

The Brussels conference on affairs in the Far East adjourned on November 24, 1937, after giving much attention to the use of force without declaration of war. At the closing session, referring to agreements in "numerous international instruments," the conference declared:

It must be recognized that whenever armed force is employed in disregard of these principles the whole structure of international relations based on safeguards provided by treaties is disturbed. Nations are then compelled to seek security in ever-increasing armaments. There is created everywhere a feeling of uncertainty and insecurity. The validity of these principles cannot be destroyed by force, their universal applicability cannot be denied and their indispensability to civilization and progress cannot be gainsaid.

GEORGE GRAFTON WILSON

**OBSERVATIONS OF FOREIGN GOVERNMENTS UPON SECRETARY HULL'S PRINCIPLES OF
ENDURING PEACE**

The statement issued on July 16, 1937, by Secretary Cordell Hull, setting forth the position of the United States "in regard to international problems and situations with respect to which this country feels deep concern" has already been the subject of editorial comment.¹ As the statement was communicated to all foreign governments with the request for an expression of opinion upon the principles enunciated, a closer examination of the replies would seem to be of interest.²

One may begin profitably with the memorandum of the Portuguese Government which seems to have been carefully prepared and is the most lengthy and detailed of all. A mild reproof is voiced against the attitude of the great nations, "on the one hand to consider themselves immune and on the other hand, to maintain themselves alien to effective coöperation, truly useful in the international field." The memorandum warns against the "abstract and generalizing tendency of jurists," and cites as causes for failure the insufficient study of the causes of world unrest and the desire to find a single formula for the solution of international problems which shall be applicable *urbi et orbi*. The memorandum continues:

On general grounds, it also seems that no objection can be raised against the assertions, advices, or wishes as a whole of the Secretary of State: everyone desires peace, everyone proclaims the sanctity of treaties and the faithful compliance therewith, everyone desires that there be less difficulties in international trade, and everyone wishes to have the burden of armaments removed or lightened. Difficulties begin only when it is sought to pass from the field of intentions into that of action, or, more concretely, what is to be done so that the events—in the development of which it is very difficult to establish individual or national responsibilities—will not contradict the good intentions.

¹ George A. Finch in this JOURNAL, Vol. 31, October, 1937, pp. 688-693.

² The replies are collated in International Conciliation, November, 1937, No. 334, pp. 734-797, from texts supplied by the Department of State in Press Releases of August and September, 1937.

As Secretary Hull advocated abstention from interference in the internal affairs of other nations, the memorandum takes occasion to point out that such interference is now conducted principally in the form of revolutionary agitation and that "soviet mysticism" has been adopted to gain political and economic ends from within. "Foreign intervention, although it is maintained effective, thus tends to lose its character in some countries, being merged in international aspirations against which strong nationalism alone can triumph."

The recent *coup d'état* in Brazil, a country with which Portugal has the closest cultural and economic ties, made the reply of Portugal assume especial importance. The statement of President Vargas of Brazil issued on November 13, 1937, in connection with his assumption of greater powers under a new régime was a striking realization of the forecast that strong nationalism develops from the desire to combat internal forces set in motion by initiative from abroad. Curiously enough, the reply of Brazil did not anticipate by its terms the present political situation there. It confined itself to an expression of Brazil's full agreement and complete support of the principles enunciated by Secretary Hull. Other Latin American countries which likewise gave express approval to the declared principles were Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay and Venezuela. It is necessary to add that Argentina annexed to its approval a request for consideration of the proposed convention giving an universal application to the right of asylum, upon which the Argentine Government lays stress as "an element of pacification in pursuance of the line of conduct which should be followed by the American countries." Bolivia expressed the hope that the declarations of Secretary Hull might have an important influence in the settlement of the still pending Chaco conflict. Nicaragua connected its approval of Secretary Hull's commercial policies with a request to the other Central American States to cease the tariff war which it alleged is being waged against it, claiming that without a real tariff union among these states, "it will not be possible to establish the peace of the Isthmus."

