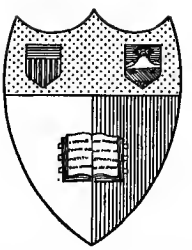

THE CHINO-JAPANESE TREATIES OF 1915

The Chino-Japanese Treaties of May 25, 1915

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I

INTRODUCTION

ONE stumbling-block which is not insurmountable, but has hitherto stood in the way of the establishment of cordial and friendly relations between China and Japan, is the so-called Chino-Japanese treaties of 1915. They constituted the burning point of the controversy between China and Japan at the Peace Conference at Versailles, where the Chinese delegates, for the reasons which we shall take up later, urged their abrogation, while the Japanese delegates insisted on their validity on the ground that they were duly entered into by the two countries and that they must be carried out if for no other reason than the proverbial sanctity of international treaties. China's claim for abrogation won the sympathetic hearing of President Wilson and Premier Lloyd George and many other leading delegates at the Conference. The issue became blurred, however, by the Shantung "settlement," although it is a known fact that in reaching that "settlement," President Wilson had refused to recognise

the validity of the Chino-Japanese treaties of 1915 and Premier Lloyd George considered them as good as executed. In the absence of a clear ruling by the Peace Conference, however, Japan has since insisted on their operation, and China has continued to urge their abrogation. Unless the question of their validity is finally disposed of, therefore, the Chino-Japanese treaties of 1915 will forever remain a disturbing element in international politics in the Far East.

The Chino-Japanese treaties of 1915, taken all together, comprise two treaties, properly so called, one respecting the Province of Shantung, and the other respecting South Manchuria and Eastern Inner Mongolia, and thirteen diplomatic notes exchanged between the Chinese and the Japanese Governments and presumably attached to the above two treaties. For the sake of convenience, these two treaties and thirteen notes are hereafter referred to merely as "the Chino-Japanese treaties of 1915." They were concluded on May 25, of the said year, as the result of the series of diplomatic negotiations in regard to the Twenty-one Demands. The said demands were made by the Japanese Government, January 18, 1915, and were pressed upon the Chinese Government for acceptance in their entirety. The nature and the contents of these demands, the motive which had actuated them, and their political and economic significance, have been treated *in extenso* in the brochure, "The Twenty-one Demands."

We need only recapitulate them very briefly here in order to make our narrative comprehensible.

The demands consisted of five Groups, the first relating to Japan's succession to the German rights and concessions in the Shantung province, the second relating to Japan's special interests in South Manchuria and Eastern Inner Mongolia, the third relating to Japan's desire of making the Han-yeh-ping Company a Chino-Japanese joint enterprise, the fourth asking for non-alienation of the coast of China, and the fifth relating to the questions of China's national advisers, police administration, purchase of arms, Japanese religious propaganda in China, Yangtze valley railways, and Fukien province. Except the Fifth Group, which was postponed for "future negotiation," the first four Groups of demands were embodied, in one form or another, in the two treaties and thirteen annexed notes.

In considering their validity from the point of International Law, as well as in attempting to understand the real character of these treaties, it is necessary to bear in mind the exact circumstances under which they were concluded. The Twenty-one Demands were presented to the Chinese President in person on January 18, 1915; on February 2, the first conference took place; on April 17, the Japanese Minister suspended the negotiation because of China's refusal to accept the demands *in toto;* on April 26, Japan presented a revised list of demands,

twenty-four in all, and pressed the Chinese Government for immediate acceptance; on May 1, China replied to the revised demands, and in a Memorandum read, the extent was pointed out to the Japanese Minister, to which the Chinese Government was able to go; on May 6, the Japanese Minister informed the Chinese Foreign Office that an ultimatum was received from Tokio and that it would be delivered upon China's further refusal to comply; on May 7, at 3 p.m. to be exact, the Japanese Minister delivered the ultimatum to the Chinese Government. "The Imperial Japanese Government hereby again offer their advice and hope that the Chinese Government, upon this advice, will give a satisfactory reply by six o'clock p.m. on the 9th day of May. It is hereby declared that if no satisfactory reply is received before or at the specified time, the Imperial Government will take steps they may deem necessary." Up to the delivery of the ultimatum, twenty-five conferences were held, but the negotiations were abruptly terminated by this drastic action on the part of the Japanese Government. On May 8, the Chinese Government complied with the ultimatum; on May 15, the text of the treaties and notes was drafted; and on May 25, they were signed, embodying the first four Groups of the Twenty-one Demands.

It is true that the treaties in question concern Japan and China, the contracting parties, only. In view of the fact that the concessions granted to

Japan under these treaties are of such a wide range and of such a nature that they either infract or conflict with the treaty rights of the other Powers in China, it is proper to say that they are not of strictly Chino-Japanese concern. Besides, the controversy between Japan and China hinges on the voidance or validity of these treaties, and the question of validity of international agreements is a question of International Law, which can be best decided by all while the subject-matter involved in the dispute con- the civilised nations in the world. In other words, cerns primarily China and Japan only, the principle with which the dispute is to be settled is of universal interest.

Studied from the point of view of International Law, the Chino-Japanese treaties of 1915 are void, on a good many grounds, some of which may appear extravagant, but some are undoubtedly unanswerable. Among these grounds may be mentioned (1) lack of legislative sanction, (2) vital change of circumstances under which they were entered into, (3) disappearance of one of their objects, (4) conflict with the existing treaties, (5) violation of the Open Door principle, (6) inconsistency with the Covenant of the League of Nations, and (7) incompatibility with China's sovereignty and her right of self-preservation and self-development. These are the principal grounds; there are other political, legal, and moral reasons which will enter into consideration. At the Peace Conference at Versailles,

the Chinese delegates urged the abrogation of these treaties:

"Because these treaties are and constitute one entire transaction or entity arising out of the war and they attempt to deal with matters whose proper determination is entirely a right and interest of the Peace Conference;

"Because they contravene the Allied formula of justice and principles now serving as the guiding rules of the Peace Conference in its task of working out a settlement of the affairs of nations in order to prevent or minimise the chances of war in the future;

"Because, specifically, they violate the territorial integrity and political independence of China as guaranteed in the series of conventions and agreements severally concluded by Great Britain, France, Russia and the United States and Japan;

"Because they were negotiated in circumstances of intimidation and concluded under the duress of the Japanese ultimatum of May 7, 1915; and

"Because they are lacking in finality, being so regarded by Japan who sought to make them final by negotiating—before China was suffered to enter the war in association with the Allies and the United States—a set of secret agreements at variance with the principle accepted by the Belligerents as the basis of the peace settlement."

The Peace Conference at Versailles has become history. China now looks forward to the Washington conference, perhaps, as another opportunity for

considering the validity of the 1915 treaties. Will the Washington conference take up this troublesome question? And if so, will the conference undertake to abrogate the treaties under consideration? It is perhaps safe to answer the first question in the affirmative; the second question it is difficult to answer one way or another.

II

LACK OF LEGISLATIVE CONCURRENCE

THE so-called Chino-Japanese treaties of 1915 are null and void *ab origine* for the simple reason that they have never been approved or ratified by the Parliament of the Republic of China. The National Assembly, as the Chinese parliament is called in the Provisional Constitution of Nanking, was not consulted in the conclusion of these treaties; and they have never since been submitted for approval or ratification to any other legitimate legislative body that the exigency of internal politics has called into existence since they were concluded in May, 1915.

According to the Provisional Constitution passed at Nanking, January, 1912, which was in force at the time of the conclusion of these "treaties" on May 25, 1915, it was stipulated in Article XXXV, Chapter IV, that "the Provisional President shall have power, with the concurrence of the National Assembly, to declare war and conclude treaties." It must be remembered that this Provisional Constitution has remained in force, and will remain in force, until a permanent constitution can be drafted and completed, and passed by the parliament to take

its place. For the time being, therefore, the Provisional Constitution of Nanking, whatever might be said about it as to its defects, has remained the supreme law of the Chinese Republic. All China's international dealings, as well as her domestic questions, must be governed and settled in accordance with this supreme law of the land. Any international understanding or agreement which the Chinese Government enters into with the foreign Powers in the future, or which it has entered into in the past, must, in order to be constitutional and valid, have the concurrence of the National Assembly, or any other legitimately and constitutionally organised legislative body of the Republic. On the one hand, it is, therefore, unconstitutional for the Chinese Government to make any international agreement without the concurrence of the legislative organ, and on the other hand, all the agreements and treaties that are or have been so entered into, are and ought to be null and void. Commenting on the treaty-making power of a State, a well-known American authority on International Law makes this observation, which is not only apropos, but also explains very succinctly the fundamental reason why a treaty concluded without the constitutional sanction of a State is not binding upon that State: "In states having a monarchical form of government the treaty-making power is one of the prerogatives of the crown; in states having republican institutions it is exercised by the executive,

either directly or subject to the approval of some branch of the legisative department of the government. This is the case in the United States. The constitution and laws of every state define the treaty-making power, and determine what restrictions, if any, are to be placed upon its exercise; and any agreements undertaken in excess of these limitations are unauthorised and void" (George B. Davis, "The Elements of International Law," Third Edition, p. 226). It may be added that this is also the case in China, where, nominally, at least, a republican government obtains.

The opinion here quoted is supported by all international jurists of recognised authority. Kluber asserts that public treaties can be valid only when they are concluded "in a manner conformable to the constitutional laws of the State." Wheaton holds that the constitution of every particular State "determines in whom resides the authority to ratify treaties negotiated and concluded with foreign powers, so as to render them obligatory upon the nation." Professor L. Oppenheim, a well-known English authority on International Law, says that, although the sovereign of a State is generally recognised as exercising the treaty-making power, this power is often limited by the constitution of the State, which is "of importance for the Law of Nations." "Such treaties concluded by these heads (of States) or representatives authorised by these heads as violate constitutonal restrictions are not

real treaties and do not bind the States concerned, because the representatives have exceeded their powers in concluding the treaties."

Indeed, it may be said that the constitutional limitation upon the treaty-making power of the executive is a common feature of all democratic institutions. On the one hand, it does not only restrict the power of the executive but also gives a voice to the people in the matters of international agreements. On the other hand, this limitation seeks to avoid secret understandings and agreements which usually characterise the foreign policy of an autocratic government and remove the danger of "selling the whole countries by means of treaties." China is by no means the only country which has such constitutional limitations upon the treaty-making power of its executive. What is provided for in the Nanking Provisional Constitution is modelled upon the constitutions of the western Republics. Thus, according to the eighth and ninth articles of the French constitution of July, 1875, it was provided: "The President of the Republic (France) shall negotiate and ratify treaties. He shall give information regarding them to the Chambers as soon as the interests and safety of the State permit. Treaties of peace and commerce, treaties which involve the finances of the State, those relating the person and property of French citizens in foreign countries, shall be ratified only after having been voted by the two Chambers. No cession, exchange, or an-

nexation, of territory shall take place except by virtue of law."

Similar restriction is also found in the Constitution of the United States. Thus, according to the second article of the second section of the Constitution, the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." A treaty is null and void if it is made without the advice and consent of the Senate, or, after conclusion, if it is not approved by two-thirds of the Senate. Of course, executive understandings and agreements such as the Root-Takahira "agreement" and the Lansing-Ishii "agreement," which do not possess the validity of an international treaty, do not require the senatorial approval or consent. It is interesting to observe that the Senate of the United States has jealously guarded its constitutional prerogative in treaty-making, and has frequently refused to give its sanction to treaties concluded by the executive and signed by the official representatives of the United States. In 1911, for instance, it refused its assent to a treaty of general arbitration with Great Britain on the ground that it called into question the sovereignty of the United States. In 1920, it refused to ratify without amendments the Treaty of Peace of Versailles, which was negotiated by President Wilson himself, and signed by him and other American delegates to the Peace Conference. These instances

serve to emphasise the point that when the treaty-making power of a State is placed in different hands, treaties entered into by that State, in order to be valid, must be approved by all institutions enjoying the treaty-making power. In other words, any international agreement that one State enters into with another, must meet the constitutional requirements of both contracting parties in order to be binding upon them.

Now coming back to the question of the so-called treaties which China and Japan had entered into in May, 1915, it is hardly necessary to say that they were concluded without the concurrence of China's National Assembly, the only legitimate legislative body of the Republic. The Twenty-one Demands (later increased to twenty-four), of which the Chino-Japanese treaties were the result, were pressed upon the Chinese Government with absolute secrecy. The Legislature, which was then in session in Peking, was not at all informed or consulted in the negotiation of these demands, or in the conclusion of these "treaties"; and since their conclusion, they have never been submitted to the Legislature for approval, as required by the Constitution of the country. Obviously, they were concluded without the neccessary "concurrence" of the National Assembly. Now, in point of law, it may be asked: Can China be bound by these "treaties" which were, in the first place, concluded in violation of the Constitution of the Republic, and secondly, which have

never been approved by the Chinese Legislature? To this question, there can be but one answer. But the question can be best answered by asking another: Can the United States, for instance, be bound by the Treaty of Peace of Versailles, which was undeniably signed by the Chief Executive of the United States and other American delegates to the Peace Conference, but which has never since been ratified by the Senate? Or, can France be bound by a treaty, which is not voted upon by the two Chambers? Or, can any State be bound by a treaty, which is entered into contrary to its constitutional requirements? The answer is a decisive "no." Inasmuch as the treaties of 1915 were concluded without the necessary "concurrence" of the National Assembly, they are, from the point of law and usage, no more binding upon China than the Treaty of Peace of Versailles is binding upon the United States.

If it were argued that, in negotiating the Twenty-one Demands with China and the treaties of 1915, Japan was not supposed to take cognisance of the constitutional restrictions of the Chinese Republic, it could only be said that this argument could not hold water. Opinion and usage are all against it. Qui cum alio contrahit, vel est, vel *debet* esse non ignarus conditionis ejus. "He who contracts with another knows, or ought to know, his condition." When the Constitution of the United States, for instance, provides any treaty or convention made

by its diplomatic representatives cannot become binding until it has been ratified by the Senate, there can be no question that "the other contracting party is charged with the duty of informing himself of the extent of the powers of those with whom he negotiates." Diplomatic agents, it may be laid down as a general rule, who are engaged in treaty negotiation, are, for their own protection, forced to examine the constitutional limitations of those representatives with whom they have to deal. Indeed, it is almost the duty of the State to take reasonable care to inform itself as to the limitations and restrictions found in the constitution or other fundamental laws of the other State, with which a treaty is to be made. Ignorance is no excuse, no more than it is before law. Properly speaking, therefore, Japan or any other Power or Powers, in entering into any conventional understanding with China, must know the extent to which the latter is limited by her constitution in the exercise of the treaty-making power. Failure to take due notice of this limitation imposed upon her by the fundamental law of the land vitiates the Chino-Japanese treaties of 1915.

Now, the domestic politics of the Chinese Republic has undoubtedly complicated its international relations. Those who like to consider the Chino-Japanese treaties as valid, even from the standpoint of the Chinese Constitution, imagine themselves to be on the solid ground, when they point out that,

at the time of the conclusion of these treaties, the Nanking Provisional Constitution was no longer in force, and that the National Assembly had been dissolved. On November 4, 1913, President Yuan Shih-k'ai ordered the immediate dissolution of the People's Party and the expulsion of its members in the Parliament. "The effect of this step was to unseat more than half the members of the Parliament and to deprive it of the quorum necessary for the transaction of business." On January 10, 1914, the Assembly was formally dissolved. Following the dissolution, a series of measures were proclaimed by Presidential mandates, each of which tended to strengthen and consolidate his own power. The creation of a "Political Council" with the members appointed by the President himself was the first of the series. This Political Council recommended the President "to call into being an elected assembly." On March 18, 1914, the "Constitutional Council," which was supposed to be an elected assembly, held its first session in Peking. The body was named "Constitutional Council" for the simple reason that its main duty was to draw up a constitution to take the place of the Provisional one. Within six weeks the Council had drawn up the so-called "constitutional compact," or "Amended Provisional Constitution of the Republic of China," which was, it has since been known, largely the work of Dr. Frank Johnson Goodnow, then "constitutional adviser" to the Chinese Government. And on May 1, the "con-

stitutional compact" was promulgated. In point of the fact, therefore, it is quite true to say that the National Assembly had ceased to exist, and that the Nanking Provisional Constitution had been replaced by the amended one.

