノ規則

一八六 東三省（滿洲）特別區域法院ハ支那國ノ法律及裁判制度ヲ支那國裁判權ニ服スルニ至リタル外國人ニ一層適合スルモノト爲シ且外國人ヲ知ラス知ラスノ間ニ支那國裁判所ニ順應スルニ至ラシメムカ爲支那國政府ノ爲シタル努力ノ結果ヲ反映スルモノナリ。數千ノ外國人ノ居住スル地域ニ是等ノ裁判所ヲ設ケタル外支那國政府ハ第八十五節ニ述ヘタルカ如キ特別ノ法規ヲ以テ領事裁判權ナキ國ノ人民ヲ能フ限リ支那各國地ニ於テ新式裁判所ヲシテ管轄セシメ其ノ以外ノ裁判所ノ管轄ニ服セシメサルコトト爲シタリ。又通譯ヲ特設シ且獨逸人ハ警察法廷ノ管轄ニ服セシメサルコトトセリ。

五、監獄制度

(一) 概說

一八七 監獄制度改善ノ目的ヲ以テ支那國ハ清朝ノ末期ニ於テ新式監獄ノ設置ヲ計畫スル所アリタルカ千九百十二年司法部ノ設立ト共ニ右計畫ハ更ニ考慮ヲ加ヘラレタリ。千九百十二年ニ於

テハ約一千七百ノ監獄支那國ニ存在シ其ノ多クハ省ノ首府及縣ニ設ケラレタルモノナリシカ同年以後北京、各省ノ首府及大都市ニシテ三百人乃至一千人ノ囚人ヲ有スル地ノ官憲ハ新式ノ監獄ヲ設立スルノ義務ヲ負ハシメラレタリ。其ノ後設立セラレタル新式監獄ノ數六十三ニ達ス。然レトモ多少新式ノ改善ヲ施シタリトハ言ヘ今尚舊式ナル六百ノ監獄現存セリ。監獄ノ數及所在地ヲ示シタル一覽表ハ附錄トシテ添附セリ。

一八八　新式裁判所ニハ新式監獄ノ外ニ審理ヲ俟チ又ハ之ヲ受ケツツアル被告人及民事被告人ヲ拘留スヘキ看守所（拘置場）ヲ附置ス。聽ク所ニ依レハ看守所ノ存在セサル土地ニ於テハ是等ノ者ハ監獄內特別ノ區劃中ニ拘置セラルル趣ナリ。警察法廷ノ判決シタル者ハ又警察署ニ附置スル特別ノ拘置場ニ之ヲ拘置ス。看守所規則ハ初メ千九百十三年一月二十八日敎令ニ依リ制定セラレ千九百十三年二月八日及更ニ千九百十四年八月十二日ノ敎令ニ依リ修正セラレタリ。

一八九　支那國ニハ精神病者拘置ニ關スル何等ノ確定的法規ナク又政府ハ斯ノ如キ者ヲ保護スヘキ何等ノ設備ヲモ設ケサルカ如シ。支那國委員ハ千九百二十六年三月二十三日開カレタル委員會ノ會議ニ於テ北京ニハ警察ノ管理スル保護所アリト述ヘタレトモ支那國ノ他ノ地方ニ於ケル同樣ノ設備ニ關シテハ確實ナル報道ニ接セサリキ。

(二)　監獄行政及司獄官

一九〇　支那國監獄ハ司法部及省長ノ一般監督ノ下ニ在リ。司法部ハ新式監獄ノ設立及舊式監獄ノ存廢ヲ決定スルノ權アリ且監獄ノ視察ノ爲メ官吏ヲ派遣スルコトヲ得。高等檢察長ハ司法部ヨリ其ノ轄管ノ下ニ在ル監獄ヲ監督スルノ權ヲ委任セラル。典獄長及看守所ノ長ハ隨時報告ヲ檢察廳長ニ提出スルコトヲ要ス。東三省（滿洲）特別區域ニ於テハ監獄監督ナル一官吏アリ常時各地ヲ巡回シテ監獄行政ヲ監督シ且其ノ結果ヲ報告ス。

一九一　新式裁判所ノ未タ設置セラレサル地方ノ舊式監獄及看守所ハ縣知事ノ監督ニ屬シ司法部直接ノ監督ニ服スルコトナシ。縣知事ハ隨時高等檢察廳及法規ニ依リ定メラレタル其ノ他ノ官吏ニ其ノ管轄ノ下ニ在ル監獄及看守所ノ狀況ヲ報告スル義務アリ。

一九二　新式監獄ノ職員ハ典獄、看守長、看守及醫師ヨリ成ル。舊式監獄及看守所ハ典獄及其ノ監督ノ下ニ在ル看守ノ管理スル處トス。

(三)　監獄及囚人ニ關スル規則

一九三　監獄及囚人ニ關スル規則ハ千九百十三年十二月一日司法部令ヲ以テ公布セラレタル所ニシテ總則、收監、監禁、戒護、勞役、敎誨及敎育、休養及醫治、接見及書信、保管、賞罰、赦

免及假釋、釋放並死亡ニ關スル諸項ニ付規定ヲ爲ス。右ノ外囚人ノ假釋及保釋ニ關スル特別ノ規則アリ。假釋ニ關スル規則ハ千九百十三年二月十五日ノ司法部令ニ依リ、保釋ニ關スル規則ハ千九百二十年十二月七日司法部令ニ依リ公布セラレタルモノナリ。前者ハ如何ナル手續及條件ヲ以テ囚人ヲ假ニ釋放スヘキカヲ定メタルモノニシテ後者ハ保釋ニ關シ同樣ノ規定ヲ定ムルモノナリ。

(四) 監獄職員ニ關スル規則

一九四 監獄職員ニ關スル規則ヲ其ノ公布日附ト共ニ列記スレハ左ノ如シ。

(イ) 監獄官考試暫行章程（千九百十九年六月二十日ノ司法部令ニ依リ公布）
(ロ) 監所職員任用暫行章程（千九百十九年四月二日ノ教令ニ依リ公布）
(ハ) 監獄看守考試規則（千九百十二年十二月七日ノ司法部令ニ依リ公布）
(ニ) 監獄看守教練規則（千九百十二年十二月七日ノ司法部令ニ依リ公布）
(ホ) 監所職員官等法（千九百十九年十二月四日ノ教令ニ依リ公布）
(ヘ) 監所職員官俸法（千九百十九年十二月四日ノ教令ニ依リ公布）
(ト) 監所職員懲獎暫行章程（千九百十九年四月二日ノ教令ニ依リ公布）

一九五 通則トシテ監獄及看守所ノ職員ハ總テ試驗合格者ノ中ヨリ任用セラルルモノトス。二十歲以上ノ者ニシテ司法部ノ承認シタル監獄學校ニ於テ課程ヲ終了シタル者又ハ一年半以上外國若ハ支那ノ法律學校ニ於テ修學シ其ノ證書ヲ有スル者又ハ本屬長官ノ任命ニ依リ官吏ノ職ニ在リタル者ニ非サレハ試驗ヲ受クル資格ナシ。試驗ハ豫備試驗及本試驗トス。豫備試驗ノ科目ハ漢文ニシテ本試驗ノ科目ハ監獄學、監獄法、刑法、刑事訴訟法、刑事政策及監獄統計ナリ。下級監獄及看守所職員ノ試驗ハ其ノ科目之ト同樣ナレトモ之ヨリ稍程度低シ。監獄及看守所職員ノ俸給ハ月額三十元ヨリ百元ニ至ル。三年間勤務シ功績顯著ナル者ニハ月額十元乃至二十元ヲ增給スルコトヲ得。監獄及看守所ノ長ハ奏請ニ依リ大總統之ヲ任命ス。其ノ他ノ監獄及看守所職員ハ本屬長官ニ於テ之ヲ任命ス。

(五) 監獄制度ニ關スル考察

一九六 新式監獄及看守所ノ構成、監獄職員ノ試驗及任用ノ手續並囚人ノ取扱ニ關スル諸規則ハ大體ニ於テ充分ト認メラル。監獄制度ニ對シ批評ヲ加ルコトヲ得トスレハ其ハ其ノ實際上ノ運用ニ關スヘク制度其ノモノニ關スルモノニ非ス。右ノ趣旨ニ依ル批評ハ本報告書第三部支那國ニ於ケル司法運用手續ニ於テ之ヲ爲スヘシ。而シテ新式監獄及看守所カ支那國監獄及看守所ノ

一小部分ヲ成スニ過キスト雖支那國監獄制度ノ改革ニ對スル模範タルモノナルカ故ニ新式監獄及看守所ノ組織及設備ハ他ノ新式ナラサル監獄及看守所ヨリモ良好ナルモノト推察シテ可ナルヘシ。

省別	廳別	處在地	法官員額						備考
			院長及廳長	庭長	推事兼監督	推事	檢察長	監督檢察官	檢察官	
京師	大理院	北京	一	七		三六				
	總檢察廳	同上								
高等廳	同上	同上		三		一〇				
地方廳	同上	同上	一	四		二五	一		二〇	
西郊地方分廷		西郊				二			二	
涿縣地方分廷		涿州				一			一	
武清地方分廷		武清				一			一	
順義地方分廷		順義				一			一	
直隸高等廳		省域	一	四		八	一		四	

省別	廳別	處在地	法官員額									備考
			院長及廳長	庭長	監督推事	推事	檢察長	監督檢察官	檢察官			
直隸	第一高等分廳	大名	一	一	一	九	一	一	七			
天津地方廳	天津地方廳	天津	一	二	一	三	一	一	二			
天津地方分廷	天津地方分廷	天津	一	一	一	三	一	一	二			
保定地方廳	保定地方廳	保定	一	一	一	三	一	一	二			
萬全地方廳	萬全地方廳	萬全	一	一	一	三	一	一	二			
奉天	高等廳	省城	一	一	一	九	一	一	四			
藩陽地方廳	藩陽地方廳	潘陽	一	一	一	八	一	一	四			
營口地方廳	營口地方廳	營口	一	一	一	三	一	一	二			
安東地方廳	安東地方廳	安東	一	一	一	二	一	一	一			
遼陽地方廳	遼陽地方廳	遼陽	一	一	一	三	一	一	二			

吉林												
高等廳	省城	一	一	一	三	一	一	一	六	一	一	三
蓋平地方分廷	蓋平	一	一	一	一	一	一	一	一	一	一	一
昌圖地方分廷	昌圖	一	一	一	一	一	一	一	一	一	一	一
東豐地方分廷	東豐	一	一	一	一	一	一	一	一	一	一	一
撫順地方分廷	撫順	一	一	一	一	一	一	一	一	一	一	一
通化地方廳	通化	一	一	一	二	一	一	一	二	一	一	一
復縣地方廳	復縣	一	一	一	二	一	一	一	二	一	一	一
海龍地方廳	海龍	一	一	一	一	一	一	一	一	一	一	一
遼陽地方廳	遼陽	一	一	一	一	一	一	一	一	一	一	一
洮南地方廳	洮南	一	一	一	一	一	一	一	一	一	一	一
鐵嶺地方廳	鐵嶺	一	一	一	一	一	一	一	一	一	一	一
錦縣地方廳	錦縣	一	一	一	一	一	一	一	一	一	一	一

省別	廳別	處在地	法官員額							備考
			院長及庭長	推事兼監督	推事	檢察長	檢察官兼監督	檢察官		
吉林	第一高等分廷	依蘭	一	一	三	一	一	一		
	第二高等分廷	延吉	一	一	四	一	一	一		
	吉林地方廳	吉林	一	一	七	一	一	四		
	長春地方廳	長春	一	一	一	一	一	四		
	琿春地方廷	琿春	一	一	一	一	一	一		
	六道溝地方廷	六道溝	一	一	一	一	一	一		
	濱江地方廳	濱江	一	一	三	一	一	二		
黑龍江	高等廳	省城	一	一	四	一	一	二		
	第一高等分廳	瓊琿	一	一	三	一	一	一		
	龍江地方廳	龍江	一	一	五	一	一	三		

省別	廳別	處在地	法官員額							備考
			院長及庭長	推事兼監督	推事	檢察長	檢察官兼監督	檢察官		
呼蘭地方廳		呼蘭	一	一	三	一	一	一		
河南	高等廳	省城	一	一	七	一	一	三		
	第一高等分廳	信陽	一	一	二	一	一	一		
	開封地方廳	開封	一	一	六	一	一	二		
	洛陽地方廳	洛陽	一	一	三	一	一	二		
山東	高等廳	省城	一	一	八	一	一	三		
	濟南地方廳	濟南	一	一	九	一	一	五		
	福山地方廳	福山	一	一	四	一	一	三		
	青島地方廳	青島	一	一	三	一	一	二		
山西	青島地方分廷	李村	一	一	一	一	一	一		
	高等廳	省城	一	三	六	一	一	三		

省別	廳別	處在地	法官員額								備考
			院長及廳長	庭長	監督推事	推事	檢察長	監督檢察官	檢察官		
山西	第一高等分廳	安邑縣運城	一	一	一	四	一	一	一		
	第二高等分廳	大同	一	一	一	九	一	一	四		
	太原地方廳	太原	一	一	一	四	一	一	三		
江蘇	高等廳	吳縣	一	一	一	二	一	一	一		
	第一高等分廳	淮陰	一	一	一	四	一	一	一		
	江寧地方廳	江寧	一	一	一	四	一	一	一		
	上海地方廳	上海	一	一	一	一〇	一	一	五		
	吳縣地方廳	吳縣	一	一	一	四	一	一	二		
	丹徒地方廳	丹徒	一	一	一	四	一	一	二		
安徽	高等廳	省城	一	二	一	五	一	一	三		
	第一高等分廳	鳳陽	一	二	一	四	一	一	三		
	懷寧地方廳	懷寧	一	一	一	四	一	一	二		
	蕪湖地方廳	蕪湖	一	一	一	四	一	一	二		
江西	高等廳	省城	一	二	一	五	一	一	三		
	第一高等分廳	贛縣	一	二	一	五	一	一	三		
	南昌地方廳	南昌	一	二	一	四	一	一	三		
	九江地方廳	九江	一	二	一	四	一	一	二		
浙江	高等廳	省城	一	四	一	七	一	一	三		
	第一高等分廳	永嘉	一	二	一	二	一	一	二		
	第二高等分廳	金華	一	二	一	二	一	一	二		
	杭縣地方廳	杭縣	一	二	一	五	一	一	三		

省別	廳別		法官員額							
			院長及廳長	庭長	推事監督	推事	檢察長	檢察官監督	檢察官	備考
	鄞縣地方廳	鄞縣	一							
	永嘉地方廳	永嘉	一							
	金華地方廳	金華	一	一	一		一	一	二	
	紹興地方分廷	紹興				四				
	嘉興地方分廷	嘉興				三	一			
	吳興地方分廷	吳興				二				
	臨海地方分廷	臨海				一				
	衢縣地方分廷	衢縣				一				
	建德地方分廷	建德								
	麗水地方分廷	麗水								

省別	廳別		法官員額							
			院長及廳長	庭長	推事監督	推事	檢察長	檢察官監督	檢察官	備考
福建	高等廳	省城	一			五	一		三	
	第一高等分廳	思明		二		二				
	閩侯地方廳	閩侯	一			七	一		五	
	閩侯地方分廷	同上				三			一	
	思明地方廳	思明	一			四	一		二	
	蒲田地方廳	蒲田	一			三	一		一	
	晉江地方廳	晉江	一			三	一		一	
	龍溪地方廳	龍溪	一			三	一		一	
	龍溪地方分廷	石碼				一				
湖北	高等廳	省城	一			六	一		三	
	第一高等分廳	宜昌		四						
	第二高等分廳	襄陽								

省別	廳別		法官員額								備考
			院長及廳長	庭長	推事兼監督	推事	檢察長	檢察官兼監督	檢察官		
湖南	武昌地方廳	武昌	一	一		四	一		二		
	夏口高等廳	夏口	一	三		七	一		四		
	高等廳	省城	一	二		八	一		四		
	第一高等分廳	沅陵			一	三		一			
	長沙地方廳	長沙	一	二		五	一		四		
	常德地方廳	常德	一	一		四	一		三		
陝西	高等廳	省城	一	二		四	一		三		
	第一高等分廳	南鄭		一	一	三		一			
	長安地方廳	長安	一	一		五	一		四		
	南鄭地方廳	南鄭	一	一		三	一		二		
甘肅	高等廳	省城	一	二		四	一		三		
	第一高等分廳	平涼			一	三		一			
	第二高等分廳	天水			一	三		一			
	第三高等分廳	寧夏			一	三		一			
	皋蘭地方廳	皋蘭	一	一		六	一		三		
四川	高等廳	省城	一	二		四	一		三		
	第一高等分廳	巴縣			一	三		一			
	第二高等分廳	雅安			一	三		一			
	第三高等分廳	濾縣			一	三		一			
	第四高等分廳	塔城			一	三		一			
	成都地方廳	成都	一	一		六	一		三		
	巴縣地方廳	巴縣	一	二		六	一		三		

省別	廳別		法官員額							備考
			院長及廳長	庭長	推事監督	推事	檢察長	檢察官監督	檢察官	
廣東	瀧縣地方廳	瀧縣	一	一		五	一		二	
	高等廳	省城	一	四		八	一		四	
	自貢地方廳	自貢	一	一		四	一		二	
	高等分廳	澄海			一	三				
	廣州地方廳	廣州	一	二		八	一		五	
	澄海地方廳	澄海	一	一		四			二	
廣西	高等廳	省城	一	二		四			二	
	第一高等分廳	桂林			一					
	桂林地方廳	桂林	一	一		五	一		三	
雲南	高等廳	省城	一	二		六	一		三	
	昆明地方廳	昆明	一	一		七	一		四	
貴州	高等廳	省城	一	二		五	一		三	
	貴陽地方廳	貴陽	一	一		六	一		四	
	鎮遠地方廳	鎮遠	一	一		四	一		一	
	郎岱地方廳	郎岱	一	一		四	一		一	
東省特別區域	高等廳	哈爾賓	一	二		五	一		二	
	地方廳	同上	一	二		八	一		四	
	第一地方分廷	橫道河子				一			一	

省別	廳別		法官員額							備考
			院長及廳長	庭長	推事監督	推事	檢察長	監督檢察官	檢察官	
計	第二地方分廷	海拉爾	—	—	—	—	—	—	—	
	第三地方分廷	滿洲里	—	—	—	—	—	—	—	
	一三九		八八	一四六	三八	五九〇	八六二	三七三〇二	四三一	
							一、二九三			

附錄第二　支那新式監獄一覽表（所在及收容人員）

名稱	所在省	所在市	收容人員
北京第一監獄	京兆	北京	一〇〇〇
北京第二監獄	同	同	一〇〇〇
北京第三監獄	直隸	保定	五〇〇
京兆第一監獄	同	北京	二五〇
京兆第二監獄	同	涿州	一五〇
直隸第一監獄	同	天津	五〇〇
直隸第二監獄	同	全	三〇〇
天津分監	同	天津	七〇〇
保定分監	同	保定	二〇〇
奉天第一監獄	奉天	奉天	一〇〇〇
奉天第二監獄	同	遼陽	五〇〇

奉天第三監獄	同	鐵嶺	四〇〇
奉天第四監獄	同	營口	四〇〇
奉天第五監獄	同	昌圖	三〇〇
奉天第六監獄	同	錦縣	一〇〇
奉天第七監獄	同	安東	二〇〇
奉天第八監獄	同	海龍	一〇〇
奉天第九監獄	同	洮南	一〇〇
奉天第十監獄	同	遼陽	五〇〇
奉天第十一監獄	同	西安	一〇〇
奉天第十二監獄	同	復縣	三〇〇
奉天第十三監獄	同	新民	三〇〇
奉天第十四監獄	同	興京	三〇〇
吉林第一監獄	吉林	吉林	五〇〇
吉林第二監獄	同	長春	五〇〇
吉林第三監獄	同	哈爾賓	五〇〇
黑龍江第一監獄	黑龍江	龍江	三〇〇
山東第一監獄	山東	濟南	五〇〇
山東第一監獄分監	同	濟南	一〇〇
山東第二監獄	同	芝罘	五〇〇
山東第三監獄	同	濟寧	三〇〇
山東第四監獄	同	益都	三〇〇
山東第四監獄分監	同	青島	一〇〇
開封監獄	河南	開封府	三〇〇
開封監獄分監	同	同	一〇〇
山西第一監獄	山西	大原府	一〇〇〇
山西第二監獄	山西	運城	三〇〇
山西第三監獄	同	大同	三〇〇
山西第四監獄	同	大谷	三〇〇

福浙江江安安安江江江山
建江西第一監獄分監
第第一第第第一第第第第
一一二一三二一四三二一五
監監監監監監監監監監
獄獄獄獄獄獄獄獄獄獄

福浙同同江同同同安同同同江同

建江　西　徽　蘇

福杭九同南鳳蘇同安南蘇上南汾

州州江　昌陽湖　慶通州海京陽

三五〇〇　二〇〇〇　三〇〇　一〇〇　三〇〇　三〇〇　五〇〇　五〇〇

貴雲甘甘陝陝陝鄰陝陝陝湖湖湖湖
州南肅肅西西西西西西北北北北
第第第第第第第第第第第第
一一一二一六五四三二一分監
監監監監監監監監監監監
獄獄獄獄獄獄獄獄獄獄獄

貴雲同甘同同同同陝同同湖同

州南　肅　西　北

貴雲武蘭甘鳳安豫南長宜同武同
南
陽府威州泉翔康林鄉安昌　昌

三〇〇　三〇〇　二〇〇　二〇〇　二〇〇　二〇〇　二〇〇　五〇〇　二〇〇

貴州第二監獄　同　鎮遠
廣西第一監獄　廣西　桂林　三〇〇　五〇〇
廣西第二監獄　同　南寧　三〇〇
四川第一監獄　四川　成都　五〇〇
綏遠第一監獄　綏遠　綏遠　三〇〇
察哈爾第一監獄　察哈爾　張家口　三〇〇
哈爾賓第一監獄　東省特別區域　哈爾賓　三〇〇

附錄第三　支那新舊監獄比較表

表中(A)ハ設備最完全ナルモノ(B)ハ普通ノモノ(C)ハ分監ヲ示スモノトス。舊監獄前清時代設立ノ監獄ヲ示ス。

省名	新監 A	新監 B	新監 G	舊監	計
京師(北京)	三	一	一	一	三
京兆	一	二	一	一	二
直隸	一	一	二	一一六	一二〇
奉天	一	一三	一一	四二	五六
吉林	一	二	一	三三	三六
黑龍江	一	一	一	三七	三八
山東	二	二	二	一〇六	一一二
河南	一	一	一	一〇七	一〇九
山西	一	四	一	七二	七七
江蘇	一	三	一	五六	六〇
安徽	一	二	一	五七	六一
江西	一	一	一	七九	八一
浙江	一	一	一	七四	七五
福建	一	一	一	六二	六五
湖北	一	一	一	六七	七〇
湖南	一	一	一	七五	七五

陝西	—	六	—	—	六
甘肅	—	二	—	六六	六八
新疆	—	—	—	四〇	四〇
四川	—	一	—	一四五	一四六
廣東	—	—	—	九四	九四
廣西	—	二	—	七五	七七
雲南	—	一	—	九五	九六
貴州	—	二	—	七九	八一
熱河	—	—	—	一四	一四
綏遠	—	一	—	七	八
察哈爾	—	一	—	六	七
東省特別區域	—	一	—	—	一
計	一四	四九	二一	一六二二	一六九九