Outside the American Continent, a large number of nations subscribed categorically or in substance to the declaration of principles. Among those making reply in this sense were the following: Albania, Austria, Belgium, China, Czechoslovakia, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Irish Free State, Luxemburg, Norway, Rumania, Sweden, Switzerland (with a reservation of its historic neutralization), Turkey and Yugoslavia.

Bulgaria expressed its concurrence with the principles set forth, while emphasizing the fact that it "feels most acutely the injustices wrought by the peace treaties, but rather than to seek to upset them by force of arms, it retains its faith in the tenets of the League of Nations to provide a remedy for the evils which afflict Europe."

Hungary considered the principles from the point of view of the peculiar problems of Hungary and the Danube Valley. It insisted that "the principle of the sanctity of agreements does not exclude, should the need therefor arise, the modification of certain treaty provisions." The Hungarian Government, the reply continued, "has never made it a secret that it does not consider as final the situation created in the Danube Valley by the peace treaties, and that it is aiming at the just and equitable change thereof." It intends to carry out this aim by peaceful means and by recourse to the means expressly guaranteed by Article 19 of the Covenant. The Hungarian Government asserts that the states which benefited by the Treaty of Trianon failed from the beginning to respect those international agreements by which they were called upon to insure the rights of the Hungarian minorities living in former Hungarian territories turned over to them by the treaty. Continuing:

The very same States consecutively sabotaged and even sabotage today the few provisions of the Treaty of Trianon which are favorable to Hungary as for instance Article 250 which was intended to protect by means of courts of arbitration the material interests of Hungarian citizens in the territory of the succession States.

It will be remembered that it was upon the alleged violation of these agreements that the Pajzs, Csáky, Esterházy case was brought before the Permanent Court of International Justice. It was decided against Hungary by a majority vote of eight to six.⁸ A very significant part of the reply of Hungary is that which points out that until now Hungary has not followed the example of Austria and Germany, which, the reply states, have unilaterally declared null and void those provisions of the Peace Treaty which restricted their armaments. Hungary points out that it did not wish to complicate the "already overheated international atmosphere," although Hungary claims that upon principle it has already regained a free hand because of the "fiasco of the Disarmament Conference" and rearming, on a grand scale, particularly of the countries of the Little Entente.

Contrasting with the position of Bulgaria and Hungary as thus disclosed, the Greek Government, while agreeing in general with Secretary Hull's declared principles, desired to elucidate the point referring to the modification of treaties. Accordingly, the Greek Prime Minister pointed out that the territorial status in the Balkans as established by the treaties of peace and the Balkan Pact is "definitive and unalterable," and considered as a mutual guaranty of the frontiers of the Balkan States.

The replies of Italy and Japan may be considered together. They are alike brief and in general terms. The reply of Italy is contained in an oral statement of the Italian Minister for Foreign Affairs in which he declares that "the Fascist Government appreciates at their high value the principles enunciated by Secretary of State Hull"; it refers to certain fundamental principles which

⁸ Judgments, Orders and Advisory Opinions, Ser. A/B, No. 68. See particularly the able dissenting opinion by Judge Manley O. Hudson, pp. 66-84.

the Fascist Government has "repeatedly and publicly" proclaimed and which "the Duce has recently reconfirmed in the interview which he granted the American publisher Simms." The statement continues:

The Fascist Government favors everything which may conduce to the pacification and to the political and economic reconstruction of the world. Therefore it regards with sympathy every initiative which tends to achieve that end by means of the limitation of armaments, by means of economic understanding among nations, non-intervention in the internal affairs of other countries and any other means which may now or in the future appear responsive to this objective.

The observations of Japan are contained in the following statement by the Japanese Ambassador:

The Japanese Government wishes to express its concurrence with the principles contained in the statement made by Secretary of State Hull on the 16th instant concerning the maintenance of world peace. It is the belief of the Japanese Government that the objectives of those principles will only be attained, in their application to the Far Eastern situation, by a full recognition and practical consideration of the actual particular circumstances of that region.

