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EDITORIAL COMMENT

THE NORTH PACIFIC SEALING CONVENTION¹

The North Pacific Sealing Convention, which was signed at Washington on July 7th last by the representatives of the United States, Great Britain, Japan and Russia, is a conservation measure of the highest importance providing as it does for the equitable adjustment of the conflicting interests of the Powers concerned, and making it to their advantage in the future to protect the seal herds in the North Pacific from the wasteful destruction involved in seal killing at sea, and assuring scientific treatment of the seals upon their breeding grounds to the

¹ See previous editorial in July, 1907, number of the JOURNAL, p. 742. The important historical documents relating to this subject will be printed in the next number of the JOURNAL.

end that the value of these herds may be increased for the purposes of commerce and the benefit of mankind.

The convention is admirable in the simplicity and fairness of its provisions, and if it is carried out in the spirit of mutual concession and benefit which seems to have largely entered into the negotiations leading up to it, there is every person to believe that it will afford a permanent and advantageous settlement of a question which for many years seemed incapable of satisfactory solution and on more than one occasion has caused serious friction between the Powers concerned.

The United States, as the party chiefly interested in the protection of the fur seals on account of the size and value of the seal herds having their breeding grounds within its jurisdiction, has for years urged upon the other Powers interested the necessity for taking international measures for the protection and preservation of the herds; and although little interest was shown on the part of some of the Powers concerned, and active opposition on the part of others, the United States continued persistently and patiently to urge the importance of mutual cooperation; and to the United States largely is due the credit for bringing about the settlement of this question.

Ever since it was decided by the award of the Fur Seal Arbitration Tribunal at Paris in 1893 that the protection of the Alaskan fur seal herd on the high seas against pelagic sealing under the flags of other nations was not a matter over which the United States had jurisdiction, this government has been prepared to make any reasonable concessions which might be necessary to secure an international agreement restricting the business of pelagic sealing.

The United States at the outset directed its attention to securing the adherence of Japan and Russia to the restrictive regulations imposed upon British and American sealers under the award of the Paris Tribunal. These regulations were designed for the protection of the seals during certain seasons of the year and within a radius of sixty miles around the Pribilof Islands. The Japanese and Russian Governments readily agreed to the application of these regulations to their own pelagic sealers on condition that similar regulations for the protection of the fur seals of the Japanese and Russian herds frequenting the western waters of the Pacific should be imposed upon British and American sealers. Great Britain, however, in deference to the wishes of the Canadian sealers, who were desirous of engaging in pelagic sealing against the Japanese and Russian seal herds, refused its consent to

the extension of the award regulations as proposed by Japan and Russia, and in consequence their adherence to the award regulations was never secured. The United States then proposed to Great Britain that the two governments undertake a revision of the award regulations, and urged upon Great Britain the importance of imposing additional restrictions upon pelagic sealers, the award regulations having proved inadequate for the purposes in view. This suggestion also Great Britain declined to adopt, maintaining that a revision of the regulations was neither desirable nor necessary, and that the views of the United States in regard to the destructive effect of pelagic sealing were not well founded. The experience of subsequent years has justified the position, which the United States has invariably maintained ever since the question was first submitted to scientific investigation, that pelagic sealing is a wasteful method of seal hunting because destructive of the reproductive capacity of the herd, and must inevitably result in the extermination of the seals for the purposes of commerce; and in recent years this view has been concurred in by the British Government. The refusal of Great Britain to adopt this view when the question was first under consideration, however, made it necessary to suspend the negotiations for the revision of the award regulations, pending the outcome of actual experience and the results of scientific investigations which were then undertaken. Meanwhile, however, so far as the United States was concerned, the question of the necessity for taking prompt action for the better protection of the seals was not regarded as dependent upon concurrent action by Great Britain, and accordingly an act was passed by Congress, approved December 29, 1897, prohibiting citizens of the United States and all persons owing obedience to its laws and treaties from engaging in pelagic sealing in the Pacific Ocean north of the thirty-fifth parallel of north latitude, which included the waters frequented by the seals of the Japanese herds.

In the same year the United States proposed to the Governments of Great Britain, Japan, and Russia that a conference be held for the purpose of considering and agreeing upon the measures necessary for the better protection of the fur seals. Great Britain declined to take part in this conference, but representatives of the United States, Japan, and Russia met at Washington in the latter part of the year 1897, and agreed upon a treaty prohibiting the killing of fur seals in all the waters of the North Pacific Ocean outside of territorial limits for the period of one year, on condition, however, that it should not become