第三部　支那國ニ於ケル司法運用手續

緒言

一九七　本報告ノ第二部ニ於テハ支那國法規及裁判制度ノ問題ヲ理論的立場ヨリ觀察シ責任アル職員ニ於テ之ヲ實際ニ運用スル態様其ノモノニ付テハ何等言及スル所ナカリキ。不完全且不滿足ノモノトシテ揭記シタル法規ハ假令實施ヲ見タリトスルモ其ノ運用亦固ヨリ不充分且不滿足ナルヘキコト論ヲ俟タス。斯ノ如キハ裁判及監獄制度ニ付テモ同様トス。從テ司法運用ノ問題ノ論議ニ當リテハ實際ト理論ト背馳セスト認メラルルモノニハ敢テ言及セス。委員會ハ實際ノ手續カ法律及規則ノ其ノ運用ニ付指示シタル法規適用ノ標準ト合致セスト認メラルル事項ニ付テノミ論評ヲ加フルコトトスヘシ

一九八　以下ニ引照スル大總統ノ命令及司法部令ニ徴スルトキハ支那國政府カ各種ノ不當ナル措置ヲ注意スルニ至リ之カ是正手段ヲ講スル所アリタルコトヲ知ルヘシ。

一九九　民國創始當時ニ於テハ支那國ノ現代的法律及裁判制度ハ尚幼稚ノ域ヲ脫セサリキ。右ハ數年前清朝ノ下ニ於テ愛國的ナル支那人ノ團體ニ依リテ創始セラレタルモノニシテ右團體ハ尚

其ノ事業ヲ繼續シツツアリタシシナリ。民國當初ノ四年間ハ政治組織相當鞏固ナリシト雖最近十年間ハ支那國ノ秩序大ニ亂レ中央政府ノ權威又之ニ伴ヒテ減少シ地方官憲又恣ニ權力ヲ濳取セリ。殊ニ千九百二十四年ノ秋ヨリ千九百二十六年ノ春ニ至ル間ハ中央ノ行政權ハ軍事官憲ノ維持スル臨時政府ノ支配下ニ在リタリ。千九百十七年ノ秋以來ノ廣東廣西兩省ノ官憲ノ中央政府ヲ否認シタルニ止マラス其ノ他ノ省モ亦隨時中央政府ヲ否認シツツ今日ニ至レルモノトス。

二〇〇　實力アル中央政府ノ存セサリシニ加ヘテ過去數年來支那國各地ニ內亂ノ續發スルアリ。本委員會開會後ニ於テモ再度首都北京トノ鐵道交通杜絕シ爲ニ委員會ノ計畫セル視察旅行ハ六週間延期セラレタルコトアリ。政狀甚不安ナリシ爲支那國各地ニ匪徒橫行シ一般人民ノ生命財產ニ對スル脅威愈增大セリ。

二〇一　民國ノ下ニ於テハ立法ハ議會ノ權限トセラレタレトモ右機關モ亦未タ整頓セラルルニ至ラス又短命ナルヲ常トシ臨時約法、千九百二十三年ノ憲法、選擧法及其ノ他ノ二三ノ法律ヲ作成セル外立法事業ニ貢獻スル所殆トナカリキ。議會トシテハ參議院、三度開會且解散セラレタル第一議會及第二議會アリ。此ノ外ニ修正約法ヲ起草セル憲法會議及臨時執政段祺瑞ノ善後會議ノ如キ二三ノ民意代表機關アリタレトモ事情斯ノ如クナリシカ爲立法ノ事項ハ概ネ必然的ニ大總統、司法總長及其ノ他ノ閣員ノ手ニ歸スルニ至リ而シテ內閣ノ存續期間ノ不定ナリシ結果トシテ立法政策ハ到底永久的ナルコトヲ得サリキ。

二〇二　上記ノ不整頓ヨリ生シタル諸般ノ結果ノ中ニハ司法ノ運用ニ重大ナル關係ヲ有スルモノ少カラス。第一ニ政府ノ中樞カ軍閥ノ手ニ落チ彼等ハ其ノ實權アル地位ヲ利シテ恣ニ行政、立法及司法上ノ權力ヲ濫行シ行政、立法、司法三權ノ分界ヲ攪亂シタリ。第二ニ政府ノ財政缺乏シ遂ニ司法及警察ノ職員ニ支拂フヘキ財源ヲスラ往々之ヲ缺クニ至レリ。第三ニ法律及裁判制度ハ中央政府ヲ承認セサル各地ニ獨立ノ法規及裁判所制定セラルルアリテ著シク其ノ統一ヲ阻害セラレタリ。第四ニ法律及裁判ノ新組織ノ擴張及完成ハ上揭ノ事情ノ爲ニ停止セラルルニ至レリ。

二、軍事官憲ノ干涉

二〇三　今日ノ支那國ニ於テ司法ノ正シキ運用ヲ阻害スル主要ナル原因ノ一ハ一般文治機關各部ニ對スル軍閥ノ巨頭ノ干涉ナリ。是等ノ軍閥ノ巨頭ハ現ニ自己ノ軍隊ヲ擁シテ常ニ鬪爭ニ從事シ其ノ暫時支配スル所トナレル地域ニ居住スル人民ノ生命、自由及財產ニ對シ殆ト無限ナル權限ヲ行使ス。此ノ權力ニ依リ彼等ハ外國ノ指揮ヲ受クルコト大ナル海關行政ノ如キ特定ノ事務

ヲ除ク中央及地方ノ一般行政事務ニ關與スル一切ノ職員ノ任免ヲ直接間接ニ統制シツツアリ。或ル軍閥ニ依リテ任命セラレタル一般文官カ其ノ敵方ノ占領スルニ至リタル地域(北京亦然リ)ヨリ安全ナル區域ニ避難逃亡スルノ事例ハ今日尙屢々見ル處ナリ。

二〇四 一般行政ニ對スル軍憲ノ干與ハ裁判制度ニモ及ヒ遂ニ其ノ獨立ヲ脅威スルニ至レリ。斯ノ點ニ關スル不當司法ハ戒嚴ニ關スル法規ニ依ラスシテ宣告セラルル戒嚴ニ依リテ生スルコトアリ。又或ル場合ニ於テハ單ニ公然權力ヲ冒用セルカ爲生スルコトアリ。又軍憲ノ政府財政ヲ管理スル結果裁判所カ其ノ財政的支持ヲ軍憲ニ仰クノ事實ニ之ヲ見ルコトヲ得ヘシ。

二〇五 支那國法規自體(一五三節參照)ノ效果ニ依リ軍憲ハ法律上普通ノ司法裁判所ノ管轄ヨリ免除セラルル地位ニ在ルモノナルカ彼等ハ其ノ權力ニ依リ實際ニ於テ屢々一切ノ司法裁判所ノ管轄ヨリ免除セラレツツアリ。此ノ免除ハ軍憲ノ知友及軍憲ニ利害關係ヲ有スル商人及商事團體ニモ擴張セラレ易シ。之ニ對スル充分ノ證據ハ軍憲カ絕ヘス犯罪ヲ犯スモ何等處罰セラルルコトナキ事實ニ見ルヲ得ヘシ。自己ノ軍隊ヲ有スル軍憲ニ賠償請求ヲ爲サムトセハ右ハ該軍憲ノ統制ニ從フ軍法會議ニ對シテ之ヲ爲スコトヲ要スルカ故ニ被害者タル一般人ハ到底其ノ目的ヲ達スルコトヲ得サルモノトス。

二〇六 普通ノ司法裁判所ノ處理スヘキ事件ニ對シ武官又ハ警察官ノ不當ニ管轄ヲ及ホスコトニ關シ支那國大總統ハ屢々訓令ヲ發シタリ。卽チ右命令ニ於テ立法、行政及司法ノ權ハ互ニ分立スヘキモノナルニ拘ハラス民事及刑事ノ事件ニ對スル軍憲又ハ警察官ノ不當管轄ノ實例最近ニ於テ大總統ノ注意スル所トナリタルニ依リ將來ニ於テハ斯ノ如キ不當ナル實例ヲ繰返スヘカラスト爲シタリ。(司法例規追補第一卷五百四十一頁千九百二十三年一月十六日大總統ノ訓令第百七十四號參照)。

二〇七 上ニ述ヘタル如キ事態ニ對スル軍憲ノ無頓着ナル態度ハ治外法權委員會ノ北京ニ於テ開催中及其ノ直前ニ於テ北京市內及各省內ニ於テ軍憲カ司法上ノ原則ヲ全ク無視シテ遂行シタル死刑及其他ノ行動ニ徵シ明カナルヲ以テ委員會カ之ニ言及セサルハ却テ其ノ義務ヲ怠ルモノト爲ルヘキニ依リ此ノ種ノ行爲中左記ノ事件ヲ玆ニ說明スヘシ。

(一) 山東高等審判廳長張志ノ事件

二〇八 千九百二十五年十二月五日ノ夜山東高等審判廳長判事張志ハ同省ノ首都濟南府ニ在ル自宅ニ於テ督軍ノ命ニ依リ敵軍方ト通シタルノ理由ヲ以テ逮捕セラレ翌朝正式ノ審問ヲ受クルコトナクシテ射殺セラレタリ。(殺サレタル廳長ノ後任トシテ督軍ハ自己ノ軍事裁判所ノ監督判事

ヲ任命セリ。）委員會ノ得タル報告ニ依レハ、死刑執行ニ付テハ何等取調ヲ行ハス何レノ裁判所ニモ起訴ノ手續ヲ採ラス又何等ノ懲戒ヲモ行ハサリシモノナリ。（尙下記第八號林白水事件參照）

（二）徐樹錚事件

二〇九　千九百二十年十二月二十九日軍閥ノ巨頭徐樹錚ハ北京ニ於テ臨時執政段祺瑞ヲ訪問シ之ヨリ天津ニ赴キツツアリタルカ途中ノ廊坊ナル一停車場ニ於テ鐵道守備兵其ノ專用車ニ闖入シ彼ヲ其ノ司法官ノ前ニ連行シタリト傳ヘラル。徐カ其ノ後間モナク射殺セラレタルコトハ疑ナシ。其ノ際陸承武ナル一陸軍將校ハ直ニ徐カ千九百十七年中ニ陸ノ父ヲ天津ニ於テ恣ニ射殺セシメタルニ依リ自ラ徐ヲ殺シタリト聲明シタリ。徐ヲ殺スニ至リタル實際ノ事情ハ未タ確定的ニ公表セラルルニ至ラス。委員會ノ知ル處ニ依レハ本件ニ關シテハ何等ノ取調行ハレス何者モ逮捕セラレス又何等ノ訴訟モ法廷ニ提出セラレタルコトナシ。事情稍酌量シ得ヘシト雖一個ノ殺人罪カ公行セラレ且一將校ノ公然其ノ犯行ヲ自白シタルニ拘ハラス之ニ付何等ノ訴追行ハレサリシコトハ事實疑ナシトス。此ノ事件ニ關シテ陸承武ノ辯解スル如ク彼ノ父カ不法ニ且恣ニ十年前天津ニ於テ徐ノ命令ニ依リ死刑ノ執行ヲ受ケタルコト及當時裁判所ニ於テ何等取調又ハ審理ヲ行ハサリシコトモ亦併セテ指摘スルコトヲ要ス。

（三）邵瓢萃事件

二一〇　千九百二十六年四月二十六日申報ナル支那新聞ノ記者邵瓢萃ハ軍憲ノ命令ニ依リ射殺セラレタリ。邵ハ其ノ前日京師（北京）警察ニ依リテ逮捕セラレ之ヨリ軍憲ニ引渡サレタリ。邵ハ其ノ論說ニ於テ四月初旬北京ヲ占領スルニ至レル軍閥ニ反對ナル宣傳ヲ試ミタリトノ故ヲ以テ處罰セラレタルモノノ如シ。委員會ノ知ル處ニ依レハ裁判所ハ本件ニ關シ何等ノ取調ヲモ爲サス且其ノ他ノ何等ノ措置ヲモ執ラサリシモノナリ。

（四）軍票ニ關シ投機ヲ爲ス者ヲ斬首ニ處スルノ布令

二一一　千九百二十六年六月十五日ニ於テ京師（北京）憲兵司令官ハ四月當該軍閥ノ北京ヲ占領シタル時以後北京及其ノ附近ニ於テ流通セシメタル軍票ニ付投機ヲ行フコトヲ防止スル目的ヲ以テ一ノ命令ヲ發布セリ。右ノ命令ハ正當ナル立法上ノ手續ヲ經テ發布セラレタルモノニ非スシテ當時權力ヲ有シタル軍憲ニ依リテ實施ヲ宣言セラレタルモノノ如シ。該命令ノ最後ノ節ヲ譯出スレハ左ノ如シ。

「此ノ布告ヲ發シタル後斯ノ如キ事件（軍票ノ投機）ノ繰返シテ行ハルルコトヲ發見シタルトキハ

キハ犯人ハ戒嚴法ノ基キ捕逮ノ上直ニ斬首セラルヘシ。尙ホ警察衙門、憲兵司令部及其ノ他官憲ニ訓令シテ此ノ種ノ人民ヲ逮捕スル爲私服ノ探偵ヲ增派セシム。何人モ之ヲ嚴守セヨ。」

(五) 韓德寧事件

二一二 千九百二十六年七月十八日長蘆鹽務局（天津附近ノ一大鹽稅徵收所）ノ長タリシ韓德寧ハ鹽稅收入ノ引渡ニ關シ直隸督軍ノ不快ヲ買ヒタルノ理由ニ依リ同督軍ノ命ニ依リ射殺セラレタリト傳ヘラル。本件ノ詳細ハ判然セサレトモ鹽務使カ軍憲ニ依リテ處刑セラレタリトノ報道ニ付テハ何人モ之ヲ否認スル者ナシ。

(六) 朱鐵夫事件

二一三 千九百二十六年七月上海海通藥局主朱鐵夫ハ外國ヨリ「モルヒネ」及「ヘロイン」ヲ密輸入シタルノ廉ニ依リ逮捕射殺セラレタリ。右ハ「モルヒネ」及阿片取引ノ禁止ニ關スル江蘇督軍制定ノ新規則ニ依リ軍事官憲ノ執行セルモノナリ。江蘇督軍ハ國際聯盟阿片委員會カ此ノ種ノ痲醉劑ノ上海密輸入ヲ警告シツツアルニ鑑ミ其ノ執リタル行動ヲ中央政府ニ報告シ國際聯盟ニ通報セシメタリト傳ヘラル。如何ナル權限ニ基キ江蘇督軍カ本件ニ關スル現行法規ニ代ハルヘキ嚴格ナル規定ヲ制定シ得ルモノナルヤニ關シ支那側ノ治外法權委員ニ質シタル處同委員ヨリ千九百二十六年八月六日附ヲ以テ司法部ニハ本件ニ關スル何等ノ記錄ナキニ依リ事件ヲ陸軍部ニ移牒シ置キタリトノ回答アリタリ。

(七) 「オトー、ハインゾーン」事件

二一四 千九百二十六年八月三日福建省ノ首都福州在住ノ「オトー、ハインゾーン」ナル獨逸人ハ令狀ナクシテ逮捕セラレ福建督軍ノ命ニ依リ陸軍監獄ニ投セラレタリ。傳フル所ニ依レハ「ハインゾーン」ハ千九百二十六年二月二十六日迄獨逸商店ノ店員トシテ雇傭中ノモノニシテ右獨逸商店ノ支配人ハ「ウイルヘルム、フエング」ト謂ヒ福建督軍ニ獨逸國ヨリ武器ヲ供給スルヲ以テ其ノ營業ト爲セル者ナリ。然ルニ再度ノ武器輸送ヲ無事終了シタル後獨逸國政府ニ於テ支那國政府ノ同意ナクシテ同國內ニ武器及彈藥輸送ヲ許可セサルヘキコトニ關スル列國協定ニ加入スルアリ爲ニ第三次ノ輸送ハ北京政府ノ許可アル迄其ノ發航ヲ差留メラルルニ至レリ。而モ北京政府ハ遂ニ右許可ヲ與ヘス時恰モ「フエング」ハ福州ヲ去リテ歸來セサリシヲ以テ督軍ハ茲ニ「ハインゾーン」ヲ陸軍監獄ニ投シ一月餘收監ノ後之ニ保釋ヲ許シタルモノナリ。右事件ハ現在（千九百二十六年九月）尙未解決ノ狀況ニ在リ。

(八) 林白水事件

二一五　千九百二十六年八月六日社會日報ナル北京ノ新聞ノ記者ニシテ社主ナル林白水ハ北京警備中ノ某軍閥中ノ有力ナル一人ノ爲ニ逮捕セラレ且射殺セラレタリ。而シテ右ニ際シ審理ニ類シタルコトハ殆ト行ハレサリシモノノ如シ。北京憲兵隊司令官ハ軍令ノ下ニ社會日報主筆林白水ハ敵軍ト通シタルコト明カナルノ故ヲ以テ死刑ニ處セラレタリトノ聲明ヲ發シタリ。以上ノ外本件ニ關スル手續ニ付テハ何等ノ報道ナシ。之ニ關係アル陸軍將校カ陸軍ノ職務以外ニハ北京ニ於テ何等官職ヲ有セサルモノナリシコトハ注意ニ値ス。死刑ノ執行セラレタル際ニ於テハ北京ニハ戒嚴法ノ實施セラレ居ラサリシコトモ注意スルヲ要ス。

(九)　成舍我事件

二一六　千九百二十六年八月七日北京ノ大新聞ノ一ナル時事日報ノ支配人兼主筆タル成舍我ハ北京憲兵隊ニ依リテ逮捕セラレタリ。軍憲ノ彼ノ家ニ到着シタル際ハ彼ハ就寢中ナリシカ起サレテ司令部ニ同行セシメラレタリ。傳フル所ニ依レハ千九百二十六年八月九日彼ハ無期懲役ノ判決ヲ受ケタル趣ナリ。彼ノ拘禁ハ軍憲ノ命令ニ依リタルモノノ如シ。彼ハ翌十日釋放セラレ彼ノ無罪ナルコト判明セリトセラレタリ。訴訟手續ニ就テハ何等ノ報道公表セラレサルモ本件ニ關シ何等カノ正式裁判ノ性質ヲ有スル手續ノ執行セラレタリトモ思ハレス。成ハ記者林白水ノ處刑ニ對シテ奪起セル世論ノ結果釋放セラルルニ至リタルモノノ如シ。

(十)　奉天官憲ノ紙幣ニ付投機ヲ行ヒタル者ニ對スル奉天ニ於ケル處刑

二一七　千九百二十六年八月十九日當時暴落セル奉天官憲ノ紙幣（奉票）ニ付命令ニ反シ投機ヲ敢テシタルノ理由ニ依リ五人ノ支那人カ奉天ニ於テ群衆ノ面前ニテ死刑ニ處セラレタリ。射殺セラレタル五人ノ內ノ三人ハ奉天、哈爾賓及長春ニ支店ヲ有スル支那銀行ノ使用人ナリ。探聞スル所ニ依レハ處刑ヲ受ケタル者ニ對シテハ別段ノ審問ヲ行ハサリシモノノ如シ。此ノ事アリテ後二三日ノ間ニ他ノ數人ノ支那人モ亦同一ノ罪ニ依リ同樣ノ方法ニ依リ處刑セラレタリ。

(十一)　「ポリス、シー、オストロモフ」事件

二一八　千九百二十四年五月三十一日支那國ハ「ソヴィエット」露西亞ト條約ヲ締結シ之ニ依リ「ソヴィエット」政府ヲ承認シ且東支鐵道ヲ五人ノ支那人及五人ノ露西亞人ヨリ成ル理事會ニ依リテ管理スルコトヲ協定セリ。當時露國人「ポリス、ジー、オストロモフ」ハ東支鐵道ノ總支配人ナリキ。東三省總司令ハ前記千九百二十四年五月三十一日ノ協定ヲ承認スルコトヲ拒ミ後千九百二十四年九月二十日同樣ノ性質ヲ有スル別個ノ協定ヲ締結セリ。千九百二十四年十月三日「オストロモフ」ハ新理事會ニ依リテ罷免セラレ令狀ナクシテ朱慶瀾ノ爲ニ哈爾賓ニ於テ逮捕セ

ラレ其ノ儘保釋ヲ許サレスシテ拘禁セラルルニ至レリ。千九百二十四年十二月五日彼ハ檢察官ノ手ヨリ豫審判事ニ引渡サレタリ。千九百二十五年一月一日支那國執政ハ特赦令ヲ發シタルカ其ノ條項ニ從ヘハ「オストロモフ」ニ對シテハ訴追ヲ行フヘカラサルニ至リタリモ千九百二十五年一月二十三日東三省總司令ハ執政ノ特赦令ノ條項ニ修正ヲ加ヘ「オストロモフ」訴追ノ原因タル官吏收賄罪ヲ含ム特定ノ犯罪ノ種類ヲ特赦ノ範圍ヨリ除外シタリ。此ノ二箇ノ矛盾セル命令アリタル爲裁判所ハ被告人ニ對シ更ニ進テ訴追ヲ爲スコトヲ差控フルコト三月而モ依然彼ヲ拘禁シテ保釋ヲ許スコトナカリキ。四月四日ニ於テ訴追ヲ爲スコトノ決定アリ是ニ於テ「オストロモフ」ハ六月間拘禁ノ後始メテ彼ニ對スル起訴狀ノ寫ヲ手交セラレタリ。

二一九 然レトモ實際ノ審理ハ千九百二十五年ノ六月四日迄執行セラレス其ノ後ニ至リテ千九百二十五年九月十二日迄數度審問ヲ行ヘリ。同日ニ於テ「オストロモフ」ハ收賄ノ嫌疑ニ因ル訴追ニ充分ノ理由アレトモ特赦ノ恩典ニ浴スルニ至リタルハ至幸ナリトノ豫審判事ノ陳述ト共ニ千九年二十五年一月一日ノ特赦令ニ基キテ放免セラルルニ至レリ。本件ニ關スル措置ヲ要約スレハ左ノ如シ。

(イ)「オストロモフ」ハ令狀ナクシテ軍憲ニ依リ逮捕セラレタリ。

(ロ)逮捕ヨリ訴追ノ事實確定的ニ被告人ニ傳達セラルル迄六月ヲ經過シタリ。

(ハ)被告人ハ保釋ヲ許サレスシテ十一月間收監セラレタリ。

(ニ)支那國執政ノ發布シタル特赦令ノ條項ハ之ト矛盾セル東三省總司令ノ命令アリタルカ爲滿洲ノ司法官憲ニ依リテ遵奉セラルルコトナカリキ。

(ホ)被告人ハ終ニ滿洲ノ司法官憲ヨリ其ノ八月半ノ間從フコトヲ躊躇セル特赦令ノ條項ニ基キテ釋放セラレタリ。

二二〇 委員會ハ上揭ノ各事件カ概ネ委員會ノ現ニ其ノ審査ヲ爲シツツアリタル間ニ於テ而モ委員會ノ現ニ開催セラレツツアリタル都市ニ於テモ起リタルコトニ付特別ノ注意ヲ爲スモノナリ。上揭ノ各事件ハ一般公知ノ事實ニシテ其ノ內情ハ何人モ之ヲ容認シ且之ヲ爭ハサルモノナルコトモ亦特筆ノルコトヲ要ス。以上ノ他北京近郊ニ於テ最近ノ內亂中ニ起リタル事件ノミナラス支那國全土ヲ通シテ過去數年間ニ起リタル軍憲ノ司法權干涉及文官ノ司法權運用妨害ニ關スル實例ヲ示スヘキ無數ノ領事報告アリ。委員會ハ現在支那國ニ於テハ生命、自由又ハ財產ニ關スル軍憲ノ專恣ニ對シテハ一般行政及司法機關ノ關スル限リ何等ノ有效ナル保障ヲ與フルコトヲ得スト謂フモ過言ニ非スト信スルモノナリ。

