

Japan's Status in Shantung

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The Tsinan affair, which started on account of a small incident, has developed into very big proportions through the military action of the Japanese troops. These troops first occupied the Chinese commercial area of Tsinan, outside the city walls, for the alleged purpose of affording protection to the foreign residents there; then they went further, bombarded the walled city itself and are now holding it by force. The Japanese commander even appointed, according to a press report from a Japanese source, a Japanese Garrison Commander for Tsinan. That all these involve serious infringements on Chinese sovereignty and are against international law is out of the question. The only doubt that lingers with some who are not familiar with Chinese affairs is the possibility of Japan's action being justified by her special status in Shantung, by the special political rights she might have inherited from Germany during the European War. It is to a discussion of this point that the present article will be devoted.

The present status of Japan in Shantung is quite different from that of Germany before the War, or even from her own status before 1923, when the German leased territory of Kiaochow and the Tsingtao-Tsinan Railway were restored to China, in pursuance of a treaty she concluded with China during the Washington Conference and certain agreements made thereafter. The Treaty for the Settlement of Outstanding Questions Relative to Shantung was signed at Washington on February 4, 1922, and it outlined the general principles concerning the restoration of Kiaochow, the transfer of the Tsingtao-Tsinan Railway, the operation of certain mines by a Sino-Japanese company, and the withdrawal of Japanese troops from Shantung, where they had been stationed since the European War. Later in the year, a Sino-Japanese Joint Commission was appointed by the two Governments concerned, agreements on detailed arrangements were made by it for the carrying out of the treaty provisions, and these were signed at Peking on March 28 and December 1 and 5, 1922. By 1923 all the arrangements were carried out, and Japan has no more rights in Shantung since that year than she has in any other Chinese or foreign territory where she may happen to have some industrial or financial investments.

In referring now to the Washington Conference and the agreements that settled the Shantung question, it may be worth while to recall also the situation in Shantung previous to the settlement. The following account by Professor W. W. Willoughby, in his book "China at the Conference," describes the circumstances in a very brief and concise form. (1)

"It will be remembered that, in 1914, Japan, in pursuance of what she affirmed to be her obligation under the Anglo-Japanese Alliance, sent a military expedition against the German leased area of Kiaochow at the eastern end of Shantung Province; that, in the military operations thus carried on, Japan paid no attention to the rights of China as a neutral

State, and not only occupied the leased area with the important city and port of Tsingtao, but took military possession of the entire length of the railway running from Tsingtao to the Capital of the Province, Tsinanfu, a distance of nearly three hundred miles, where it joined with the important railways running from the north, through Peking and Tientsin to Shanghai; that Japan also took possession of, and operated, certain mines formerly German owned; that Japan took possession of other mines that had not been so owned; that she erected radio stations, and stationed troops at various points in the Province; that, in one way or another, her nationals came into possession and claimed ownership of considerable amounts of real estate in the Province; that the operation of such public enterprises as the electric lighting, telephone, water and laundry services was carried on under Japanese authority; and finally, that Japan had gone so far as to assume and exercise, at various places, civil governmental rights such as could properly be claimed only by a territorial sovereign. In short, Japan had assumed and exercised powers within Shantung that were in considerable excess of those that had been claimed or exercised by Germany."

The above quotation serves to show that many of the rights claimed and powers exercised by Japan at that time had no legal basis at all. By the Washington Treaty and the Agreements concluded afterwards, she gave up all the rights she formerly claimed in exchange for pecuniary compensation from China, although at present she seems to be inclined to exercise certain powers again, powers which have no background in international law or special treaty stipulations. As the principal question at the present juncture is the stationing of Japanese troops in Shantung, this point will be discussed first.

Section III of the Washington Treaty referred to above is devoted to the question of withdrawal of troops. It contains three articles, which will be reproduced below:

Article IX—The Japanese troops, including gendarmes, now stationed along the Tsingtao-Tsinanfu Railway and its branches, shall be withdrawn as soon as the Chinese police or military force shall have been sent to take over the protection of the Railway.

Article X—The disposition of the Chinese police or military force and the withdrawal of the Japanese troops under the preceding Article may be effected in sections.

The date of the completion of such process for each section shall be arranged in advance between the competent authorities of China and Japan.

The entire withdrawal of such Japanese troops shall be effected within three months, if possible, and, in any case, not later than six months, from the date of the signature of the present Treaty.

(1) Willoughby, *China at the Conference*, p. 286.

Article XI.—The Japanese garrison at Tsingtao shall be completely withdrawn simultaneously, if possible, with the transfer to China of the administration of the former German Leased Territory of Kiaochow, and, in any case, not later than thirty days from the date of such transfer.