On the other hand, a few vital points must not be lost sight of. In the first place, the *coup d'état* of November 4, 1913, was illegal in itself, for President Yuan Shih-k'ai had no constitutional power to dissolve a political party or to expel its members from the Parliament if they were duly elected. The final dissolution of the National Assembly was, of course, also illegal, for it could not be arbitrarily dissolved by the President. The series of measures which were enacted by President Yuan with the view to strengthening his own power were so many more violations of the Provisional Constitution. And then the so-called "constitutional compact," designed ostensibly to take the place of the Nanking Provisional Constitution, was drafted and promulgated with no other end in view than that of making Yuan Shih-k'ai the Emperor of China. The "compact" was, therefore, not only unconstitutional and illegal, but also fundamentally opposed to the spirit and letter of the Constitution of the Republic. It is quite correct to say that neither the "compact" nor the legislature called into existence nominally to take the place of the National Assembly was designed in the spirit of the Provisional Constitution. It is no wonder that, with the subsequent death of President

Yuan Shih-k'ai on June 6, 1916, all these legislative innovations died with him. They could not have taken the place of the Provisional Constitution and Parliament.

How, it may be asked, could legislative approval be obtained for the Chino-Japanese treaties of 1915, inasmuch as the National Assembly had been dissolved, either in accordance with the Constitution or otherwise?

The question is highly pertinent, but there is no getting away from the fact that, when the Constitution of the country requires the approval of the legislature for international treaties it enters into with other countries, they can never become binding without the said approval. If the legislature is not in session at the time of the conclusion of a treaty, it is understood that the operation of the treaty is suspended until it is finally approved by it. If the parliament is dissolved, as it was the case with the National Assembly of 1915, treaties concluded at the time must be submitted for approval to the new legislature. It must be borne in mind that since the *coup d'état* of November 4, 1913, different legislative bodies have been called into existence. The "constitutional compact" of 1914, though fundamentally at variance with the Nanking Provisional Constitution, provided for an elected House of Legislature (Li-fa-yuan) and a Council of State (Tsanchengyuan). The Li-fa-yuan was, of course, never elected, but the Council of State, sitting in the

capacity of the Li-fa-yuan, began its work on June 30, 1914. It is not known that the Chino-Japanese treaties had been submitted to the Council of State for approval. In 1916, the old parliament, the National Assembly, which was virtually dissolved by President Yuan Shih-k'ai on November 4, 1913, was restored after his death. Vice-President Li Yuan-hung succeeded to the Presidency, and all Yuan's measures were regarded as null and void. The Provisional Constitution, upon the convention of the old parliament, was again recognised as the fundamental law of the Republic. It is not known that during its short session in Peking the Chino-Japanese treaties of 1915 had been submitted to the National Assembly for approval. Unfortunately, the same Assembly was again dissolved, in June, 1917, and again illegally, but this time by President Li Yuan-hung who was under the pressure of the military leaders in Peking. The military men were anxious to get into their hands the reins of the government by getting China to participate in the European War; as the majority of the National Assembly then in session, mostly Kuomingtang men, were strongly and unalterably opposed to China's participation, the military men could not see their wish realised except by forcing the hands of the President. This second dissolution of the National Assembly has been directly responsible for the internal strugggle in China for the last four years. The majority of its members, largely Koumingtang men, went to Can-

ton immediately after the second dissolution and began its extraordinary session there, on May 18, 1918. A new parliament was organised in Peking in the meantime, which elected Hsu Shih-chang President. It is, therefore, incorrect to say that China has had no parliament since November 4, 1913. The argument that no legislative approval could be obtained falls to the ground when it is remembered that the Chino-Japanese treaties of 1915 have never been approved by any of the above mentioned legislative bodies. On the contrary, the National Assembly, upon its restoration in Peking after the death of President Yuan, denounced the Twenty-one Demands and the 1915 agreements. This denunciation was repeated when it was convoked in Canton in 1918.

Apparently, the Japanese Government was at the time well aware of the fact that such treaties could stand no chance of being duly ratified by the Chinese parliament as provided for in the Constitution of the Republic. So by a clever stroke of diplomacy, Japan attempted to reduce the Constitution of the Chinese Republic to a mere scrap of paper. It was stipulated in either of the treaties: "The present treaty shall come into force on the date of its signature. The present treaty shall be ratified by His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, and the ratifications thereof shall be exchanged at Tokio as soon as possible." By this stipulation, Japan sought

to leave the power of ratification into the hands of the President alone, thus totally ignoring the Constitution of the Republic, which requires the concurrence of the National Assembly.* It may be pointed out here that a provision of this kind is of no legal value. It cannot be valid, and it cannot be binding upon China, for the simple reason that it is not in conformity with the Constitution, the fundamental law of the Republic. It has been a recognized principle of international law and usage that agreements and conventions, in order to be valid and binding upon a State, should be in conformity, not only with the law of nations, but also with the constitution of that State. This principle invalidates and renders void all treaties and agreements which are at variance with it. "The constitution is to prevail over a treaty where the provisions of the one come in conflict with the other." Secretary Blaine, in a communication to Mr. Chen Lan Pin, under the date of March 25, 1881, strongly emphasised the point that "a

* Even in the "constitutional compact," legislative approval is provided for. The saving clause is found in Article XXV of the Third Chapter of the compact, which reads: "The President makes treaties. But the approval of Li-fa-yuan (the Senate) must be secured if the articles should change the territories or increase the burdens of the citizens." Now, there cannot be the slightest doubt that the Chino-Japanese treaties of 1915 do increase the burdens of the Chinese citizens and do involve territorial changes. It is not known that the approval of Li-fa-yuan for these treaties has ever been secured. Tsan-cheng-yuan (the Council of State) was, of course, sitting in the capacity of Li-fa-yuan, the latter being never elected.

treaty, no less than the statute law, must be made in conformity with the constitution, and where a provision in either a treaty or a law is found to contravene the principles of the constitution, such provision must give way to the superior force of the constitution, which is the organic law of the Republic, binding alike on the Government and the nation."

The point is beyond doubt, that the Chino-Japanese treaties of 1915, inasmuch as they have never been approved by the Chinese parliament, can not be binding upon China. Nominally, they were ratified on June 8, 1915, by President Yuan Shih-k'ai himself. As the President could have no power of ratifying international agreements without the concurrence of the legislature, such ratification as President Yuan had given was *ultra vires* and absolutely unconstitutional. Without the sanction of the National Assembly, Yuan's ratification could bind China to these treaties no more than the President of the United States could by his ratification bind his country to any international agreement without the approval and consent of the Senate.

III

CONFLICT WITH EXISTING TREATIES

IN the previous chapter we have pointed out that the Chino-Japanese treaties of May 25, 1915, are, from the constitutional point of view, null and void *ab initio*. Fortunately for China, she has more than her own Constitution to fall back upon. The treaties in question are not only in violation of the Constitution of the Republic of China, but also in conflict with a number of existing international treaties and agreements, of which we can mention the Manchurian Convention of December 22, 1905, between China and Japan, the Anglo-Japanese alliance of 1911, and the numerous agreements and understandings on the Open Door policy in China. It is a recognised principle of International Law, as well as it is the established practice among the family of nations, that treaties entered into in disregard, and, therefore, in violation of the existing ones are null and void.

Following the chronological order of the different agreements with which the Chino-Japanese treaties are in conflict, let us first take up the so-called Manchurian Convention. The said agreement was entered into between China and Japan, December 22, 1905, for the purpose of securing the consent of the

Chinese Government to the transfer to Japan of the Russian concessions in South Manchuria as arranged in the Russo-Japanese treaty of peace. The second article of the Convention reads: "The Imperial Japanese Government engage that in regard to the leased territory as well as in the matter of railway construction and exploitation, they will, as far as circumstances permit, conform to the original agreements concluded between China and Russia."

This was the specific undertaking by Japan in 1905 when she endeavoured to secure China's requisite consent to the transfer of the Russian rights and interests to the Japanese hands. Keeping in mind the foregoing provision, and reading the text of the Chino-Japanese treaties of May 25, 1915, together with the notes attached, one cannot fail to notice the apparent inconsistency between Japan's words and her deeds. Her engagement in the Manchurian Convention was not fulfilled. On the contrary, it was totally disregarded and violated. Instead of conforming to the original agreements concluded between China and Russia "in regard to the leased territory as well as in the matter of railway construction and exploitation" in South Manchuria, Japan practically made a scrap of paper of this engagement, when she extorted, as a result of the Twenty-one Demands, the following agreement from the Chinese Government: "The two High Contracting Parties agree that the term of lease of Port Arthur and Dalny and the terms of the South Man-

churian Railway and the Antung-Mukden Railway, shall be extended to 99 years." It is to be recalled that the original term of the lease was for 25 years, and the South Manchurian Railway was to be redeemed by the Chinese Government after 36 years from the date on which the traffic was opened. Now, the lease was given an additional term of 74 years, and the date for restoring the South Manchurian Railway to China shall not fall due until in 2002, while that of Antung-Mukden Railway in 2007. Such arrangements are certainly not in conformity with the original agreements between China and Russia, for the observance of which Japan had solemnly promised in 1905.

Nor are such arrangements at all in harmony with the provisions of the Russo-Japanese treaty of July 4, 1910, which was concluded ostensibly for the purpose of maintaining the *status quo* in South Manchuria. We can easily recall that the treaty was a direct answer to the American attempt to neutralise the Manchurian railways. Philander C. Knox, then Secretary of State, essayed to save Manchuria from sinking into the rank of a Russo-Japanese colony, by converting the Russo-Japanese owned and controlled railways in Manchuria into an effective economic instrument to be put in the hands of an international body for the development of the said region. This bold attempt was met with an equally bold answer from Russia and Japan. The Russo-Japanese treaty of 1910, concluded on July 4, a date

which is of unusual significance to the United States and to the American people, contains the following:

"Article II. Each of the High Contracting Parties engages to maintain and to respect the *status quo* in Manchuria as it results from all the treaties, conventions or other arrangements hitherto concluded, either between Russia and Japan or between these two Powers and China. Copies of the aforesaid arrangements have been exchanged between Russia and Japan.

"Article III. In case any event of such a nature as to menace the above-mentioned *status quo* should be brought about, the two High Contracting Parties will in each instance enter into communication with each other, for the purpose of agreeing upon the measures that they may judge it necessary to take for the maintenance of the said *status quo*."

This convention was, nominally, intended to replace the Russo-Japanese convention of July 30, 1907, in which both Powers also engaged to "sustain and defend the maintenance of the *status quo* and respect for this principle by all the pacific means within their reach." As a matter of fact, it was meant to be an answer to the American proposal for the neutralisation of the railways in Manchuria, which was regarded as threatening the privileged status that both Japan and Russia were then enjoying in Manchuria.

Now, the question may be raised: if the attempted

neutralisation of Manchurian railways was destined to disturb the *status quo* in Manchuria, is it not nearer to the truth to say that the extension of the terms of the leased territory as well as of the South Manchurian Railway and the Antung-Mukden Railway has radically altered the *status quo* which Japan and Russia were, in 1907 as in 1910, so anxious to preserve? Besides the extension of the term of the leases, we notice that by the treaties of 1915 Japanese subjects have acquired the right to "investigate and select mines in the mining areas in South Manchuria" and to operate a number of coal and iron mines specified in one of the diplomatic notes exchanged, and attached to the treaties. "Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises," and they shall be free "to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever." These are the economic and political rights which the Russians had never dreamed of in Manchuria. For the Japanese subjects to enjoy them alone would give them such a preferable treatment that it would hardly be in consonance with the principle of equal opportuninty. At any rate, these privileges, be they political or merely economic in nature, and the position which Japan would occupy as a result of them, would be a radical departure from the *status quo* of 1907, or from that of 1910,

politically and economically. Furthermore, when the Chino-Japanese treaties of 1915 were concluded and signed, Russia was busily engaged in the war, and it is doubtful if the Russian Government had been informed of the negotiations carried on in Peking or had approved of the treaties when they were negotiated and became known. At any rate, should Russia so choose, she can hold Japan to account for this alteration of the precious *status quo*.

More important is, of course, the consideration of the violation of the Anglo-Japanese alliance of July 13, 1911. Article III of the alliance reads: "The High Contracting Parties agree that neither of them will, without consulting the other, enter into a separate agreement with another power to the prejudice of the objects described in the preamble of this Agreement." And one of the objects described in the preamble is "The preservation of the common interests of all powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China." Here we have two issues raised: one is that Japan undertakes not to enter into any separate agreement with a third Power to the prejudice of the interests of Great Britain as outlined in the alliance, and the other is that both Japan and Great Britain undertake to preserve the independence and integrity of China and the principle of equal opportunities commonly known as the Open Door policy.

In the light of the facts now generally known, we are sure that the negotiation of the Twenty-one Demands which were largely embodied in the treaties of 1915 was conducted in secret, and the exact demands were not made known to the British Government either before or after their presentation to the Chinese Government. As a matter of fact, when the public opinion became so alarmed over the negotiation in Peking and when the Western Powers began to inquire officially as to the nature of those demands which formed the subject of negotiation, the Japanese saw it fit to notify them only of eleven demands, concealing the other ten demands which were most drastic in nature and were in open conflict with the American and British interests in China. So one of the high contracting parties of the Anglo-Japanese alliance entered into a separate agreement with China, without consulting the other, which was to all intents and purposes prejudicial to the common interests and objects agreed upon in the alliance. There can be no doubt that the Twenty-one Demands were presented to the Chinese Government by Japan without the knowledge of Great Britain. Although she had the right to be consulted in such matters according to the stipulations of the Anglo-Japanese alliance, Great Britain was left in the dark. She was absolutely ignored, and she was denied a full knowledge of the demands when they became generally known. Could the treaties arising out of these ignominious demands,

negotiated in secret and without having the British Government consulted in the matter, be recognised as valid? Could they be allowed to stand as they are in open conflict with the stipulations of the Anglo-Japanese alliance?

This is a question largely for Great Britain to decide. If she should elect to insist upon the faithful observance of the terms of the alliance by her ally, she could rightly demand that the Chino-Japanese treaties of 1915 arising out of the Twenty-one Demands which were kept from the knowledge of the British Government for some time at least should not be valid. As far as we can ascertain now, and according to the facts given by Professor E. T. Williams to the Senate Foreign Relations Committee on August 22, 1919, we know that Great Britain was not in favour of the execution of these Chino-Japanese treaties. Professor Williams said that on April 22, 1919, President Wilson, at the Peace Conference, sent for him and asked him, which of the proposed alternatives would be less injurious to China—the transfer of the German Shantung rights to Japan, or the execution of the Chino-Japanese treaties of 1915 growing out of the notorious Twenty-one Demands. When Professor Williams replied that he hoped that neither course would be found necessary, he was told by the President that unfortunately Great Britain and France were bound by previous engagements with Japan to support her claims in Shantung and that Lloyd

George said he would bow to the Japanese wishes only on consideration that the 1915 treaties were executed. We can therefore safely assume that Great Britain, while she did not insist on the abrogation of the 1915 treaties on the strength of the terms of the Anglo-Japanese alliance, considered them as executed as a *quid pro quo* for keeping her pledge with Japan in regard to Shantung.

IV.

CONFLICT WITH THE OPEN DOOR POLICY.

THE fact that the Twenty-one Demands were pressed upon China without the knowledge of the British Government, and that the resulting treaties, unquestionably prejudicial to the objects of the Anglo-Japanese alliance, were entered into by Japan without due consultation with her ally as required by the alliance, is a matter which concerns Great Britain more than any other Power. Whether or not the Chino-Japanese treaties of 1915 are deemed as in violation of the terms of the Anglo-Japanese alliance is a question which concerns again mostly with Great Britain. China cannot insist on (although she has a right to expect, as does every other nation in the world), the faithful observance of the terms of the alliance by Japan, while Great Britain, one of the High Contracting Parties, was willing enough, for one reason or another, to permit the other High Contracting Party to play fast and loose with it. In other words, although the violation of the Anglo-Japanese agreement would furnish sufficient ground for the abrogation of the 1915 treaties, China, not being a party to it, has but an indirect claim.

On the other hand, when we come to the consideration of the principle of equal opportunity and the Open Door policy in China, the question ceases to be purely Anglo-Japanese. The Open Door policy, which comprises the principle of economic equality of opportunity for all Powers in China and of her independence and territorial integrity, is a mighty issue which concerns not only China herself, not only Japan and Great Britain, but also the United States, France, and other countries which have maintained treaty relations with China and which have specifically pledged to the maintenance of that policy.