三　其他ノ干渉

二二一　縣知事法廷及會審衙門ニ於テ外國人カ原告タル事件ヲ審理スル縣知事ニ對シ一般行政機關ヨリ屢々訓令ヲ發スルコトアリ。外國ノ立場ヨリスレハ此ノ慣例ハ縣知事ノ司法作用ニ對スル一ノ干渉タリ。但シ支那側ノ立場ヨリスレハ斯ノ如キ訓令ヲ發スルハ混合事件ノ審理ニ關スル手續カ條約ノ定ムル處ニ徹シ準司法的性質ノモノナルニ鑑ミ中間ニ介在スル官吏ニ對シ訓令ヲ發スルモ何等妨ナシトテ之ヲ辯解スルヲ得ヘシ。

二二二　最近（千九百二十五年ヨリ二十六年ニ至ル間）ノ廣東及其ノ附近ニ於ケル騷擾ニ際シ罷業者ハ正式ノ裁判所ヲ無視シテ罷業破壞者ヲ審問スヘキ裁判所ヲ恣ニ設定シタリ。又千九百二十五年ノ夏楊子江筋ニ排外感情ノ著明ナル表現アリ右ハ遂ニ暴擧ト化シ外國人ノ身體及財產ニ對スル攻擊ト爲リタルニ拘ハラス司法官憲ハ是等ノ事故ニ對シテ何等有效ナル行動ヲ採ラス又採ルコトヲ得サリキ。

四　法規ト其ノ運用

(一)　支那國法規ノ普遍的適用性ノ欠缺

二二三　委員會ノ研究シタル法規ハ北京ノ中央政府ニ依リ法規トシテ宣布セラレタルモノナレトモ是等ノ法規ハ支那國ノ全土ニ於テ普遍的ニ適用セラルルコトナシ。斯ノ如キ事情ハ二個ノ原因卽チ支那國ノ或ル地方ニ於テ中央政府ヲ全然否認スルコト及各省又ハ其ノ他ノ權力アル官憲ニ於テ憲法上ノ權限ナクシテ補助的法規ヲ制定スルコトニ由來スルモノナリ。例ヘハ九年間廣東及廣西ノ二省ハ中央政府ヲ承認スルコトヲ拒ミ且右期間中ニ於テ恣ニ自己ノ法規ヲ制定シタリ。是等ノ法規ノ性質及範圍ニ付テハ委員會ハ之ヲ研究スルノ機會ナカリシヲ以テ何等知ル所ナシ。更ニ軍閥ノ巨頭タルコトヲ常トスル各省官憲ハ恣ニ中央政度ノ法規ヲ補充シ又ハ之ニ背反スル諸規則ヲ制定セリ。楊子江流域ノ一省ニ於テハ中央政府ノ暫行新刑律及嗎啡治罪法ノ當該事項ニ關シテ規定スル所寬大ナルニモ拘ラス罰則中ニ死刑ヲ規定セル痲醉劑禁止法規ノ制定ヲ見タリ。同樣ニ北京ニ於テモ軍憲ハ軍票僞造者及投機者ニ對シテ死刑ヲ科スヘキコトヲ布令セリ。加之中央政府自身モ亦隨時特定ノ地域ニ限リテ適用スヘキ特別ノ法規ヲ制定セルコトアリ。北京及甘肅省內ノ或ル地域ノ司法官憲竝多數ノ司法事務兼理ノ縣知事ヲシテ民事訴訟條例ノ精神ニ反スル民事被告人拘押ノ制度ヲ實行セシムルコト卽チ其ノ例ナリ。

二二四　諸省ノ省長ハ法規ニ基キ輕微ナル刑罰ノ規定ヲ有スル規則ノ制定權ヲ有スト雖省長ハ時ニ其ノ權限ヲ超ヘタル刑罰規定ヲ伴フ規則ヲ制定スルコトアルカ如シ。此ノ種慣行ヲ是正セム

カ爲大總統ハ千九百二十四年十二月十一日ノ訓令ヲ以テ特別ノ犯罪ヲ死刑ニ處スヘキコトヲ定メタル規則ヲ實施シタリト認メラルル山東及河南兩省ノ省長ニ對シ警告ヲ與ヘタリ。(司法例規第二卷八十一頁參照)

(二) 保釋

二二五 保釋ノ許可ニ關スル支那國法規ノ規定ハ警察ニ依ル拘留ノ權利(第六十節參照)ニ關スルモノヲ除クノ外大體ニ於テ妥當ト認メラルルモ支那國裁判官ハ此ノ規定ノ實際ノ適用ニ當リテ極メテ狹量ナル態度ヲ採リ保釋ヲ許スヨリモ之ヲ差シ控フルノ傾向アリ。司法部ハ千九百二十一年五月十日訓令ヲ發シ從來屢々訓達シタルニ拘ハラス尙保釋規定ヲ狹量ニ解釋スル向アリ爲ニ看守所收容人員ノ過剩ヲ來シ且有罪ノ嫌疑ナキ者ニシテ其ノ生命ヲ脅威セラルルモノアルニ至レリト警告シ且將來ハ保釋規定ヲヨリ寬大ニ解釋スヘシト命シタリ(司法例規千百九十四頁參照)。未タ有罪ノ認定ヲ受ケサル者ニ對シテハ保釋ノ許可ハ一般ニ重大ナル意味ヲ有スルモノナルニ拘ラス此ノ點ニ關スル被告人ノ權利ハ實際ニ於テ充分ニ尊重セラレサルモノノ如シ。保釋ノ取消ニ關シ現在ノ如ク大ナル裁量權ヲ司法官憲ニ與フルコトモ亦望マシキコトニ非ス。

(三) 囚人ノ虐待及不法ナル處刑ノ方法

二二六 暫行新刑律及刑事訴訟條例ハ「被告人、被訴追者又ハ事件ニ連坐シ又ハ之ニ關係アル者ニ對スル强暴又ハ慘酷ナル行爲」ヲ禁止シ且之ニ對シ刑罰ヲ規定ス。本件ニ關シ支那國ノ諸法典ノ規定スル所ハ標準ノ高キモノナルニ拘ハラス犯罪ノ自白ヲ强要スル爲拷問ヲ行ヒ犯罪人處罰ノ爲ニ不法ナル方法ヲ用ヒ又ハ囚人ヲ虐待スルノ事例支那國ニ於テ尙現存スルヲ見ル。右事例ハ概ネ所謂內地及遠隔ナル地ニ於テ行ハルルモノノ如シ。囚人ニ對スル拷問ノ事例ニ付テハ支那國各地ニ付比較的新ラシキ領事報告ヲ引用スルコトヲ得ヘシ。右領事報告ニ記載セルハ箇々ノ事件ニ付其ノ眞僞ヲ確ムルコト不可能ナリト雖該報告ノ大部分信賴スルニ足ル節ヨリ提出セラレタルモノナルヲ以テ其ノ正確ナルコトヲ疑フノ餘地ナシ但シ委員會ノ注意スル所トナリタル拷問及虐待ノ實例ハ軍憲、縣知事及警察ノ行ヒタル所ニ係リ新式裁判所ニ關シテハ何等斯ノ如キ事例ノ報導ナシ。

二二七 死刑執行ノ方法ハ支那國暫行新刑律ニ於テハ絞首ナリ但シ銃殺ニ依ル刑罰モ懲治盜匪法ニ於テハ之ヲ許セリ。現在ニ於テ軍事裁判所ノ言渡シタル又ハ任意ニ軍閥ノ巨頭ノ命令シタル死刑ノ宣告ヲ軍憲ニ於テ執行スル場合ニハ銃殺又ハ斬首ノ方法ニ依レリ。

五　裁判制度ト其ノ運用

二二八　次ノ考察ヲ爲スニ當リテ委員會ハ北京ニ於テ會議ノ際入手シタル報告ノミナラス附錄トシテ本報告書ニ添付セル委員會旅行班ノ報告ヲモ參考ニ供シタリ。但シ右旅行班ハ警察法廷、縣知事法廷及軍事裁判所ヲ視察スルノ機會ナカリシ趣ニテ是等ノ裁判所ニ於ケル司法運用ニ付テハ何等右報告中ニ揭記スル所ナシ。而シテ新式裁判所ニ於ケル司法運用ニ關スル見聞モ亦同報告記載ノ如キ事情ノ下ニ於テ可能ナリシモノノミニ限ラレタリ。警察法廷ノ場合ニ於テハ警察事件ハ司法部ノ監督ニ屬シテ內務部ノ監督ニ屬シ且委員會ノ調査ノ範圍ニ屬セサルモノナリトノ理由ヲ以テ支那國委員ハ之カ視察ヲ拒絕セルモノナリ。

(一)　新式裁判所ノ不足

二二九　支那國ニ於ケル最滿足ナル裁判所ハ東支鐵道地帶ニ於ケル五個ノ特判裁判所ヲ含ム新式裁判所ナルコト論ナシ。斯ノ種支那國裁判所ノ總數百三十九ノ中旅行委員ノ視察シタルハ二十三ニシテ高等審判廳七、地方審判廳十三、地方審判分廷一及鐵道地帶特別裁判所二ナリ。旅行委員ノ視察セル裁判所ニ於ケル法規運用ノ仕組ノ充分ナリシコトハ同委員ノ報告ニ徵シテ明ナリ。然レトモ支那國ニハ現在九十一箇ノ第一審裁判所タル新式裁判所アルニ過キス。人口四百四十萬人ニ對シテ一箇ノ割合ニ過キス。

(二)　素養アル司法官ノ不足

二三〇　支那國ニ於ケル新式裁判所ハ各級ヲ倂セ其ノ總數百三十九ニ過キサルニ依リ素養アル推事及檢察官モ之ニ應シテ少數ナルヘキコト當然ニシテ其ノ實際ノ數僅ニ千二百九十三名ニ過キス。(報告書第二部附錄第一參照)。然レトモ此ノ數ニテハ現存裁判所ニ必要ナル職員ヲ配置スルニスラ足ラサルモノノ如シ。卽チ新式裁判所一覽表ヲ見ルニ相當多數ノ地方審判分廷ハ平均僅ニ一人若ハ二人ノ裁判官ノ配置ヲ受クルニ過キサルコトヲ發見スヘシ。是等ノ裁判所ニ於テハ候補推事ノ勤務ヲ利用スルニ非サレハ法規ニ依リ合議廷ヲ以テ裁判スヘキ事件ノ審判ニ當リ三人ノ推事ヲ構成員トスル合議廷ヲ組織スルコト能ハサルニ至ラム。

(三)　司法官ノ素養

二三一　司法官任用ニ關スル諸規則ハ充分素養アル者ヲ採用スル爲特別ノ規定ヲ爲スモノニシテ右規定ハ實際施行セラレ居ルモノノ如シ。北京其ノ他ノ省ニ於テ委員ノ親シク接シタル司法職員ハ概ネ法律ノ素養アルモノト見受ケラレタリ。判職ノ司法職員タル推事及檢察官ノ半數以上ハ十年以上ノ勤續者ニシテ是等ノ者ノ多數ハ外國殊ニ日本ニ於テ學習ヲ經タル者ナリ。千九百二十五年ニ於ケル大理院ノ推事三十二名ノ中二十一名ハ外國出身者ナリ。然レトモ委員會ハ支那國内ノ法律學校ノ課程ニ付テハ何等知ル處ナシ。

(四)　司法官ノ給料

二三二　司法職員ノ俸給ハ本報告第二部中ニ於テ既ニ述ヘタル諸規則ノ規定スル所ナレトモ是等ノ俸給ノ充分ナリヤ否ヤハ支那國ニ於ケル生活費及生活標準ニ據ルニ非サレハ公正ナル決定ヲ爲シ難キモノナルヲ以テ委員會ニ於テ之ヲ推定スルコトヲ得ス。千九百二十一年五月七日ノ司法部訓令ヨリ推測スレハ司法官ノ俸給ハ同程度ノ地位ニ在ル他ノ官職ノ者ニ比シ不良ナルモノノ如シ。一月百元ハ初給トシテモ何レノ推事ニ取リテモ少額ノ給料ナリ。殊ニ司法職務ニ任用セラルル以前ニ於テ推事ノ具有スルコトヲ要スヘキ條件ヲ考慮ニ入ルルトキニ於テ一層其ノ感ヲ深フス。

(五)　裁判所ニ對スル財政上ノ支持

二三三　過去數年來中央政府ニ於テ司法機關其ノ他ノ政府各部ノ使用人ニ給與ヲ爲スコト益々困難トナルニ至リタルコトハ公知ノ事實ナリ。委員會開會中北京ニ於テ司法官ニ對スル支拂ニ充當スヘキ財源ノ缺乏セル結果罷業ヲ誘致シタルコトアリ。委員會旅行班モ亦旅行中ニ於テ各省裁判所ノ財政上ノ支持ノ殆ト全部カ裁判所收納ノ手數料及司法官ノ省官憲ヨリ受領スル下附金ニ待ツモノナルコトヲ目擊セリ。事情右ノ如クナルニ依リ中央政府ハ裁判機關ニ對スル財政上ノ支配權ヲ失ヒツツアリ。司法官俸給支拂ノ不確實ハ此ノ職務ニ從事スル者ヲシテ大ナル不安ヲ覺ヘシムルモノニシテ優良ナル人物ノ此ノ職ニ就クコトヲ阻止スルノ結果ヲ招來スヘシ。

二三四　委員會ニ提出セラレタル統計ニ依レハ支那國全土ノ裁判制度ノ經常費額ハ司法部竝監獄及看守所維持費ヲ合シ千九百二十三年ニ於テ約二千萬元ナリ。而シテ現行制度ヲ維持セムトセハ裁判及監獄制度ノ財政ヲ全部司法部ニ集中スルト共ニ公的收入ヲ不當ノ用途ニ充當シツツアル省及其ノ他ノ官憲ノ干渉ヨリ之ヲ獨立セシメ司法部ニ年々前記ノ費額ニ相當スル費用ヲ配給スルノ措置ヲ講セルヘカラス。

(六)　縣知事法廷

二三五 縣知事法廷ニ關シ報告第二部ニ於テ言及シタル所ヨリスレハ是等ノ法廷ニ於ケル司法運用ノ滿足ナルヘキヲ期待スルハ固ヨリ難シ。然レトモ此ノ事實ニ對シテハ支那國政府モ常ニ注意ヲ怠ラサリシモノニシテ下ニ揭クル政府ノ命令ハ克ク之ヲ證ス。千九百十九年三月二十六日大總統ハ訓令ヲ發シ縣知事カ其ノ司法權ヲ行使スルコトヲ回避シ殊ニ困難ナル事件ヲ自ラ審理セスシテ軍憲ニ引渡スコト屢々ナルヲ不可トシタリ(司法例規第四百八十五頁參照)。大總統ハ更ニ千九百十六年四月二十八日訓令ヲ發シ知事ノ司法權濫用及人民壓迫ニ關シ各縣ヨリ再三報告ヲ接受シタルカ斯ノ如キ不當ナル措置ハ將來之ヲ止ムヘシト爲シタリ(司法例規第三百九十六頁)。次テ千九百二十三年十二月五日ニ大總統ハ再ヒ訓令ヲ發シ北京城內ニテ職務ヲ執レル一縣知事カ審問ヲ終了セスシテ刑事被告人ヲ六年間監獄ニ收容シタルコトニ付譴責ヲ爲セリ(司法例規追補第一卷第五十九頁)。

(七) 警察法廷

二三六 委員會ハ警察法廷ノ實務ノ執行ヲ視察スルノ機會ヲ得サリシト雖警察法廷ニ於テ行フ審理ハ支那國ノ制度ノ下ニ於テハ行政行爲ト認メラレ普通裁判所ニ上訴スルノ權利ナキモノナルニ徵シ現在ノ手續ノ下ニ於ケル警察法廷ノ司法運用ハ尙滿足スヘカラサルモノナルコトヲ推知セリ。以上ノ外警察法廷ハ本來其ノ權限ニ屬セサル事件ニ關シテ越權的ニ其ノ管轄ヲ及ホスコトアリ(司法例規追補第一卷五十四頁千九百二十四年一月十六日附大總統令參照)。支那國警察法廷カ司法部ノ監督ニ服セスシテ內務部ノ管轄ニ服スルコトハ注意ヲ要ス。

(八) 軍法會議

二三七 實際ニ於テ各軍憲ハ自身ノ任命セル職員ヲ以テ組織セル自身ノ軍法會議ヲ有シ事件ヲ祕密ニ審問セシム。辯護士ノ出廷及上訴ハ之ヲ許サス且裁判所ニ六百打迄ノ棍刑ヲ換科スルノ權限ヲ附與ス。是等ノ法廷ニ於ケル司法運用カ斯ノ如キ事情ノ下ニ於テハ固ヨリ滿足トハ認メ難シ。

六 監獄制度及其ノ運用

二三八 監獄制度ノ運用ノ考察ニ當リテハ支那國ノ監獄及囚人ニ關スル規則ノ外報告ノ附錄トシテ添附セル委員會旅行班ノ報告ヲ參考ニ供シタリ。本報告第二部ニ附錄第三第二表トシテ添附セル監獄一覽表ニ徵スルニ支那國ニハ七十四箇ノ新式監獄アリ。新式監獄ノ中十四箇及新式看守所ノ十五箇ハ右旅行班ノ親シク訪問セル處ナリシモ舊式監獄、警察拘置場及陸軍監獄ハ之ヲ訪問スルノ機會ナカリキ。委員會ハ其ノ訪問セル現代的樣式ノ監獄ヲ以テ大體ニ於テ滿足スヘ

キ狀況ニ在ルモノト認メタリ。千六百二十二ヲ數フル其ノ他ノ監獄ハ或ル程度ノ現代的改善ヲ加ヘタルモ舊態ノ儘ナルコト謂フ迄モナシ。

二三九 委員會ノ新式監獄及看守所ニ付批評ヲ爲サントスルモノ三點アリ卽チ或ル監獄ニ於ケル收容人數ノ過多、監獄職員ノ給料及財政的支持ニ關ス。收容人員ノ過多ナルコトニ付テハ委員會ハ或ル地方ニ於テハ囚人ノ全部ヲ適當ニ收容スル爲ニハ狹隘ニ過クルモノナリト認メタルコトアリ。監獄職員ノ給料ノ等級ニ於テ三十元ヲ最低ノ額トスルコトハ司法官ノ場合ト同樣餘リニ少キニ過クルカ如シ。視察シタル監獄ノ二三ニ於テ其ノ典獄ハ支拂ハルヘキ給料低額ナルカ爲適當ナル監獄職員志願者ヲ得ルコト必スシモ容易ナラサルニ至リタリト述ヘタリ。此ノ事態ハ給料支拂ノ不確實ニ依リテ惡化セラレ遂ニ財政的支持ニ影響シ次テ必然的ニ監獄職員ノ能率ヲ低下シ且囚人ノ生活ノ安定ニ重大ナル影響ヲ及ホスニ至レリ。

二四〇 監獄及看守所ノ狀況ニ關シ參考ノ爲次ニ二三ノ監督官廳ノ命令ヲ引用セム。千九百二十一年五月十日司法部ハ囚人ノ間ニ惡疫ヲ發生セシムルノ虞アル監獄及看守所內ニ於ケル非衞生及不健康ナル狀況ニ付警告ヲ發シタリ（司法例規千三百五十八頁參照）。最近卽チ千九百二十六年八月五日ニ於テモ司法部ハ同樣ノ警告ヲ發シ同時ニ斯クノ如キハ財源ノ缺乏ニ基クモノト爲シ之ヲ遺憾ト爲セリ。千九百二十一年五月十日司法部ハ天津ニ於ケル囚人カ特ニ財源ノ缺乏ノ爲食物ノ給與ヲ受ケサルコトアリタルノ事實ヲ指摘シ（司法例規千三百八十四頁參照）千九百二十三年二月十三日支那國大總統ハ訓令ヲ發シ縣監獄（舊式監獄）ニ於ケル囚人ヲ死ニ至ラシムル程度ノ懲力濫用及不當取扱ニ付警告スル所アリタリ（司法例規追補第一卷百四十六頁參照）。上記ノ諸命令ヨリシテ監獄ノ現狀ニ關シ支那國政府ハ其ノ改善ノ必要ヲ認メツツアルコトヲ知ルヘシ。

七 警 察

二四一 委員會ハ警察ニ依ル權力ノ濫用ニ關シ種々ノ苦情アルコトヲ知レリ。警察カ些細ナル違反行爲ヲ理由トシテ人民ヲ逮捕スルコトヲ得ルノ事實ト警察カ犯人逮捕ニ付推事及檢察官ノ職務ヲ行ヒ長期間其ノ裁量ヲ以テ之ヲ拘留スルノ事實ニ照シ右ハ必スシモ無稽ナラスト推測セラル。更ニ警察ハ拘留、取調及其ノ後ノ拘留ニ付公衆（親戚及友人）ノ傍聽ヲ許否スルノ權アリ右ハ全ク警察ノ裁量權ニ委ネラルルノ所ナリ。警察ハ時ニ諸外國ニ於テハ國家ノ負擔トスルヲ常トスル費用ヲ被害者ヲシテ納付セシムルコトアリ。又極メテ些細ナル警察罰ヲ犯シタル小兒ヲ逮捕スルコトアリ。委員會ハ警察ニ依ル司法ノ運用ハ或ル重大ナル點ニ付尙不滿足ナルモノ

アリト認ムルモノナリ。

八　其ノ他ノ苦情

二四二　以上本報告書本部ニ於テ述ヘタル苦情ノ外事件審理ノ遲滯、判決ノ執行確保ノ困難及適法ナル權限ナクシテ爲ス私邸宅ニ對スル不法侵入ニ關シ二三ノ委員ニ數多ノ苦情ヲ寄セ來レルモノアリ。右事件ハ全部眞實ナルヤ否ヤ明ナラサレトモ是等ノ苦情ノ或ルモノハ其ノ眞否ヲ云々スル迄モナク公知ノモノナリ。審理ノ遲滯及執行確保ノ困難ノ事例ハ何レノ國ニモ起リ得ヘキ所ナレトモ斯ノ如キ懈怠ノ素因ヲ成スモノハ主トシテ支那國ノ常規ヲ逸シタル政情ニ存スルモノト認メラル。而シテ實際ニ於テ外國人ノ一切ノ苦情ハ滿足ナル審理ヲ爲スニ適セサル現狀ニ在リト認メラルル縣事法廷ノ訴訟事件ニ關スルモノノミナリ。

附錄第一

千九百二十六年五月十日ヨリ六月十六日ニ至ル治外法權委員會旅行班ノ視察旅行ノ報告

旅行日程

治外法權委員會ノ旅行班ハ當初三月ノ中頃ヨリ二週間中ニ大原及張家口ノ審判廳及監獄ヲ視察シ後四月ノ第一週中ニ北京ヲ出發シ支那國ノ他ノ地方ニ赴クヘキ豫定ナリシモ內亂ノ結果委員會ノ最初ノ計畫ヲ實行スルコト能ハス時局ノ安定ヲ待チテ漸ク五月十日ニ至リ旅行ヲ開始セリ。旅行ハ約四千二百哩ニ亙リタルカ其ノ日程細目ハ附錄トシテ添附セル處ノ如シ。

旅行中訪問セル裁判所、監獄及看守所ハ左ノ通リナリ。

高等審判廳	七
地方審判廳	一三
地方審判分廷	
特別區域法院（哈爾賓）	一
外國裁判所及會審衙門	二
監獄	五
看守所	一四
外國裁判所及會審衙門附屬ノ監獄及看守所	一五
以上ノ外委員全部ハ北京滯在中大理院、京師高等審判廳、京師地方審判廳竝北京第一及第二新式監獄ヲ視察シタリ。	九
旅行班加入者	