On March 8, 1922, about a month after the signature of the Treaty, the Sino-Japanese Joint Commission reached an Agreement in Peking for the carrying out of this Section of the Treaty. There are eleven Articles in this Agreement, of which Article II outlined the plan of withdrawal in three sections. The Japanese troops in Section A, from Tsinan to Changtien and Changtien to Poshan, were to be withdrawn by April 10; in Section B, from Hutien to Huangchipao, by April 20; and in Section C, from Chashan to Yukookow, by April 30, 1922. These three sections include the whole length of the Railway outside the leased territory of Kiaochow. The latter was dealt with in another Agreement signed by the Joint Commission on December 1 of the same year. Article V of that Agreement reads:

The withdrawal of all Japanese troops (including gendarmes) stationed at Tsingtao shall be completed within twenty days from the date stipulated in Article I of this Agreement.

The date stipulated in Article I was December 10, 1922, when the German Leased Territory of Kiaochow was to be transferred to China. (2)

It should be noted that, while the Leased Territory of Kiaochow was dealt with in a separate Agreement, the withdrawal of troops from Tsinan was provided for in connection with the Railway, and not by any separate arrangement. This was because Tsinan was purely Chinese territory, before as well as after the Japanese displaced the Germans in Shantung. And it has remained so since. There is no Japanese or other foreign concession in or around that city, but the commercial area there was opened to foreign trade by China herself in 1904. Even in 1914, Japan did not think of demanding a concession in Tsinan when she presented her Twenty-one Demands to China.

In the Treaty and Agreements above referred to, there is no provision that, under such and such circumstances, Japan may again send troops to Shantung. On the contrary, Item 2 of the Agreed Terms of Understanding recorded in the official Minutes of the Chinese and Japanese Delegations at the Washington Conference specially stipulates that, "after the withdrawal of the Japanese troops provided for in Articles IX-XI of the Treaty (the Washington Treaty), no Japanese military force of any kind will remain in any part of Shantung." (3)

In the Resolution Regarding Armed Forces in China, adopted by the Washington Conference in its fifth plenary session on February 1, 1922, the Powers declared their intention to withdraw their armed forces on duty in China, and to that end to instruct their diplomatic representatives in Peking, whenever China should so request, to associate themselves with three

representatives of the Chinese Government to conduct collectively a full and impartial inquiry into the issues raised, and to make a report setting out their findings of fact and their opinion with regard to the matter, and "in no case shall any of the said Powers make its acceptance of all or any of the findings of fact or opinions either directly or indirectly dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic."

Even when the Tsingtao-Tsinanfu Railway was under German management the stationing of foreign troops was not allowed. In an Agreement between China and Germany dated March 21, 1900 (4), there are two articles bearing on this question.

Article 16.—Troops eventually necessary for the protection of the railway will be stationed by the Governor of the Province of Shantung (the highest Chinese official in the province). Therefore, outside the 100 li zone (referring to the leased territory of Kiaochow) no foreign troops shall be employed for this purpose. The Governor of the Province of Shantung binds himself to take effective measures during the period of surveying as well as when the railway is under construction or opened to traffic to prevent any damage being done to it by the mob or by rebels.

Article 17.—Development of trade and communications being the only purpose of the railway, no transport of foreign troops and their war materials shall be allowed on it. The Railway Administration however is not to be held responsible for such transport when brought into a position of constraint by war or similar circumstances. On the other hand, the Governor of the Province of Shantung will not be responsible for the protection of sections of the railway being in the hands of the enemy. The conditions of this Article are not to be applied to the section of the railway within the 100 li zone (the zone of the leased territory).

The above shows that, when under German administration, no troops were to be stationed in Tsinan or along the railway except in the Leased Territory of Kiaochow. The enemy probably referred to the Boxers, and it was agreed by Germany to send no German troops for the protection of the railway or German residents outside the Leased Territory even though the Governor of Shantung openly disclaimed any responsibility for such protection when the railway was in the hands of the enemy.

In the Washington Treaty which provided for the withdrawal of Japanese troops, Article XIV stipulated that "Japan shall transfer to China the Tsingtao-Tsinanfu Railway and its branches, together with all other properties appurtenant thereto, including wharves, warehouses and other similar properties." As compensation "China undertakes to reimburse to Japan the actual value of all the Railway properties mentioned in the preceding Article." The Sino-Japanese Joint Commission which met in Peking after the Washington Confer-

(2) For the original text of the Treaty and the Agreements, see China Year Book, 1923 edition, pp. 1133 to 1195.

(3) China Year Book, 1923 edition p. 1175.

(4) MacMurray, No. 1900/3. The explanations in brackets are supplied by the present writer.

ence took much time to determine the value of Japanese improvements and additions to the railway, but it was finally decided that the total reimbursement should be 40,000,000 yen, to be in the form of Chinese Treasury Notes, bearing interest at 6 per cent per annum. The transfer of the Railway was arranged in the Agreement of December 5, 1922, and it took effect on January 1, 1923. (5) The Treasury Notes were promptly paid over to Japan, which is now only a general creditor of the Chinese Government to the extent as represented by these Notes.