It is to be recalled that the Hay notes of 1899 and 1900 and the principles outlined therein were accepted by France, Great Britain, Germany, Russia, Italy, Austria-Hungary, and Japan—all the great Powers who have had vital interests in the Far East in general, and in China in particular. We are, of course, not going back to the days when the most-favored-nation treatment reigned supreme in China and governed her dealings with the foreign Powers. We are only taking into consideration the principle of equality of economic and commercial opportunity, formulated by John Hay, American Secretary of State, in answer to the international scramble for political and economic concessions in China towards the end of the nineteenth century. Beginning with these Hay notes, we have had a series of international understandings and agreements which have

been concluded in the course of some twenty years with the ostensible purpose of maintaining the independence and territorial integrity of China and the equality of opportunity for trade and commerce in that country. The Anglo-German convention of 1900, the Anglo-Japanese alliance of 1902, the Russo-Japanese treaty of peace of 1905, the second Anglo-Japanese alliance of the same year, the Russo-Japanese convention of 1907, the Franco-Japanese convention of the same year, the Root-Takahira exchange of notes of 1908, the Russo-Japanese agreement of 1910, the third Anglo-Japanese alliance of 1911, and finally the Lansing-Ishii exchange of notes of 1917, are, one and all, designed, at least, ostensibly, for the maintenance of the territorial integrity of China and the Open Door policy. Now, it remains for us to see how far the Chino-Japanese treaties of 1915, arising out of the notorious Twenty-one Demands are in open conflict with these Open Door agreements, and how far they have violated their spirit. It is scarcely necessary to add here that, if these treaties of 1915 have violated the Open Door principle in one form or another, they should be made null and void. The interests of the western Powers in China, to say nothing of her own interests in the matter, depend much upon the faithful maintenance of the Open Door policy.

We have, in the first place, a specific violation of the territorial integrity of China in the "exclusive concession" which Japan is to have at Kiao-chow.

According to the notes exchanged between China and Japan and attached to the treaties of 1915, respecting the restoration of the German leased territory in Shantung, "a concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government" was one of the necessary conditions for which the leased territory would be restored to China. Now it is clear as daylight that this desired concession is running counter to the principle of China's territorial integrity, the maintenance of which constitutes the most important object of the above-mentioned international agreements. The concession is not only to be "exclusive," but it is also to be "under the exclusive jurisdiction of Japan." The Chinese Government will have nothing to say as to where the concession is going to be established, although China is the sovereign nation. It is to be established "at a place designated by the Japanese Government." The very idea that Japan, a friendly neighbour and supposedly in favour of the maintenance of the independence and territorial integrity of China, is to have a *carte blanche* to establish an exclusive concession on Chinese territory and at her own sweet will, is not only revolting, not only infringing upon China's sovereignty, but also absolutely inconsistent with the numerous pledges of the Japanese Government to respect the Open Door principle. There are persons who believe that the so-called Open Door policy is largely a commercial policy of the

foreign Powers for equal opportunity in trade and commerce in China and that it has nothing to do with China's independence and territorial integrity. That this is a misconception of the true meaning of the policy is evident, when we remember that if the territorial integrity of China is not to be respected and maintained, where can have the foreign Powers equal opportunity? The whole country will be parcelled out, and the independence of China will be a thing of the past. It is evident, therefore, that the Open Door means territorial integrity of China first, and equal opportunity second.

The more we study the language of the provision, the more we become apprehensive as to China's future integrity. "A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government"—the language sounds harmless and quite innocent. Yet there is a sting in it which cannot escape even the most casual observer. Aside from the obnoxious feature that the concession is to be "exclusive" and that it is to be under Japanese jurisdiction, there is nothing, not a word, said about the time which the concession will last if it were established. It may be for one hundred years and it may be perpetual. "Owing to the bitter experiences which China has sustained in the past in connection with the leased portions of her territory, it has become her settled policy not to grant further leases nor to extend the term of those now in existence," says the official

statement by the Chinese Government respecting the Chino-Japanese negotiations of 1915. And it is true that the situation is more than serious when we remember the Japanese holdings in South Manchuria and the uses the Japanese Government has been making of them. Japanese position in South Manchuria, which has been converted, to all intents and purposes, a Japanese colony, has already been a serious menace to the territorial integrity of China. It remains to be seen whether Manchuria can yet be saved. Now, for Japan to establish an exclusive concession "at a place designated by the Japanese Government" is to put Japan in a position which will enable her to threaten the Peking Government as the pincers threaten a nut. The proposed concession will not only be an *imperium in imperio,* with which China has been burdened already too many, but will also be a perpetual stronghold for Japan wherefrom she can work for her domination of China. Taking the situation from its most serious aspect, we must admit that the question is not merely one of the violation of China's territorial integrity. It is a problem of China's future existence as an independent nation.

It is unnecessary to go into the details of the question. We have already shown how the provisions of the Chino-Japanese treaties of 1915 are totally incompatible with China's territorial integrity and her future safety. As to the principle of equal opportunity, there are a number of evidences to show

that it has been violated or deliberately set aside. We can point to the second article of the "Treaty respecting South Manchuria and Eastern Inner Mongolia" whereby "Japanese subjects in South Manchuria may lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises." We can point to the third article of the same treaty whereby "Japanese subjects may be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever." These are the rights and privileges acquired by the Japanese and which are not enjoyed by the nationals of other treaty Powers. As these privileges create a status for Japan which is far above that of the other Powers, they are absolutely incompatible with the idea of equal opportunity. "Japan's unconditional demand for the privilege of inland residence accompanied with a desire to extend extra-territoriality into the interior of China and to enable Japanese subjects to monopolize all the interests in South Manchuria," it is pointed out in the official statement by the Chinese Government in regard to the negotiations of the Twenty-one Demands in 1915, "was also palpably irreconcilable with the principle of equal opportunity." And in another place, the statement says: "The demand by Japan for the right of her subjects in South Manchuria to lease or own land, and to reside and travel, and to engage in business or manufacture of any kind whatever,

was deemed by the Chinese Government to obtain for Japanese subjects in this region a privileged status beyond the terms of the treaties existing between the two nations, and to give them a freedom of action which would be a restriction of China's sovereignty and a serious infringement of her administrative rights."

The incompatibility of these privileges granted to Japanese subjects with the principle of equal opportunity for trade and commerce in China can be brought out in still bolder relief if we can only imagine what use the Japanese will make of these privileges. Now Manchuria, and particularly South Manchuria, is admittedly the richest field for foreign trade in China. At present, in fact, for the last decade or so, Japan has enjoyed an unusual position because of the transportation facilities in her control in South Manchuria, and the preferential measures which she has adopted for her own nationals. Now, by the treaties of 1915, Japanese subjects may lease land, erect buildings, prosecute agricultural enterprises, and in addition, they shall be free to travel and reside in South Manchuria and "to engage in business and manufacture of any kind." With these rights and privileges in their favour, Japanese merchants, it is easy to see, can run out all the foreign competitors and monopolise the whole Manchurian trade to themselves. They have those transportation facilities and preferential treatments, which are accorded them by their pa-

ternal government but which are denied to the western merchants; they can "engage in business and manufacture of any kind whatsoever" right in Manchuria and produce the necessary supplies on the spot with cheap labour and without meeting the cost of shipment, while the western merchants will have to order their goods from home, to be shipped over at great cost, and only to be undersold; they shall be free to travel and to reside in South Manchuria and thus to carry on local trade without the slightest restriction, while the western merchants, who are not granted these privileges and therefore not so free in local business dealings, will have either to give up their trade entirely or to see their business ruined. Such a condition is not only possible, but it is sure to come, if the treaties of 1915 were permitted to stand. Those who have taken but an academic interest in the principle of equal opportunity in China may find it hard to see such a condition in their mind's eye, but the western merchants who have had sad and bitter experiences in the past in their Manchurian trade will readily agree that such a condition will arise as surely as the day follows the night.

To press the question just one step further. We can take the cotton industry as our illustration. According to the Chino-Japanese treaties of 1915, Japanese subjects have the right to erect cotton mills in South Manchuria, for instance. They can use the native raw material, employ the native labour, to

manufacture the kind of cotton goods most suitable to meet the needs of the natives. In such a case, does any one imagine that American cotton which has found a very large market in Manchuria in the past will be able to compete with the Japanese made? In such a case, the opportunity for trade and commerce will become absolutely unequal.

But this is not all. In addition, Japanese subjects shall, as soon as possible, prospect and work mines in the mining areas in South Manchuria. The specified number as given in the exchanged notes consists of six coal mines, two iron mines, and one gold mine, mostly in Fengtien and Kirin provinces. There is nothing in the treaties or in the exchanged notes to indicate that these rich mines will not become a Japanese monopoly, although there is no statement that other interested Powers are to be excluded. This is to be presumed, however. Unfortunately, it is a usual practice with Japan to monopolise everything she can lay her hand on in China. While it is unnecessary for us to deal at any length with Japan's financial and economic ambitions in China, the methods with which she tries to achieve her aims, and the natural consequences of her designs, it may be of interest to tell the tale again by briefly referring to the case of Hanheyping Iron Works. In the 1915 treaties the Chinese Government was made to agree "not to confiscate the said Company, nor without the consent of the Japanese capitalists to convert it into a state enter-

prise, nor cause it to borrow and use foreign capital other than Japanese." From the point of view of the Japanese, there might be sufficient reasons why the Company must not use any "foreign capital other than Japanese," but no amount of argument can alter the fact that the principle of equal opportunity which the Japanese Government has so repeatedly professed to respect in international agreement or in official notes has been deliberately set at naught.

Fortunately, however, the United States is not bound by those limitations on the Open Door principle in China. President Wilson in a note issued on August 6, 1919, in supplement to the "frank statement" given out by Viscount Uchida at Tokyo about the restoration of Kiao-chow to China, had made it clear that the United States was in no way bound to recognise the Chino-Japanese treaties of 1915. "No reference was made," said President Wilson, "to this policy (of restoration) being in any way dependent upon the execution of the agreement of 1915 to which Viscount Uchida appears to have referred. Indeed, I felt it my duty to say that nothing that I agreed to must be construed as an aquiescence on the part of the government of the United States in policy of the notes exchanged between China and Japan in 1915 and 1918." This position of the United States is as clear and as well defined as it can be.

This happened, however, after the treaty of peace

with Germany was signed and the German rights in Shantung were awarded to Japan. Early in March, 1919, when the Shantung question was brought before the Peace Conference at Versailles for discussion and deliberation, there was a rumour emanating from the Japanese authorities in Washington and widely circulated in the American press to the effect that the Japanese peace delegation would quote to the Peace Conference the Lansing-Ishii agreement of November 17, 1917, to repudiate the right of the United States in interfering with Japan's policy in China. It was reported that "in Japanese diplomatic quarters it is claimed that the failure of the United States to raise any objection after the publication of the treaties and agreements of May 25, 1915, by the Japanese Government to those pacts, and the subsequent signing by the United States, two years later, of the Lansing-Ishii agreement, prevents the United States at this time from raising objections to the arrangements Japan has concluded with China." As a matter of fact, the United States was definitely on record as resenting any agreements resulting from the Twenty-one Demands between the Chinese and Japanese Governments, which would impair the political independence, territorial integrity, treaty obligations, and the free economic development of China. We can easily recall that, on May 7, 1915, when the diplomatic negotiations in regard to the Twenty-one Demands reached a breaking point, the United

States, in a statement to the public, declared that she would not surrender any of her treaty rights in China. The statement reads:

"At the beginning of negotiations the Japanese Government confidentially informed this Government of the matters which were under discussion, and accompanied the information by the assurance that Japan had no intention of interfering with either the political independence or territorial integrity of China, and that nothing that she proposed would discriminate against other Powers having treaties with China or interfere with the Open Door policy to which all the leading nations are committed.

"This Government has not only had no thought of surrendering any of its treaty rights with China, but it has never been asked by either Japan or China to make any surrender of these rights."

Under all circumstances, this declaration would alone be quite sufficient to make clear the position of the United States toward the Twenty-one Demands. But events in the Far East moved with vertiginous speed. On the day the American declaration was published, an ultimatum was presented by Japan to the Chinese Government, giving hardly more than 48 hours to make a "satisfactory answer." The Chinese Government answered, and the result was that those notorious Twenty-one Demands were more or less classified and clarified, and put into the treaties and notes which were signed on

May 25, 1919. Before the treaties were signed, however, the United States made known her position once again in another note which was sent both to the Chinese and Japanese Governments. The note reads:

"In view of the circumstances of the negotiations which have taken place or which are now pending between the Government of China and the Government of Japan and the agreements which have been reached as a result thereof, the Government of the United States has the honour to notify the Government of the Chinese Republic (and of Japan) that it cannot recognise any agreement or undertaking which has been entered into, or which may be entered into between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China, or the international policy, commonly known as the Open Door policy."

With these two diplomatic documents on record, the United States was in an inequivocal position as to the Japanese policy in China and the Chino-Japanese treaties of 1915, directly resulted from the Twenty-one Demands. The United States can either hold Japan to "strict accountability" on the general principle of the Open Door about which a number of agreements have been entered between the two countries, or refuse to recognise the 1915 treaties on the strength of these notes above quoted.

It is highly doubtful if Great Britain, France, Russia, and Italy who had secret agreements with Japan to support her claims in Shantung, could in their own interest or in the interest of China support Japan to enforce these treaties. Indeed, as said before, in yielding to Japan's wish at the Peace Conference, Lloyd George had considered them as executed. And the United States could certanly not be bound by the Lansing-Ishii agreement which has but recognised Japan's "special interest" in China. When the Lansing-Ishii agreement was made, it was admitted by Mr. Lansing himself before the Senate Foreign Relations Committee, the Twenty-one Demands or the treaties resulting from them did not enter into the discussion of the Agreement. "At no time was it understood that the Lansing-Ishii agreement was the endorsement of the Twenty-one Demands?" asked Senator Borah. "Absolutely not," replied Mr. Lansing, "and we were opposed to them." This catechism ought to make the position of the United States clear beyond doubt.

V

DOCTRINE OF REBUS SIC STANTIBUS

SO far, we have based our arguments on the ground that the treaties of 1915 are in conflict with the Open Door principle, with the existing treaties, and with the fundamental laws of the Republic of China. As such, they are, therefore, null and void *ab initio*. There can be no stronger reason for considering the treaties as null and void than the unalterable fact that they have never been concurred in by the legislative body of the Chinese Republic as it is required by the Constitution; and there can be no more solid ground for regarding the treaties as invalid from the very beginning than the obvious fact that they are in conflict with a number of existing international agreements, of which Japan, or China, or both are the contracting parties. In the point of law, therefore, these treaties of 1915, the abrogation of which China has urged, are null and void from the very beginning. It is not at all necessary for China to urge their abrogation; China can repudiate them entirely, without violating her international good faith.

This is the course, which China probably will not take, except as a last resort, when she has failed in

all her attempts to bring about a mutual agreement for the abrogation of these treaties of 1915. At the Peace Conference at Versailles, China brought out her claim for the abrogation of the 1915 treaties. She was immediately accused of bad faith, and of regarding international agreements as mere scraps of paper. China was not, however, guilty of the charge. The very fact that she had urged their abrogation at the Peace Conference, instead of disregarding them altogether as she is entitled to do so, was an indication that she was not willing to play fast and loose with her international agreements, although these agreements have never been approved by her legislature.

Lest the argument might appear extravagant, that the Chino-Japanese treaties of 1915 are null and void *ab initio,* we may go one step further by assuming, for the sake of argument, that they are not in conflict with the existing treaties, with the Open Door policy, or with the Constitution of the Chinese Republic. Even on this assumption, the voidance of the 1915 treaties ought to be taken as a matter of fact, since the circumstances under which they were entered into have entirely changed. In other words, the very circumstances, for which the treaties were concluded, and which were supposed to continue, have ceased to exist.