出發ヨリ最終迄旅行ノ全部ヲ完了セル委員

佛蘭西國　デー、シー、ツーサン

英帝國　スキナー、ターナー

和蘭國　エー、ディー、エー、ド、カット、アンデェリーノ

旅行ヲ完了セル委員會關係者

支那國　鄭天錫（王榮年同伴）

英帝國　シー、エフ、ガースティン

支那國（委員會書記長）　徐維震

合衆國　ゼー、イー、ゼーコブス

日本國　守屋　和郎

旅行ノ一部ニ加ハリタルモ其ノ全部ヲ完了スルニ至ラサリシ各國委員及其ノ他

合衆國　エス、エーチ、ストローン

白耳義國　エー、ヴァン、クッツェム

伊太利國　デー、ド、ロシー

佛蘭西國　マーセル、ボーデ

白耳義國　エー、サーデセルス

北京以外ノ視察旅行ニ加ハルコトヲ得サリシ各國委員其ノ他

支那國　王寵惠

日本國　日置　益

丁抹國　エーチ、ド、カウフマン

諸威國　ヨハン、ミシリー

葡萄牙國　ゼー、エー、ド、ビヤンチ

西班牙國　ドン、マヌエル、アカル、イ、マリン

瑞典國　カール、レージョンフード

視察ノ方法

(一)　裁判所　當該裁判所ノ審判廳長及檢察長ニ紹介セラレタル後旅行班ハ隨時比較的詳細ニ裁判所ノ構成、司法運用及其ノ他ノ事項ニ付審判廳長及檢察長ニ質問ヲ爲シタリ。審判廳長及檢察長ハ一切ノ質問ニ對シテ慇懃ニ答辯ヲ爲シ且進ムテ其ノ審判廳ノ記錄ヲモ旅行班ノ縱覽ニ供シ

タリ。

質問ニ對シ答辯アリタル後各旅行班ハ民事及刑事ノ事件ノ實際ノ審判ヲ觀察スル爲裁判所內各法廷ニ案內セラレ次テ審判廳ノ各事務室例ヘハ書記局、不動產登記處及記錄室ヲ視察シ且記錄室ニ於テ記錄ノ審査ヲ爲シタリ

(二) 監獄及看守所　監獄及看守所ニ於テモ同樣ノ方法ニ依リ視察ヲ爲シタルモ質問事項ハ多ク監獄其ノモノヲ實際ニ視察シツツアル間ニ監獄ノ長及其ノ配下ニ對シテ之ヲ爲シタリ。旅行班ハ監房、處刑場、病院等ノ視察ノミニ止マラス屢々親シク囚人自身ニ質問ヲ發シタリ。

(註)

縣知事法廷　旅行班ノ訪問セル地方ニハ縣知事ノ司法權ヲ行使スルモノナカリシモ旅行準備中ニハ之ニ氣付カス後ニ至リ卽チ旅行中ニ縣知事法廷訪問ノ問題起リタルニ際シ支那側代表者ヨリ此ノ點ニ關スル旅行計畫ノ變更ニ付テハ北京ニ照會スルノ要アル旨ヲ告ケラレタリ。尙支那側代表者ハ私見トシテ縣知事法廷ニ於ケル司法ノ運用ハ旅行班ノ視察範圍ニ屬セス支那國カ治外法權ノ撤廢ノ問題ヲ華盛頓會議ニ提議シタルハ新式ノ裁判所及監獄ヲ眼中ニ置キタルモノナル旨陳辯セリ。外國側代表者ハ右ノ事情ニ依リ新式裁判所ヨリモ遙カニ多數ナル此ノ種法廷ニ於ケル司法運用ニ付何等其ノ意見ヲ發表スルコトヲ得サルニ至リタルヲ遺憾トスルモノナリ。

警察法廷　旅行ノ途中ニ於テ違警罰法カ新式裁判所(審判廳)其ノ他ノ司法官廳ニ何等ノ關係ナク警察法廷(警察廳)ニ依リテ適用セラルルコト及是等ノ法廷ニ依リテ拘留ノ宣告ヲ受ケタルモノハ警察拘置場ニ拘置セラルルモノナルコトヲ知ルニ至リタルヲ以テ旅行班ハ右法廷及拘置場ヲ訪問セムトシタレトモ之ヲ支那側代表者ヨリ北京ニ照會シタルニ對シ電報ヲ以テ警察事件ハ司法部ノ管轄ニ屬セスシテ內務部ノ管轄ニ屬スルニ依リ右ハ旅行班ノ審查ノ範圍內ニ屬セストノ回答アリタリ。(イ)旅行班ハ警察官署カ違警罰法ノ下ニ於テ人民ヲ拘禁スルノ權利ヲ有シ且刑事事件ニ於テ檢察官ニ引渡ス以前ニ被告人ヲ取調ヘ又ハ拘束スル等ノ權力ヲ有スルコトヲ熟知セサリシトロ)委員會カ北京ニ於テ違警罰法ヲ審查シタリシトニ鑑ミ本件ニ關シ支那側官憲ノ執リタル態度ハ旅行班ニ於テ首肯シ難キ所ニシテ之ヲ遺憾トセリ但シ支那側代表者ハ之ニ同意シ難キ旨ヲ述ヘタリ。仍テ外國側代表者ハ警察官署ノ處理スル事件ニ關スル司法運用ニ付テハ何等ノ意見ヲ發表スルコト能ハサルモノナリ。

一般的印象

(一) 裁判所　旅行班ノ質問ニ對スル回答トシテ提供セラレタル各種ノ資料ヨリ判斷スレハ新式裁判所ニ於ケル事件ノ處理ハ刑事被告人其ノ他ノ訴訟當事者ニ充分ニ答辯ヲ爲スノ機會ヲ與ヘツアルモノノ如シ。右ハ旅行班ノ親シク審査シテ或ル程度迄之ヲ確認シ得タル所ナリ。推事及檢察官ハ智識及經驗ヲ有シ裁判所ニ於テ適用セラルル法律及手續ニ通シ且彼等ノ審判スル事件ニ對シテ最注意深キ考慮ヲ拂ヒツツアルモノト認メラレタリ。多クノ場合ニ於ケル當事者ハ辯護士ヲ以テ代理セシムト雖積極的ニ證人訊問ヲ爲シ得ルハ稀ナル場合ニ限ラレ證人訊問ハ概ネ裁判長タル推事ノ執行スルモノトス。旅行班ノ視察セル裁判所ノ構成及訴訟手續ハ相當ニ統一セラレ居リ北京ニ於テ委員會ノ研究シタル本件ニ關スル法律及規則ニモ適從セルモノト認メラル。支那國裁判所ノ記錄ハ滿足ナル方法ニテ保存セラルルト雖火災又ハ盜難ニ對シテ充分ナル防護ノ設備ナシ。殊ニ土地ニ關スル地契（證書）ノ場合ニ於テ然リトス。裁判所ノ建物及設備ハ概シテ相當ト認メラレ二三極メテ良好ナルモノアリタリ。

(二) 監獄及看守所　旅行班ノ視察セル新式裁判所及看守所ハ大體ニ於テ滿足ト認メラル。建物ノ外形及設備ハ樣式一ナラスト雖各室ノ配置及內規ハ概ネ劃一ノ方式ニ依レリ。極メテ概括的ニ旅行班ノ受ケタル印象ヲ述フレハ最新式ノ監獄ハ外國人ノ收容ニ何等差支ナキモノナリ。

批評細目

(一) 裁判所

(イ) 東支鐵道地帶特別區域ノ裁判所

此ノ地域ニハ五箇ノ裁判所アル由ナルモ哈爾賓ニ於テ旅行班ノ視察シタルハ其ノ內二箇ニ限ラレタリ卽チ哈爾賓高等審判廳及哈爾賓地方審判廳之ナリ。各法院ニハ曾テ此ノ地露西亞國裁判所ニ於テ裁判事務ヲ執リタル一名ノ露國人ヲ顧問トセル外事務員トシテ露西亞人ヲ雇ヒ又露國語ヲ語ル支那人ヲ官選ノ通事トシテ使用セリ尤モ旅行班ノ聞ク處ニ據レハ當時者ハ任意自身ノ通事ヲ使用スルコトヲ許サル。是等ノ裁判所ハ支那國ノ裁判制度中ニ於テ特殊ノ地位ヲ占ムルモノニシテ右裁判所ノ管轄權ハ領事裁判權ナキ國ノ人民間ノ事件ノミニ限定セラルルト共ニ右裁判所ノ組織ハ支那國新式裁判所ト同樣ナリ。旅行班ハ裁判所ノ執務振ハ良好ナルモノト見受ケタリ。

(ロ) 通事

支那國裁判所ニ於ケル混合事件ニ於ケル通事ノ問題ニ關シテハ通事ヲ必要トスルニ拘ラス當事者ニ於テ自ラ之ヲ雇フコト能ハサルカ如キ場合ニ付最モ愼重ナル考慮ヲ要スルモノト認ム。

(ハ) 財政的支持

旅行班ハ裁判所現在ノ狀態ヲ維持シ且將來ノ進歩ヲ阻止セサラム爲適當ナル財政上ノ措置ヲ講セムコトヲ希望ス。

(二) 監獄及看守所

(イ) 監房

最新式ノ監獄及看守所ノ監房ハ充分ト認メラルル。其ノ他ノ新式監獄ニ於テハ其ノ大サ及收容人數並囚人ニ對スル設備ノ標準一ナラス。支那國官憲ノ建築セル監獄ノ各監房ニハ獨房モアリ又十人位迄ヲ收容スル監房モアリタリ。露西亞人ノ建設ニ係リ且曾テ哈爾賓ニ於ケル露國監獄トシテ使用セラレタルモノニ在リテハ一箇ノ大監房中ニ十九人ノ囚人アルヲ見タリ但シ右監獄ハ現ニ擴張工事中ナル趣ナリ。監房中ニハ其ノ容積ノ不充分ト認メラレタルモノアリ又採光裝置ノ充分ト認メ難キモノモアリタリ。重大ナル監獄規律違反ノ罪アル囚人ヲ單獨ニ拘置スル暗室ハ何レノ監獄ニモ之ヲ設ケタリ。

(ロ) 監獄食事

支那國官憲ハ支那人タル囚人ニ供給スル食物ヲ以テ外國人タル囚人ニハ適當ナラスト認メ手加減ヲ加フ。

(ハ) 獄衣

囚人ニハ相當ト認メラルル制服ヲ供給ス。

(ニ) 病院及醫者

病氣ニ罹レル囚人ノ爲ニ監獄内ニ特別ノ設置ヲ爲セトモ其ノ内容一ナラス。又醫官ヲ之ニ配置スルモ其ノ中ニハ西洋醫學ノ素養ヲ缺ク者アリタリ。

(ホ) 採暖設備

監獄ニハ總テ或ル種ノ採暖設備アリタルカ如キモ夏季ノ視察ノコトトテ旅行班ハ此ノ設備ノ如何ナル程度ニ滿足ナルモノナルヤヲ詳ニセス。

(ヘ) 死刑執行

監獄ニ於ケル死刑執行ノ器具ハ絞殺ノ方法ニ依ルモノナリシモ一監獄（奉天）ニ於テハ懸首ノ方法ニ依レリ。

(ト) 運動

總テノ監獄ニ於テ戸外運動及勞役ヲ行ハシム。

(チ) 炊事室、浴室及衛生設備

總テノ監獄ニハ炊事室、浴室及簡單ナル衛生設備アリタリ。

(リ) 教誨

囚人教誨ノ爲特別ノ施設アルヲ見タリ。支那國官憲其ノ他ノ者ノ語ル處ニ依レハ宣教師ハ隙時監獄ヲ訪問スルコトヲ許サレ且之ヲ奬勵セラルル趣ナリ。

(ヌ) 女監

新式ノ監獄及看守所ニ於テハ總テ婦人ヲ女監取締ノ管理スル特別ノ區劃ニ分離シテ收容セリ。

(ル) 哈爾賓ニ於ケル外別ノ外國人監獄

此ノ監獄ニ於テハ看守長カ露西亞人ニシテ且看守ハ多ク露西亞人ナリシコトヲ特ニ注意セリ。此ノ監獄ニハ尙露西亞國式禮拜堂アリ露西亞人僧侶之ニ侍シタリ。

(ヲ) 財政的支持

旅行班ハ新式監獄及看守所現在ノ狀態ヲ維持スル爲且必要ニ應シテ之ヲ改良スル爲並其ノ將來ノ進歩ヲ阻止セサラム爲恰當ナル財政上ノ措置ヲ講セムコトヲ希望ス。

附記

旅行班ハ其ノ視察旅行中支那國官憲ヨリ受ケタル款待竝支那國官設鐵道及南滿洲鐵道旅行ノ際ノ斡旋ニ對シ深甚ナル感謝ノ意ヲ記錄セムト欲ス。旅行班ニ對シテハ到ル處ニ於テ費用及勤勞ヲ惜マス熱誠ナル歡迎ヲ爲シ能フ限リノ慰問ノ方法ヲ講シタリ。

各外國代表者ハ又鄭天錫博士及徐維震君ノ辛勞ニ對シ深キ感謝ノ意ヲ表示セムト欲ス。旅行ノ成功ハ是等ノ人ニ負フ處尠カラサルモノナリ。

附錄　旅行日程細目

旅行班ノ旅行日程ハ左ノ如シ。

五月十日　午後十時ノ汽車ニテ北京ヲ發シ漢口ニ向フ。

五月十一日　漢口行車中。

五月十二日　漢口行車中。

五月十三日　午前一時三十分漢口著。

五月十四日　午前武昌ニ於ケル湖北第一監獄ヲ訪問ス。午後武昌地方審判廳、湖北高等審判廳及其ノ附屬看守所ヲ訪問ス。

五月十五日　午前英國居留地會審衙門、英國領事館監獄及漢口洋務公所ノ宣告シタル犯罪人

ヲ收容スヘキ支那國看守所ヲ訪問ス。午後佛國領事館監獄、夏口（漢口）地方審判廳及其ノ附屬看守所ヲ訪問ス。

五月十六日　漢口ヲ發シ汽船瑞和號ニテ午後九時三十分九江ニ向フ。

五月十七日　午前八時三十分九江着午前十時特別車ニテ南昌ニ向フ。午後五時南昌着。

五月十八日　午後江西高等審判廳、南昌地方審判廳、其ノ附屬看守所及江西第一監獄ヲ訪問ス。

五月十九日　午前八時特別列車ニテ南昌ヲ發シ九江ニ向フ。午後一時九江着、午後九江地方審判廳、其ノ看守所及江西第二監獄ヲ訪問ス。

五月二十日　活和號ニテ正午九江ヲ發シ南京ニ向フ。午後同汽船ヲ安慶ノ沖ニ停船セシメ船上ニテ支那國地方官憲ノ代表者ヲ引見ス。眞夜中ニ汽船ヲ蕪湖沖ニ停船セシメ地方官憲ノ代表者ヲ接見シ二三ノ委員之ニ挨拶ス。

五月二十一日　午前九時南京着。

五月二十二日　午前江蘇第一監獄ヲ視察ス。午後南京地方審判廳及其ノ附屬スル看守所ヲ訪問ス。

五月二十三日　午前八時特別列車ニテ南京ヲ發シ蘇州ニ向フ。午後一時三十分蘇州着。江蘇高等審判廳、蘇州地方審判廳及其ノ附屬看守所、江蘇第三監獄及其分廷ヲ訪問ス。午後一時ノ特別列車ニテ蘇州ヲ發シ上海ニ向フ。午後八時上海着。

五月二十四日　午後上海地方審判廳、其ノ看守所及江蘇第二監獄ヲ訪問ス。

五月二十五日　午前共同租界會審衙門、其ノ看守所及女監ヲ訪問ス。午後共同租界內工部局監獄ヲ訪問ス。

五月二十六日　午前佛租界會審衙門、其ノ看守所及監獄ヲ訪問ス。

五月二十七日　午前合衆國支那裁判所及其ノ監獄並英國高等法院ヲ訪問ス。

五月二十八日　午前八時ノ汽車ニテ上海ヲ出發シ杭州ニ向フ。午後一時杭州着。

五月二十九日　午前浙江第一監獄ヲ訪問ス。午後浙江高等審判廳、杭州地方審判廳及看守所ヲ訪問ス。午後六時ノ汽車ニテ杭州ヲ去リ上海ニ向フ。午後十一時上海着。

五月三十日　日曜日ニ付上海ニテ休養。

五月三十一日　此ノ日ヲ警審法廷及監獄ノ訪問ノ日ニ豫定シ置キタリシモ支那國官憲ハ之ヲ許容セス。

六月一日　午後一時汽船榊丸ニテ青島ニ向フ。
六月二日　午後七時青島着。
六月三日　午前青島地方審判廳、其ノ分廳、其ノ看守所及山東第三監獄ヲ訪問ス。午後汽船榊丸ニテ大連ニ向フ。
六月四日　午前八時大連着、午後九時三十分ノ汽車ニテ大連ヲ出發シ奉天ニ向フ。
六月五日　午前七時奉天着、午後奉天高等審判廳、奉天地方審判廳、各看守所及奉天第一監獄ヲ訪問ス。
六月六日　午後三時三十分ノ汽車ニテ奉天ヲ發シ哈爾賓ニ向フ。
六月七日　午前七時哈爾賓着、午後哈爾賓特別地方審判廳、特別外國人監獄及外國人看守所ヲ訪問ス。
六月八日　午前特別高等審判廳ヲ訪問ス。午後特別地方審判廳ヲ再ヒ訪問ス。
六月九日　午前哈爾賓地方審判廳ヲ訪問ス。
六月十日　午前吉林第三監獄ヲ訪問ス。午後十時哈爾賓ヲ發シ長春ニ向フ。
六月十一日　午前七時長春着八時三十分特別車ニテ吉林ニ向テ出發シ正午同地着。午後吉林高等審判廳、吉林地方審判廳及其ノ看守所ヲ訪問ス。

六月十二日　午前吉林第一監獄ヲ訪問ス。午後四時三十分特別列車ニテ吉林ヲ發シ午後七時三十分長春着。午後十時三十分長春ヲ發シ奉天ニ向フ。
六月十三日　午前七時三十分奉天着午前十時三十分奉天ヲ發シ天津ニ向フ。
六月十四日　午前八時天津着。此ノ日ハ支那國國慶日ナリシヲ以テ何事モ爲サス。
六月十五日　午前直隷第一監獄及看守所ヲ訪問ス。午後直隷高等審判廳及天津地方審判廳ヲ訪問ス。
六月十六日　午後四時三十分天津ヲ發シ北京ニ向フ。午後九時北京歸着。

支那國北京ニ於テ作成ス　千九百二十六年六月二十一日

旅行ヲ完了セル各國代表者

佛蘭西國　ヂー、シー、ツーサン
英帝國　スキナー、ターナー
和蘭國　エー、デー、エー、ド　カット、アンゼリーノ
支那國　鄭天錫

英　帝　國　シー、エフ、ガーステン
亞米利加合衆國　ゼー、イー、ゼーコブス
日　本　國　守屋和郎

旅行ノ一部ニ加リタル各國代表者
亞米利加合衆國　サイラス、エーチ、ストローン
白耳義國　エー、ヴァン、クッツエム
伊太利國　ジー、ド、ロシー
佛蘭西國　マーセル、ボーデ
白耳義國　エー、サージセルス

第四部　勸告

委員ハ其ノ審査ヲ完了シ且本報告ノ第一部、第二部及第三部ニ揭クル事實ヲ認定シ玆ニ左ノ勸告ヲ爲ス。

委員ハ本勸告事項カ相當ニ實行セラルルニ至ラハ諸國ニ於テ其ノ各自ノ治外法權ニ關スル權利ヲ拋棄スルコトヲ得ヘキモノト認ム。

治外法權拋棄ノ上ハ關係國ノ人民ハ一般ノ國際慣行ニ從ヒ及公正且衡平ナル基礎ニ依リ居住及營業ノ自由竝私權ヲ支那國一切ノ部分ニ於テ享有スヘキモノトス。

勸告事項

一

支那國ニ在ル一般人民ニ關スル司法ノ運用ハ之ヲ裁判機關ニ委スルコトヲ要ス。裁判所ハ政府ノ行政其ノ他一切ノ文武官憲ノ不當ナル干涉ニ對シ有效ニ保護セラルヘシ。

二

支那國政府ハ支那國ノ現存ノ法制竝司法及監獄ノ制度改良ノ爲左ノ計畫ヲ採用スヘシ。

一　同政府ハ法規竝司法、警察又監獄ノ制度ニ關スル本報告第二部及第三部記載ノ意見ニ適應スルニ必要ナルヘキ改正及措置ヲ爲スノ目的ヲ以テ右第二部及第三部ニ付考慮スヘシ。

二　同政府ハ左ノ法規ヲ完成シ且之ヲ實施スヘシ。

(一)　民法典
(二)　商法典（手形法、海法及保險法ヲ含ム）
(三)　改正刑法典
(四)　銀行法
(五)　破產法
(六)　特許法
(七)　土地收用法
(八)　公證人法

三　同政府ハ支那國法規ニ付不確實ナル所ナカラシムル爲其ノ正式ナル制定、公布及廢止ニ關スル統一的制度ヲ設定シ且維持スヘシ。

四　同政府ハ縣知事衙門竝舊式ノ監獄及看守所廢止ノ目的ヲ以テ新式裁判所、新式監獄及新式看守所ノ制度ヲ擴張スヘシ。

五　同政府ハ裁判所、看守所及監獄竝其ノ職員ノ維持ノ爲ニ相當ナル財政上ノ施設ヲ爲スヘシ。

三

前記勸告事項ノ全部カ相當ニ實行セラルル時期前ニ在リテモ其ノ主要ナル事項ニシテ實行セラレタル後ハ關係國ハ支那國政府カ希望スルニ於テハ其ノ際協定セラルヘキ漸進的計畫（地理的、部分的又ハ其ノ他ノ）ニ從ヒ治外法權ノ撤廢ヲ考慮スルヲ妨ケサルヘシ。

四

治外法權ノ撤廢ニ至ル迄關係國政府ハ本報告第一部記載ノ意見ニ適應スルノ目的ヲ以テ右第一部ニ付考慮スヘク且治外法權ノ現在ノ制度及行使ニ對シ必要アラハ支那國政府ノ協力ヲ得テ左ノ變更ヲ加フヘシ。

一　支那國法規ノ適用

關係國ハ其ノ採用スルコトヲ適當ト認ムル支那國ノ法規ヲ自國ノ在支正式裁判所又ハ領事裁判所ニ於テ成ルヘク適用スヘシ。

二　混合事件及會審衙門

關係國ノ國民ヲ原告トシ支那國法權ノ下ニ在ル者ヲ被告トスル混合事件ハ通則トシテ外國會審官カ審理ノ監視又ハ其ノ他ノ方法ニ依ル干與ノ爲臨席スルコトナク支那國新式裁判所（審判廳）ニ於テ裁判セラルヘシ。現存ノ特別混合裁判所ニ關シテハ其ノ構成及訴訟手續ハ租界ノ特殊事情ノ許ス限リ支那國新式裁判制度ニ依ル構成及訴訟手續ニ一層適合セシムヘシ。治外法權國ノ人民ニシテ在支外國正式裁判所又ハ領事裁判所ニ出廷スル資格ヲ有スル辯護士ハ支那國辯護士ヲ律スル法令ニ從フニ於テハ一切ノ混合事件ニ付外國人又ハ支那人ノ訴訟代理人タルコトヲ許サルヘシ。右事件ニ付業務ニ從事スル爲ノ資格トシテ何等ノ試驗ヲ必要トセサルヘシ。