Article XXI of the Washington Treaty provided that "the concessions relating to the two extensions of the Tsingtao-Tsinanfu Railway, namely, the Tsinan-Shunteh and the Kaomi-Hsuchowfu lines, shall be made open to the common activity of an international financial group, on terms to be arranged between the Government of the Chinese Republic and the said group." The proposed Chefoo-Weihsien Railway was not even made open to such common activity, provided that the said Railway should be constructed with Chinese capital (Article V of Annex to the Treaty). All light railways constructed by Japan in Shantung and all properties appurtenant thereto, as well as all telegraph lines along the Railway, were considered part of the Railway properties, (Item 3 of the Agreed Terms of Understanding recorded in the official minutes) and were compensated for by the 40,000,000 yen issue of Chinese Treasury Notes.

The restoration of Kiaochow Leased Territory was provided for in the very first Article of the Washington Treaty. Seven other Articles outlined the general procedure by which the Territory should be restored, and the public properties therein, except those required for the Japanese Consulate and Japanese public schools, shrines and cemeteries, should be transferred to China. The detailed arrangements were made on December 1, 1922, by the Sino-Japanese Joint Commission in Peking, by which the restoration was effected on December 10 of the same year. (6) At the same time China undertook on her own account to make Kiaochow a commercial port open to all foreign trade, and the limits were from latitude 35° 53' 30" north to latitude 36° 16' 30" north, and from longitude 120° 8' 30" east to longitude 120° 35' 30" east. The old 100 li zone, being too vague a designation, now gives place to this new delimitation, which is further outlined by a map. (7) In a note of September 7, 1921, addressed to the Chinese Government, the Japanese Government expressed the view that, "in case the Chinese Government on its own initiative throws open the entire leased territory as a commercial port, recognizes the liberty of residence, commerce, industry, agriculture, and other lawful undertakings of foreigners, and respects and recognizes the vested rights of foreigners, the Japanese Government agrees to the withdrawal of the proposal for the establishment of a special and international settlement." (8) Hence, there has been no foreign settlement in the former Leased Territory of Kiaochow, or Tsingtao.

During the Japanese occupation after the European

War, Japanese nationals became largely interested in the production of salt in Shantung, which was in violation of the Chinese Government system of salt monopoly. As the Japanese Government, in spite of this fact, demanded recognition and protection of the interests of their nationals in the industry, China was obliged to compensate for these salt interests of Japan, and to agree to the exportation of salt to Japan between the maximum amount of 350,000,000 and the minimum amount of 100,000,000 cattie, annually, within a period of fifteen years beginning from 1923. The compensation for the salt interests and for the public properties of Kiaochow which were transferred to China was fixed at 16,000,000 yen, of which 2,000,000 yen was paid in cash and the remainder in 6 per cent Treasury Notes. (9) The compensation for the mines of Tzechwan, Fangtze and Chinlinchen was 5,000,000 yen, paid to the Japanese Government by a Sino-Japanese company, in which the capital and additional investments were equally divided between Chinese and Japanese nationals. (10)

The Japanese Government, in Article XXVI of the Washington Treaty, declared that "all the rights, title and privileges concerning the former German submarine cables between Tsingtao and Chefoo and between Tsingtao and Shanghai are vested in China, with the exception of those portions of the said two cables which have been utilized by the Government of Japan for the laying of a cable between Tsingtao and Sasebo," and in the following Article, "the Government of Japan undertakes to transfer to the Government of the Chinese Republic the Japanese wireless stations at Tsingtao and Tsinanfu, for fair compensation for the value of these stations." By the Agreement of December 1, 1922, one-half of the Tsingtao-Sasebo Cable was transferred to China, and the Tsingtao end of the cable was to be operated by the Government of China. (Article X of Agreement). The Customs House of Tsingtao, which had been held by Japan as being independent of the Chinese Maritime Customs, was made an integral part of the latter upon the coming into force of the Washington Treaty (Articles XII and XIII of Treaty). The compensation for the wireless stations was taken care of by 16,000,000 yen referred to above, and which were duly handed to Japan by the Chinese Government. (11)

It is clear that whatever rights or claimed rights of Japan in Shantung, have been surrendered to China either for pecuniary compensation duly paid to Japan, or because Japan was never properly entitled to them, but they were inherently the rights of China. The sending of Japanese troops to Shantung after their withdrawal in 1922 was expressly forbidden by mutual consent as recorded in the official minutes of the Washington Conference. Tsinan, Tsingtao and the whole length of the Tsingtao-Tsinan Railway are Chinese territory, and there is no provision for any 20 li zone from which the Japanese commander recently demanded the Chinese troops to keep out. Japan at present has no special status in Shantung at all.

(9) Articles XVII-XX of Agreement of December 1, 1922. See China Year Book, 1923 edition, p. 1182.

(10) Articles XXI-XXV of same Agreement. See ditto, pp. 1183 and 1184.

(11) China Year Book, 1923 edition, p. 1181.

(5) China Year Book, 1923 edition, pp. 1166-1168, also p. 1191.

(6) China Year Book, 1923 edition, p. 1179.

(7) Ditto, p. 1193.

(8) Willoughby, China at the Conference, p. 293.