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TREATY AND CONVENTION

BETWEEN

GREAT BRITAIN AND THE UNITED
STATES OF AMERICA

RELATING TO

BEHRING'S SEA.

Signed at Washington, February 29 and April 18, 1892.

Ratifications exchanged at London, May 7, 1892.

*Presented to both Houses of Parliament by Command of Her Majesty.
May 1892.*

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TREATY AND CONVENTION BETWEEN GREAT
BRITAIN AND THE UNITED STATES OF
AMERICA RELATING TO BEHRING'S SEA.

No. 1.

*Treaty between Great Britain and the United States of America.
Arbitration respecting the Seal Fisheries in Behring's Sea.*

Signed at Washington, February 29, 1892.

[Ratifications exchanged at London, May 7, 1892.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, being desirous to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, have resolved to submit to arbitration the questions involved, and to the end of concluding a Convention for that purpose have appointed as their respective Plenipotentiaries :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, G.C.M.G., K.C.B., Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States; and the President of the United States of America, James G. Blaine, Secretary of State of the United States ;

Who, after having communicated to each other their respective Full Powers, which were found to be in due and proper form, have agreed to and concluded the following Articles :—

ARTICLE I.

The questions which have arisen between the Government of Her Britannic Majesty and the Government of the United States concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, shall be submitted to a Tribunal of Arbitration, to be composed of seven Arbitrators, who shall be appointed in the following manner, that is to say: two shall be named by Her Britannic Majesty; two shall be named by the President of the United States; his Excellency the President of the French Republic shall be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy shall be so requested to name one; and His Majesty the King of Sweden and Norway shall be so requested to name one. The seven Arbitrators to be so named shall be jurists of distinguished reputation in their respective countries; and the selecting Powers shall be requested to choose, if possible, jurists who are acquainted with the English language.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of any or either of the said Arbitrators omitting or declining or ceasing to act as such, Her Britannic Majesty, or the President of the United States, or his Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, as the case may be, shall name, or shall be requested to name forthwith, another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

And in the event of the refusal or omission for two months after receipt of the joint request from the High Contracting Parties of his Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, to name an Arbitrator, either to fill the original appointment or to fill a vacancy as above provided, then in such case the appointment shall be made or the vacancy shall be filled in such manner as the High Contracting Parties shall agree.

ARTICLE II.

The Arbitrators shall meet at Paris within twenty days after the delivery of the Counter-Cases mentioned in Article IV, and shall proceed impartially and carefully to examine and decide the questions that have been or shall be laid before them as herein provided on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the arbitration.

ARTICLE III.

The printed Case of each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other party as soon as may be after the appointment of the members of the Tribunal, but within a period not exceeding four months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV.

Within three months after the delivery on both sides of the printed Case, either party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other party, a Counter-Case, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence so presented by the other party.

If, however, in consequence of the distance of the place from which the evidence to be presented is to be procured, either party shall, within thirty days after the receipt by its Agent of the Case of the other party, give notice to the other party that it requires additional time for the delivery of such Counter-Case, documents, correspondence, and evidence, such additional time so indicated, but not exceeding sixty days beyond the three months in this Article provided, shall be allowed.

If in the Case submitted to the Arbitrators either party shall have specified or alluded to any Report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within thirty days after delivery of the Case; and the original or copy so requested shall be delivered as soon as may be, and within a period not exceeding forty days after receipt of notice.

ARTICLE V.

It shall be the duty of the Agent of each party, within one month after the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party a printed argument showing the points and referring to the evidence upon which his Government relies, and either party may also support the same before the Arbitrators by oral argument of Counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by Counsel, upon it; but in such case the other party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:—

1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Behring's Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea, were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring's Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring's Sea when such seals are found outside the ordinary 3-mile limit?

ARTICLE VII.

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring's Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination, the Report of a Joint Commission, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Government may submit.

The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

ARTICLE VIII.

The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate

question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims, and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

ARTICLE IX.

The High Contracting Parties having agreed to appoint two Commissioners on the part of each Government to make the joint investigation and Report contemplated in the preceding Article VII, and to include the terms of the said Agreement in the present Convention, to the end that the joint and several Reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators, should the contingency therefor arise, the said Agreement is accordingly herein included as follows:—

Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal-life in Behring's Sea, and the measures necessary for its proper protection and preservation.

The four Commissioners shall, so far as they may be able to agree, make a joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise.

ARTICLE X.

Each Government shall pay the expenses of its members of the Joint Commission in the investigation referred to in the preceding Article.

ARTICLE XI.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States for his Government.

ARTICLE XII.

Each Government shall pay its own Agent, and provide for the proper remuneration of the Counsel employed by it and of the Arbitrators appointed by it, and for the expense of preparing and submitting its Case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE XIII.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE XIV.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions referred to the Arbitrators.

ARTICLE XV.

The present Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States of America, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at Washington, the 29th day of February, 1892.

(L.S.) JULIAN PAUNCEFOTE.
(L.S.) JAMES G. BLAINE.

No. 2.

*Convention between Great Britain and the United States of America.
Modus Vivendi in Behring's Sea.*

Signed at Washington, April 18, 1892.

[Ratifications exchanged at London, May 7, 1892.]

WHEREAS, by a Convention concluded between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America on the 29th day of February, 1892, the High Contracting Parties have agreed to submit to arbitration, as therein stated, the questions which have arisen between them concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said sea, and the rights of the subjects and citizens of either country as regards the

taking of fur-seal in, or habitually resorting to, the said waters; and whereas the High Contracting Parties, having differed as to what restrictive regulations for seal hunting are necessary during the pendency of such arbitration, have agreed to adjust such difference in manner hereinafter mentioned, and without prejudice to the rights of either party :

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States ;

And the President of the United States of America, James G. Blaine, Secretary of State of the United States ;

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

Her Majesty's Government will prohibit, during the pendency of the arbitration, seal killing in that part of Behring's Sea lying eastward of the line of demarcation described in Article I of the Treaty of 1867 between the United States and Russia, and will promptly use its best efforts to insure the observance of this prohibition by British subjects and vessels.

ARTICLE II.

The United States' Government will prohibit seal killing for the same period in the same part of Behring's Sea, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observance of this prohibition by United States' citizens and vessels.

ARTICLE III.

Every vessel or person offending against this prohibition in the said waters of Behring's Sea, outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proofs necessary to establish the offence shall also be sent with them.

ARTICLE IV.

In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the Case and arguments of that Government before the Arbitrators, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or remain upon the seal islands, during the sealing season, for that purpose.

ARTICLE V.

If the result of the arbitration be to affirm the right of British sealers to take seals in Behring's Sea within the bounds claimed by the United States, under its purchase from Russia, then compensation shall be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the arbitration upon the basis of such a regulated and limited catch or catches as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the arbitration shall be to deny the right of British sealers to take seals within the said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens, and lessees) for this agreement to limit the island catch to 7,500 a season, upon the basis of the difference between this number and such larger catch as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds.

The amount awarded, if any, in either case, shall be such as under all the circumstances is just and equitable, and shall be promptly paid.

ARTICLE VI.

This Convention may be denounced by either of the High Contracting Parties at any time after the 31st day of October, 1893, on giving to the other party two months' notice of its termination, and at the expiration of such notice the Convention shall cease to be in force.

ARTICLE VII.

The present Convention shall be duly ratified by Her Britannic Majesty and by the President of the United States of America, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged, either at London or at Washington, as early as possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our seals.

Done in duplicate, at Washington, the 18th day of April, 1892.

(Signed)

JULIAN PAUNCEFOTE.
JAMES G. BLAINE.