三　治外法權國ノ人民

(イ)　治外法權國ハ支那人竝事實上全部又ハ大部分支那人ノ所有ニ屬スル營業及船舶業ニ對シ外國ノ保護ヲ及ホスコトニ因リ生シタル濫用ヲ匡正スヘシ。

(ロ)　支那國ニ於ケル自國民ニ對シ現ニ强制的定期登錄ヲ命セラル治外法權國ハ右定期登錄ノ施設ヲ爲スヘシ。

四　司法上ノ協力

支那國官憲ト治外法權國官憲トノ間及治外法權國官憲相互間ノ司法上ノ協力（司法共助ヲ含ム）ニ關スル必要ナル取極ヲ爲スヘシ。

例ヘハ

(イ)　外國人ト支那國法權ノ下ニ在ル者トノ間ニ於テ仲裁手續ニ依リ民事事件ヲ解決スヘキ旨ヲ定ムル一切ノ約定ハ其ノ當事者カ治外法權國在支正式裁判所又ハ領事裁判所ノ管轄下ニ在ル場合ニ於テハ右正式裁判所又ハ支那國裁判所ノ管轄下ニ在ル場合ニ於テハ右支那國裁判所ニ依リ承認セラルヘク、且右約定ニ從ヒ爲サレタル仲裁判斷ハ執行セラルヘシ。但シ管轄裁判所カ右判斷ヲ公ノ秩序又ハ善良ノ風俗ニ反スト認ムルトキハ此ノ限ニ在ラス。

(ロ)　支那國裁判所ニ依リ正當ニ發セラレ且權限アル支那國官憲ニ依リ證明セラレタル支那國法權ノ下ニ在ル者ニ關スル判決、呼出狀及逮捕又ハ搜査ノ令狀ノ迅速ナル執行ニ付支那國政府ト關係國トノ間ニ滿足ナル取極ヲ爲スヘシ。治外法權國人民ニ關スル同樣ノ事項ニ付亦同シ。

五　課　稅

治外法權ノ撤廢ニ至ル迄、關係國ノ人民ハ支那國政府ノ權限アル官憲ニ依リ正當ニ公布セラレ

タル法令ニ規定セラレ且關係國ニ依リ自國民ニ適用セラルヘキモノト承認セラレタル課稅ヲ納付スルコトヲ要ス○

千九百二十六年九月十六日北京ニテ署名

亞米利加合衆國　サイラス、エーチ、ストローン

白耳義國　ヴァン、クッツェム

英帝國　スキナー、ターナー

支那國　本報告ニ調印スルモ第一部、第二部及第三部ニ掲クル記載ノ內部ヲ承認セルモノト看做サルルコトナカルヘシ　王寵惠

丁抹國　エル、ビー、テーリッツ

佛蘭西國　デー、ツーサン

伊太利國　デー、ロシー

日本國　佐分利貞男

和蘭國　エー、デー、エー、ド、カット、アンデェリーノ

諾威國　ヨハン、ミシリー

葡萄國　ゼー、エー、ド、ピアンチ

西班牙國　マヌエル、アカル、イ、マリン

瑞典國　カール、レージョンフード

正誤表

頁	行	項目	誤	正
二八八	一一	本目凡例	(二)(一)	(二)(一)
二八六	一三	文次例	右在保○第判利他、爾、民、賠、	右在保○第判利地○佛○利○陪○
三六六	二	〃	宣在、健、一法、ア事、	宣在任○護一法○非(ハ)時○人
三七六	三	〃	員、ノ審裁○ル	員。ノ審裁○ル
四二八	九	〃	判、ノ○	判ノ○
四四五	一一	〃	ル事、	ル事○
四四七	一二	〃	ノ、	ル
五〇七	一二	〃	右在保○第判利位、事、	右在保○第判利位非○事○
五一七	一二	〃	宣在、健、一法、ア事、	宣在任○護一法○非○事○
五一七	一二	〃	員、ノ審裁○ル	員。ノ審裁○ル
五一八	一二	〃	判、ノ○	判ノ○
五二四	一二	〃	ル事、	ル事○
五二五	一二	〃	ノ、	ル
五四四	一一	〃	内、黨、時盟、	内、訴、陸、時盟、
五四四	一一	〃	ヶ手續、	ヶ手續○
五四五	一一	〃	七月、以内	七月、以内
五四六	一一	〃	判、	判、
五四六	一一	〃	第四十條	第四十條
五四六	一一	〃	事件ニ	事件ニ
五四六	一一	〃	右宣、	右宣、
五四六	一一	〃	在、	在、
五四六	一一	〃	内、訴、陸、時盟、	全○訴、陸○時盟、
五四六	一一	〃	ヶ手續、	ヶ手續○
五四六	一一	〃	中央政府、	中央政府○
五四六	一一	〃	千九百二十年	千九二十五○年
五四六	一一	〃	支那國支、席	支那國政○席
五四六	一一	〃	黨等	黨等
五四六	一一	〃	以内	以内
五四六	一一	〃	手續、	手續○
五四六	一一	〃	決、定、	法○事
五四六	一一	〃	第四十條	第四十條
五四六	一一	〃	事件ニ	事件ニ
五四六	一一	〃	右宣、	右宣、
五四六	一一	〃	在、	在、
五四六	一一	〃	全○訴、陸○時盟、	全○訴訟○時盟○
五四六	一一	〃	ヶ手續、	ヶ手續○

INTRODUCTORY REMARKS

INTRODUCTORY REMARKS

The representatives of the Powers participating in the Commission on Extraterritoriality in China, to wit:—the United States of America, Belgium, the British Empire, China, France, Denmark, Italy, Japan, the Netherlands, Norway, Portugal, Spain and Sweden, met in Peking in pursuance of Resolution V and additional Resolutions adopted at the Conference on the Limitation of Armament, December 10, 1921, as follows:

"The representatives of the Powers hereinafter named, participating in the discussion of Pacific and 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, the 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 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 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 a position to determine;

" Have resolved

" That the Governments of the Powers above named shall establish a Commission (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 finding 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 herein contemplated shall be constituted within three months after the adjournment of the Conference in accordance 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 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 ".

And the further Resolution:

" That China, having taken note of the Resolutions affecting the establishment of a Commission to investigate and report upon extraterritoriality and the administration of justice in China, expresses its satisfaction with the sympathetic disposition of the Powers hereinbefore

named in regard to the aspiration of the Chinese Government to secure the abolition of extraterritoriality in China, and declares its intention to appoint a representative who shall have the right to sit as a member of the said Commission, it being understood that China shall be deemed free to accept or reject any or all of the recommendations of the Commission. Furthermore, China is prepared to cooperate in the work of this Commission and to afford to it every possible facility for the successful accomplishment of its tasks.

"Adopted by the Conference on the Limitation of Armament at the Fourth Plenary Session, December 10, 1921."

The date of the convening of the Commission was fixed for December 18, 1925, but the interruption of the railway service in consequence of civil warfare in China prevented some of the Commissioners from reaching Peking by that date. The opening session was held in the Chu Jen T'ang at the Winter Palace on January 12, 1926, and the first business session was held in the same building on the following day.

At the opening session which was presided over by the Chinese representative, Dr. Wang Chung-hui, the Chinese Minister of Justice was elected Honorary President of the Commission and Mr. Silas H. Strawn, the American Commissioner, was elected Chairman. At the first business session, Mr. G. Ch. Toussaint, the French Commissioner, was elected Vice Chairman.

The following is a list of the Commissioners, their substitutes and staffs:

AMERICA

Commissioner:	Mr. Silas H. Strawn
Technical Advisers:	Mr. J. E. Jacobs
	Mr. M. F. Perkins

BELGIUM

Commissioner:	Dr. A. van Cutsem
Substitute:	Mr. A. Sergysels

BRITISH EMPIRE

Commissioner:	Sir Skinner Turner
Substitute:	Mr. C. F. Garstin

CHINA

Commissioner:	Dr. Wang Chung-hui
Substitute:	Dr. F. T. Cheng
Technical Advisers:	Mr. Shih Chih-chuan
	Mr. Lin Hsing-kuei
Secretaries:	Dr. Ling Pyau
	Dr. M. T. Z. Tyau
	Mr. C. T. Liang
	Mr. S. Y. Chan
	Mr. Hsiang Che-chun

DENMARK

Commissioner:	H. E. Mr. H. de Kauffmann
Substitute:	Mr. L. P. Tillitse

FRANCE

Commissioner:	Procureur-General G. Ch. Toussaint
Substitute:	Mr. Marcel Baudez

ITALY

Commissioner: Com. G. de Rossi
Substitute: Mr. G. Ros
Secretary: Mr. Magistrati

JAPAN

Commissioner: H. E. Mr. E. Hioki
Substitute: Mr. Sadao Saburi
Secretaries: Mr. M. Shigemitsu
Mr. S. Miyake
Mr. R. Sawada
Mr. W. Moriya
Mr. K. Shiozaki

THE NETHERLANDS

Commissioner: Mr. A. D. A. de Kat Angelino

NORWAY

Commissioner: H. E. Mr. Johan Michelet

PORTUGAL

Commissioner: H. E. Mr. J. A. de Bianchi
Substitute: Mr. L. E. Fernandes

SPAIN

Commissioner: Senor Don Manuel Acal y Marin

SWEDEN

Commissioner: Baron Carl Leijonhufvud

SECRETARIES-GENERAL

Mr. Showin Wetzen Hsu
Mr. W. A. Alexander.

The Commission met in full session 21 times, the last session having been held on September 16, 1926. At these

sessions, the principal work before the Commission, prior to the consideration of the report, was the examination of Chinese codes and laws and the various problems arising out of the exercise of extraterritorial jurisdiction in China.

A travelling committee, charged with the duty of examining the courts, prisons, and detention houses in the provinces, and generally, the working of the Chinese judicial system, carried out a tour of investigation which lasted from May 10th to June 16th. The original program of travel contemplated by the Commission had to be considerably curtailed as the Chinese authorities at Canton formally declined to receive the travelling committee on the ground that extraterritoriality should be immediately abolished without investigation, and certain other parts of China such as Taiyuanfu, Kalgan, Kweihua, Paotao and Ninghsia were inaccessible on account of disturbed political conditions and the difficulty of making transport arrangements.

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PART I

PRESENT PRACTICE OF EXTRATERRITORIALITY IN CHINA

I. BRIEF HISTORICAL OUTLINE

1. Although as early as 1689, China and Russia entered into a treaty providing reciprocally for a modified form of extraterritoriality, the existing system of extraterritoriality in China had its origin in a number of treaties between China and the Powers commencing in the year 1843. In that year China and Great Britain entered into a treaty, to which was attached a number of supplementary articles dated October 8, 1843, one of which, Article XIII, definitely provided that British subjects were to be tried by British officials according to British laws and that in mixed civil cases between British and Chinese there was to be a joint adjudication. The following year, the American and French Governments negotiated treaties with the Chinese Government along similar lines, the former dated July 3, 1844, the latter, October 24, 1844. Sweden and Norway, then united kingdoms, followed with a treaty in 1847.

2. In 1858, there were revisions of the American, British and French treaties and new treaties were entered into between China and those Powers containing extraterritorial clauses similar in purport to those of the earlier treaties but more clearly and carefully stated. In 1876 China and Great

Britain, and in 1880 China and the United States, negotiated further treaties, in which the reciprocal right to send a deputy to watch the proceedings in mixed cases was more clearly provided.

3. In July 1871, Japan and China entered into a bilateral arrangement for the establishment of consular jurisdiction. By the Shimonoseki Treaty and the Treaty of Commerce and Navigation of 1896, China relinquished extraterritorial rights in Japan while Japan retained them in China.

4. By 1918, all the other Powers represented on this Commission, as well as Germany, Russia and Austria-Hungary, which have since lost their extraterritorial rights as a result of the World War, and Peru, Mexico, Brazil and Switzerland, which are not-represented on this Commission, had negotiated treaties with China securing for their nationals in China similar extraterritorial rights. The last treaty entered into by China granting extraterritorial rights to a foreign Power was that with Switzerland which was signed on June 13, 1918 and ratified on October 8, 1919. Altogether, therefore, there are now sixteen Powers exercising extraterritorial rights in China. It may be mentioned in this connection that Sweden has declared in her treaty of 1908 with China that 'as soon as all other Treaty Powers have agreed to relinquish their extraterritorial rights, she will also be prepared to do so.' A similar clause was inserted in the declaration made by Switzerland upon the conclusion of the treaty of 1918 with China, while Mexico in an exchange of notes with the Chinese Government dated September 26, 1921, has promised

the insertion of a clause in the definitive and formal amendment to the treaty of 1899 renouncing Mexican consular jurisdiction in China.

II. SOURCES

5. As has been stated in paragraph 1, the original authority for the existing practice of extraterritoriality is to be found in the treaties negotiated between China and the Powers concerned, a list of which, together with the dates of the treaties and the pertinent articles therein, is attached hereto as Appendix I. In addition, there are a number of secondary sources for the existing practice of extraterritoriality. (see Appendix II) which are to be found in (1) local agreements, (2) customs, some of which have been expressly recognized.

6. The provisions of the treaties, complementary agreements and customs in respect to the practice of extraterritoriality may conveniently for the purpose of this report be treated under two aspects as follows:

(a) The position of the extraterritorial foreigner when he is a defendant in a civil suit or an accused in a criminal case.

(b) The position of Chinese in cases where the plaintiff in civil cases and the complainant in criminal cases is an extraterritorial foreigner.

As a rule, (for exception see paragraph No. 17 (c)), in the former case a court of the nationality of the foreign concerned as defendant or accused has jurisdiction while in the

latter case a Chinese court has jurisdiction. These courts are hereinafter referred to respectively as "Foreign Courts" and "Chinese Courts", although it should be noted that the foreign and Chinese courts so designated, when hearing mixed cases, are to that extent "mixed courts" if the right to depute a representative or co-judge is exercised.

7. It may be mentioned that in all mixed civil cases, the foreign consular authorities are authorized by treaty to assist the parties to arrive at an amicable settlement before litigation is actually commenced. In accordance with this provision, a considerable number of claims between Chinese and extraterritorial nationals are settled out of court.

III. FOREIGN COURTS

(1) In General

8. After the right to exercise jurisdiction over their nationals in China had been placed upon treaty foundation, a number of the Powers proceeded to enact legislation and to institute courts to carry out the provisions of the treaties. Some of the systems put into operation are more extensive than others and in some cases little or nothing has been done to establish courts in China. Two of the Powers, Great Britain and the United States, have established special courts in China with a professional staff. France and Italy have a special judge for China. Japan has specially trained consular judges assigned to the Consulates-General at Mukden, Tientsin, Shanghai and Tsingtao. Norway has a consular judge at

Shanghai who must have received the same legal training as judges of the ordinary courts in Norway. With the above exceptions, the judicial system of the extraterritorial Powers consists of consular courts presided over by a consular officer, alone, or in some cases, assisted by assessors. The British system alone provides for trial by jury. The whole judicial organization of foreign courts in China is generally much simplified, preserving, however, most of the essentials of trial procedure in foreign countries.

(2) Jurisdiction

9. The foreign courts have civil and criminal jurisdiction in three clearly defined types of cases, as follows:

(a) Cases in which the parties on both sides are of the same nationality as that of the court.

(b) Cases in which the plaintiff or complainant is a foreigner not of the same nationality as that of the court.

(c) Cases in which the plaintiff or complainant is Chinese.

10. In the first category of cases, only one nationality is involved, namely, that of the competent court, and the proceedings concern only the Power whose court is functioning. In the second category of cases, two foreign Powers are concerned, the case being tried in the court of the nationality of the defendant or accused. In such cases, agreements and arrangements between the Powers concerned, or the lack of agreements and arrangements may play an important part in the proceedings. In the third category of cases,

the procedure varies according to the nationality of the defendant or accured and according as the proceedings are civil or criminal. In certain instances, the Chinese authorities may claim the right to depute an official to be present at the trial in the foreign court to watch the proceedings and in other instances, in civil cases only, special arrangements exist for examining, in a less formal way, cases conjointly according to equity, the representative of the Chinese Government in these cases having the same rights as the foreign consular representative. Cases coming within the third category may appropriately be described as " mixed cases ".

11. In general, the foreign courts have jurisdiction over their nationals in China when they are defendants in civil cases and accused in criminal cases. All civil cases fall within their competency as courts of first instance but in criminal cases certain more serious crimes in some instances are tried in a foreign court beyond the territorial limits of China. The composition of the foreign courts and their procedure sometimes vary according to the amounts and legal principles involved in civil cases and according to the seriousness of the crimes in criminal cases.

12. It is perhaps not out of place to add that some foreign courts or other foreign authorities are authorized in certain circumstances to order the expulsion from China of nationals under their jurisdiction.

(3) Appeals

13. If the final decision is referred to a superior jurisdiction by way of appeal, or if the case is a criminal one of a serious nature, that jurisdiction will be found either in China itself, as in the case of the British Supreme Court, and partially so in the case of the United States Court for China, or in a neighbouring region as in the case of Japan, the Netherlands' courts at Batavia, the French courts at Saigon and Hanoi and the Portuguese courts at Macao and Goa. In the case of Belgium, Denmark, Italy, Norway, Spain and Sweden, the superiour jurisdiction is in Europe. In the case of all the Powers, final appeals lie to the highest competent tribunals located in their respective capitals with the exception of Holland, which has placed the power of finally deciding appeals in the High Court of Batavia, and with the partial exception of Japan as regards Southern China, Manchuria and the Chientao region from which final appeals lie to the courts in Taihoku (Formosa), Port Arthur and Seoul respectively.

(4) Laws Applied

14. The foreign courts apply the same systems of law as are in force in the territorial limits of the extraterritorial Powers concerned, with or without modifications. In so doing they, of course, at times apply in civil cases, local customs, general principles of equity, and, in conformity with the rules of international law, certain alien laws. Under some of the systems, diplomatic and consular officers, with or without the special approval of their home governments in each specific case, are authorized to promulgate

regulations in police, municipal, harbour and other matters having the force of law while under other systems this practice does not exist.

(5) Prison Facilities

15. Prisoners sentenced by the foreign courts are in some cases sent to foreign prisons in China and in other cases to prisons beyond the territorial limits of China, the deciding factor in most cases being the length of the sentence. The United States of America, Great Britain, France, and Japan are the only extraterritorial Powers providing any prison facilities in China. The other Powers either make arrangements with one of the four Powers above mentioned, or with the foreign settlement or concession authorities for the use of their prisons or they send prisoners sentenced by their courts to prisons beyond the territorial limits of China.

(6) General Memoranda on Foreign Courts

16. Memoranda giving fuller details, prepared in each case by the Commissioner of the nationality concerned, on the foreign judicial systems in China will be found in Appendix III attached to this part of the report in alphabetical order as follows:

1. The United States of America
2. Belgium
3. The British Empire
4. Denmark

5. France
6. Italy
7. Japan
8. The Netherlands
9. Norway
10. Portugal
11. Spain
12. Sweden.

IV. CHINESE COURTS

(1) In General

17. In addition to authorizing the foreign Powers to exercise jurisdiction over their nationals in China, the extraterritorial treaty clauses and agreements also authorize special arrangements for the settlement of civil disputes and criminal complaints between foreigners and Chinese when the latter are defendants or accused. For the purpose of convenience, such arrangements may be divided into three groups as follows:

(a) Those treaties and agreements which expressly provide for the right of the foreign Power to send a representative, usually described as an assessor, to watch the proceedings with the right, if he so desires, to protest in detail against the proceedings, and in the case of the American treaty of 1880, to present, to examine and cross-examine witnesses.

(b) Those treaties which do not contain any such express provision although through the operation of the most

favoured nation clause the right to send an assessor may be and usually is invoked.

(c) Those treaties which provide for the joint adjudication of civil cases by the Chinese and foreign officials concerned.

18. At the time when the extraterritorial treaties were negotiated, the complete administration of justice was in the hands of the courts of the District Magistrates (Chih Hsien) so that naturally the claims and complaints of foreigners against Chinese came to be tried in these courts. In the course of time, however, at Shanghai, Amoy and to a certain extent at Hankow special practices came into existence which enhanced the power of the assessor watching the proceedings. Between 1904 and 1910, China began the reorganization of its judicial system along Western lines and under this reorganization scheme the modern courts were established. Wherever these modern courts were established, the District Magistrates were shorn of their judicial authority. Since the Chinese Government refused to permit the presence of an assessor in these modern courts, and since the foreign Powers were not prepared to relinquish their treaty right to send an assessor to watch cases against Chinese in which their nationals were plaintiffs or complainants, the District Magistrates had perforce to continue to exercise jurisdiction in such cases. However, it is not obligatory upon foreigners to take their cases before the District Magistrates for trial, and they may, if they are compelled by circumstances or are willing to waive their right to have an official representative

of their nationality present to watch the proceedings or to settle the case conjointly according to equity, take their cases to the modern courts for trial, a practice which is now followed to a certain extent by extraterritorial nationals.

(2) Jurisdiction and Procedure

19. The competent courts and tribunals having jurisdiction in the adjudication of claims and complaints of foreigner against Chinese may therefore be summarized as follows:

(a) The Courts of the Districts Magistrates with the Magistrate sitting alone if the right to depute an assessor to watch the proceedings is not exercised.

(b) The Courts of the District Magistrates with an assessor of the foreign plaintiff or complainant's nationality present to watch the proceedings.

(c) The settlement of disputes in civil matters according to equity by a foreign and Chinese official acting conjointly.

(d) Special Mixed Courts at Shanghai, Amoy and Hankow where the assessor sits with enhanced powers.

(e) The Modern Chinese Courts without a foreign assessor.

20. The procedure in cases (a) and (b) above, is briefly as follows: The consul concerned forwards the petition of his national to the Commissioner for Foreign Affairs for transmission to the magistrate having jurisdiction. The case is set for hearing and at the trial the assessor may or may not be present according as the consul concerned does or

does not exercise his treaty right in this respect. With regard to the detailed procedure during the trial, the Chinese Government has prescribed a number of rules and regulations (see for instance those promulgated on March 6, 1913, under the title "Hwa Yang Su Sung Pan Fa") but in so far as these regulations purport to modify or abridge the treaty rights of extraterritorial foreigners they are not recognized as valid by the foreign Powers concerned. This matter has been the subject of discussion between the Chinese Ministry of Foreign Affairs and the foreign Powers concerned, the last communication setting forth the views of the Chinese Government having been despatched on May 26, 1914.

21. As far as concerns the joint examination and settlement of disputes in civil matters provided for in several of the treaties and mentioned in (c) above, in practice this method is followed in litigation chiefly between French citizens and Chinese citizens according to the following rules. The plaintiff or complainant must first address the consul who, if he cannot settle the matter amicably, requests the presence of the competent Chinese official and they together examine the case conjointly and adjudicate according to equity. According to the treaty provision, the meeting must be held at the consulate but as a matter of courtesy it is held at the office of the official representative of the defendant. The competent official has been, according to circumstances, the Taotai, the Sub-Prefect, or the Commissioner for Foreign Affairs. Today it is often impossible to constitute this form of mixed court on account of the refusal of the

Chinese authorities and as a result the consuls usually settle the matter with the Commissioner for Foreign Affairs in an administrative manner.

22. The organization and procedure of the special mixed courts mentioned in (d) above are not absolutely uniform even when the courts are situated in the same city. At Shanghai, there are two of such courts, the Mixed Court of the International Settlement and the Mixed Court of the French Concession.

