

25, 1937, both the American and British Governments exchanged notes with the Japanese Government for the abolition of the "system of perpetual leases";<sup>10</sup> the "understanding" embodied in these notes is to the effect:

(1) That the said system of perpetual leases shall come to an end on the first day of the fourth month of the seventeenth year of Showa, corresponding to the 1st day of April, 1942, when the leaseholds shall without compensation be converted into the rights of ownership in accordance with the provisions of Japanese laws and ordinances. Such conversion shall be effected free of registration taxes in respect of lands under perpetual leases and buildings thereon.

(2) That until the thirty-first day of the third month of the seventeenth year of Showa, corresponding to the 31st day of March, 1942, the present position as regards tax exemptions shall be maintained,<sup>11</sup> and no further claims shall be made by the Japanese authorities for arrears of such disputed taxes as may still be uncollected.

Similar notes were exchanged by the Japanese Government with the Governments of France and Switzerland on April 15, 1937, and with the Governments of Denmark, Italy, Portugal, and The Netherlands on April 30, 1937.<sup>12</sup>

In announcing the understanding with Japan, the Department of State of the United States said that "a coöperative attitude has thus far been manifested by American leaseholders, and it is confidently expected that, by accepting the terms of settlement, they will contribute to the promotion of friendly international relations."<sup>13</sup> This statement does not imply a legal necessary for affirmative action of acceptance by the leaseholders.

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#### THE DEFENSE OF OPPRESSED PEOPLES

One hears currently much agitation in favor of action by the Government of the United States to assist peoples which are oppressed by foreign aggressors, by national governments or by domestic conflicts. Thus it is urged by some that the United States should do something to aid the Loyalists in Spain, chiefly on the ground that their enemies are being aided by Germany and Italy and that the Insurgents are waging cruel warfare. It is urged that the United States should do something to aid the Chinese against Japanese aggression. It was urged that the United States should do something to help the

<sup>10</sup> U. S. Executive Agreement Series, No. 104; British Treaty Series, No. 29 (1937).

<sup>11</sup> Elaborating this expression, a second exchange of notes between the United States and Japan, also of March 25, 1937, provided that "until March 31, 1942, no taxes at present in force shall be collected other than those heretofore collected from the leaseholders, nor shall any taxes which may be introduced in the future be collected from the leaseholders if such taxes are directly connected with the perpetual leaseholds." It was also stipulated that "in the event of an American leasehold being transferred it . . . shall continue to be subject to the terms of the understanding" reached. U. S. Executive Agreement Series, No. 104.

<sup>12</sup> 36 (Japanese) Journal of International Law and Diplomacy, No. 6 (July, 1937).

<sup>13</sup> 16 Department of State Press Releases (March 6, 1937), p. 134.

Ethiopians against Italian aggression. It has been urged that the United States should assist the Jews in Palestine; there is a long record of demands that minorities in many countries be helped.

From the moral or sentimental point of view, many of these demands are appealing. From the legal point of view, the United States would be justified in acting in some cases. It is not intended to discuss here the correctness of the assertion that states are justified in intervening on humanitarian grounds, but it may be said that a treaty right is a surer legal foundation for action. Thus the United States is within its legal rights in participating in the Brussels Conference convened in accordance with the Nine-Power Treaty. The United States probably has a legal right under treaties to concern itself with the British plan for the division of Palestine. If the Government of the United States desires to act in any of these cases, it clearly should find a legal basis on which to justify its action; one illegal act is not mended by the commission of another. Aside from the legal basis for action, however, there are grave questions of policy which must be considered by the responsible officials even though they are ignored by irresponsible though well-meaning private persons. It may be of value to recall in these days the manner in which a great Secretary of State, Elihu Root, dealt with certain cases of a comparable nature.

On November 16, 1905, with armed Japanese guards around his palace, the Emperor of Korea accepted the terms imposed by Japan which in effect ended Korea's existence as an independent state. The United States immediately acquiesced in accepting the situation created by the Japanese action. There was considerable hue and cry in the United States about the immorality of this action of the American Government and many persons expressed the opinion that the United States should not permit Japan to take Korea. There was a possible legal basis for action by the United States in that our treaty of May 19, 1883, with Korea provided, with ironically reciprocal obligations, that "If other powers deal unjustly or oppressively with either government, the other will exert their good offices to bring about an amicable arrangement." On the other hand, the treaties of February 23 and August 22, 1904, between Japan and Korea had placed the relations of the two countries on such a basis that the Japanese action in 1905 could be supported by legal argument. Practically, as Mr. Root pointed out many years later in private conversation, "There was nothing we could do except fight Japan; Congress wouldn't have declared war and the people would have turned out the Congress that had. All that we might have done was to make threats which we could not carry out." Mr. Root continued with a comment on the situation in the Belgian Congo in 1906:

The case of the Belgian Congo is a very conspicuous illustration of the difficulties which are created for diplomatists—the men handling foreign affairs in a democratic country—regarding matters of sentiment. The very people who are most ardent against entangling alliances insist most fanatically upon our doing one hundred things a year on humanitarian

grounds, which would lead to immediate war. That attitude practically put us into the war for Cuba. The Protestant Church and many good women were wild to have us stop the atrocities in the Congo. . . . People kept piling down on the Department demanding action on the Congo. We went the limit which wasn't far.