Now it is a recognised and well-established principle of international law that a treaty becomes null and void, when the conditions under which it is

concluded, or the conditions contemplated by the provisions of the treaty cease to exist. This principle is generally known as the doctrine of *rebus sic stantibus*. Mr. William E. Hall, the very well-known English authority on international law, whose opinion has been highly valued by international jurists, points out that a treaty becomes null and void "when an express condition upon which the continuance of the obligation of the treaty is made to depend ceases to exist." Bluntschli, one of the earlier authorities of modern international law, holds the same opinion on such matters when he says:

"Lorsque l'ordre de faits qui avaient été la base expresse ou tacite du traité se modifie tellement avec le temps, que le sens du traité s'est perdu, ou que son exécution est devenue contraire à la nature des choses, l'obligation de respecter le traité doit cesser." And Professor Oppenheim, the well-known Swiss-British authority, frankly admits that the doctrine of *rebus sic stantibus* is as necessary for international law as the very rule *pacta sunt servanda*. "For it is an almost universally recognised fact that vital changes of circumstances may be of such a kind as to justify a party in notifying an unnotifiable treaty. The vast majority of publicists, as well as all the Governments of the members of the Family of Nations, defend the principle *conventio omnis intelligitur rebus sic stantibus*, and they agree, therefore, that all treaties are concluded under the tacit condition *rebus sic stantibus*."

We can go on almost indefinitely, quoting authorities after authorities, to show how a treaty becomes null and void owing to a vital change of circumstances that has taken place. In the case under consideration, it only remains for us to show that such a vital change of circumstances has taken place since the conclusion of the Chino-Japanese treaties of 1915, and that that change is sufficient to invalidate the treaties in question.

The negotiations on the Twenty-one Demands were brought to an abrupt end on May 7, 1915, when the Japanese Government presented an ultimatum to the Chinese Government, demanding the latter to accede to the most of the onerous demands within a little over forty-eight hours. On May 9, the Chinese Government, "with a view to preserving the peace of the Far East," accepted the ultimatum, acceding to the first four groups of demands, leaving those in the fifth group "for later negotiation." "The Japanese Minister is hereby requested to appoint a day to call at the Ministry of Foreign Affairs to make the literary improvement of the text and sign the agreement as soon as possible." The demands thus acceded to by the Chinese Government were embodied in the treaties and notes now under consideration, which were completed and signed, one and all, on May 25, 1915. At that time, China was a neutral country in the European struggle. In other words, as a neutral, China was then on friendly terms with Japan as well as with Ger-

many. As she had abandoned her intention to take an active part in the war (her request for participation in the Tsingtao expedition in August, 1914, was declined by the British and Japanese Governments), China presumed that she would remain neutral throughout the war. And with this presumption China was cajoled into the belief that, as a neutral, she could have no place in the post-bellum peace conference, and that necessary arrangements in regard to the German possessions in Shantung must be made with Germany directly by Japan who was willing—nay, anxious—to speak for China. It becomes apparent that China, and Japan as well, entered into these treaties of 1915 on this express or implicit understanding that China was to remain neutral during the war, that as a neutral Power she would not be invited to the post-war conference, and that as she could not speak for herself or deal with Germany directly, it was necessary for her to agree, as she had agreed after the Russo-Japanese War of 1904-5, to whatever arrangement that Japan might make with Germany in regard to Shantung after the war. This understanding or this presumption that China was to remain neutral during the war was therefore an implicit condition, under which the treaties of 1915 were entered into, and upon which the continuance of the obligation of these treaties will necessarily depend. It would be ridiculous to think otherwise; for had China foreseen that in a war between civilisation and barbarism she could

not remain neutral, and that she was eventually to be drawn into the conflict, and therefore she would be entitled to a seat in the peace conference, she would not have consented to such arrangements as provided for in the treaties and notes of 1915, knowing full well that, as she was to have an opportunity to deal with Germany directly at the Peace Conference, she would be under no necessity of coming to any advanced arrangement with Japan. It cannot be doubted, therefore, that China's remaining neutral throughout the war was the absolute condition under which the treaties of 1915 were concluded, and upon which they depended for their validity.

This absolute condition ceased to exist with China's participation in the war two years later. On February 9, 1917, China protested against the ruthless submarine warfare adopted by the German Government towards the end of the month of January, saying that she would be constrained to sever diplomatic relations with Germany, if her protest should prove to be ineffectual. As Germany declined to abandon her blockade policy, China had no choice but to carry out her warning. A Presidential mandate was issued on March 14, in which diplomatic relations with Germany were declared to be severed. In a communication to the German Minister in Peking under the same date, the Chinese Minister of Foreign Affairs said: "The Government of the Chinese Republic, to its deep regret, considers its

protest to be ineffectual. The Government of the Republic is constrained to sever the diplomatic relations at present existing with the Imperial German Government." On August 14, another Presidential mandate was issued, declaring the existence of the state of war, "between China on the one hand and Germany and Austria-Hungary on the other, commencing from ten o'clock of this, the 14th day of the 8th month (August 14) of the 6th year of the Republic of China."

This declaration of war by China was admittedly a vital change of circumstances, which would, in the eyes of the law, be sufficient ground for the nullification of the 1915 treaties. From the position of a neutral country, China now joined the rank of the belligerents in the war,—a fact contrary to the assumed condition, for the continuance of which the Chinese Government had consented to the arrangements about the disposition of German rights in Shantung as embodied in the 1915 treaties. The fundamental presumption that she was to remain a neutral all the time during the conflict became thus a bygone condition. China was, by her participation in the war, assured of a place at the post-bellum peace conference where she could deal with Germany directly, as one belligerent with another, in regard to the German rights and interests in the Shantung province. Under such changed circumstances, the consent which China was forced to give in the treaties of 1915 to whatever arrangement Japan might

make with Germany in regard to Shantung became meaningless and valueless. It would be the height of folly to think that China was bound by this consent, when she, as it has been shown, could look after her own interests and rights without troubling a third party to do so. To all intents and purposes, the agreement reached regarding the disposition of Shantung became null and void upon China's participation in the war. In such a case, as in similar cases, the doctrine of *rebus sic stantibus* should rule.

Without appearing arbitrary in the matter, however, we can point to the specific rules of International Law, which guide the civilised nations in controversies of this sort. "The principle which has been mentioned as being a sufficient test of the existence of obligatory force or of the voidability of a treaty at a given moment may be stated as follows," says Hall, whom we have quoted before. "Neither party to a contract can make its binding effect dependent at his will upon conditions other than those contemplated at the moment when the contract was entered into, and on the other hand a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered. If this be true, and it will scarcely be contradicted, it is only necessary to determine under what implied conditions an international agreement is made. When these are found the reasons for

which a treaty may be denounced or disregarded will also be found." In our case, the implied conditions of the Chino-Japanese treaties of 1915 were that China was to remain neutral throughout the duration of the war, that as a neutral country China was not likely to be represented at the peace conference, and that Japan would therefore speak for China in regard to the arrangements of the disposition of the German concessions and rights in Shantung. Now, with China's participation in the war, the implied conditions of these treaties were radically changed. Could China be bound to such an agreement made under circumstances totally different from those contemplated?

This is not a mere empty contention. It is borne out by facts. We need only ask the Japanese diplomats who conducted the negotiations of the Twenty-one Demands in Peking in 1915, if it was true that the Chinese Foreign Minister, Mr. Lou Tsenghsiang, repeatedly urged that Kiao-chow should be returned to China after the war, and that China should be invited to participate in the conference between Japan and Germany in regard to that matter. At the outset of the negotiation of the Twenty-one Demands in February, 1915, the Chinese Government pointed out that the question of the disposal of the German concessions in Shantung related to the post-bellum settlement, and as such, it should therefore be left over for consideration by all the parties interested at the peace conference. It was

also pointed out that as a neutral country then, and being still on friendly terms with Germany, China would not agree to the Japanese demands of the first group. Failing to persuade the Japanese Minister to accept this point of view, the Chinese Government took, then, the position that it would agree to the Japanese demand in principle if China was to be invited to participate in the negotiations between Japan and Germany in regard to the disposition of the Shantung concessions. In view of the fact that Shantung, a Chinese province, was to be the subject of future negotiation between Japan and Germany, it was perfectly natural that China, the Power most vitally concerned in the future of that territory, should have desired representation in the negotiation. The Japanese Minister was, however, not only insistent, but also persistent. He refused to take a single backward step. And he won the diplomatic game, when the Chinese Government, thinking that, as a neutral government, it could not participate in the forthcoming peace negotiations, yielded to the Japanese demand. A desperate effort was made to correct this mistake a little later, but nothing short of actual participation in the conflict could save China from this false step. It was generally understood, and frankly conceded among the official and diplomatic circles in Peking, that in entering the war, China not only gained a place at the peace conference, but would also, by thus gaining a place, bring about a vital change of political and diplo-

matic situation in the Far East that would in the point of law invalidate the Chino-Japanese treaties of 1915. If there is ever a case in which the doctrine of *rebus sic stantibus* holds good, it is this case of China's participation in the war.

VI

ABROGATION OF THE LEASE OF KIAO-CHOW

ASIDE from the doctrine of *rebus sic stantibus,* which alone is, as a matter of law, quite sufficient to render the Chino-Japanese treaties of 1915 void, we are fortunate and proud to state that there is yet another principle of International Law, equally well recognised, upon the strength of which China may yet hope for redress. It is none other than that a treaty becomes null and void when its object ceases to exist.

This principle is held by all the noted international jurists and publicists almost without a single exception. To cite but one, we may again refer to Professor Oppenheim whom we have quoted before: "All treaties whose obligations concern a certain object become void through the extinction of such object. Treaties, for example, concluded in regard to a certain island, become void when such island disappears through the operation of nature, as likewise do treaties concerning a third State when such State merges in another." It is perfectly clear that, in such circumstances, treaties will *ipso facto* become void when their objects cease to exist.

The same principle is also applicable to the Kiao-

chow lease in connection with the treaties of 1915. By common consent among the civilised nations, war abrogates all treaties, except those which have settled permanent questions, and those which are entered into specifically to meet the conditions arising out of war. The treaty concluded between China and Germany on March 6, 1898, whereby the territory of Kiao-chow Bay was leased to Germany for ninety-nine years, is a treaty which was neither meant to settle permanent questions between the two countries, nor intended to meet the conditions of war. On the very contrary, the treaty is temporary in nature, inasmuch as the lease which it provided for was limited to ninety-nine years. Such a treaty is, therefore, subject to abrogation upon the outbreak of war between the contracting parties. There is no denying that, upon China's entrance into the conflict, the said treaty was abrogated. In fact, the Chinese Government had so stated in the declaration of war upon Germany and in its communication to the Allied Powers. The Presidential mandate of August 14, 1915, declaring the existence of a state of war from then on, says: "In consequence thereof, all treaties, agreements, and conventions, heretofore concluded between China and Germany, and between China and Austria-Hungary,* as well as such parts

* China declared war on Austria-Hungary in the same Presidential mandate, on the ground that "it is not Germany alone, but Austria-Hungary as well, which has adopted and pursued this policy (of submarine warfare) without abatement."

of the international protocols and international agreements as concern only the relations between China and Germany and between China and Austria-Hungary are, in conformity with the Law of Nations and international practice, hereby abrogated." The abrogation of these treaties, agreements, and conventions with Germany and Austria-Hungary was communicated by the Chinese Minister of Foreign Affairs to the diplomatic representatives of the Allied and neutral nations and the American Minister in Peking, in a circular note of August 14. Sir Beilby Alston, then the British *Charge d'Affaires* at Peking, admitted this fact in his note to the Chinese Foreign Minister of the same date. Of the other Allied and neutral nations, Japan included, not a single Power raised any objection to this point. The principle is perhaps too well recognised to be of dispute.

That the German lease of Kiao-chow was abrogated by China's participation in the war is the position which the Chinese Government has most consistently maintained. Her delegates at the Peace Conference at Versailles made this point as one of the reasons for direct restoration of the German leased territory to China. Owing to the engagements which Great Britain, France, and Italy had previously made with Japan about the disposal of German rights and concessions in Shantung, China's claim at the Peace Conference was not granted. Japan has since attempted on different occasions to

persuade China to negotiate for the restoration of the Kiao-chow leased territory. It is significant to note that, in answer to the overtures from Japan, China has consistently maintained that her declaration of war upon Germany abrogated the lease of Kiao-chow, and that, upon the abrogation of the lease, the territory reverted back to China, *ipso facto,* so to speak. There is, therefore, from the point of view of the Chinese Government, no necessity for negotiation.

On the other hand, the Japanese Government has refused to admit that China's declaration of war upon Germany abrogated the lease, and that the territory held under the lease could revert back to China. The point was emphasised by the Japanese delegates at the Versailles Peace Conference, and has since been repeatedly asserted, that the lease could not be abrogated by China's participation in the war, inasmuch as the Kiao-chow leased territory was at the time not in the hands of Germany, but in the hands of Japan.

In answer to this argument, we can refer, for a parallel case, to Article 132 of the Treaty of Peace with Germany signed at Versailles. Therein Germany was made to agree "to the abrogation of the leases from the Chinese Government under which the German concessions at Tien-tsin and Hankow are now held." It is unnecessary to say that the lease of Kiao-chow Bay is of the similar kind. If the leases of the German concessions at Tien-tsin

and Hankow were admitted as abrogated, for what reason and by what rule of International Law was the lease of Kiao-chow Bay regarded as not abrogated? It is almost a unanimous opinion that, as the lease convention did not settle anything permanently, as it was not intended to meet conditions in case of war, but on the contrary, it was merely a temporary lease limited to ninety-nine years, it was most undoubtedly abrogated by China's declaration of war upon Germany.

Mr. Robert Lansing, former Secretary of State of the United States and one of the American Commissioners to negotiate peace at Paris, held that the extinguishment of the lease upon China's declaration of war was at once a moral and legal ground for the Chinese Government to take. In his book, "The Peace Negotiations, A Personal Narrative," Mr. Lansing says:

"As to whether a state of war does in fact abrogate a treaty of the character of the Sino-German Treaty of 1898 some question may be raised under the accepted rules of International Law, on the ground that it was a cession * of sovereign rights and constituted an international servitude * in favour of Germany over the territory affected by it. But in this

* It is questionable whether it could be properly regarded as "a cession of sovereign rights" and "an international servitude." Both terms, "cession" and "international servitude," carry the usual implication of being perpetual and almost irrevocable, while as a matter of fact the lease, by its own terms, was limited to ninety-nine years, with China's sovereignty over the territory specifically reserved.

particular case the indefensible duress employed by the German Government to compel China to enter into the treaty introduces another factor into the problem and excepts it from any general rule that treaties of that nature are merely suspended and not abrogated by war between the parties. It would seem as if no valid argument could be made in favour of suspension because the effect of the rule would be to revive and perpetuate an inequitable and unjustifiable act. Morally and legally the Chinese Government was right in denouncing the treaty and agreements with Germany and in treating the territorial rights acquired by coercion as extinguished. It would appear, therefore, that, as the Japanese Government recognised that the rights in the Province of Shantung had not passed to Japan by the forcible occupation of Kiao-chow and the German concessions, those rights ceased to exist when China declared war against Germany, and that China was, therefore, entitled to resume full sovereignty over the area where such rights previously existed." In another place, Mr. Lansing admitted that "this view of the extinguishment of the German rights in Shantung was manifestly the just one and its adoption would make for the preservation of permament peace in the Far East."

With the abrogation of the lease convention, the Kiao-chow territory automatically reverted back to China. All the jurisdictional rights which she had given up in favour of Germany within the territory for ninety-nine years, China now resumed once

again. Legally, therefore, the territory ceased to be German leased territory, and Germany could have no more claim to it. At the same time, it may be pointed out, Japan has been occupying the territory which has long ceased to be under German jurisdiction. Japan has been occupying, as a matter of fact, the territory not of an enemy, but of a friendly neighbour and of a co-belligerent during the war.

The point which we should particularly emphasis here is the fact that the reversion of the German leased territory to China means the disappearance of the object—or, at least, one of the objects—of the Chino-Japanese treaties of 1915. It was in the "Treaty Respecting the Province of Shantung" that the Chinese Government was forced to give "full consent" to whatever arrangement which Japan might come to with Germany "relating to the disposition of all rights, interests and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung." And it was in one of the diplomatic notes exchanged and attached to the said treaty that Japan undertook to restore the Kiao-chow leased territory to China.* Our question here is: Inasmuch as the

* Japan undertook to restore the Kiao-chow leased territory to China, when it was left to her free disposal, on the condition that (1) the whole of Kiao-chow Bay should be opened as a commercial port; (2) that a concession under the exclusive jurisdiction of Japan should be established at a place designated by the Japanese Government; (3) that an international concession, if the foreign Powers should desire it, would be established, and (4) the public buildings and properties of Germany could be disposed of according to mutual agreement.