effective unless the adherence of Great Britain was secured. Great Britain declined to adhere to this treaty, so that it never became effective, and terminated by limitation at the expiration of the year. A further attempt was then made by the United States to induce Great Britain to agree to a revision of the award regulations. By the terms of the Paris Award of 1893 it was provided that the regulations adopted under the award should be submitted every five years to a re-examination to enable the governments to determine in the light of past experience whether there was any occasion for modification of the regulations. In 1898, therefore, at the expiration of the first five-year period both governments referred this question to the Joint High Commission which had been instituted by them for the purpose of adjusting a number of unsettled questions between the United States and Canada. It was currently reported that as a result of the examination of this question by the Joint High Commission a tentative agreement was reached providing that British subjects should be prohibited from engaging in pelagic sealing against the American herds on condition that Great Britain should be given a very considerable interest in the American herds, and should be paid by the United States at least half a million dollars as compensation for abandoning the pelagic sealing business. Whether or not this tentative agreement would ultimately have been adopted or what its terms would finally have been, cannot be determined because of the failure of the Joint High Commission to reach a final agreement on any of the questions submitted owing to their failure to agree upon a settlement of the Alaskan Boundary dispute. In 1903, at the close of the second five-year period, the United States again brought up the question, and proposed to Great Britain a treaty providing for its settlement by prohibiting pelagic sealing on terms which were reported to be based upon the arrangement which had been under consideration by the Joint High Commission in 1898. Great Britain was unwilling to entertain this proposal at this time, however, and the United States then proceeded to formulate and submit to the consideration of Great Britain certain changes in the regulations which were regarded as essential for the proper protection and preservation of the seals. These proposed changes also proved unacceptable to Great Britain, and were declined, and no counter-proposals were submitted by Great Britain. Meanwhile a report had been adopted by a committee of the Senate recommending the settlement of this question by giving the Canadian Government a generous share of the proceeds of

all skins taken on land from the American herds on condition that British subjects should be prohibited from hunting the seals of the American herds on the high seas, and this report was communicated by the Department of State to the British Ambassador as a basis for further negotiations. In the following year a treaty based upon the recommendations of this report was drafted and proposed by the United States to Great Britain as part of a general plan for the adjustment of all the pending unsettled questions between the United States and Canada; and following this proposal diplomatic negotiations were undertaken, which, although protracted by an apparent indifference on the part of Canada and by new complications, owing to the necessity of securing the adherence of Japan in order to make any final settlement effective, ultimately brought about a basis of agreement which resulted in the conclusion of the present North Pacific Sealing Convention. It is understood that the negotiations were delayed in part by the unwillingness of the United States to acquiesce in Great Britain's demand for a money payment as compensation for the loss which the Canadian pelagic sealers claimed would result if they were prohibited from continuing that business. The United States has always maintained in refusing this demand of Great Britain that it should not be called upon to pay for the abandonment of a business which already was no longer profitable and would ultimately be self-destructive because if persisted in it would result in the extermination of the seals. The United States was prepared, however, to make a money payment to Great Britain, not as compensation for the abandonment of the pelagic sealing business, but as an advance payment of the share of the proceeds of the annual killing of seals on land to which Great Britain would be entitled under the proposed arrangement. The propriety of some such arrangement is evident from the fact that otherwise Great Britain might have been entirely deprived of any compensation for abandoning pelagic sealing, in case the United States should have exercised the right, which it insisted upon reserving, of suspending altogether the killing of seals on land, an interest in the proceeds of which was all Great Britain would receive under the new arrangement. This latter plan finally proved acceptable to Great Britain, and was adopted as the basis for the final settlement of this question.

Meanwhile, however, the situation had been somewhat complicated by the development of an important and profitable pelagic sealing business under the Japanese flag. The Japanese pelagic sealers began to

engage in hunting the seals of the American herd in the year 1901, and these sealers rapidly increased in number and efficiency, and in recent years between 30 and 50 Japanese vessels have annually engaged in pelagic sealing in Bering Sea. Inasmuch as Japan was not a party to the fur seal arbitration proceedings at Paris, the restrictive regulations which were imposed by the Paris Award in 1893 upon British and American sealers did not apply to the Japanese, and having refused their adherence to that award they have always felt themselves free to disregard such regulations. This freedom from the restrictions which were imposed upon the Canadian sealers gave the Japanese a very decided advantage over their Canadian competitors, and it soon became evident not only that an agreement with Great Britain prohibiting pelagic sealing would be valueless unless a similar agreement could be made with Japan, but also that Japan would feel entitled to demand the same compensation from the United States as Great Britain should receive in consideration for making such an agreement. It is true that Japan's relation to this question differed somewhat from Great Britain's in that no fur seal breeding grounds were within the jurisdiction of Great Britain, and that there were a number of breeding grounds within the jurisdiction of Japan. None of these breeding grounds, however, were resorted to by any considerable number of fur seals, and although Japan admitted that the protection of the seals under its jurisdiction from pelagic sealing might result in increasing the number and ultimately developing a herd of some importance and value, nevertheless even under the most favorable conditions the number of seals resorting to the Japanese breeding grounds must always be inconsiderable in comparison with the size and value of the American herd. The position of the Russian Government was practically identical with the position of the United States with respect to its interest in protecting a valuable herd of seals which resorted to breeding grounds within its jurisdiction and with respect to the relation of the Canadian and Japanese pelagic sealers to such herd; and Russia, like the United States, has for many years prohibited its subjects from engaging in pelagic sealing, the taking of seals being restricted wholly to land killing on the seal islands.