23. The constitution of the Mixed Court in the International Settlement was originally based upon the Mixed Court Rules of 1869, although this court was actually functioning some years prior to that date. Since 1869, however, various local practices and customs have arisen which have rendered these rules substantially obsolete. At the time of the Revolution in 1911, when the question arose as to whether the Mixed Court could continue to function, its position become anomalous in that the Chinese magistrates had to be confirmed in their position by the Shanghai Consular Body as an emergency measure to prevent the disintegration of the court and others have since been selected and appointed by that body without reference to the Chinese authorities until they are now six in number. After the institution of the Republican Government in 1912, and its recognition by the Powers, negotiations were entered into, and have continued intermittently ever since, for the settlement of the question of the status of this court. Since the foreign and Chinese authorities are at the present time (September 1926) negotiating

about this court, the Commission has not deemed it necessary to go into all the details of its present organization and procedure. Attention should, however, be drawn to its very extensive jurisdiction in that it extends to all Chinese and non-extraterritorial nationals residing in the International Settlement and to the fact that under the present arrangement in all cases even purely Chinese civil cases, foreign assessors adjudicate conjointly with Chinese magistrates. It will be seen, therefore, that this Mixed Court as at present constituted has been functioning without treaty sanction since October 1911.

24. As regards civil procedure in the International Mixed Court when an extraterritorial foreigner is plaintiff, civil action is commenced by the filing of the petition with the registrar of the court through the consular official of the plaintiff's nationality. After the receipt of the petition, the defendant is served with a copy thereof and an order calling upon him to answer within twenty days. When the plaintiff has reason to believe that the defendant will abscond if service is made in this manner, he may apply to the court for a summons for immediate security upon service of which the defendant is taken immediately to the court and required to deposit security for his appearance. In such instances, however, the court usually requires the plaintiff to deposit security prior to the service of such summons as a guarantee of good faith. After service in either manner, a date for the hearing of the case is set by the registrar of the court, at which the plaintiff and the defendant either in person

or by attorney, state their case, produce their evidence and examine and cross-examine witness. At the termination of the case, if after deliberation the magistrate and assessor agree they deliver a joint judgement. If they do not agree there is a retrial.

25. In other civil cases involving only Chinese or non-extraterritorial nationals, the procedure is the same as described above in paragraph 24 except that the petitions in such cases are not filed through the medium of a foreign consul but direct with the registrar of the court upon payment of the prescribed fees, and except that the assessor is one of a number selected yearly by the Shanghai Consular Body.

26. In regard to criminal and police procedure, action is generally instituted by private individuals or by the police. In case the police arrest any person *in flagrante delicto*, the accused is brought to the police station, examined in a summary way, and, if the police desire to prosecute, the substance of the charge is entered upon the Police Charge Sheet and the case brought before the court within twenty-four hours. In minor infractions of the municipal bye-laws, the police also grant bail. In other cases, the aggrieved party must apply to the court for a summons or a warrant. At the trial the procedure varies according as the prosecution is instituted by a private individual or by the police. In the former case the prosecution is conducted by the complainant in person, or by his attorney, and in the latter case by the police prosecutor. Both sides are entitled to produce

their witnesses and evidence and to examine and cross-examine. After the trial, as in civil cases, judgement is given after deliberation with the foreign assessor. In cases where the accused is sentenced to death it is the present practice for the Mixed Court to send the accused to the Chinese authorities at Shanghai for execution of the sentence which is in fact usually not carried out until a further trial has been held by them.

27. Although the Mixed Court Rules of 1869 were not signed by France, Article 10 thereof being clearly contrary to the Sino-French treaties then in force, the provisions of these rules which were not in conflict with that treaty were applied in the French Mixed Court. The other documents relating to this court are the Rules of 1902 defining the jurisdiction of the International Mixed Court and the French Mixed Court, the proclamation of the Consular Body of 1911, the Sino-French agreement of 1914, and the various ordinances of the French Consul-General respecting this Court.

28. At the French Mixed Court, the petition must be filed with the registrar. The service thereof and the summoning of the parties and witnesses is done by the registrar but the processes bear the signature of a judge. In conformity with Chinese practice, the plaintiffs must furnish a personal bond or money security if they do not reside in the Settlement or Concession or are not persons of sufficient substance. The defendant can be put under security by order of the judge upon application of the plaintiff if there are serious reasons therefor. It may be personal and monetary or either of

these form of security. If, however, the defendant is a landholder or a merchant established in the French Concession, the question of arrest or security does not arise if the amount claimed is not greater than the approximate value of his property or his business. The defendant may be detained when there is evidence of fraud or when the security is insufficient. In criminal matters the police may arrest without warrant in cases *flagrantis delicti* or in cases of emergency when public order is jeopardised. In all other cases, a warrant is necessary. The accused must be brought before the court at its next sitting.

29. At Amoy, the constitution of the Mixed Court of the International Settlement of Kulangsu was originally based upon the "Land Regulations of 1902" for that Settlement, Articles 12 to 14 inclusive. In 1911, a situation arose similar to that at Shanghai mentioned in paragraph 23 above, and was dealt with in a somewhat similar manner. The position of this Court, therefore, remains anomalous like that of the International Mixed Court at Shanghai but as Amoy is a small place compared with Shanghai, its importance in the system of extraterritorial practice is not so great as that of the Shanghai Court.

30. At Hankow there is a Special Mixed Court for the trial of petty offenders in the foreign Concessions at that place. The Chinese Government has designated a special magistrate for this purpose and maintains a special prison for the incarceration of persons sentenced by that court. There are no special rules of procedure and the jurisdiction

of the court is very restricted when compared with the Mixed Courts at Shanghai. Civil cases involving extraterritorial nationals as plaintiffs against Chinese are tried before the Hsiakou District Magistrate, who is a different official from the Magistrate of the Special Mixed Court.

31. The procedure in the modern Chinese courts mentioned in (e) above is the same as in the purely Chinese cases tried in those courts.

(3) Appeals

32. Appeals from the orders and decisions of the courts of the District Magistrates hearing mixed cases with or without an assessor sitting as mentioned in (a) and (b), paragraph 19, lie to a court composed of the Chinese Commissioner for Foreign Affairs with the right of the foreign consul concerned to sit with the Commissioner, to watch the proceedings. Beyond this there is no appeal, strictly speaking, but if the decision of the Commissioner is still disputed by the assessor, the matter may be taken to Peking for negotiation between the Ministry of Foreign Affairs and the Legation concerned. Although there is no provision for an appeal in cases referred to in (c) of paragraph 19, in fact it is on record that appeals in such cases have been heard before the Taotai and the consul-general (e. g. in 1867, 1868 and 1905). With regard to cases heard in the special mixed court mentioned in (d) paragraph 19, appeals from the court at Amoy lie, in civil cases of foreigners against Chinese, to

the Chinese Commissioner for Foreign Affairs as in the case of appeals from the courts of the District Magistrates but at Shanghai the case is different. Here, owing to the anomalous position of the International Mixed Court, there is at present no arrangements for appeals from its judgements although rehearings are allowed before the same assessor and magistrate or before a different assessor and magistrate. In regard to the French Mixed Court at Shanghai, a somewhat similar situation exists although there is an arrangement in this court for a rehearing before the senior Chinese magistrate and a special assessor for this purpose. Appeals in cases tried in the modern Chinese courts follow the usual appellate procedure of those courts to the High Courts and to the Supreme Court of China.

(4) Laws Applied

33. The laws applied by all the competent courts and tribunals having jurisdiction in the adjudication of claims and complaints of foreigners against Chinese are mainly the Chinese laws, ordinances, rules and regulations in force in Chinese courts throughout the country subject, in some instances, to modification to meet special conditions such as the enforcement of the bye-laws of the settlements and concessions. These tribunals are also authorized in a number of treaties to apply the general principles of equity.

(5) Prison Facilities

34. Prisoners sentenced by the competent courts and tribunals having jurisdiction in the adjudication of com-

plaints of extraterritorial foreigners against Chinese are incarcerated in Chinese prisons in accordance with Chinese prison regulations except at Shanghai where they are incarcerated in municipal prisons.

V. OBSERVATIONS

35. It may be useful here to make a few observations on the general aspects of the practice of extraterritoriality in China.

(1) Limitations upon China's Jurisdictional Freedom.

36. On account of the profound difference between Chinese and foreign legal and judicial conceptions, the system of extraterritoriality was established in China as a *modus vivendi* necessary for harmonious relations between China and the Powers until the evolution of the laws and legal conceptions of China should render it unnecessary. Although in the course of history, extraterritoriality in its relation to the sovereign rights of a country has been regarded in a quite different light, it is now generally considered as a limitation upon such rights of the State which has granted it. It is on this aspect of the question that China has in recent years laid great stress. This is no doubt due mainly to the growth of nationalistic feeling in China along with the rapid expansion of foreign interests in the country which brings more frequently into prominence the anomalies of the present system.

(2) Multiplicity of Courts and Diversity of Laws

37. It is obvious that with so many foreign courts existing in China, each administering the laws of its own country, anomalies will arise from time to time. The court in which a trial is taking place has no jurisdiction over an alien plaintiff or witness. Thus if such a person commits perjury or is guilty of contempt of court, he is immune from the usual process of law administered by the court in such cases although the court is not powerless, as it may (1) refuse to continue hearing the case, (2) strike the name of the offender, if he should be a lawyer, from the roll of attorneys of the court, and (3) refer the matter to the court having jurisdiction over the offending alien, which in some instances has power to punish him. Again, if the defendant desires to bring a counterclaim against the alien plaintiff, he cannot do so in the same court unless (1) the counterclaim is in fact a "set-off", or (2) the plaintiff submits to the jurisdiction of the court to the extent of depositing security for the satisfaction of the judgement if it should go against him. However, in a case where a counterclaim is raised against an alien plaintiff, the court may, in the interests of justice, stay execution of judgement, or even stay the proceedings, until the counterclaim has been heard in the competent court. Disputes as to the ownership of property seized in execution, which in other countries would be brought before the court

in the form of an interpleader issue, are complicated in China by the existence of other courts claiming jurisdiction. Another striking anomaly arises when several persons have jointly committed a crime. In such a case there must be as many trials in the respective courts as there are accused of different nationalities and of course the punishments inflicted may vary within wide limits. On the other hand, the principles of law administered by the foreign courts are substantially uniform. Where in any case there is a conflict of laws, many difficulties are avoided by the normal application of the rules of international law.

(3) Inaccessibility of the Courts

38. Where a serious crime is committed by a foreigner in China, he can only be prosecuted (unless his nationality is American or British) outside the territorial limits of China, in some cases, even in Europe. It is not necessary to dwell upon the difficulties of this system. Even in cases where a foreigner can be prosecuted before a consular court in China, such a court may be at a very long distance from the place where the offense was committed, and it is often difficult to secure the attendance of the necessary witnesses or to produce other necessary evidence. As a result burdensome delays, expense and other inconveniences arise but the fact that most foreigners in China live in the larger Treaty Ports where foreign courts exist and the fact that some of the extraterritorial systems permit their courts to go on circuit to try cases

in remote districts, eliminate to a large extent these inconveniences.

(4) Competence and Training of the Personnel of the Foreign Courts

39. In view of the fact that the trial of cases before consular judges may be unsatisfactory because of their lack, in some instances, of legal and judicial training and of the conflicting nature of their administrative and judicial duties, a number of foreign Powers, desiring to remedy this state of affairs, have appointed specially trained men as judges, or have established special courts. (See paragraph 8).

(5) Procedure in Appeals

40. A condition similar to that mentioned under (3) above, in connection with serious crimes arises also in connection with appeals. Under most of the systems extraterritoriality in operation in China, appeals from the judgements of the foreign courts must be taken to courts beyond the territorial limits of China. This is obviously unfair for Chinese litigants and sometimes inconvenient for foreigners. (See paragraph 13).

(6) Immunity of Foreigners from the Operation of Chinese Regulations

41. It was stated above (paragraph 14 "Laws Applied") that the courts of the foreign Powers in China apply to their nationals the same laws as are in force within their own

territorial limits, with or without modifications. The power to make such modifications, without specific legistrative authority in each case, is of course limited, and does not as a rule extend to the enforcement of Chinese subsidiary legislation (ordinances, by-laws, rules, regulations, etc.) such as regulations relating to traffic, regulations relating to taxation, and regulations relating to the press. From the immunity of foreigners in this respect an anomalous situation arises, which has been a source of friction between them and the Chinese authorities.

(7) Conflict of Laws Relating to the Nationality of Persons of Chinese Origin

42. In connection with persons of Chinese origin born in foreign countries, anomalies occasionally arise out of the difference between the principle of *jus sanguinis* and the principle of *jus soli*, when such persons resort to Chinese territory. It also happens that naturalization accorded a person of Chinese origin in a foreign country is not recognized in China. These contradictions result in differences which are complicated by the exercise of extraterritorial jurisdiction.

(8) Irregular Protection of Chinese

43. It happens that some extraterritorial Powers too readily extend protection to Chinese in China by allowing Chinese citizens as well as their firms and property, to be registered by their consulates. By so doing they remove

those persons, their property and business interests from the jurisdiction of Chinese laws and Chinese courts. There is no justification, however, for such protection and a number of the Powers, realizing this, have taken steps to control and remedy this situation.

44. Under this heading may also be mentioned the difficulties which arise when persons of Chinese origin who have acquired foreign citizenship either by birth or by naturalization, come or return to places in China where the treaties do not permit foreigners to reside, to own property or to trade, and by holding themselves out to be Chinese are able to set aside these restrictions of the treaties. In case of trouble, such persons claim the protection of their consuls and thus seek to avoid the obligations which they have contracted under the guise of being Chinese citizens. The fact that some Powers do not require compulsory registration of their nationals in China makes it more difficult to keep track of such offenders. Another difficulty arises from the use of different names by persons of Chinese origin.

(9) Absence of Extradition Arrangements

45. On account of the existing system of extraterritoriality combined with the absence of extradition arrangements between China and some of the Powers, and between the Powers themselves, it is often impossible to bring to justice persons who escape from the jurisdiction of the foreign courts in China. This situation could exist to a certain extent without extraterritoriality but with that

system in operation the inequities of such cases become more apparent.

(10) Inviolability of Foreign Premises

46. According to the treaties, foreign premises are not subject to search or entry by the Chinese judicial or other authorities and Chinese criminals who flee thereto cannot be arrested without due requisition by the Chinese authorities addressed to the consular authorities, and in some instances a *prima facie* cause for the arrest has to be proved. It happens, therefore, at times that the extraterritorial nationals give or seem to give protection to Chinese citizens on their premises. When the premises are located in the interior, distant from a consulate, the role of protector by the foreigner concerned becomes more apparent. A similar situation arises when a foreign court has occasion to arrest or serve a process upon a person under its jurisdiction who resides or has taken refuge on premises belonging to Chinese or persons of another extraterritorial nationality.

(11) Restriction upon Travel, Trade and Residence

47. It has long been the policy of China, which was confirmed by the Chinese Delegation at the Washington Conference, that until the system of extraterritoriality is abolished or substantially modified, it is inexpedient for China to open its entire territory to foreign trade and commerce. Accordingly, therefore, foreigners, with the exception of missionaries and those engaged in philanthropic

work, are not entitled to unrestricted travel, trade and residence in all parts of China. Their activities are generally confined to special places called "Treaty" or "Open Ports" and in most instances to special areas in these ports. This situation has a further complication in that there has always been a disagreement between China and the extraterritorial Powers as to the exact limits of these ports and areas which results in frequent disputes between foreigners and the Chinese officials.

(12) Mutual Assistance between Courts

48. The foreign courts in China, both among themselves and in relation to the Chinese and mixed courts, practise to a certain extent cooperation with respect to the mutual summoning and examination of witnesses, arrest of offenders, execution of judgements and the service of judicial process. This mutual assistance is in practice largely a matter of voluntry cooperation and does not have sufficient authoritative basis in the treaties or other formal agreements.

(13) Lawyers

49. With regard to the appearance of lawyers in the foreign courts, each extraterritorial Power has its own rules and regulations regarding the admission of lawyers to appear in its courts. As a rule when a lawyer has been admitted to practice before his own national courts in China he is as a matter of courtesy admitted to practice in the other foreign courts in China if the courtesy is reciprocated. Lawyers are

also permitted to plead in the Mixed Courts of Shanghai. With regard to the appearance of lawyers in the other Chinese courts hearing mixed cases, this right is denied to the foreign plaintiffs except that such plaintiffs as take their cases before the modern courts are entitled to engage a Chinese lawyer to represent them.

(14) Number of Foreigners and Foreign Firms in China

50. In order that some idea may be had of the relative number of foreigners and foreign firms in China, there is given below a table of such statistics, the foreigners of extra-territorial nationality being grouped in Table I and those of non-extraterritorial nationality in Table II. These statistics were compiled for the year 1925 by the Maritime Customs. (See page 219 of The Foreign Trade of China, 1925.) From these statistics, it is to be noted that:

(a) Of the total number of extraterritorial nationals, 98.4% are Japanese, British, American, Portuguese and French, the remaining nationals of the other Powers totalling only 1.6%.

(b) Of the five extraterritorial Powers specifically mentioned above, 87.4% are Japanese (the larger part of whom are in Manchuria), 6% are British, 3.8% are American, 1.4% are Portuguese and 1.2% are French.

TABLE I.

Nationality	Persons	Firms
American	9,844	482
Belgian	549	25
Brazilian	1	0
British	15,247	718
Danish	626	45
Dutch	469	35
French	2,576	176
Italian	783	46
**Japanese	218,351	4,708
Mexican	12	1
Norwegian	575	16
Peruvian	0	0
Portuguese	3,739	174
Spanish	216	16
Swedish	489	6
Swiss	429	25
	254,006	6,473

**According to the statistics given by the Japanese Commissioner, the total number of Japanese nationals in China for 1924 was 1,032,716, which number included 800,000 Koreans and 7,963 Formosans.

Note: The Chinese Commissioner submitted two memoranda, dated March 23rd and April 26th, dealing with the various questions concerning the present practice of extraterritoriality in China, one of which related to the Special Areas, such as Foreign Settlements, Leased Territories, The Legation Quarter at Peking and railway Zones. The Commission was of the opinion that the question of "Special Areas" did not come within the scope of the Commission's investigations, as laid down in the Washington Resolution, and it was decided that the two memoranda should be transmitted to the Governments concerned for their consideration.

TABLE II.

Nationality	Persons	Firms
Austrian	193	3
Czecho-Slovakian	156	6
Finnish	2	0
German	3,050	518
Hungarian	1	0
Russian	79,785	932
Others	48	6
	83,235	1,270

APPENDIX I.

LIST OF EXTRATERRITORIAL POWERS AND PERTINENT TREATY CLAUSES

1. UNITED STATES OF AMERICA.
   Treaty of Wang Hsia (1844), Articles XVI, XXI, XXIV, XXV, XXIX.
   Treaty of Tientsin (1858), Articles XI, XVIII, XXVII, XXVIII, XXX.
   Commercial Treaty of Peking (1880), Article IV.

2. BELGIUM.
   Treaty of Peking (1865), Articles XVI, XVII, XVIII, XIX, XX.

3. BRAZIL.
   Treaty of Tientsin (1881), Articles IX, X, XI.

4. BRITISH EMPIRE.
   General Regulations of Trade (1843), Article XIII, Abrogated by Article I of British Treaty of 1858.
   Treaty of Tientsin (1858), Articles VII, XV, XVI, XVII, XXII, LIV.
   Chefoo Agreement of 1876, Section II.
   Burmah Convention of 1894, Article XVII.
   Modification (1897) of Burmah Convention of 1894, Article II.

Convention respecting Extension of Hongkong Territory (1898), Paragraph 2.

Treaty of Commerce (1902), Article VIII, Section II.

Convention respecting Tibet (1906), Article IV.

Tibetan Trade Regulations (1908), Article IV.

5. DENMARK.

Treaty of Tientsin (1863), Articles XV, XVI, XVII, XVIII.

6. FRANCE.

Treaty of Wangpoa (1844), Articles XXV, XXVI, XXVII, XXVIII, XXXI, XXXV.

Treaty of Tientsin (1858), Articles XXXII, XXXV, XXXVIII, XXXIX, XL.

Convention of Tientsin (1886), Articles XVI, XVII.

7. ITALY.

Treaty of Peking (1866), Articles XV, XVI, XVII, XVIII.

8. JAPAN.

Treaty of Tientsin (1871), Articles XII, XIII.

Treaty of Commerce and Navigation (1896), Articles XX, XXI, XXII, XXIII, XXIV.

9. MEXICO.

Treaty of Washington (1899), Articles XIII, XIV, XVI XVII.

10. THE NETHERLANDS.

Treaty of Tientsin (1863), Articles VI, XV.

11. NORWAY.

Treaty of Canton (1847), Articles XXI, XXIV, XXV, XXIX.

12. PERU.

Treaty of Tientsin (1874), Articles XII, XIII, XIV.

13. PORTUGAL.

Treaty of Tientsin (1862), Articles XV, XVI, XVII, XVIII.

Treaty of Peking (1887), Articles XLVII, XLVIII, XLIX, L, LI.

14. SPAIN.

Treaty of Tientsin (1864), Articles XV, XVI, XVII, XVIII, XII, XIII, XIV.

15. SWEDEN.

Treaty of Canton (1847), Articles XXI, XXIV, XXV, XXIX.

Treaty of Peking (1908), Articles X, XI.

16. SWITZERLAND.

Treaty of Tokyo (1918), Article II and the Declaration attached to the Treaty.

APPENDIX II.

DECLARATION OF POLICY BY THE PRESIDENT OF CHINA DATED OCTOBER 10, 1913.

".....I hereby declare that all treaties, conventions and international agreements entered into between the former Manchu and Provisional Republican Governments of the one part and the foreign Governments of the other part shall be strictly observed, and that all contracts duly concluded by the former Governments with foreign companies and individuals shall also be strictly observed, and, further, that all rights, privileges and immunities enjoyed by foreigners in China by virtue of international engagements, national enactments and established usages are hereby confirmed. This declaration I make with a view to the maintenance of international amity and peace."

APPENDIX III.

GENERAL MEMORANDA ON FOREIGN COURTS

(1) THE UNITED STATES OF AMERICA

I. In General.

After the ratification of the Treaty of Wang Hsia in 1844 between the United States and China, Articles 16, 21, 24, 25 and 29 of which granted extraterritorial rights to the United States, the American Government proceeded to enact the necessary laws and create the legal machinery to carry out the provisions of the Treaty. The first statutes regulating and defining the system of American extraterritorial courts were enacted on August 11, 1848. This was followed by supplementary and amendatory Acts of June 20, 1860, July 22, 1866, July 1, 1870, March 23, 1874 and February 1, 1876. In 1878 all of the abovementioned Acts were consolidated in Sections 4083 to 4130 of the Revised Statutes of the United States. These Statutes, as far as China is concerned, still continue in force except in so far as they have been amended by the Act of June 30, 1906, creating the United States Court for China and the Act of June 4, 1920, merging the judicial functions of the Consular Judge of the Consular Court for the District of Shanghai with the functions of the Commissioner of the United States Court for China, who after that date became *ex-officio* Judge of the Consular Court for the District of Shanghai.

There have also been a number of special Acts such as the Opium Traffic Act, the Pharmacy Act, and the China Trade Act.

II. Outline of the Extraterritorial Courts.

As a result of the above Congressional Acts, there exist in China today the following American extraterritorial courts:

1. 17 Consular Courts.
2. 1 United States Commissioner's Court.
3. The United States Court for China.

1. Consular Courts.

There are in China eighteen (18) Consular Districts, viz: Amoy, Antung, Canton, Changsha, Chefoo, Chungking, Foochow, Hankow, Harbin, Kalgan, Mukden, Nanking, Shanghai, Swatow, Tientsin, Tsinan, Tsingtao and Yunnanfu. The Consul-General, Consul or Vice-Consul in charge of the Consulate in the above mentioned districts in *ex-officio* Judge of the Consular Court, except in the case of Shanghai District, where the Commissioner of the United States Court for China is *ex-officio* Judge of the Consular Court instead of the senior consular officer.