German leased territory reverted back to China upon the abrogation of the lease, why should Japan further insist upon restoring it to China? Inasmuch as the rights and privileges which Germany had held in Shantung were also taken over by China upon the abrogation of the lease convention, why should Japan insist upon China to give "full consent" to a further disposition of them? The Chino-Japanese treaties were concluded May 25, 1915. One of the objects of these treaties was the disposition of the German leased territory and German rights and interests in Shantung. On August 14, China declared war against Germany, which fact abrogated the lease convention of 1898. Both the leased territory and all other German rights and interests reverted back to China. Thus, before Japan could come to any arrangement with Germany, and before the terms of the 1915 treaties in regard to Shantung could be carried out, China resumed full sovereignty over the leased territory and took back German interests and rights in Shantung. Strictly speaking, therefore, the principal object, if not the only object, of the Chino-Japanese treaties of 1915 disappeared with the abrogation of the lease convention, and with the disappearance of the principal object the said treaties could hardly remain operative. According to the accepted principles of International Law, treaties become null and void when their objects cease to exist. It is safe to assume, therefore, unless the contrary has been proved to be

law, the treaties under consideration are void through the extinction of the German lease and of other concessions which were also based upon the lease convention. There is no difference, as far as can be ascertained, in law or usage, between the physical disappearance of a material object as in the case of an island referred to by Professor Oppenheim and the legal extinction of a grant such as the German possession in the Province of Shantung.

The above points are, of course, concerned with only one part of the Chino-Japanese treaties of May 25, 1915, the German possessions in the Shantung province. As the treaties in question have dealt with many other subjects, such as the Manchurian question, the Mongolian question, and the Hanyehping Works, it may be asked if all the treaties and exchanged notes are thus rendered null and void. As to this question, the opinions of international lawyers are varied, although the practice of the civilised nations is almost uniform. There are authorities of International Law of great repute who hold that the stipulations of a treaty or connected treaties are one and inseparable, and consequently that they shall fall and stand together; others have maintained that the nullity of the one does not mean the nullity of all the others; and there are still a third group of authorities of International Law who have made a distinction between the principal and the secondary articles and regard the voidance of the principal articles *only* as destructive of the binding

force of the entire treaty or treaties. Whatever might be the opinions of the international publicists, the established practice of the civilised nations is that there is no distinction between the essential and the non-essential parts of a treaty or treaties, and that the breach of any portion of the agreement render the whole compact void. In other words, the validity of a treaty or connected treaties is to be taken collectively. If one part of the treaty or treaties is rendered void, the rest also loses its binding force. The doctrine of *rebus sic stantibus* and the principle of the extinction of the object of a treaty concern only with the Shantung provisions of the 1915 treaties. But as these provisions are rendered void because of the vital change of circumstances that has taken place since May 25, 1915, and because of the legal extinction of the one of the objects of these treaties, they are, one and all, rendered null and void. In point of law, this seems to be the only possible position.

VII

DURESS AS A GROUND FOR ABROGATION

ABOVE all the arguments for the abrogation of the Chino-Japanese treaties of 1915, there is one which is legally weak, but morally unanswerable. It has been frequently pointed out that China yielded to the Twenty-one Demands under the menace of an ultimatum, and that the resulting treaties were, therefore, entered into under duress. For this reason, it has been urged, the treaties of 1915 are void.

In fact, that is the ground upon which the Chinese delegation at the Peace Conference at Versailles had based its claim for the abrogation of the Chino-Japanese treaties of 1915, which were regarded as a proper subject for consideration by the peace conferees. The treaties in question should be abrogated, it was urged, "because they were negotiated in circumstances of intimidation and concluded under the duress of the Japanese ultimatum of May 7, 1915."

This argument is technically weak, it is to be admitted. It is, however, morally strong, and one which is quite unanswerable. It furnished the reason why the Chinese Government, as pointed out in a previous chapter, consented to the transfer of the German leasehold to Japan without doing anything to repudiate it first.

Those who dissent from the argument of the Chinese delegation at the Versailles Peace Conference are quite right, and we are perfectly willing to share their view in the matter to a great extent. For, according to the best authorities of International Law, and according to the established international usage, all sovereign States are equal, and one is as strong as the other, and in their diplomatic dealings there is nothing to speak of as "duress" which can be taken as a valid ground for the abrogation of international agreement. The only kind of duress which enters into consideration of the validity of a treaty is the constraint or violence practised upon the person of the negotiators. "The only kind of duress which justifies a breach of treaty," observed Professor T. J. Lawrence, "is the coercion of a sovereign or plenipotentiary to such an extent as to induce him to enter into arrangements that he would never have made but for fear on account of his personal safety. Such was the renunciation of the Spanish crown extorted by Napoleon at Bayonne in 1807 from Charles IV and his son Ferdinand. The people of Spain broke no faith when they refused to be bound by it and rose in insurrection against Joseph Bonaparte, who had been placed upon the throne."

It is quite in accord with the recognised principle of International Law to say that the plea of duress is no ground for the abrogation of the Chino-Japanese treaties of 1915, and it is but natural that

Japanese diplomats and writers should have scorned the idea that they should be abrogated just because they were entered into under threat of war, or "because they were negotiated in circumstances of intimidation and concluded under the duress of the Japanese ultimatum of May 7, 1915." It remained to Senator Robinson (from Arkansas), however, to preach a sermon on the validity of treaties concluded under duress, in a language which deserves to be quoted:

"It is said that China is pacific and Japan is a warlike nation, and that China was induced by fear of war with Japan to enter into the treaty of 1915 agreeing to whatever arrangements Japan might make with Germany concerning the property and rights in Shantung. It is also claimed that it is not only the duty of the United States to refuse to recognise this treaty but that we should treat it as utterly void because made under duress.

"This position seems inconsistent and indefensible. Every commercial treaty of importance now in force between China and European nations is the result of war or some other form of duress.

"In view of the fact that the commercial relations of nearly all nations with China are based on duress in some form, and in contemplation of the further fact that the most important treaties now in force between the various nations are the outcome of wars—which, of course, are the supreme manifestations of duress—why then should the claim that China was induced to make the treaty with Japan through fear

of war invalidate that treaty, and all other treaties with China, many of which she was compelled by war to execute, be left in force?

"If we go back into history and invalidate every treaty into which duress has entered chaos in international relations will result.

"'Shall we assert that treaties tainted with duress in which Japan is interested must be invalidated and at the same time recognise English, French, and Russian compacts with the Chinese Government—compacts, for the most part, extorted through wars engaged in for the express purpose of compelling China to yield? Shall we attempt to make one rule for Japan and a totally different rule for other nations? To ask the question is to answer it." (*Cong. Record,* July 24, 1919.)

This is a point well taken and well stated. We agree to recognise the force of the argument, and there is little doubt that the Senator, in his enthusiasm for the defence of the Versailles treaty, the Shantung settlement, and incidentally Japan, had his feet on solid ground when he asked if "we shall make one rule for Japan and a totally different rule for other nations." Bowing to the strict interpretation of the accepted rules of International Law, for which we have cherished the most profound respect, we still feel safe to say that there is a material difference, in law as well as in fact, between the treaties concluded under duress which the Senator and other friends of Japan might have in mind and the

Chino-Japanese treaties of May 25, 1915. In order to see the material difference we need only refer to the circumstances under which these treaties were entered into.

At the time of the negotiation of the Twenty-one Demands there was in South Manchuria, in Central China, in Tien-tsin, in Fukien, and in Shantung, an unusually large number of Japanese soldiers who were ordered ready for any eventuality at a moment's notice. These forces alone were quite sufficient to overrun the whole of China by seizing all the strategical points and cutting off all the means of communication. When the negotiation reached a point where force would succeed in what diplomacy had failed, additional divisions of Japanese troops were despatched to China, some to Tsinanfu, the capital of Shantung, some to Hankow, the Chicago of China, and some to South Manchuria which has already been a Japanese military stronghold, and a Japanese fleet was also ordered to China to assist in the demonstration. All this, it ought to be clearly borne in mind, happened when the diplomatic negotiation regarding the Twenty-one Demands was still pending. And then amidst this military and naval glare, the Japanese Minister in Peking quietly called at the Chinese Foreign Office at 3:00 p.m., May 7, and presented the ultimatum for which "a satisfactory reply" was expected within a little over forty-eight hours. "It is hereby declared that if no satisfactory reply is received before or at the specified

time the Imperial Government will take such steps as they may deem necessary." The Chinese Government was fully aware of the consequences that would follow in case of further refusal to yield. It could only mean war, and a war between China and Japan, at a time when the western Powers were engaged in the desperate struggle with Germany would furnish the very opportunity which the Japanese imperialists have long looked for to carry out their expansion schemes on the continent. Furthermore, by going to war with Japan who was then at war with the Teutonic Powers, China would under the force of such anomalous circumstances place herself on the side of Germany. This position she was bound to take sooner or later. In such a case no one need be a prophet in order to see what dire consequences might await the Allies and what dreadful complications might arise between the Allies, China, and Japan.

These are the facts in the case in the light of which it is easy to realise the truthfulness of the plea by the Chinese peace delegation that the 1915 treaties were entered into under "circumstances of intimidation and duress." What we want to point out specially, however, is that there is a material difference between the treaties entered into under duress which Senator Robinson had in mind and the Chino-Japanese treaties of 1915. We have no hesitation in agreeing with the Senator that war is the supreme manifestation of duress and that treaties concluded

after war are valid. But it must be remembered that the Chino-Japanese treaties of 1915 were not the outcomes of war. There was no war between China and Japan in 1915, or since. Indeed, on the contrary, these two countries were friendly neighbours and co-belligerents against Germany. It is legitimate, as far as the international usage obtains at present, for the victor to dictate terms to the vanquished in an international conflict, as the Allies dictated to Germany, and the forthcoming treaty which will necessarily be concluded under duress will be held valid. This is the established practice, of which a change for the better is yet to be hoped for in the more enlightened days to come. It is hardly proper, however, it is at least morally indefensible, for one strong power to exact severe terms from another weak but friendly power, under the threat of war, and with no reason whatsoever, except, perhaps, the imperialistic designs of the strong. China and Japan, ever since the day when they measured their strength in the Liaotung peninsula, have been friendly neighbours, and in the struggle against the Teutonic powers they were allies. Why, then, should Japan press those Twenty-one Demands on China, and force her to sign the 1915 treaties with an ultimatum, the terms of which could not have been any worse had they been at war with each other and China had been the defeated party? Why should Japan treat her friendly neighbour even worse than her avowed enemy? The Twenty-one

Demands were worse and far more damaging to China's sovereignty than the eleven demands which Austria had presented to Serbia, whose refusal to accept led to the outbreak of the European war, and the treaties embodying those demands were negotiated and concluded under the most immoral form of duress—the kind of duress exerted, not by one enemy upon another enemy, but by one friendly power upon another friendly power. China yielded under duress, not only to save an armed conflict between herself and Japan, which was sure to follow in case of her refusal, but also to avert the allied Powers from the most disastrous result of such a conflict. If the 1915 treaties, concluded as they were under these circumstances, were permitted to stand, then the strong powers would be forever free to dictate the terms they like to the weak nations. If such is peace, then war is infinitely better, for although war is said to be hell, peace like this is something infinitely worse.

On the other hand, had China and Japan been enemies instead of friends, had they been at war with each other instead of at peace, the treaties of 1915 might be then on a different status. War is the supreme manifestation of duress, says Senator Robinson, and he therefore holds that treaties concluded after war are valid. We have no fault to find with this general assertion, but at the same time we cannot help but recall the treaties of Brest-Litovsk and Bucharest as the most striking and recent excep-

tions. The treaty of Brest-Litovsk and the treaty of Bucharest were the two treaties which Germany had entered into respectively with Russia and Rumania after the contracting parties had agreed to end the war. They were concluded under duress, no doubt, and in point of law, they were valid in spite of the onerous terms contained therein. In the armistice terms, however, Germany was made to agree to the abrogation of these two treaties, apparently for no other reason than they were concluded under duress and their terms were unbearable to Russia and Rumania. It must be understood that Russia and Rumania were enemies of Germany, and these two treaties were the direct outcomes of the European War. It may fairly be asked that if such treaties could be abrogated under the plea of duress, why could not the Chino-Japanese treaties of 1915 be also abrogated? It would be ridiculous to think that Japan, a friendly power, had a better right to impose onerous terms on China, another friendly power, than one enemy might have to impose on another enemy.

The Senator seems to have entertained the fear that "if we go back into history and invalidate every treaty into which duress has entered chaos in international relations will result." But he can rest assured that China will not be the disturbing cause. China is not asking, nor has she ever asked, for the abrogation of the Anglo-Chinese treaty of 1842 which ceded Hongkong to Great Britain, the Shi-

monoseki treaty of 1895 which ceded Formosa and Pescadores to Japan, or any other treaty which was entered into with China largely as a result of war or duress. Having appealed to the force of arms to decide the opium issue in 1841, and again in 1894 to decide the Korean question, China was great enough to accept the consequences of an international war and to bear the burdens of a defeated battle. But as to the Chino-Japanese treaties of 1915, it was not a case of war consequences. It was a case of a strong Power imposing its will upon the weaker. It was a case of highway robbery, pure and simple. It appears in still worse light when we remember that the robber and the robbed are professed friends. If such treaties were not to be abrogated, and if such immoral practice were to be countenanced in international dealings, then, indeed, to quote the Senator, "chaos in international relations will result." The strong Powers, under the pretext of friendship, would be forever free to do whatever they please with the weak, and before there is time enough to "make the world safe for democracy," there will be no democracy left to make the world safe for.

On this question of the abrogation of the Chino-Japanese treaties of 1915, Chinese opinion is unanimous. To give but one instance we quote an editorial from the Peking *Leader,* an English paper, published and edited by the Chinese. "These treaties were devoid of any legal foundation; they were

extorted at the point of bayonet. They were not negotiated willingly but were forced upon us by the show of superior force. And China never agreed to them, but her consent was overborne by *force majeure.* Here is a case which primarily calls for the vindication of justice. Hade there been provocation on the part of China the situation might have been different, but all the while it was the stronger power who was the provocator. The world rejoices, indeed, in the abrogation of the Brest-Litovsk and Bucharest treaties which Germany had forced upon Russia and Rumania. If so, the same immutable justice demands that the 1915 treaties should also be forthwith abrogated, since unlike Russia and Rumania there were no hostilities between China and Japan, but equally with them, this country (China) is also a co-partner with the other Allies. Let it not be said or implied that east of Suez the standard of justice varies from that which obtains west of that waterway" (Peking *Leader,* Jan. 4, 1919). Senator Robinson is anxious that there should not be "one rule for Japan and a totally different rule for other nations." The Chinese people are apparently also anxious that, in view of the abrogation of the treaties of Brest-Litovsk and Bucharest, there should not be one rule for the East and a totally different rule for the West.

VIII

TRANSFER IRREGULAR AND ILLEGAL

THERE are other things which we must take into consideration. What is to be pointed out in particular is that the entire procedure adopted in 1915 for the transference of the German rights in Shantung to Japan was an absolute departure from the safe and sound precedent which she herself had established in 1905. We recall that in the peace negotiations at Portsmouth after the conclusion of the Russo-Japanese War, the Japanese delegates demanded, apart from the cession of Sakhalien Island and a big indemnity, the transfer of the Russian leases and concessions in South Manchuria. We also recall how nearly the peace negotiations were brought on the verge of breaking-up, due to the Japanese insistence on their demands on the one hand and the persistent refusal by the Russian delegates on the other. Thanks to the mediation of President Roosevelt, however, the Russian delegates were persuaded to agree to the transfer, on the condition that China's consent to such an arrangement should be secured. Then after the conclusion of the peace, Japan, as the prospective successor to the Russian leaseholds and Russian con-

cessions in South Manchuria, came to China for her consent to this transfer, and the consent was given which was embodied in the Chino-Japanese Convention of December 22, 1905.

In connection with this arrangement, two things of importance are noticeable. First, Japan had negotiated the transfer directly with Russia, one as the victor of the war and the other as the defeated party. Secondly, China's consent was obtained after Russia, the lessee and the legal holder of all the economic concessions granted to her by China in South Manchuria, had agreed to the transfer herself. It was, of course, very significant that Russia had insisted that the proposed transfer should be subject to China's consent. This was a definite and proper acknowledgment of China as the real owner of the territories and properties in question. It was still more significant, however, that China's consent should have been obtained, not before but after, Russia herself had agreed upon the transfer through her delegates at the peace conference at Portsmouth. In other words, China gave her consent after the fortunes of the war had been decided and after Russia had admitted her defeat in ceding the Chinese concessions to Japan. This appeared to be the only legal way, and therefore the only correct way, of settling the dispute.