In view of the situation then existing, as above briefly outlined, it seemed to the United States that the only way of arriving at an adjustment of the conflicting interests of the four Powers chiefly concerned

was to bring them together in conference for the discussion of the questions involved. An invitation was accordingly issued by the United States Government in the early part of the year 1909 to Great Britain, Japan, and Russia to take part in a conference for the purpose of considering and endeavoring to agree upon some course of action for the protection and preservation of the seals. This invitation was cordially accepted by both Japan and Russia, but Great Britain, in deference to the wishes of the Canadian Government, insisted that before taking part in such conference a satisfactory settlement of the Canadian interests should first be effected by a separate agreement between Great Britain and the United States. Such an agreement was finally arrived at after negotiations extending over a period of nearly two years, and a treaty embodying its terms was entered into between Great Britain and the United States in February, 1911. Recognizing, however, that the cooperation of Japan and Russia was necessary for the effective protection of the fur seals against pelagic sealing, the enforcement of this preliminary treaty with Great Britain was made conditional upon the conclusion of an international agreement between the Governments of the United States, Great Britain, Japan, and Russia, undertaking by such stipulations as were mutually acceptable to prohibit for a period of not less than fifteen years pelagic sealing by the citizens or subjects of those Powers in the waters of the North Pacific Ocean. By virtue of this separate agreement between the United States and Great Britain, the way was opened for the meeting of the proposed conference between the four Powers above mentioned, and the United States accordingly renewed its invitation for such conference, and the representatives of the four governments interested met at Washington on May 11th last.

As a result of the deliberations of this conference, which extended over a period of nearly two months, terms of settlement were finally agreed upon and embodied in the North Pacific Sealing Convention which was signed by the members of the conference on the 7th day of July last, the text of which convention is published in the Supplement to this number of the Journal.² At the time of signing the convention the conference authorized the publication of the following statement, indicating in general terms the provisions agreed upon,

² Page 267.

which is reproduced here on account of its official character and as a convenient summary of the convention:

The purpose of the North Pacific Sealing Convention is to secure the adoption of effective measures for the preservation and protection of the fur seals frequenting the North Pacific Ocean, and to that end it provides that all persons subject to the laws and treaties of the parties to the convention, and their vessels, shall be prohibited from engaging in pelagic sealing in the waters of the North Pacific Ocean north of the thirtieth parallel of north latitude, including the seas of Bering, Okhotsk, Kamchatka and Japan, and that every such person and vessel offending against such prohibition may be seized and detained by duly authorized officials of any of the parties to the convention to be delivered to the authorities of the nation of the person or vessel seized, which authorities alone shall have authority to try the offence and impose the penalties. Further provision is made for supplying the necessary evidence to establish the offence.

It also prevents the use of any of the ports or harbors of any of the parties by any persons for any purposes whatsoever connected with the operations of pelagic sealing in the waters mentioned, and it prohibits the importation into the territory of any of the parties to the convention of any seal skins of the American, Russian, or Japanese herds taken by pelagic sealing.

The convention further provides for the maintenance of a guard or patrol in the waters frequented by the North Pacific seal herds, and for the adoption of appropriate legislation for the enforcement of the provisions of the convention, and for cooperation of all the parties in carrying out its purposes.

The convention also arranges for the apportionment among the parties of the annual proceeds of the several seal herds in which they are interested as follows: 30% of the skins annually taken from the American and Russian herds respectively is to be divided equally between Great Britain and Japan; 30% of the skins annually taken from the Japanese herd is to be divided equally between the United States, Great Britain and Russia; and 30% of the skins annually taken from any herd which may hereafter resort to the breeding grounds under British jurisdiction in the North Pacific Ocean, is to be divided equally between the United States, Japan, and Russia.

In connection with this apportionment some special arrangements between the United States and Japan and Great Britain are agreed upon, under which the United States makes an advance payment of \$200,000 to each of those Powers, which payments are to be refunded to the United States out of the proceeds of the British and Japanese share of skins taken from the American herd. This payment is in effect merely a loan, and was necessary only because the United States reserves the right to discontinue altogether the killing of the Pribilof Island seals.

The convention also prohibits the citizens or subject of the parties or their vessels from hunting sea otter on the high seas.

There are other provisions relating to the annual killing of the seals of the several herds on land, the regulations and control of each herd being reserved, however, to the government having jurisdiction over the breeding grounds.