The Consular Courts, including the Court of the Commissioner of the United States Court, exercise jurisdiction in matters civil, criminal and probate. In civil cases they have jurisdiction where the amount involved does not exceed $500 in the currency of the United States. In criminal cases they

have jurisdiction where the punishment for the offense cannot by law exceed $100 fine or sixty days imprisonment, or both. In addition, they have the power to arrest, examine and discharge accused persons and / or bind them over for hearing before the United States Court for China, in cases which do not fall within their jurisdiction. In probate matters they have jurisdiction over all estates less than $500 in the currency of the United States.

2. The United States Court for China.

The United States Court for China was created by Act of Congress of June 30, 1906, and occupies practically the same position in the American judicial system as that of a District Court of the United States. It consists of a Judge appointed for ten years, a District Attorney, a Marshal, a Clerk and a Commissioner, whose terms of office are at the pleasure of the President. This court sits regularly at Shanghai and is required to sit once a year in the cities of Canton, Tientsin and Hankow. In addition, the Judge of this court may, at his discretion, hold court at the American consulate in any city in China where it is permitted by the treaties, if he considers such action necessary.

The United States Court for China has original jurisdiction in all cases, civil, criminal and probate not falling within the jurisdiction of the consular courts. In the decision of March 9, 1919, *In re Estate of A. C. K. Fitch*, the Judge of the United States Court for China held that this court possesses concurrent jurisdiction even in minor cases which fall

within the original jurisdiction of the consular courts. According to this ruling, therefore, parties may bring original actions in the United States Court for China in minor cases which they might otherwise be required to bring in a consular court. In addition the United States Court for China has appellate jurisdiction in all cases which are tried in the consular courts and the Commissioner's court, as courts of first instance.

III. Appeals.

The system of appeals in the American courts in China is as follows:

1. Appeal from the judgement or decision of a consular court lies to the United States Court for China.

2. Appeals from the judgements and decisions of the United States Court for China, lie to the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California.

3. Appeals and writs of error may be taken on the decisions and decrees in extraterritorial cases, from the United States Circuit Court of Appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted on judgements of said Court of Appeals in cases coming from the District and Circuit Courts of the United States.

IV. Prisoners.

Prisoners sentenced by the consular courts and the

United States Court for China are usually, in minor cases, incarcerated either in the United States Jail at Shanghai or some other prison arranged for by the court concerned. In cases where the term of imprisonment is more than three months it has been the practice to send prisoners to Bilibid Prison in Manila but more recently to the United States. The Attorney General of the United States, however, under authority of Section 5546 of the Revised Statutes, may transfer prisoners to federal prisons in the United States at his discretion.

V. Laws Enforceable Against Americans in China.

The general provisions regarding the laws enforceable against Americans in China are to be found in Section 4086 of the Revised Statutes and Section 4 of the Act of June 30, 1906, both of which are quoted below:

"Sec. 4086. Jurisdiction in both criminal and civil matters shall, in all cases be exercised and enforced in conformity with the laws of the United States which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended

in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers of the United States in those countries, respectively, shall by decrees and regulations which shall have the force of law, supply such defects and deficiencies."

"Sec. 4. The jurisdiction of said United States Court both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American Consular Courts in China, and all judgements and decisions of said consular court, and all decisions, judgements and decrees of said United States Court shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall govern the same subject to the terms of any treaties between the United States and China."

During the past three years (i. e., 1923, 1924, and 1925) the total number of cases, civil, criminal and police cases, tried in all the American courts in China was 1006, among

a population of approximately 12,000 Americans, of which number 945 were tried at Shanghai.

This is a yearly average of 369 cases, 130 of which were cases of infractions of the Shanghai Municipal By-Laws.

(2) BELGIUM

Belgium secured extraterritorial rights in China by the Treaty of Peking of November 2nd, 1865, and therefore the status of Belgian subjects resident in that country has, since that time, been defined by the Consular Organization Law of December 31, 1851.

There is no permanent Consular Court, the need therefor never having made itself felt, but a court can be formed when required on the initiative of the Consuls at Canton, Hankow, Shanghai and Tientsin. The Consular Court consists of the Consul as President, two Assessors, reputable Belgian subjects, Registrar, the Chancellor of the Consulate.

The administration of justice in the Belgian Consular Courts in China is subject to the control of the Royal Procurator-General at Brussels.

Jurisdiction in Civil Matters.

The Consul sits alone and without appeal from his judgements, in all disputes not exceeding 100 francs in value, where the defendant is a Belgian and the plaintiff, a Belgian or a foreigner. The Consul sits with two Assessors in all disputes the value of which exceeds 100 francs, where the defendant is a Belgian and the plaintiff a Belgian or a

foreigner. Appeal may be had from his judgements. The appeal is heard by the Court of Appeal at Brussels.

As regards the Final Appeal on points of law, appeal may be to the Final Court of Appeal at Brussels in the circumstances permitted by the law of Belgium.

Disputes between Chinese citizens and Belgian subjects are settled in accordance with the conciliatory procedure provided in the treaty of Peking of 1865 which instituted a mixed jurisdiction giving judgements according to equity (Article 16).

Original Jurisdiction. Police Offenses. (Contraventions)

The Consul takes cognizance of simple police offenses committed by Belgian subjects. There is no appeal from his decisions.

Misdemeanours. (Delits)

The Consul with the assistance of two Assessors selected from reputable Belgian citizens takes cognizance in first instance of misdemeanours committed by Belgian subjects. Appeals are heard in the Court of Appeal at Brussels, and final appeal on points of law in the Final Court of Appeal at Brussels in the circumstances permitted by the Belgian law.

Criminal Offenses. (Crime)

Persons committing offenses defined as criminal offenses by the Criminal Code are sent to Brussels to be tried by the Assizes of the Province of Brabant.

Penalties.

Police offenses, misdemeanours and criminal offenses are punished by the penalties provided by the law of Belgium, but as regards police offenses and misdemeanours, the Consul has authority to substitute fines for sentences of imprisonment.

(3) GREAT BRITAIN

Under the Foreign Jurisdiction Act, 1890, Great Britain took power to make provision for the exercise of jurisdiction over British subjects, in countries where she had by Treaty or otherwise that right. This was to be by an order (known as an Order-in-Council) made by His Majesty by and with the advice of His privy Council. Under this power the China Order-in-Council, 1925 has now been made, replacing other Orders dealing with that jurisdiction throughout China (except Kashgar) in 236 Articles.

The jurisdiction is exercised by means of a Supreme Court and Provincial Courts: it covers all civil and criminal matters, including now divorce in the case of British subjects domiciled in China.

Supreme Court.

This ordinarily sits at Shanghai, but can sit at any other place in China. At present it has two trained judges and a professional staff. It has unlimited jurisdiction both in civil and criminal matters. It can sit alone, with assessors, or

with a jury. Certain matters, both civil (e. g. divorce) and criminal (e. g. murder) must be tried by it.

A Provincial Court exists in each Consular district in China. It is presided over by the Consular Office in charge of the district. In civil matters it has a jurisdiction unlimited in amount, subject to:

(1) a duty to report to the Supreme Court in any case over £500 in value or involving difficult questions of law,

(2) the right of the Supreme Court to withdraw any case to itself.

It can sit alone or with assessors. In criminal matters its jurisdiction is limited to cases in which a sentence of 12 months imprisonment and a fine of £100 is sufficient penalty: but the Supreme Court can withdraw any case from it. It sits summarily or with assessors.

Appeal.

A full court of three judges has been established which sits at Shanghai. This Court has full jurisdiction in both civil and criminal matters. In order to deal with urgent matters, it can consist of two judges and in some cases of one only. It exercises the powers of the Court of Appeal and the Court of Criminal Appeal in England. Any party to a civil action in the Supreme Court can appeal to tnis Court. Any party to a civil action in a Provincial Court involving £25 or upwards can appeal to this Court:—in any other case leave to appeal can be given by either the Provincial Court or by the Full Court itself. In criminal cases

there is a general right of appeal to the Full Court: even in summary trials when they involve questions of law. Leave to appeal in these cases can also be given by the Full Court.

Final Appeal.

In civil matters there is an appeal from the Full Court to the Privy Council sitting in London (a) as of right in cases involving £500 or upwards: (b) by leave of the Full Court, in cases where the questions involved are of great general or public importance.

In criminal matters, there is no appeal to the Privy Council from a decision of the Full Court, save by leave of the Privy Council.

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Sentences of Criminal Courts are carried out in China, but there is power to send convicted men to Hongkong or elsewhere to serve their sentences. Death sentences are carried out by means of hanging in Shanghai but not until they have been confirmed by H. B. M. Minister.

Mitigation and remission of sentences may be made by the Secretary of State or H. B. M. Minister on a report by the Judge of the Supreme Court.

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In civil matters, the law administered is, subject to the provisions of the Order-in-Council, the Law of England for the time being in force.

In criminal matters, the law administered is the Law of England for the time being in force, and in addition the Courts have power to deal which matters declared to be offenses in any Order-in-Council. Thus a British subject can be punished for perjury in a foreign Court in China, and also for contempt of that Court, and local regulations (e. g. in Sanitary and Port matters or dealing with things like narcotics and arms importation) can be made binding on British subjects. Up to January, 1922, no fewer than 192 of these Regulations had been made, and at that date 146 were in force in China. (The power to make these Regulations was contained in earlier Orders-in-Council).

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Kashgar has been treated differently. The laws of India have been applied to British subjects there, and the Court held there is under the Court of Burmah. The principles above laid down otherwise apply generally.

(4) DENMARK.

The rules now in force in regard to the jurisdiction over Danish subjects in China are based upon an Act of Parliament of February 15, 1895. Pursuant to special instructions issued under this Act by the Danish Ministry of Foreign Affairs, the judicial and administrative authority for the whole of China is vested in the Danish Consular Court in Shanghai.

Competency of the Court.

The Consul-General in Shanghai is *ex-officio* Consular Judge. He is assisted in the exercise of his functions by the staff of the Consulate-General and the subordinate local Consuls.

In civil cases the Consul-General is sole judge. In criminal cases he alone directs the preliminary inquiry. He alone also passes sentence when he is of the opinion that the penalty may not exceed a fine of 200 crowns. In cases where he presumes that a heavier penalty may be imposed, he has to summon two men to assist him in passing sentence. These must, as far as possible, be chosen amongst the members of the Danish community in China. The Judge is the President of the Consular Court, but the assessors have equal vote with him, and the decisions are taken by majority of votes.

Competency of the Court.

The Court is a court of first instance in all civil cases brought against Danish subjects residing or temporarily sojourning in China. It is, furthermore, competent as probate court to handle the estates of Danish residents in China.

In criminal cases the Court is competent to pass penal sentences up to six months imprisonment, whereas more serious cases must be referred to the courts at Copenhagen.

In his capacity as bailiff the Consular Judge executes sentences and agreements made in court on persons, who are subject to his jurisdiction, whether passed by or concluded

before him or another Danish Consul invested with judicial power or before a Danish tribunal in the native country.

The special administrative authority entitles the Consul-General to issue, for the whole of the country or a part of it and for the individuals who are subject to his jurisdiction, general police regulations, and to publish what is to be observed with reference to the existing laws of the country.

Appeals.

The court of appeal in civil cases is the "Ostre Landsret" in Copenhagen. In criminal cases an accused, upon whom a sentence of imprisonment has been passed, has the right to demand that the case shall be referred to the Copenhagen "Byret" to be dealt with *a prima instantia*. In this case the accused is to be sent home and handed over to the authorities in Denmark.

Prisons.

Prisoners are usually incarcerated in the prison of the French Concession in Shanghai, where the Consular Court has its premises.

Legislation applied by the Court.

The cases must as far as possible be dealt with and adjudged in accordance with Danish law, and especially in criminal cases sentence must be passed according to the general Danish penal code or other laws containing penal clauses. It goes without saying that in civil cases not only

local customs but also foreign laws are frequently taken into consideration in the decisions of the Court. In criminal cases in which the Danish penal laws are not directly applicable, as for instance in cases involving contraventions against local import restrictions with regard to arms, narcotics, etc., or infringements of other local regulations, the Court is usually able to deal effectively with the lawbreaker by analogical application of corresponding Danish legislation.

Statistics.

(a) By far the majority of the civil cases filed with the Consular Court are settled out of Court with the assistance of the Judge, the cases in which summonses are served being thereby reduced to a very small number. The average number for the last ten years is five cases, and there have been years without a single law-suit. About thirty per cent of the plaintiffs were Chinese and the majority of the rest foreigners, of various nationalities. In no case was the judgement of the court appealed to the superior instance in Copenhagen.

(b) In the last ten years a total of twenty-five criminal cases were tried by the Court. The offenses may be classified as follows: serious violations of traffic regulations, etc. 10 cases; assault 7; robbery-fraud, 3; libel, 3; morality, 1; desertion, 1. Two cases were referred to the criminal courts in Copenhagen.

(5) FRANCE

I. Status.

Articles 27 and 28 of the Sino-French Treaty of Whampoa of October 24, 1844 and Articles 38 and 36 of the Sino-French Treaty of Tientsin of June 27, 1858, lay down that French citizens in China are under French jurisdiction.

The law of July 8, 1852 defining the jurisdiction of the French Consuls in China applied, with certain modifications, the provisions in force in this matter in the Levant.

The principal documents which govern French Consular Jurisdiction in China at the present time are, apart from the abovementioned law:—

The Admiralty Ordinance of August, 1681.

The Edict of June, 1778 defining the judicial and police functions exercised by French Consuls in foreign countries.

The law of May 28, 1838 regarding the prosecution and punishment of police offenses, misdemeanours and criminal offenses committed by French citizens in the Levant.

The law of April 28, 1869 which assigns to the Court of Saigon appeals from the judgements of Consular Courts in China and the duties of dealing with criminal offenses committed by French citizens in that country.

The law of July 15, 1910 which assigns to the Court of Appeal of Hanoi appeals from the judgements of

Consular Courts in Yunnan and the duties of dealing with criminal offenses committed by French citizens in the same province.

II. Organization of Consular Courts.

There are 17 French Consular Courts in China. Each Consular Court is composed, both in civil and criminal causes, of the Consul as President, and two assessors, except in simple police matters when the Consul sits alone. Judicial functions in Peking are performed by the "Chancelier" of the Legation (Decree of January 31, 1881).

In 1917 a judge was attached to the Shanghai Consular Court, and now there is a judge for China to sit in the Consular Courts when the consuls do not sit. Moreover, as a general rule when a Consul is absent or unable to sit, he is replaced on the bench by a member of the consular staff; in that event the latter must hear all stages of the case.

The Assessors must be French citizens, of age and in enjoyment of their civil rights. In commercial or civil cases they are appointed for each case. In criminal matters they are nominated in advance for the whole year. They must take oath before exercising their functions.

If for any reason the Consul cannot obtain the services of two Assessors he sits alone.

The Chancelier performs the duties of registrar and clerk of the court. In Peking these duties are assigned to a deputy Chancelier appointed for the purpose by the Minister or Chargé d'Affaires of the Republic.

There is no public prosecutor attached to the Consular Courts. The duties of the examining magistrate are carried out by the Consul.

III. Competence.

Consular Courts are competent to hear all civil or commercial disputes of whatever nature or importance, either between French citizens or when a French citizen or French protected person is sued by a foreigner. The jurisprudence of precedents has even admitted that a Chinese plaintiff can bring an action against a Frenchman in the French Consular Court. Cases are heard without appeal where the writs concern personal matters or movables the value of which does not exceed 3,000 francs, also cross petitions or actions for compensation not exceeding the same amount, and where the parties have agreed to have their case taken finally.

In petty criminal matters the Consular Court takes cognizance of misdemeanours. It has jurisdiction

(a) if the offender is a French citizen

(b) if the offender is French protected

(c) so far as French partners or accomplices in a misdemeanour committed by a foreigner are concerned.

China disputes French jurisdiction over her protégés such as Roumanians or Greeks (*vide*:—Communications from the Chinese Ministry for Foreign Affairs to the French Minister regarding the Buzila case, 13 January 1919, and the Touliotos case, 11 December 1920).

The Consular Court has authority to change imprison-

ment penalties to fines, if there is no prison, or if the prison is not suitable to receive the convict.

Criminal offenses are referred to the Courts of Appeal at Saigon or Hanoi, first to the Indictment Court of the Procurator-General and subsequently if the accusation is sustained, to the Full Court.

Council Chamber.

The Consular Court sits as Council Chamber when the Consul does not avail himself of his right of direct summons in police cases and misdemeanours. In the case of criminal offenses the court must be convoked in the form of a council chamber as soon as the legal equiry is completed.

The Council Chamber can decide:

(1) That there is insufficient proof and that there is no case for prosecution.

(2) That the offense is a police offense and to refer the accused back to the simple petty police hearing.

(3) That the offense is a misdemeanour and to refer the accused back to the court for petty offenses.

(4) That the offense is a criminal one and issue an order for the remand of the accused in custody. In case of remand under arrest the order is immediately notified to the accused who is sent with the evidence and the court record to the Procurator General of the Court concerned.

IV. Appeals.

There is no appeal from judgements in simple police

cases. In civil matters the notices of appeal are governed by the provisions of the Edict of 1778 and Articles 456 and 61 of the Code of Civil Procedure.

In penal matters appeal can be had from all judgements of the Consular Courts respecting any fact styled as misdemeanour. The right of appeal belongs to the accused, to persons responsible from a civil point of view, to the injured party (only in rsepect of his own interests) and to the Procurator General of the competent Court.

The procedure is laid down in the law of 1836 and the Code of Legal Inquiry in Criminal Matters.

V. Appeal to the Supreme Court.

The appeal to the Supreme Court is brought before the Court of Cassation in Paris. In civil matters the appeal to the Supreme Court is only authorized when based on an allegation that the Court exceeded its powers. In penal matters appeal to the Supreme Court is not allowed against the judgements in simple police cases.

VI. The Law Administered.

As a general rule the laws of France are administered, so long as they do not conflict with the special provisions of consular jurisdiction and are not of a purely territorial nature.

But if the plaintiff is a foreigner, whose national law is not common to that of the French or French protected defendant, the consular courts have to conform to the rules of

international law. Thus consideration is given as of right to the rule *locus regit actum*. Similarly also if the parties of their own free will have invoked a law, that law is administered. In default of any stipulation the law administered is the *lex loci contractus* or the *lex loci solutionis*. For example, if a contract has been made in Hongkong the British law is administered. When the contract has been made in the concessions and the presumed desires of the parties cannot be decided, the Consular Courts administer the customs of commerce and the general principles of law. In bankruptcy matters the *lex fori* governs in principle the position of the bankrupt and the consequences of the bankruptcy. As regards the rules governing the procedure they are always those of the *lex fori*.

(6) ITALY

In the Treaty concluded at Tientsin in 1866 between China and Italy, full jurisdiction by her own authorities was reserved by the latter Power, in all questions arising between Italian subjects residing in China, in regard to rights whether of property or person, as well as in similar questions between foreigners and Italian subjects, in which the latter were defendants (Art. XV).

In criminal matters jurisdiction over Italian subjects was also reserved to Italian authorities alone (Art. XVI).

Art. XVII, on the other hand, provided for a kind of mixed jurisdiction in civil suits between Chinese and Italian subjects; but as the right of co-operation with foreign au-

thorities in deciding civil cases in which Chinese subjects were plaintiffs was subsequently relinquished by China in other treaties with foreign Powers, Italy claimed the privilege of full jurisdiction over her own subjects also in such civil suits, a claim which has been contested by the Chinese Government.

No special law to govern the exercise of jurisdictional functions in China had to be enacted, since the Italian Consular Law with attached regulations, already in force at the time of the signing of the treaty, embodied detailed provisions for that purpose.

In accordance with this law judicial power was vested, according to the nature and importance of the case, either in the Consul himself or in the Consular Court attached to each Consulate, their jurisdiction extending over their respective consular districts, of which there are five at present in China, as follows:

Shanghai (Consulate-General), Provinces of Kiangsu, Anhwei, Shantung, Chekiang and Fukien.

Hankow (Consulate), Provinces of Hupch, Kiangsi, Honan, Hunan, Szechwan, Shensi and Kansu.

Tientsin (Consulate), Provinces of Chihli and Shansi.

Harbin (Consulate), Three Manchurian Provinces.

Canton (Consulate-General), Provinces of Kwantung, Kwangsi, Kweichow and Yunnan.

As mentioned above, the Consul or his substitute, or his delegate, may sit as single judge; and the Consul or his substitute, or his delegate, presides over the Consular Court.

This is formed by the President and two assessors, the latter being chosen from among a number of judges who are annually appointed by the Consul, by Consular Decree. They must not be necessarily Italian subjects (Art. 69 of the Consular Law), but for the practical considerations very seldom foreigners are nominated. The standing, morality and qualifications of the residents in the Consular District is to be carefully investigated before proceeding to the appointment of judges; and in choosing the assessors for each particular case, consideration is given to their special competence in the questions to be examined, and any existing connexion of interests with the litigant parties is scrutinized.

Should, for any reason or consideration, it become impossible or unadvisable to form a three-judges court, the Consul will then sit alone in its lieu, and he will have to mention this circumstance in the documents relating to the case which he will try.

A Vice-Consul—or where there is none, a peron nominated by the Consul-perform the duties of Registrar of the Court.

Lawyers and Attorneys intending to appear on behalf of litigants are required to send a written application to the Consul, who will by Consular Decree grant or refuse the same. An appeal against the refusal, to the Ministry of Foreign Affairs, is admitted.

Judgements of Consuls or Consular Courts are executed within the Consular District by the Consul himself, or without any further formalities, by the competent authorities,

in other Consular Districts (where extraterritorial rights are enjoyed), in the Kingdom of Italy, and in the Italian Colonies.

Respective Competence of the Consul of the Consular Court in Non-Contentious Matters.

Section IV of the Italian Consular Law deals with non-contentious jurisdiction (*giurisdizione volontaria*). Consuls are thereby given, in what concerns the exercise of this jurisdiction, the same powers which in Italy a "Pretore", or a President of a Court of First Instance have; while cases which are within the sphere of a Court of First Instance are to be taken up by the Consular Courts.

A limitation to these powers is however specified, which reserves only to the Judiciary of the Kingdom all ordinances, decrees and other acts relating to cases of adoption or legitimation of children, or to transactions in connexion with immovable properties situated within the Kingdom of Italy, which can be granted only by Judicial Authorities sitting in the Kingdom.

Decisions are taken in chambers. Orders, decrees of judgements can be appealed against, before the Court of Appeal of Ancona, in all cases in which appeal is allowed under Italian law. Pending a superior decision they may be however enforceable by special order of the Consul or of the Consular Court, also in cases in which Italian law does not expressly provide for provisional enforcement.

Civil Jurisdiction.

The Consul sits as single judge in all disputes arising between members of the crew of Italian ships and the captain or master, in regard to salaries, allowances, relations, etc. No appeal against his decisions is allowed.

In civil or commercial disputes between Italians or in which Italian subjects are defendants, if the amount involved does not exceed five hundred lires, the Consul sits as single judge; otherwise the Consular Court is competent.

As a rule Italian law are applied; but local customs and usages of trade, as well as foreign laws are taken in due account in commercial cases.

The procedure before the Consualr Court is somewhat simpler than the ordinary one to be followed in the Courts in the Kingdom. An outline of such a procedure is to be found in the Consular Law, Art. 80—110 and in the Consular Regulations, Art. 213—248.

Appeal in Civil Cases.

No appeal against the judgements delivered by the Consul sitting as single judge or by the Consular Courts in cases involving not more than one thousand five hundred lires is allowed. In all other cases the Court of Appeal of Ancona is competent to try again in the case.