Now what was the step which Japan took in effecting the transfer of the German lease and rights in Shantung? The step, it is but fair to admit, was

a radical departure from the Portsmouth precedent and one which, unless actuated by the most selfish motives, Japan would not have adopted. She resorted to the most reprehensible method by presenting the Twenty-one Demands to the Chinese Government at a time when the entire world was engaged in the war against Germany and pressing them for acceptance before the world could have time to know just what they were. In striking this *coup de force,* Japan not only forgot the fact that the war was still going on and its fortunes had not yet been decided, not only neglected the fact that China, as a neutral then and on friendly terms with Germany, could have no right, moral or legal, to deprive of Germany what was already leased and granted to her, but also disregarded the elementary rule of International Law that, Germany, as the lessee and the holder of the concessions in Shantung, should have been consulted first before China could have anything to say in the matter, and that Germany's agreement to the transfer should have been secured first, as Russia's consent was first secured in 1905, before China would give hers. This is as it should be, for China could under no circumstances lease or transfer to Japan what she had already leased to Germany without Germany's assent. Now, without waiting for the final decision of the post-bellum conference in which Japan and Germany could agree upon the transfer themselves first, as Japan and Russia had agreed at the

Portsmouth conference, Japan, by means of an ultimatum of May 7, 1915, forced from the Chinese Government the consent as it was now embodied in the treaty of 1915 relating to the Shantung Province. The entire procedure is, to say the least, like putting the cart before the horse. It is at once ridiculous and impossible.

Now let us analyse it in a more clear fashion. Chronologically, the Twenty-one Demands were presented to the Chinese Government on January 18, 1915, and the treaties embodying a majority of these demands were signed on May 25, of the same year. The Chinese Government was made to agree against its own will "to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests, and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the province of Shantung." When this undertaking was entered into, the war in Europe, of which the Anglo-Japanese expedition against Tsingtao was but one incident, had yet to be fought out. In other words, the Twenty-one Demands were presented to the Chinese Government and the resulting treaties were signed *flagrante bello*. There was no indication then that the strength of the Teutonic Allies was waning, and no one could foretell just with whom the fortune of the war would lie. In January or even in May, 1915, if

we recollect correctly, Germany and her allies were at the height of success in their military operations in the Western front. Germany stood then a good chance to win the war if the allied Powers had not exerted to the last ounce of their energy and if the United States had not come to their rescue. It was therefore perfectly evident that, in exacting the concession from the Chinese Government as stipulated in the treaties of 1915, Japan had taken too much for granted. That is, "China is made to concur with the Japanese attitude of mind that Germany is as good as vanquished, and therefore China must agree beforehand with Japan to whatever Japan may agree with Germany when the war is ended." Such a precipitating arrangement, there is no denying, was devoid of all counsels of wisdom and prudence. Fortunately, the nation which challenged the whole world by ruthlessly tramping under feet all that is sacred and precious in law and in order was beaten to its knees, and the war was won. Should, on the other hand, Germany have come out victorious and the Allies have been beaten, the whole structure of the Chino-Japanese treaties of 1915 relating to Shantung would have fallen to the ground. Germany would have retained all her possessions in Shantung; China's consent to the transfer would have been absolutely meaningless; and Japan, as an aspirant to the rich German possessions, would have been rudely disappointed, and perhaps, made to pay for her temerity in extort-

ing such an arrangement from the Chinese Government!

But the validity or invalidity of the Chino-Japanese treaties of 1915—particularly the provision on the disposal of the German leased territory and the German concessions in Shantung—can be better tested in this fashion. According to the first article of the "Treaty respecting the province of Shantung," China undertakes to consent to whatever arrangements Japan may make with Germany after the war. And according to one of the notes attached to the treaty, Japan undertakes to restore Kiao-chow to China on the condition that Japan, among other things, should be granted an exclusive concession. Now, as we have asked before, should Germany have come out victorious in the war and dictated the terms of peace, would Japan have considered herself as bound by the treaty? and if so, could she restore Kiao-chow to China as she undertakes to? and how? We know, of course, that this is contrary to the fact. We put forth this imaginary question only to show that if Japan insists upon the operation of the treaties of 1915, she might in such a contingency find herself legally bound to restore the Kiao-chow territory to China and yet physically unable to do so. Such premature arrangement—it was premature, for it did not wait for the final outcome of the war, is thus seen unwise, imprudent, and sometimes impossible of execution. If Japan could not be bound by the treaty provisions in such

a contingency, how could China be expected to abide by them under circumstances totally different from those contemplated?

Now it is quite possible that Japan may fall back upon the doctrine of *uti possidetis* to justify her retention of the German concessions in Shantung. Indeed, some of the Japanese writers and even responsible Japanese statesmen have more than once pointed out that China's declaration of war against Germany could not abrogate the lease and therefore could not affect the leased territory which has already been captured and occupied by Japan. In other words, they have based their contention on one phase of the *uti possidetis* doctrine—the physical possession or occupation. This is a very plausible argument, as far as it goes. But no one need be an International Law expert in order to see that the contention has a very thin legal foundation. To put in non-technical language, the doctrine of *uti possidetis* signifies that at the conclusion of peace, one belligerent may keep all the enemy territory which he has occupied or is occupying, unless the treaty of peace excluded that tacit understanding by express provisions. Now in the case of Kiao-chow Bay, of which Japan has considered herself as the sole occupant, it is as evident as daylight that the doctrine of *uti possidetis* could not be held to apply, at the time when the Chino-Japanese treaties were concluded. In the first place, the doctrine of *uti possidetis* could not come into operation until at the

end of the war, and it could certainly not be presumed to have operated in May, 1915, when the Chino-Japanese treaties were concluded. Strictly speaking, even at the end of the war it could not be resorted to, unless there was nothing to be said about the German possessions in Shantung in the forthcoming peace treaty, for the doctrine signifies that at the conclusion of peace one belligerent may keep all the enemy territory which he has occupied or is occupying, unless the treaty of peace excluded that tacit understanding by express provisions. Furthermore, with China's participation in the war which abrogated the lease convention, the Kiao-chow territory ceased to be an enemy territory. The territory, together with the rights and properties appertaining to it, reverted back to China, the original lessor. China and Japan were friendly neighbours and allies in the war. How could Japan then invoke the doctrine of *uti possidetis* in order to keep what really belonged to an ally? In the bygone ages, possession means nine points of law. It is difficult to believe that such is still the practice obtaining in this civilised age.

Furthermore, do we not remember that the lease was non-transferable? Under the fifth article of the lease convention, it was stipulated that Germany was not to sublet the territory leased from China to another Power. And it was a clear implication that China was not to transfer it to a third Power while Germany was holding it. In giving her consent to

whatever arrangements which Japan might make with Germany after the war, China agreed to something which she should have not agreed to. It was at once an unfriendly and illegal act on the part of China. At the time when the Chino-Japanese treaties of May, 1915, were concluded, as we have pointed out before, China was a neutral, taking no part in the war and remaining on friendly terms with Japan as well as with Germany. The lease was as good then as it was when first granted. China could, as the lessor, cancel the lease on any justiciable ground, but she certainly had no right to give it to Japan, while she had done nothing to abrogate the lease.

CONCLUSION

ENOUGH has been said, in the previous chapters, about the voidance of the Chino-Japanese treaties of 1915. If, however, additional arguments are required, we need only remember that the provisions of the said treaties are absolutely incompatible with the sovereignty of China, with the right of self-preservation and self-development, and with the fundamental principles of the League of Nations. China is required to build her railways in her own territory only with Japan's consent; China is required to employ Japanese advisers in preference to those of other nationalities; China is required to give her mines, coal, gold, and iron, so that they can be operated by Japanese and with Japanese capital; China is required not to build dockyards, arsenals, or other naval equipments in one of her own provinces; China is required not to borrow foreign capital other than Japanese for the development of the biggest ironworks in the country; China is further required to lease her land to meet the needs of the agricultural enterprises of the Japanese subjects; and most outrageous of all, China is required to employ Japanese police to guard the Chinese railways.

Without marshalling further evidences, it is quite

apparent that the Chino-Japanese treaties of 1915 are neither compatible with China's sovereignty, nor with her right of self-preservation and self-development. What Japan seeks to accomplish by means of the treaties of 1915 tends to create new spheres of interest and influence for herself, but destroys those for the other Powers. Remembering the position which Japan enjoyed in South Manchuria and the numerous economic weapons which she has in her grasp, the merest tyro of the Far Eastern situation can readily see that Japan would be practically enthroned in a menacing position to the Chinese Government and to the existence of China as an independent nation, if she were permitted to enjoy the benefits and rights which she has obtained in the 1915 treaties. In addition to Manchuria, Japan has already made a sphere of interest or influence out of Shantung for herself. And in addition to both regions, Japan has, according to these treaties of 1915, acquired extensive rights and concessions in Mongolia. Without going into the details as to Japan's position in North China, it is, therefore, very easy to see that she is quite able to control the whole area of northern China, including Mongolia. Her sphere of interest in Fukien, and her attempt to break into the Yangtze Valley—an attempt ill-concealed in her demand in regard to the Hanyehping Ironworks, are the mere details of her general programme for the domination of China.

Now it must not be lost sight of that it is a recog-

nised principle of International Law that when a treaty threatens the self-development and self-preservation of a nation, that treaty ceases to be obligatory. "Les traites internationaux ne veuvent jamais constituer un obstacle permanent au developpement de la constitution et des droits d'un peuple," says Bluntschli, and Professor Oppenheim points out the same principle when he says: "When, for example, the existence or the necessary development of a State stands in unavoidable conflict with such State's treaty obligations, the latter must give way for self-preservation and development in accordance with the growth and the necessary requirements of the nation are the primary duties of every State. No State would consent to such treaty as would hinder it in the fulfilment of these primary duties." And Professor John Bassett Moore is very explicit in language on such a question when he writes: "when performance of a treaty, for instance, becomes impossible, non-performance is not immoral; so if performance becomes self-destructive to the party, the law of self-preservation overrules the laws of obligation in others." The noted Italian publicist, M. Pasquale Fiore, seems to think that "all treaties are to be looked upon as null and void which are in any way opposed to the development of the free activity of a nation, or which hinder the exercise of its natural rights." We have not the slightest doubt that the performance of the 1915 treaties is impossible; it is incompatible with China's sov-

ereignty; it is incompatible with her right of self-preservation and self-development; in short, it is self-destructive. If performance becomes self-destructive, the law of self-preservation overrules the law of obligation.

Furthermore, it is inconceivable how Japan can become a member of the League of Nations and at the same time insist upon the enforcement of the 1915 treaties without violating the fundamental principles of the Covenant. We have pointed out and proved in the previous chapters how the carrying out of the treaties will involve a specific violation of China's territorial integrity and her political independence. Yet territorial integrity and political independence are to be respected and guaranteed by the League of Nations. Article X of the Covenant, the retention of which has been recommended by the Committee on Amendments but recently, reads: "The members of the League undertake to respect and to preserve as against external aggression the territorial integrity and existing political independence of all members of the League." And it is further stipulated in Article XX, "the members of the League severally agree that this Covenant is accepted as abrogating all obligations and understandings inter se which are inconsistent with the terms thereof." It is pertinent to ask if Japan, now a member of the League, will continue her membership in it by trampling down these very fundamental principles, and it is also proper to ask if the mem-

bers of the League will suffer such a violence to its constitution. According to the language of Article XX, it is Japan who should, before becoming a member of the League, undertake to abrogate the Chino-Japanese treaties of May 25, 1915, which are incompatible with the League Covenant. "In case any member of the League," reads the second part of the said Article, "shall, before becoming a member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such member to take immediate steps to procure its release from such obligations." There is nothing so simple and so easy for Japan to live up to the Covenant of the League.

It does not seem necessary to go any further to argue why the Chino-Japanese treaties of May 25, 1915, should be abrogated. One reason after another we have pointed out, showing in the first place that they are void *ab initio*. We are not at all sure whether China and Japan, the contracting parties, can ever come to an amicable settlement of the dispute. It is not at all certain that the question can or will eventually be settled by the League of Nations, of which both China and Japan are members, or by an arbitration board, which the two countries may institute for the purpose, or by any other procedure which is fitting and competent to take up such a controversy. Some may urge that the question of the validity of the treaties of 1915, and of all the notes attached to them, can be properly sub-

mitted for reconsideration at the Conference on limitation of armament at Washington, inasmuch as it undertakes to settle problems in the Pacific and in the Far East.

It is always to be understood that it is one thing to submit a controversy of this character to a congress of Powers for consideration, and it is an entirely different matter to expect a judicious decision from it. China submitted her claim for the abrogation of these treaties at the Versailles Peace Conference, and she was more than disappointed with the decision that the "Big Three" had reached. As far back as 1870, when the question of treaty obligations was being widely discussed apropos of the decision by Russia not to be bound by the Treaty of Paris of 1856, which forbade her (and Turkey) to build "military-maritime arsenals" on the coast of the Black Sea or to maintain ships of war thereon, James Stuart Mill raised this question: "What means, then, are there of reconciling, in the greatest practicable degree, the inviolability of treaties and the sanctity of national faith, with the undoubted fact that treaties are not always fit to be kept, while yet those who have imposed them upon others weaker than themselves are not likely, if they retain confidence in their own strength, to grant release from them?" Exactly fifty years have elapsed since the question was asked, but no answer has yet been found. It would seem that the answer given by Russia by taking law into her own hands has not

been seriously challenged. The Conference of London held in 1871 to settle the Black Sea question, laid down this rule: "It is an essential principle of the Law of Nations that no power can liberate itself from the engagements of a treaty, or modify the stipulations thereof, unless with the consent of the contracting powers by means of an amicable arrangement." While laying down this rule as "an essential principle of the Law of Nations," the Conference of London did nothing to call Russia to task for her disregard of the Treaty of Paris of 1856. Commenting on the same rule, Professor T. J. Lawrence observes: "This doctrine sounds well; but a little consideration will show that it is as untenable as the lax view that would allow any party to a treaty to violate it on the slightest pretext. If it were invariably followed, a single obstructive Power would have the right to prevent beneficial changes that all the other states concerned were willing to adopt. It would have stopped the unification of Italy in 1860 on account of the protests of Austria, and the consolidation of Germany in 1866 and 1871 because of the opposition of some of her minor states."

At any rate, it may be presumed that the Chino-Japanese treaties of 1915 cannot be allowed to be operative, and that China, failing to reach an amicable settlement of the matter, will be compelled to take step to repudiate them altogether. We have pointed out that they are null and void *ab initio*

because of the lack of legislative sanction, which is required by the Constitution of the Chinese Republic to every international agreement it enters into. The fact that these treaties have never been submitted to the approval of the Chinese National Assembly, and that they have been submitted to any other legislative body legally constituted in China, is sufficient ground for China to repudiate them altogether. For the last few years, China has been torn by internal differences. The day when the country is united, and when a new National Assembly is elected, will soon arrive, and it is simply a matter of procedure that they are declared null and void by legislative action. By an Act of Congress of July 7, 1798, it was declared, "That the United States are of right free and exonerated from the stipulations of the treaties and of the consular convention, heretofore concluded between the United States and France." Following the example thus set by the United States, China, with a united country and a representative parliament, can refuse to recognise the treaties of 1915 as binding upon her. The Chinese legislature can pass a resolution to this effect, which can be communicated to the Japanese Government as a notification of the abrogation of the treaties under consideration. China need have no fear that she would be considered as faithless in her international engagements in such an eventuality. She will have done her best, and she certainly cannot be expected to sacrifice her right of existence as an in-

dependent and sovereign nation for the interest of her neighbouring empire. The world's public opinion will be behind China. The simple fact that China took the trouble of submitting the case to the Peace Conference at Versailles, and that she has not seen fit to repudiate these treaties on her own responsibility, is a convincing proof that she cherishes great regard for her international engagements. Only as the last resort to rectify this gross injustice, China may be driven to take the extreme measure suggested above.