In this instance the United States was a party to the 1890 General Act of the Brussels Conference Relative to the African Slave Trade, but was not a party to the General Act of Berlin in 1885 under which the Congo Free State was set up. Secretary Root rejected the suggestions of Mr. Adee that the numerous delegations of persons interested in the Congo be turned aside with polite letters. He insisted upon seeing them. He made them realize his sincere desire to be helpful by showing them in strict confidence the correspondence he was conducting with our diplomatic missions in Europe. At the same time he realized the difficulties confronting the Belgian Government, as is indicated by a letter which he wrote to Congressman Edwin Denby on February 20, 1906: "If the United States had happened to possess in Darkest Africa a territory seven times as large and four times as populous as the Philippines, we, too, might find good government difficult and come in for our share of just or unjust criticism." Secretary Root succeeded in securing the good will of the persons active in the Congo Reform Association in the United States and, by working closely with the British Government, exerted such influence as the United States possessed in inducing the Belgian Government to adjust the situation. To John E. Parson, he wrote on April 15, 1908:

We have been doing everything which seemed to be possible to bring about a change of conditions. Unfortunately the United States is not a party to the Berlin Convention which gives the great powers of Europe a right of supervision over Congo affairs, so that we have the least ground for interference of any of the great powers. Nothing that could be done which seemed at all likely to do more good than hurt, has been neglected, and nothing will be omitted in the future. Of course, we can not send an army to the Congo to take possession of the country and administer it ourselves. It is only by moral pressure that we can accomplish anything. This we have been exercising in conjunction with England, but to do it publicly would result in complete disaster by creating resentment in Belgium against foreign interference.

One other instance may be cited. In 1905 and 1906 the persecution of the Jews in Russia reached unusually tragic proportions. There was considerable agitation in the United States in favor of some action which would compel the Russian Government to give adequate protection to her Jewish population. In sending a check to the relief fund which was being raised, Secretary Root wrote to Arnold Kohn on November 24, 1905:

I do not see how any one can fail to sympathize deeply with them in their suffering, and to hope that out of the present disorder and change in that country there may come a better day of security and freedom for them. We have little power to help them; but for some of the homeless and despoiled, money may be helpful, and for some who are in despair,

the knowledge that there is friendliness and sympathy in the world may be an encouragement; and the expression of abhorrence and condemnation by the civilized world for the cruelties which have been practiced may in time come to have some little restraining effect.

On June 23, 1906, Secretary Root wrote to President Roosevelt, submitting for his approval an instruction which he proposed to send to the American Ambassador in St. Petersburg with reference to making representations in behalf of the Russian Jews:

I think it may do some good, though I do not feel sure of it. I do not know how it will be received. It may merely give offense. I am sure that to go further would do harm. I am sure also that to publish here the fact that such a despatch has been sent would do harm, and serious harm, to the unfortunate people whom we desire to help. Any possible good effect must be looked for in absolutely confidential communication to the Russian Government. The publication that any communication has been made would inevitably tend to prevent the Russian Government from acting, to increase the anti-Jewish feeling and to make further massacres more probable.

In like vein he wrote on January 7, 1906, a letter to Robert R. Hitt, Chairman of the House Committee on Foreign Affairs, who had sent him copies of a resolution introduced in the House expressing sympathy for the Jews in Russia. The advice contained in Secretary Root's letter is of permanent value:

These resolutions do not appear to be the exercise of any legislative power conferred upon Congress by the Constitution, but to be merely an expression of opinion upon matters which, so far as they may be the concern of this Government, form a part of the foreign relations which the Constitution requires the President to conduct upon his own responsibility, or with the advice and consent of the Senate. The resolutions could not, therefore, if adopted, be regarded as responsible official action, and I cannot conceive that their adoption would accomplish any good purpose. I am rather inclined to think that they would tend, by producing irritation and antagonism, to aggravate the dangers of the unfortunate people whom they are intended to aid.

Government officials are not entitled to enjoy the luxury of expressing righteous indignation when their expressions may affect the international relations of their country. Private persons frequently feel free of such restrictions but often fail to realize that their own satisfaction is achieved at the expense of the cause which they sincerely desire to serve. They also frequently fail to realize that the only logical and effective result of the course of conduct which they advocate is a resort to war, which they oppose. Government officials need to weigh delicately the nice balance between the desirability of expressing "abhorrence and condemnation" of illegal or inhuman conduct and the undesirability of making ineffective gestures or threats which, in Mr. Root's words, "tend, by producing irritation and antagonism, to aggravate the dangers to the unfortunate people whom they are intended to aid."

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