The party dissatisfied with the judgement of the Consul or the Consular Court shall give notice of appeal to the Consulate within ten days from the handing down or notification

of such judgement. The proper appeal is to be filed within a year therefrom, in the Court of Appeal of Ancona.

Criminal Juisdiction.

The Italian Consular Law defines the competence of the different judicial organs, in criminal matters, as follows:

" Contravvenzioni ", of which Italians in the Consular District or on board Italian ships are guilty—the Consul or his substitute, or his delegate, as single judge.

" Delitti "—the Consular Court.

" Crimini"—the Assizes Court of Ancona.

If we refer to the Italian Criminal Code, in force since 1890, we find all criminal offenses grouped under the two headings " Delitti " and " Contravvenzioni ". It is therefore necessary to explain that the term " crimini ", which occurred in the Sardinian Criminal Code, still in force when the Consular Law was promulgated, is now taken to cover all criminal offenses punishable with imprisonment for life, perpetual loss of civil rights, and imprisonment or detention for a minimum period of three years.

There being no Procurator attached to the Consulates, the duties of prosecutor are entrusted ot the Consul himself (Art. 115 of the Consular Law).

The Consul performs also the duties of investigation judge in all cases in which preliminary investigation is found necessary. The Consular Court, in chamber, on the report of the investigation judge, upon being satisfied that no supplementary investigation is required, either discharges the

accused, or commits him for trial before the Consul or Consular Court. In case of " crimine " the documents are to be transmitted to the Procurator-General attached to the Court of Appeal of Ancona, who will commit the accused for trial before the Assizes, or will not take up the prosecution, according to the circumstances of the case.

Italian criminal laws are applied; for Italian subjects living in Settlements and Concessions the respective Municipal By-laws are enforced.

Appeal in Criminal Cases.

For sentences passed by the Consuls no appeal is allowed. These sentences are not even subject to revision by the Supreme Court (Art. 133 of the Consular Law).

The Court of Appeal of Ancona is competent to re-try cases in which sentence has been passed by the Consular Court, only on petition from the person sentenced, or the Procurator-General attached to that Court, or the aggrieved party suing for damages, when the amount of these exceeds the sum of one thousand five hundred lires.

Notice of appeal should be filed within five days from the reading of the judgement in Court or within ten days from the notification of the same, if the party concerned was not present at the reading of the judgement.

Administrative Powers of the Consul.

The Consuls are invested with police authority by Art. 172 of the Consular Law. According to this article Consuls

may, if circumstances so require, and so far as compatible with Treaties and local customs, enact police regulations to be observed by Italian subjects residing in the Consular Districts. Non-compliance with his orders given in his capacity of supreme police authority in the Consular District is punishable in accordance with the provision of the Italian Criminal Code relating to "disobedience of orders lawfully given."

Italian subjects can be expelled from the Consular District by virtue of Consular Decree, if their conduct is such as to jeopardize the public order among the local community, as well as for moral or political consideration.

(7) JAPAN

1. Rules Governing the Exercise of Consular Jurisdiction.

The Sino-Japanese Treaty of 1871 provides for the bilateral grant of the rights of consular jurisdiction between the Contracting States. By the Shimonoseki Treaty and the Treaty of Commerce and Navigation, concluded in 1896, the Chinese Government relinquished extraterritorial right in Japan, while the Japanese Government retained them in China.

In 1899 the Japanese Government enacted a "Law Relating to the Duties of the Consular Official" in which provisions are embodied for the exercise of consular jurisdiction. The law empowered the consular official commissioned in China to exercise as *ex-officio* judge, jurisdiction in criminal,

civil and commercial cases where Japanese nationals are the accused or defendants and in non-contentious matters concerning Japanese nationals resident in China. In the same year was promulgated the Imperial Order entitled "Detailed Rules Relating to the Duties of the Consular Official", which defined the general principles in regard to consular jurisdiction in China.

2. The Organization of the Judiciary.

(A) The Japanese consular official in China is empowered as court of first instance to hear and decide matters as follows:

i) All civil cases regardless of the amount involved.
ii) Bankruptcy cases.
iii) Non-contentious matters.
iv) Criminal cases in which the offenses are not felony.

The consular official has no power to give judgement in criminal cases involving felony, i.e. an offense which can by law be punished with death, imprisonment or penal servitude for life or for a term of not less than one year. The consular official conducts preliminary examinations in such criminal cases and if the accused is suspected to be guilty, remands them for public trial to the District Court of Nagasaki in case they were examined by a consular official in Central China; to the District Court of Kwantung in case they were examined by a consular official in Manchuria; to the District Court of Seishin, Korea, in case they were examined

by a consular official in Chientao; and to the District Court of Taihoku, Formosa, in case the consular official in charge is commissioned in Southern China. The cases thus remanded are heard by these courts as the court of first instance.

The Japanese law provides that cases involving offenses against the Imperial Household and the Imperial Family or offenses against the internal security of the State shall fall within the special jurisdiction of the Supreme Court of Japan proper or of the Colonial Government, which shall conduct the preliminary examination and public trial of such cases.

(B) In regard to the appeal and the final appeal from the judgement of the consular official, the same judicial procedure is followed as in the appeal and the final appeal from the judgement of the general court of Japan.

The system of appellate jurisdiction in cases from consular officials is as follows:

First Instance	Appeal	Final Appeal
Consular official in Central China (as regards criminal cases involving felony, District of Nagasaki).	Court of Appeal of Nagasaki.	Supreme Court of Japan.
Consular official in Manchuria (as regards criminal cases involving felony, District Court of Kwangtung).	Division of Appeal of High Court of Kwangtung.	Division of Final Appeal of High Court of Kwantung.

Consular official in Chientao (as regards criminal cases involving felony, District Court of Seishin, Korea).	Court of Appeal of Seoul.	Supreme Court of Korea.
Consular official in Southern China (as regards criminal cases involving felony, District Court of Taihoku).	Division of Appeal of High Court of Formosa.	Division of Final Appeal of High Court of Formasa.

3. The Official Staff of the Consular Court.

There are thirty-five Japanese consulates situated in China. The consul-general or consul in charge of the consulate is *ex-officio* judge. To each of the consulates-general at Fengtien, Tientsin, Shanghai, Tsingtao, and where suits and actions are many and diversified, is attached a consul or a vice-consul who is solely charged with judicial matters. Such consul or vice-consul is appointed from among the judges who are actually in the judicial service in Japan. The consul-general, consul or vice-consul has power to hear and decide a case by himself. The functions of the procurator are discharged by a chancellor or a police official of the consulate; and the duties of the registrar by a chancellor. The chancellor in charge of judicial matters is generally appointed from among those who have had experience as registrar in courts of Japan.

4. Judicial Procedure.

Japanese consular jurisdiction in China is generally exercised in accordance with the judicial procedure in the courts of Japan, provided that exceptions are made only where the conditions in a district or other circumstances do not permit the consular jurisdiction from introducing such judicial procedure. If a criminal cause falling by law within the jurisdiction of a consular official be deemed to affect the friendly relations with other State or States, the Minister for Foreign Affairs may instruct such consular official to withdraw jurisdiction from the cause and to send the criminals to a prison situated in Japan, and, at the same time, may take the necessary steps to have the cause examined and tried by the Court of the Appeal of Nagasaki (or the District Court of Nagasaki), the District Court of Kwantung, the District Court of Seishin, or the District Court of Taihoku, in accordance with the jurisdiction and nature of the cause.

5. Laws, Ordinances and Regulations Applied.

All the civil, commercial and criminal laws, ordinances, and regulations enforced in Japan shall be applied to cases tried by the consular official. However, in case they are not applicable by reason of the nature of a case, proper provisions in lieu thereof may be laid down by Imperial Ordinance or Order of the Minister for Foreign Affairs. The consular official is delegated to law down necessary orders in regard to administrative, particularly police, matters. Consular order

may provide for the punishment of a fine of not more than fifty yen or detention.

6. The Execution of Sentence.

Sentences in matters civil and commercial, are executed by a police official in the consulate, who is *ex-officio* process-server.

Sentences in criminal cases are executed in the prison attached to the consulate, in case where the term of imprisonment or penal servitude is comparatively long, prisoners are sent to a prison situated in Japan. Fines are collected by a police official in the consulate who is *ex-officio* process-server in pursuance of orders of the official who functions as a procurator.

7. Judicial Assistance.

In a case a Japanese national in China commits an offense and absconds in a district outside the jurisdiction of the Japanese police power, the Japanese authorities must receive assistance of foreign authorities concerned for the arrest of the accused. It is the present usage that in case the accused takes refuge in the interior of China the accused is arrested had handed over to the Japanese authorities by the assistance of the Chinese authorities, and in case the accused absconds within the exclusive or the International Settlements of the extraterritorial Powers, by the assistance of the municipal authorities concerned.

In case Japanese nationals in China commit an offense in the interior of China or in the exclusive Settlements of other Powers or in the International Settlements, the accused is arrested in accordance with the principle of mutual judicial assistance by the authorities having jurisdiction in such districts and is surrendered to the Japanese authorities. If a foreign national (inclusive of Chinese) after having committed an offense, absconds into a Japanese Settlement or the Railway Zone, or in case a foreign national commits an offense in a Japanese Settlement or the Railway Zone, it is the present practice that the accused is arrested by the Japanese authorities upon the request of the foreign authorities concerned and is delivered to them.

Judicial assistance will be necessary when a civil judgement is to be executed on a Japanese national in the foreign or the International Settlements, or when the judgement of a foreign tribunal is to be executed on a foreign national in a Japanese Settlement or the Railway Zone. But there have been very few instances of such mutual assistance between the Japanese and the foreign authorities.

It is provided by treaty that the Japanese authorities will arrest and deliver up at the request of the Chinese authorities a Chinese subject who has committed an offence and who has taken refuge in houses occupied by Japanese subjects in China or on board a Japanese ship in Chinese waters, but actually there have occurred few cases which called for such assistance.

The so-called commission rogatoire though quite necessary, has not become a common practice between the Chinese tribunals and the Japanese consular officials nor between the Japanese consular officials and the authorities of other extraterritorial Powers.

(8) THE NETHERLANDS

By the Treaty of October 6, 1863, signed at Tientsin, the Netherlands obtained extraterritorial status for its nationals in China. In order to give the necessary statutory authority to the Netherlands consular officers for the exercise of judicial functions, Parliament passed the Act of July 25, 1871, known as "The Consular Law". It contains regulations concerning the powers of consular officers in respect to the registration of civil acts and in respect to consular jurisdiction; this law has been repeatedly modified, lastly on February 23, 1918.

Article 1 of the Consular Law provides that only those consular officers who have been specially designated by Order in Council (General Order of the Queen with the advice of the Council of State) shall be empowered to exercise jurisdiction with the district thereby assigned to them. The Order in Council of September 19, 1872, lastly modified on March 28, 1917, authorizes the consular officers highest in rank at Amoy, Canton, Shanghai and Tientsin to exercise jurisdiction in China.

According to Art. 20 of the Consular Law, judicial power in these four districts may be vested in the consular officer

alone as *unicus judex* or in the consular court. The consular court is composed of the consular officer as president and two assessors to be appointed by the chief of the Netherlands Legation.

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In civil and criminal cases the laws of the Netherlands are applied; in commercial cases regard must also be had to well-established usages of trade in force in the district of the consulate, or in the place where the transaction took place. As to procedure, both in civil and criminal cases, the laws of the Netherlands are followed with some minor exceptions. The organization of the courts is, however, much simplified. With the approbation of the chief of the Legation, police regulations may be made by consular officers in China; offenses against these regulations may be punished with detention not exceeding 6 days or a fine not exceeding 25 florins, or both. According to the law of March, 1913, displomatic and consular officers are also authorized to issue in certain cases more important regulations which, however, before promulgation have to be sanctioned by the Minister for Foreign Affairs. Offenses against these regulations may be punished with detention of not more than six months or a fine of not more than 600 florins.

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In civil cases the consular officer tries alone and without appeal all claims up to 75 florins against Netherlands

subjects. All extrajudicial duties which in Holland in civil cases are entrusted to Justices of Peace or Presidents of the Courts of Arrondissement are also discharged by him.

In criminal cases he tries alone and without appeal all offenses punishable with detention not exceeding 6 days or a fine not exceeding 60 florins, or both.

The consular court tries all claims exceeding 75 florins against Netherlands subjects; its judgement is without appeal when the claim does not exceed 600 florins, but if it does, appeal to the Court of Justice in Batavia is permitted. It is also empowered to discharge all duties which in Holland are entrusted to Courts of Arrondissement in matters of guardianship, curatorship, marriage, etc., and also in cases of bankruptcy, default of payment, etc.

In criminal cases it tries without appeal all offenses punishable with detention of more than 6 days or fine of more than 60 florins. It may also try as a court of first instance all crimes punishable with imprisonment of less than 4 years, but appeal to the Court of Justice in Batabia is permitted. The court may also order the expulsion from China of nationals under its jurisdiction. If the maximum punishment is or exceeds imprisonment of 4 years, the Court of Batavia is the court of first instance.

With the exception of the judgements of the consular officers and of the judgements of the consular courts in criminal cases, cassation of all final judgements and decisions delivered by virtue of the Consular Law by the High Court of Justice of the Netherland Indies is permitted. The judge-

ments in criminal cases delivered by virtue of the Consular Law by the High Court of Justice in Batavia, whether as a court of first instance or as a court of appeal, are open to revision by the High Court.

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The records of judgements delivered or of acts registered in pursuance of the Consular Law are operative throughout the Kingdom and its foreign colonies and possessions.

Sentences are served in prisons of other nations; condemned persons sentenced to imprisonment of more than 6 months may be sent to the Netherland Indies to undergo their sentence.

From the judicial statistics of the last five years (1920-1924) it appears that during that period not one single civil or criminal case was tried in the districts of Amoy and Canton, only one case in 1924 in the district of Tientsin. In the district of Shanghai, in which the greater part of Netherlands subjects reside, the consular judges tried respectively 12, 22, 14, 24 and 54 cases both civil and criminal, mostly minor civil cases or petty offenses; the great majority thereof concerned Netherlands subjects or citizens of other foreign nations.

(9) NORWAY

A Law of March 29, 1906 regulated the jurisdiction exercised by Norway in China.

According to this Law the Consular Court consists of the Consular Judge as Chairman, and, with some exceptions referred to below, two assessors.

The Norwegian Consul-General at Shanghai is the Consular Judge. It is, therefore, necessary to appoint a Consul who has received the same training as the Judge of the ordinary Courts in Norway.

The assessors are appointed for each case and are not trained judges, but constitute the lay element of the Court: being mercantile experienced men, men with nautical knowledge or knowledge of other kinds as the case may be.

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For the sake of convenience, and to make this sketch more clear *Criminal* and *Civil Cases* are dealt with separately.

Criminal Cases.

In criminal cases the Consular Judge also exercises the functions which, at home, according to the Code of Criminal Procedure, are assigned to the Public Prosecutor.

In cases where only fines may be inflicted, the Consular Judge sits alone (without assessors) but has to call two jurors.

In the same way the judge may also sit without assessors in cases where the punishment cannot exceed imprisonment for 3 months provided that the accused agrees to assessors not being called.

In other cases two assessors must sit with the judge.

The Consular Court has not jurisdiction in cases where the penalty exceeds 3 *years.*

If the penalty exceeds 3 years the case must be referred to the Courts in Norway.

The Appeal of a judgement by the Consular Judge or by the Consular Court lies with the Supreme Court of Norway (in Oslo).

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Civil Cases.

All civil cases, also divorce cases, are heard by the Consular Court (the Judge and two Assessors) provided that the Judge may hear a case alone when the value of the object under dispute does not exceed kr. 200 (about Mex. $110).

The Appeal.

The appeal from the Consular Sourt lies with the Supreme Court of Norway (in Oslo) although the appeal in cases about a matter the value of which does not exceed a certain amount lies with the City Court of Oslo.

No appeal can be made against a judgement, when the value of the claim leading to the action does not exceed kr. 200 (Mex. $110).

The Law administered by the Consular Court is the Law of Norway.

It should be remembered that, according to the Criminal Code of Norway, in certain cases breaches against Municipal By-Laws are punishable according to the said Criminal

Code. In this way, for instance, breaches against Shanghai Municipal Council's Traffic Regulations are punishable.

The Judge may also, if he chooses, sit outside Shanghai and he may authorize some other person, who he may consider qualified, to hear witnesses or carry out other duties of the Judge, at other places. Such other person is, however, never authorized to pass judgement.

(10) PORTUGAL

The right of jurisdiction over Portuguese citizens in China is provided by the Treaty concluded between China and Portugal in the year 1887.

This jurisdiction—civil, commercial and criminal—is exercised by the Consuls and Consular Courts, the consular officer at the treaty ports sitting alone in criminal cases and with or without assessors in all civil and commercial cases.

The laws of Portugal are applied in all cases, taking into consideration what may be contained in diplomatic conventions.

Civil and Commercial Jurisdiction.

Consular jurisdiction in all civil and commercial matters is exercised within the limits prescribed by treaties in force and according to "The Consular Regulations".

The Consular Regulations in articles 523 to 620 contain full particulars regarding the exercise of extraterritorial jurisdiction.

No action can be brought before the Consul or the Consular Court (as the case may be), until an attempt at con-

ciliation has been made. The Vice Consul acting as Justice of Peace sits on all cases of conciliation.

The Consul sits alone and his decision is final in all cases involving sums not exceeding 200 escudos ($400). Any other case over 200 escudos in value is submitted to the Consular Court, which is constituted by the Consul as President and three assessors.

The procedure before the Consul sitting alone and before the Consular Court is identic. The Consul presiding over the Court, before giving judgement, has to submit to the assessors the necessary questions regarding the facts.

The decision of the Court is subject to appeal to the High Judicial Court in Goa (Tribunal de Relacao de Goa), Portuguese India.

Criminal Jurisdiction.

The Consul and the Consular Courts exercise jurisdiction over the Portuguese citizens and on board Portuguese merchantmen in Chinese waters.

The Consul sits alone in all cases which correspond to the following penalties:—

1. Caution.
2. Suspension of political rights for a period not exceeding 5 years.
3. Fine up to the amount of 1000 escudos (Mex. $2000).
4. Banishment for a period not exceeding 6 months.
5. Imprisonment not exceeding 6 months.

The Consular Court is competent to hear all cases corresponding to heavier sentences than those above enumerated, with the exception of those specifically mentioned in Articles 55, 56 and 57 of the Penal Code.

Articles 55 to 57 of the Penal Code refer to crimes corresponding to imprisonment from 2 to 8 years followed by exile from 8 to 25 years; or expulsion from the continent of Portugal; or sentence to be served by exile in Portuguese colonies in Western Africa. These cases have to be sent to the Judicial Court at Macao. The duty of the Consular Officer in this instance is simply to obtain evidence and collect all proofs of the crime, which shall be despatched to Macao with the least possible delay.

There is no death penalty in Portuguese law.

Sentence passed by the Judicial Court at Macao is subject to appeal to the High Judicial Court in Goa. The party may further appeal on questions of law and procedure to the Supreme Court of Justice in Lisbon (Supreme Tribunal de Justica) whose decision is final.

The following are the principal laws in force:

Civil Code.

Code of Civil Procedure.

Code of Commercial Procedure.

Penal Code.

Novissima Reforma Judiciaria (Criminal Procedure).

Bankruptcy Code.

Family Laws and Laws of Divorce, etc., (recent additions and alterations of the Civil Code.)

(11) SPAIN

The basis of Spanish Consular jurisdiction in China is found in Aticles XII, XIII and XIV of the Sino-Spanish Treaty of 1864.

The dispositions governing the Consular jurisdiction of Spain in China are contained in the regulations of November 18, 1854.

The professional Consul forms the Consular Court, but in order to pronounce sentence in the case of which he takes cognizance it will be necessary for him to nominate two Spaniards of over 25 years of age, or failing them, to appoint two foreigners of note, to concur with him in pronouncing sentence. If it is not possible for him to find two Spaniards or two foreigners as aforesaid, the Consul may pronounce sentence alone, making known this circumstance before the sentence.

The legislation applicable is the Spanish.

In civil matters the Consular Court will not admit a written application when the value of the thing claimed does not attain $100 Chinese currency. Questions of minor importance will be resolved by means of arbitrators nominated by the parties. If the latter make no nomination the Consul will appoint them, and he will be the third in case of disagreement between the arbitrators.

The Consul will take note of offenses committed by Spanish subjects in which no arms have been used and which have not resulted in effusion of blood provided that the injured party makes complaint. In case the offenses have resulted in effusion of blood or if arms have been used, also in other crimes and misdemeanours, the Consul will proceed officially, associating with himself two Spaniards, or, failing them, two foreigners of repute, who will assist him in the proceedings and judgement of the case.

In matters of non-contentious jurisdiction the Consul possesses the qualifications and fulfils the duties pertaining to a judge of first instance.

The competence of the Spanish Consular Court extends over all Spaniards.

Sentences pronounced by the Consul are final in civil matters when the interest at stake does not exceed $400 and such sentences may be carried into effect by distraint of goods and even by personal pressure when it is legal. Sentences pronounced by default will be executed upon the goods of the contumacious persons.

(12) SWEDEN

Sweden's right of exercising consular jurisdiction in China is based on the Treaty concluded between Sweden-Norway on one part and China on the other, on March 20th, 1847, its section 21 reading as follows:

> "Subjects of China, who may be guilty of any criminal act toward Swedish or Norwegian subjects, shall be arrested and punished by the Chinese authorities according to the laws of China; and subjects of Sweden or Norway, who may commit any crime in China, shall

be subject to be tried and punished only by the Consul, or other public functionary of Sweden or Norway, thereto authorized, according to the laws of his country. And, in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides."

Another Treaty between Sweden and China was concluded on July 2nd, 1908, confirming the special rights acquired by Sweden. Article 10 of this Treaty, of the following tenor is dealing at length with this particular subject;

"The only authorized Swedish Authorities shall hear and decide all cases brought against Swedish subjects by Swedish subjects, or by the subjects or citizens of any other foreign Power, without the intervention of the Chinese Authorities.

"However, as China is now engaged in reforming her judicial system it is hereby agreed that as soon as all other Treaty Powers have agreed to relinquish their extraterritorial rights, Sweden will also be prepared to do so.

"Charges or complaints of a civil nature brought by the subjects of either of the High Contracting Parties against the subjects of the other shall be heard and decided impartially by the Authorities who have jurisdiction over the defendants, in accordance with the procedure observed in similar charges or complaints brought by subjects of the most favored nation.

"Subjects of either of the High Contracting Parties

charged with the commission of any crimes or offenses shall be tried by the Authorities who have jurisdiction over the accused with the procedure observed in similar cases of the most favored nation, and, if found guilty, shall be punished in accordance with the laws of their own country."

The rules now in force on this subject are contained in the Swedish law on consular jurisdiction of June 5th, 1909, which came into force on January 1st, 1910. Those subjected to this jurisdiction are Swedish subjects, individuals placed under Swedish protection (protégés) and, as far as concerns crimes committed on board Swedish vessels, also citizens of other nationalities than the Swedish. With regard to "protégés" the said law has as yet not been applied, no Swedish "protégés" existing in China in the technical sense of the word.

The application of Swedish law is the fundamental governing consular jurisdiction. With Swedish law is here understood all laws and Royal ordinances in force within the realm of Sweden. However, only so with the express proviso: "as far as local conditions allow and provided the law of June 5th, 1909, or any other Swedish legislation do not contain other stipulations."

Any Swedish law particularly applying to Sweden alone, requires Royal sanction to extend its validity to cover consular jurisdiction abroad. But so far no need has been felt for such a sanction. Owing to this fact it may be doubted whether, for instance, the Consular Court is in a position to