In view of the fact that the Washington conference aims to reach some agreement upon limitation of armament, the point should be strongly emphasised that no such agreement can be arrived at without a general settlement of the Far Eastern questions. And the Far Eastern questions cannot be settled without disposing these treaties of May 25, 1915, which have since their conclusion stood as a stumbling-block to the cordial relations between Japan and China. While it is quite likely, therefore, that the question of validity of these treaties may be re-opened at the Washington conference, the re-opening is in itself no assurance of a judicial settlement. China will perhaps welcome the opportunity of reconsidering the question, of course. She will, however, be better off not to discuss it, if such discussion can only result in a repetition of the outrageous treatment which she received at the Versailles Peace Conference. It is certainly true that,

unlike the Peace Conference at Versailles, the conference at Washington seeks to discuss the Far Eastern problems and will therefore give more careful consideration to questions of Chinese interest. It is also true that, in a general conference of Powers such as this, no matter what its agenda may be, the interests of the participating Powers are so numerous and various that those of the weaker are often sacrificed for the stronger Powers. There are bound to be compromises and concessions. On the question of the 1915 treaties there should be no compromise. China expects their absolute repudiation. Every compromise will tend to recognise their validity. This China refuses to admit.

APPENDIX A

TREATY RESPECTING THE PROVINCE OF SHANTUNG

His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, having resolved to conclude a Treaty with a view to the maintenance of general peace in the Extreme East and the further strengthening of the relations of friendship and good neighbourhood now existing between the two nations, have for that purpose named as their Plenipotentiaries, that is to say:

His Excellency the President of the Republic of China, Lou Tseng-tsiang, *Chung-ching,* First Class *Chia Ho* Decoration, Minister of Foreign Affairs.

And His Majesty the Emperor of Japan, Hioki Eki, *Jushii,* Second Class of the Imperial Order of the Sacred Treasure, Minister Plenipoteniary, and Envoy Extraordinary:

Who after having communicated to each other their full powers and found them to be in good and due form, have agreed upon and concluded the following Articles:

Article 1. The Chinese Government agrees to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.

Article 2. The Chinese Government agrees that as regards the railway to be built by China herself from Chefoo or Lungkow to connect with the Kiaochow-Tsinanfu railway, if Germany abandons the privilege of financing the Chefoo-Weihsien line, China will approach Japanese capitalists to negotiate for a loan.

Article 3. The Chinese Government agrees in the interest of trade and for the residence of foreigners, to open by China herself as soon as possible certain suitable places in the Province of Shantung as Commercial Ports.

Article 4. The present treaty shall come into force on the day of its signature.

The present treaty shall be ratified by His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, and the ratification thereof shall be exchanged at Tokio as soon as possible.

In witness whereof the respective Plenipotentiaries of the High Contracting Parties have signed and sealed the present Treaty, two copies in the Chinese language and two in Japanese.

Done at Peking this twenty-fifth day of the fifth month of the fourth year of the Republic of China, corresponding to the same day of the same month of the fourth year of Taisho.

APPENDIX B

EXCHANGE OF NOTES RESPECTING SHANTUNG

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

In the name of the Chinese Government I have the honour to make the following declaration to your Government: "Within the Province of Shantung or along its coast no territory or island will be leased or ceded to any foreign Power under any pretext."

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which you made the following declaration in the name of the Chinese Government: "Within the Province of Shantung or along its coast no territory or island will

be leased or ceded to any foreign Power under any pretext."

In reply I beg to state that I have taken note of this declaration.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

APPENDIX C

EXCHANGE OF NOTES RESPECTING THE OPENING OF PORTS IN SHANTUNG

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that the places which ought to be opened as Commercial Ports by China herself, as provided in Article 3 of the Treaty respecting the Province of Shantung signed this day, will be selected and the regulations therefor, will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which

you stated "that the places which ought to be opened as Commercial Ports by China herself, as provided in Article 3 of the Treaty respecting the province of Shantung signed this day, will be selected and the regulations therefor, will be drawn up by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

APPENDIX D

EXCHANGE OF NOTES RESPECTING THE RESTORATION OF OF THE LEASED TERRITORY OF KIAOCHOW BAY

—Note—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

In the name of my Government I have the honour to make the following declaration to the Chinese Government:

When, after the termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:

1. The whole of Kiaochow Bay to be opened as a Commercial Port.

2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.

3. If the foreign Powers desire it, an international concession may be established.

4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure relating thereto, the Japanese Government and the Chinese Government shall arrange the

matter by mutual agreement before the restoration.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to acknowledge the receipt of your Excellency's note of this day's date in which you made the following declaration in the name of your Government:

"When, after the termination of the present war the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:

1. The whole of Kiaochow Bay to be opened as a Commercial Port.

2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.

3. If the foreign Powers desire it, an international concession may be established.

4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure relating thereto, the Japanese Government and the Chinese Government shall arrange the matter by mutual agreement before the restoration.

In reply, I beg to state that I have taken note of this declaration.

I avail, etc.,
(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

APPENDIX E

TREATY RESPECTING SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, having resolved to conclude a Treaty with a view to developing their economic relations in South Manchuria and Eastern Inner Mongolia, have for that purpose named as their Plenipotentiaries, that is to say:

His Excellency the President of the Republic of China, Lou Tseng-tsiang, *Chung-ching,* First Class *Chia-ho* Decoration, and Minister of Foreign Affairs; and His Majesty the Emperor of Japan, Hioki Eki, *Jushii,* Second Class of the Imperial Order of the Sacred Treasure, Minister Plenipotentiary and Envoy Extraordinary;

Who, after having communicated to each other their full powers, and found them to be in good and due form, have agreed upon and concluded the following Articles:

Article 1. The two High Contracting Parties agree that the term of lease of Port Arthur and Dalny and the terms of the South Manchuria Railway and the Antung-Mukden Railway, shall be extended to 99 years.

Article 2. Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

Article 3. Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

Article 4. In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government may give its permission.

Article 5. The Japanese subjects referred to in the preceding three articles, besides being required to register with the local Authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and taxation of China.

Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese Consul: those in which the defendants are Chinese shall be tried and adjudicated by Chinese Authorities. In either case an officer may be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage.

When in future, the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried and adjudicated entirely by Chinese law courts.

Article 6. The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain suitable places in Eastern Inner Mongolia as Commercial Ports.

Article 7. The Chinese Government agrees speedily

to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway loan agreements made heretofore between China and foreign financiers.

When in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers in connection with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

Article 8. All existing treaties between China and Japan relating to Manchuria shall, except where otherwise provided for by this Treaty, remain in force.

Article 9. The present Treaty shall come into force on the date of its signature. The present Treaty shall be ratified by His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, and the ratifications thereof shall be exchanged at Tokio as soon as possible.

In witness whereof the respective Plenipotentiaries of the two High Contracting Parties have signed and sealed the present Treaty, two copies in the Chinese language and two in Japanese.

Done at Peking this twenty-fifth day of the fifth month of the fourth year of the Republic of China, corresponding to the same day of the same month of the fourth year of Taisho.

APPENDIX F

EXCHANGE OF NOTES

RESPECTING THE TERMS OF LEASE OF PORT ARTHUR AND DALNY AND THE TERMS OF SOUTH MANCHURIAN AND ANTUNG-MUKDEN RAILWAYS

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that, respecting the provisions contained in Article 1 of the Treaty relating to South Manchuria and Eastern Inner Mongolia, signed this day, the term of lease of Port Arthur and Dalny shall expire in the 86th year of the Republic or 1997. The date for restoring the South Manchuria Railway to China shall fall due in the 91st year of the Republic or 2002. Article 12 in the original South Manchurian Railway Agreement providing that it may be redeemed by China after 36 years from the day on which the traffic is opened is hereby cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic or 2007.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date, in which you stated that respecting the provisions contained in Article 1 of the Treaty relating to South Manchuria and Eastern Inner Mongolia, signed this day, the term of lease of Port Arthur and Dalny shall expire in the 86th year of the Republic or 1997. The date for restoring the South Manchurian Railway to China shall fall due in the 91st year of the Republic or 2002. Article 12 in the original South Manchurian Railway Agreement providing that it may be redeemed by China after 36 years from the day on which the traffic is opened, is hereby cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic or 2007."

In reply I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) Hioki Eki.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

APPENDIX G

EXCHANGE OF NOTES RESPECTING THE OPENING OF PORTS IN EASTERN INNER MONGOLIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that the places which ought to be opened as Commercial Ports by China herself, as provided in Article 6 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, will be selected, and the regulations therefor, will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which

you stated "that the places which ought to be opened as Commercial Ports by China herself, as provided in Article 6 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, will be selected, and the regulations therefor, will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

SOUTH MANCHURIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that Japanese subjects shall, as soon as possible, investigate and select mines in the mining areas in South Manchuria specified hereinunder, except those being prospected for or worked, and the Chinese Government will then permit them to prospect or work the same; but before the Mining regulations are definitely settled, the practice at present in force shall be followed. Provinces Fengtien:

Locality	*District*	*Mineral*
Niu Hsin T'ai	Pen-hsi	Coal
Tien Shih Fu Kou	"	"
Sha Sung Kang	Hai-lung	"
T'ieh Ch'ang	Tung-hua	"
Nuan Ti T'ang	Chin	"
An Shan Chan region	From Liaoyang to Pen-hsi	Iron
KIRIN (*Southern Portion*)		
Sha Sung Kang	Ho-lung	C. & I.
Kang Yao	Chi-lin (Kirin)	Coal
Chia P'i Kou	Hua-tien	Gold

I avail, etc.,
(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day respecting the opening of mines in South Manchuria, stating "Japanese subjects shall, as soon as possible, investigate and select mines in the mining areas in South Manchuria specified hereinunder, except those being prospected for or worked, and the Chinese Government will then permit them to prospect and or work the same; but before the Mining regulations are definitely settled, the practice at present in force shall be followed.

1 Provinces Fengtien.

Locality	*District*	*Mineral*
1. Niu Hsin T'ai	Pen-hsi	Coal
2. Tien Shih Fu Kou	"	"
3. Sha Sung Kang	Hai-lung	"
4. T'ieh Ch'ang	Tung-hua	"
5. Nuan Ti T'ang	Chin	"
6. An Shan Chan region	From Liaoyang to Pen-hsi	Iron

KIRIN (*Southern Portion*)

1. Sha Sung Kang	Ho-lung	C. & I.
2. Kang Yao	Chi-lin (Kirin)	Coal
3. Chia P'i Kou	Hua-tien	Gold

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs of the Republic of China.

APPENDIX H

EXCHANGE OF NOTES RESPECTING RAILWAYS AND TAXES IN SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

In the name of my Government.

I have the honour to make the following declaration to your Government:

China will hereafter provide funds for building necessary railways in South Manchuria and Eastern Inner Mongolia; if foreign capital is required China may negotiate for a loan with Japanese capitalists first; and further, the Chinese Government, when making a loan in future on the security of the taxes in the above-mentioned places (excluding the salt and customs revenue which have already been pledged by the Chinese Central Government) may negotiate for it with Japanese capitalists first.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,

Hioki Eki,

Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date respecting railways and taxes in South Manchuria and Eastern Inner Mongolia in which you stated:

"China will hereafter provide funds for building necessary railways in South Manchuria and Eastern Inner Mongolia; if foreign capital is required China may negotiate for a loan with Japanese capitalists first; and further, the Chinese Government, when making a loan in future on the security of taxes in the above mentioned places (excluding the salt and customs revenue which has already been pledged by the Chinese Central Government) may negotiate for it with Japanese capitalists first.

In reply I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) Hioki Eki.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

APPENDIX I

EXCHANGE OF NOTES RESPECTING THE EMPLOYMENT OF ADVISERS IN SOUTH MANCHURIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

In the name of the Chinese Government, I have the honour to make the following declaration to your Government:

"Hereafter, if foreign advisers or instructors on political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

I avail, etc.,
(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which

you made the following declaration in the name of your Government:

"Hereafter if foreign advisers or instructors in political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

APPENDIX J

EXCHANGE OF NOTES RESPECTING THE EXPLANATION OF "LEASE BY NEGOTIATION" IN SOUTH MANCHURIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to state that the term lease by negotiation contained in Article 2 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day shall be understood to imply a long-term lease of not more than thirty years and also the possibility of its unconditional renewal.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which you state:

"The term lease by negotiation contaianed in Arti-

cle 2 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day shall be understood to imply a long-term lease of not more than thirty years and also the possibility of its unconditional renewal."

In reply I beg to state that I have taken note of the same.

I avail, etc.,
(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

APPENDIX K

EXCHANGE OF NOTES RESPECTING THE ARRANGEMENT FOR POLICE LAWS AND ORDINANCES AND TAXATION IN SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that the Chinese Authorities will notify the Japanese Consul of the police laws and ordinances and the taxation to which Japanese subjects shall submit according to Article 5 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day so as to come to an understanding with him before their enforcement.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of

Your Excelleny's note of this day's date in which you state:

"The Chinese Authorities will notify the Japanese Consul of the police laws and ordinances and the taxation to which Japanese subjects shall submit according to Article 5 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day so as to come to an understanding with him before their enforcement."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that, inasmuch as preparations have to be made regarding Articles 2, 3, 4 & 5 of the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, the Chinese Government proposes that the operation of the said Articles be postponed for a period of three months beginning from the date of the signing of the said Treaty.

I hope your Government will agree to this proposal.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date in which you stated that "inasmuch as preparations have to be made regarding Articles 2, 3, 4 & 5 the Treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, the Chinese Government proposes that the operation of the said Articles be postponed for a period of three months beginning from the date of the signing of the said Treaty."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

APPENDIX L

EXCHANGE OF NOTES RESPECTING THE MATTER OF HANYEHPING

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to state that if in future the Hanyehping Company and the Japanese capitalists agree upon co-operation, the Chinese Government, in view of the intimate relations subsisting between the Japanese capitalists and the said Company, will forthwith give its permission. The Chinese Government further agrees not to confiscate the said Company, nor, without the consent of the Japanese capitalists to convert it into a state enterprise, nor cause it to borrow and use foreign capital other than Japanese.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency,

I have the honour to acknowledge the receipt of

Your Excellency's note of this day's date in which you state:

"If in future the Hanyehping Company and the Japanese capitalists agree upon co-operation, the Chinese Government, in view of the intimate relations subsisting between the Japanese capitalists and the said Company, will forthwith give its permission. The Chinese Government further agrees not to confiscate the said Company, nor, without the consent of the Japanese capitalists to convert it into a state enterprise, nor cause it to borrow and use foreign capital other than Japanese."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

APPENDIX M

EXCHANGE OF NOTES RESPECTING THE FUKIEN QUESTION

—Note—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Excellency,

A report has reached me to the effect that the Chinese Government has the intention of permitting foreign nations to establish, on the coast of Fukien Province, dock-yards, coaling stations for military use, naval bases, or to set up other military establishments; and also of borrowing foreign capital for the purpose of setting up the above-mentioned establishments.

I have the honour to request that Your Excellency will be good enough to give me reply stating whether or not the Chinese Government really entertains such an intention.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

—Reply—

Peking, the 25th day of the 5th month of the 4th year of the Republic of China.

Monsieur le Ministre.

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date which I have noted.

In reply I beg to inform you that the Chinese Government hereby declares that it has given no permission to foreign nations to construct, on the coast of Fukien Province, dock-yards, coaling stations for military use, naval bases, or to set up other military establishments; nor does it entertain an intention of borrowing foreign capital for the purpose of setting up the above-mentioned establishments.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

His Excellency,
Hioki Eki,
Japanese Minister.

APPENDIX N

THE CLAIM OF CHINA

SUBMITTING FOR ABROGATION BY THE PEACE CONFERENCE THE TREATIES AND NOTES MADE AND EXCHANGED BY AND BETWEEN CHINA AND JAPAN ON MAY 25, 1915, AS A TRANSACTION ARISING OUT OF AND CONNECTED WITH THE WAR BETWEEN THE ALLIED AND ASSOCIATED STATES AND THE CENTRAL POWERS

It is submitted that the Treaties and Notes signed and exchanged by and between the Chinese and Japanese Governments on May 25, 1915, as a result of the negotiations connected with the Twenty-one Demands and of the Japanese ultimatum of May 7, 1915, are and do constitute one entire transaction or settlement arising out of and connected with the war between the Allied and Associated States and the Central Powers.

An essential feature of this transaction is the set of demands relating to the province of Shantung and insisting on the right of Japan to succeed to the leased territory of Kiaochow and the other "rights, interests and concessions" of Germany in the province.

That this essential feature of the transaction can only be settled by the Peace Conference is clearly admitted by the Japanese Government, because they

have submitted to the Conference a claim for "the unconditional cession of the leased territory of Kiaochow together with the railways and other rights possessed by Germany in respect of Shantung province."

It follows, therefore, the entire transaction or settlement of which this Shantung claim of Japan forms an essential feature, is A MATTER DIRECTLY ARISING OUT OF THE WAR AND WITHIN THE PURVIEW OF THE PEACE CONFERENCE AND NECESSARILY SUBJECT TO ITS REVISIONARY ACTION.

WAR-CHARACTER OF TREATIES OF 1915 EMPHASISED

The war-character of these Treaties of 1915 is further attested by the opening sentence of the "First Instructions" to Mr. Hioki, which reads: "In order to provide for the readjustment of affairs consequent on the Japan-German war and for the purpose of ensuring a lasting peace in the Far East by strengthening the position of the [Japanese] Empire, the Imperial Government have resolved to approach the Chinise Government with a view to conclude treaties and agreements mainly along the lines laid down in the first four Groups of the appended proposals."

The Japanese ultimatum also begins with a sentence, emphasising that the *demarche* is due to the desire of Japan "to adjust matters to meet the new situation created by the war between Japan and Germany. . . ."

TREATIES OF 1915 SIGNED UNDER COERCION

The fact that these Treaties of 1915 were signed by the Chinese Government of the day does not remove them from the scope of the revisionary authority of the Peace Conference. Nor can the same operate as an estoppel against China in her claim to be released from them. These Treaties were signed by the Chinese Government under coercion of the Japanese ultimatum of May 7, 1915, and in circumstances entirely excluding any suggestion that China was a free and consenting party to the transaction embodied in them.

ABROGATION INVOLVES NO JUSTICE OF UNFAIRNESS TO JAPAN

The abrogation of the Treaties of 1915 necessarily carries with it the rejection of the pending Japanese claim for the unconditional cession of the German system in Shantung.

On this point, the submission is made that no injustice or unfairness will be done to Japan in denying her claim to perpetuate German aggression in Shantung. Nor will Japan's failure in this respect place her in a position inferior to that of any of the other Powers in "territorial propinquity" to China, even assuming—which China does not admit—that Japan's "territorial propinquity" entitles her to claim a "special position" in China which has never been claimed by Great Britain and France although their respective Asiatic possessions are also "contiguous" to the territory of the Chinese Republic.

HOW CHINA WAS PREVENTED FROM INTERVENING IN THE WAR

It is also submitted that but for the attitude of Japan—inspired largely, it seems, by her desire to replace Germany in Shantung—China would have been associated with the Allies in August, 1914, and again in November, 1915, in the struggle against the Central Powers.

In August, 1914, the Chinese Government expressed their desire to declare war against Germany and to take part in the Anglo-Japanese operations against the German garrison at Tsingtao. The proposal was not pressed owing to the intimation reaching the Chinese Government that the proposed Chinese participation was likely to create "complications" with a certain Power.

Again in November, 1915, the Chinese Government expressed their desire to enter the war in association with the Allies but the Japanese Government opposed the proposal.

Eventually, however, the Chinese Government addressed a note of warning to Germany on February 9, 1917, severed diplomatic relations with the latter on March 14 following, and finally declared war against Germany and Austria on August 14, 1917—the opposition of the Japanese Government having been removed in the circumstances indicated in another despatch written by M. Krupensky to the Russian Government on February 8, 1917, reporting on his efforts to induce Japan to withdraw her opposition to China's entry into the war on the side of the Allies.* (See page 141 for footnote.)

Further, it is reasonable to point out that, if Japan had not occupied it, the leased territory of Kiaochow would in any event have been directly restored to China as one of the States associated with the Allied Powers and the United States in the war against the Central Powers.

THE CONGRESS OF BERLIN

The submission is further made that, in addition to the foregoing reasons, there are precedents justifying the Peace Conference in dealing with the Treaties of 1915 in the sense of abrogation.

The Congress of Berlin is an instance of the Great Powers, acting as a whole and collectively, revising a treaty concluded between two states, i.e. Russia and Turkey for a variety of reasons but mainly because the settlement dictated by Russia at San Stefano was deemed ultimately to endanger the peace of Europe.

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* In this connection, it is right to note China's war-services and offer of man-power to the Allies and America. During the war a large contingent of Chinese workers laboured for the Allies behind the battle lines in Northern France. They eventually numbered 130,678. Not a few of them were killed or wounded by enemy operations. In addition to these workers in France, a large number were employed in connection with the British operations in Mesopotamia and German East Africa; and the crews of quite a considerable number of British ships consisted of Chinese seamen.

Besides placing at the disposal of the Allied Governments nine steamers, which were greatly needed for the Chinese export trade, the Chinese Government offered to despatch an army of 100,000 to reinforce the man-power of the Allied and Associated States in France. The offer was favourably entertained by the Inter-Allied Council in Paris; but owing to Allied inability to supply the necessary tonnage for transport, the proposal eventually could not be carried out.

It is urged that the settlement dictated by Japan at Peking in 1915 endangers directly the peace of Far Asia and, ultimately, the peace of the world.

A CONFERENCE RULING

There are two other arguments against the validity of the Treaties of 1915. One is based on a ruling of the Conference and the other on the lack of finality affecting the Treaties.

By Article 1 of the "Treaty Respecting the Province of Shantung"—which embodies the first of the Twenty-One Demands—the Chinese Government engage to recognize any agreement concluded between Japan and Germany respecting the disposition of the latter's "rights, interests and concessions" in the province; and in the notes exchanged regarding Kiaochow, Japan subjects the restoration of the leased territory to the condition *inter alia,* that "a concession under the exclusive jurisdiction of Japan [is] to be established at a place designated by the Japanese Government."

As regards this Article 1 of the Treaty, it is important to emphasize the point that Japan is debarred from negotiating separately with Germany in respect of the latter's system in Shantung owing to the decision of the Conference to deal with German "territories and cessions" without consulting Germany.

On this view it is plain that Japan is not in a position to agree with Germany regarding the "free disposal" of Kiaochow and that the article in question should be deemed inoperative.

AN ILLUSORY RESTORATION OF KIAOCHOW

The same objection applies to the notes exchanged. And even if this were not so, the illusory character of the restoration of Kiaochow contemplated in them would be a proper matter for the consideration of the Peace Conference in deciding on Japan's claim for the unconditional cession of Kiaochow and the rest of the German system in Shantung.

The chief value of Kiaochow lies partly in the harbour of Tsingtao and partly in an area dominating the finest anchorage of that harbour which has been delimited by the Japanese Government and is already reserved for exclusive Japanese occupation under Japanese jurisdiction, no other than Japanese being permitted to hold land within its boundaries.

This delimited area, presumably, is the "place to be designated by the Japanese Government" as "a concession under the exclusive jurisdiction of Japan." The restoration of Kiaochow to China, with retention by Japan of the area dominating it, would be the restoration of the "shadow" of this "place in the sun" and the retention of its substance by Japan.

LACK OF FINALITY

Since the date of the Treaties of 1915, even Japan has acted on the assumption that they are lacking in finality.

It is evident that the scheme worked out in the Twenty-One Demands and in the Treaties of 1915 demanded for its permanence the assent of the Great Powers with whom Japan was and is under agree-

ment guaranteeing the independence and integrity of China.

Accordingly, the Japanese Government secured the conclusion of two treaties with Russia in the summer of 1916. One was made public and, before its signature, was communicated to the British Government. But the other was a secret treaty, consisting of six articles whereof the last provided that the "present Convention shall be kept in complete secrecy from everybody except the two High Contracting Parties.*

If these significant documents are to be interpreted accurately they must be studied—particularly the secret treaty—in connection with the Anglo-Japanese Treaty of Alliance of July 13, 1911. The latter provides, in Art. 3, that "the High Contracting Parties agree that neither of them will, without consulting the other, enter into separate arrangement with another Power to the prejudice of the objects described in the preamble of this Agreement." One of these objects is defined to be "the preservation of the common interests of all Powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China."

* Commenting on the Treaties in its issue of December 24, 1917, a great organ of British public opinion pointed out that there were considerable differences between the public and secret documents: "The Public Treaty professes to aim at maintaining a lasting peace in the Far East and makes no reference to China: the Secret Treaty is not concerned with Peace but with the interests of both contracting Powers in China. . . . The Public Treaty indicates consultation between the contracting parties as to the measures to be taken, the Secret Treaty points to military measures and is definitely a military alliance."

It is obvious that this specific object of the Anglo-Japanese Treaty would be infringed by the political domination of China or any portion of the territory of the Chinese Republic by either or both of the contracting parties to the secret Russo-Japanese Treaty. And yet this secret Treaty, in Art. 1, fails to provide against the "political domination of China" by either or both Japan and Russia although a secret military alliance is definitely made by the two Powers against the "political domination of China by ANY THIRD POWER."

A further comment may be added. Article 2 of the Public Treaty provides for consultation between Japan and Russia in case their territorial rights or special interests in the Far East be threatened. The specific reference to China in the Secret Treaty shows that the "special interests" of the parties contemplated were those recognised by each other as existing in China. There can be no question whatever that, under the Treaties of 1915, Japan secured valuable territorial rights and special interests in great regions of China like South Manchuria, Eastern Inner Mongolia and Shantung. Indeed, the *cumulative* effect of these Treaties of 1915 is to centre in the hand of Japan a "political domination of China" conflicting with the preamble of the Anglo-Japanese alliance.

FURTHER NEGOTIATIONS WITH RUSSIA

Further negotiations between Japan and Russia are reported in another despatch written by M. Krupensky to Petrograd under date of February 8, 1917.

The Ambassador was reporting on his efforts to

induce Japan to withdraw her opposition to China's entry into the war on the side of the Allies. After stating that he never omitted "an opportunity for representing to [Viscount Motono] the Japanese Minister for Foreign Affairs, the desirability, in the interests of Japan herself, of China's intervention in the war" and that the Minister had promised "to sound the attitude of Peking without delay," M. Krupensky reported that:

"On the other hand, the Minister pointed out the necessity for him, in view of the attitude of Japanese opinion on the subject, as well as with a view to safeguard Japan's position at the future Peace Conference, *if China should be admitted to it* (italics added), of securing the support of the Allied Powers to the desires of Japan in respect of Shantung and the Pacific Islands. These desires are for the succession to all the rights and privileges hitherto possessed by Germany in the Shantung Province and for the acquisition of the Islands to the north of the equator which are now occupied by the Japanese. Motono plainly told me that the Japanese Government would like to receive at once the promise of the Imperial (Russian) Government to support the above desires of Japan."

"In order to give a push," the Ambassador added persuasively, "to the highly important question of a break between China and Germany I regard it as very desirable that the Japanese should be given the promise they ask."

THE RUSSIAN PROMISE

This promise was given in the following communication, dated at "Tokyo, le 20 février/15 mars 1917:

"En réponse à la notice du Ministère des Affaires Etrangères du Japon, en date du 2 février dernier, l'Ambassade de Russie est chargée de donner au Gouvernement Japonais l' assurance qu'il peut entièrement compter sur l'appui du Gouvernement Impérial de Russie par rapport à ses desiderata concernant la cession éventuelle au Japon des droits appartenant à l'Allemagne au Chantoung et des îles allemandes occupées par les forces japonaises dans l'Océan Pacifique au nord de l'équateur."

It is reasonable to suggest that if Japan had at this date regarded, in a sense of finality, the settlement imposed on China in 1915, there would have been no necessity for Japan to insist on Allied support of her claim regarding Shantung at the future Peace Conference.

OTHER ALLIED PROMISES

The same remark applies to the other promises of support secured by the Japanese Government from Great Britain on February 16, 1917; from France, on March 1, 1917; and from Italy whose Minister for Foreign Affairs verbally stated on March 28, 1917, that "the Italian Government had no objection regarding the matter."

Without attempting to express here the Chinese sense of disappointment at the conclusion of these agreements at a time when China was definitely aligning herself with the Allied and Associated States in

the struggle against the Central Powers, it is pertinent to state that, in the view of the Chinese Government, these Allied promises to Japan in so far as they relate to China cannot be deemed binding on Great Britain, France and Italy on the main ground that China's subsequent entry into the war on August 14, 1917, in association with the Allies and the United States involved such a vital change of the circumstances existing at the dates of the respective promises and of the situation contemplated therein that the principle of *rebus sic stantibus* necessarily applies to them.

DISCLAIMER BY CHINESE GOVERNMENT

That the Chinese Government also regarded the Treaties of 1915 as lacking in finality is clear from the disclaimer registered in their official statement on the negotiation connected with the Twenty-One Demands.

Although threatened by the presence of large bodies of troops despatched by the Japanese Government to South Manchuria and Shantung—whose withdrawal, the Japanese Minister at Peking declared in reply to a direct inquiry by the Chinese Government, would not be effected "until the negotiations could be brought to a satisfactory conclusion"—the Chinese Government issued an official statement immediately after this "satisfactory conclusion" had been effected under pressure of the Ultimatum of May 7, 1915, declaring that they were "constrained to comply in full with the terms of the Ultimatum, but in complying the Chinese Government disclaimed any desire to as-

sociate themselves with any revision, which may be effected, of the various conventions and agreements concluded between other Powers in respect of the maintenance of China's territorial independence and integrity, the preservation of the *status quo,* and the principle of equal opportunity for the commerce and industry of all nations in China."

A "UNILATERAL NEGOTIATION"

The foregoing declaration was preceded by an account of the manner in which the negotiations had been conducted or, more accurately, dictated by Japan. It was shown how, faced by Twenty-One Demands of a powerful government "determined to attain this end by all means within their power" and at a selected moment when three of the Powers—with whom Japan had severally guaranteed the independence and integrity of China—were engaged in a deadly struggle with the Germanic Kingdoms, China was compelled to enter into a singularly unequal negotiation with Japan.

It was a negotiation in which the number and virtually the personnel of China's representatives were dictated to her. It was a negotiation in which Japan refused to have official minutes of the proceedings kept as proposed by China, with the result that the Japanese and Chinese representatives differed in their respective records of important declarations made by the latter, and, on the basis of some of these differences, the Japanese Government in their Ultimatum accused the Chinese Government of "arbitrarily nullifying" statements alleged to have been made—but in fact never made—by the senior Chinese represen-

tative. It was a negotiation in the course of which—these are the words of the Chinese Official Statement issued at the time: "the Japanese Minister twice suspended the conferences, obviously with the object of compelling compliance with his views on certain points at the time under discussion." In a word, it was a negotiation in which Japan dominated and dictated the course and the terms of the discussion.

PROTEST BY UNITED STATES GOVERNMENT

Presumably it was as much this element of harshness as the subject matter of the negotiation which moved the Government of the United States concurrently to address to the Chinese and Japanese Governments, four days after the delivery of the Ultimatum to China, the following identic note:

"In view of the circumstances of the negotiations which have taken place and which are now pending between the Government of China and the Government of Japan and of the agreements which have been reached as a result thereof, the Government of the United States has the honour to notify the Government of the Chinese Republic [Japan], that it cannot recognise any agreement or undertaking which has been entered into between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China or the international policy relative to China commonly known as the Open Door Policy. An identical note has been transmitted to the Japanese [Chinese] Government."

CONCLUSION

Summing up the foregoing arguments, it is submitted that they establish the claim of China for the abrogation of the Treaties of 1915—

I. Because these Treaties are and constitute one entire transaction or entity arising out of the war and they attempt to deal with matters whose proper determination is entirely a right and interest of the Peace Conference;

II. Because they contravene the Allied formula of justice and principles now serving as the guiding rules of the Peace Conference in its task of working out a settlement of the affairs of nations in order to prevent or minimise the chances of war in the future;

III. Because, specifically, they violate the territorial integrity and political independence of China as guaranteed in the series of conventions and agreements severally concluded by Great Britain, France, Russia and the United States with Japan;

IV. Because they were negotiated in circumstances of intimidation and concluded under the duress of the Japanese ultimatium of May 7, 1915; and

V. Because they are lacking in finality, being so regarded by Japan who sought to make them final by negotiating—before China was suffered to enter the war in association with the Allies and the United States—a set of secret agreements at variance with the principles accepted by the Belligerents at the basis of the peace settlement.