The replies of Italy and Japan may profitably be compared with that of Soviet Russia, which is drawn in the form of a personal communication from Mr. Litvinov to Mr. Hull. The declaration of principles is declared to be in accord with the general position of the Soviet Government and specifically approves of non-intervention in the internal affairs of other nations. The statement emphasizes the fact that the Soviet Government presented at Geneva, as far back as a decade ago, a plan for complete general disarmament, a proposal for partial reduction in armaments and the organization of "a permanent peace conference within the framework of which the coöperative efforts mentioned in Mr. Hull's statement could be exerted."

The reply of the Spanish Republic has a distinctly pathetic ring after these high-sounding phrases of totalitarian states. The Spanish note points to the principles of the Constitution of 1931, which renounces war as an instrument of national policy, and incorporates the principles of the Covenant.

The Government of the Republic has never deviated from the course indicated by its Constitution, which permits it to point to a complete coincidence both in doctrine and in practice with the principles defended by Mr. Hull in his statement which, under present circumstances when the Spanish people are the victims of a foreign invasion and suffer the sorrow of a war in defense of their independence, has a singular importance and inspires a gratifying hope for the reestablishment of peace and law among the nations.

The Union of South Africa replied by a remarkable statement on the part of its Prime Minister, which approved of the principles so far as the Union is concerned, "under present circumstances." The statement then continued as follows:

. . . I cannot help feeling that if the Union had been in the position of a State laboring under wrongs confirmed or perpetuated by agreement at the point of the bayonet, such agreement could have little claim to any degree of sanctity; and certainly to none when the agreement had been obtained in a manner violating the established usage of war, or contrary to the dictates of international consciences.

While the statement is couched in somewhat cryptic terms, it can scarcely be read in any other sense than that the Prime Minister calls for a revision of the peace treaties and that such revision could well be insisted upon by any state "wronged," prior to its approval of the principle of the sanctity of treaties. A statement of this nature would not be expected from one of the British Dominions which had taken a most active part in the war. It is not without great significance from the point of view of British imperial politics. Curiously enough, an echo, much wilder in tone, is found in the reply of Canada. While laudatory of the statement of Secretary Hull, the Canadian note draws the conclusion that emphasis should be laid "upon the task of studying immediately wherein all may try by agreement to modify the barriers and rigidities, both economic and political, which may be claimed to deny to peoples or nations equality of opportunity or treatment; for naturally, it is by such wise anticipations that revolutionary and catastrophic events are to be forestalled."

An analysis of the replies calls forth the inquiry whether the statement of principles was justified in the light of apparently irreconcilable differences both in Europe and the Far East. Contestants who have cast the die of armed intervention, or who are determined to seek their purposes in more subtle ways by "boring from within," are not likely to give serious consideration to the most sincere appeals to reason, if not concretely connected in some way with a solution of their claims or differences. We may say that they insist upon an applied rather than a pure science of diplomacy. Some of the replies are quite explicit in this respect. Again, many will urge that when the blood is up, it is futile to expect any sincere conformity to a declaration of general principles. We are living in an age of evident resurgence of Machiavellian methods of statecraft. It would be a mistake, however, to regard as merely naïve the sincere effort of Secretary Hull to obtain a consensus of opinion in favor of more orderly processes and higher moral standards. When an effort was made to apply the declared principles at the Brussels Conference called under the Nine-Power Treaty in November, 1937, an American critic exclaimed that "moral suasion is impotent in the world today, even when it is American."⁴ And yet, so far as the declared principles were concerned, Secretary Hull announced that he was well satisfied with "the solidarity of attitude and aspiration" revealed by the replies of the foreign governments. Taken at their face value, this is undoubtedly true, although some of them were ambiguous, others assertive of special interests, or diplo-

⁴ Edwin L. James in the *New York Times*, November 21, 1937.

matically critical. At all events, the record has a value in itself in disclosing the policy of the particular government.

In drawing conclusions from the observations taken as a whole, three points may be emphasized. First, that there was a manifest solidarity of the nations of the Western Hemisphere in specific acceptance of the principles. Second, that the problem of intervention in international law has become complicated by the fact that the respective dominant political parties of certain countries assume to extend their sphere of action beyond the territory of their own state, thus engendering a conflict of ideologies without being guilty of intervention in the hitherto accepted sense. Third, that too much reliance must not be placed upon the acceptance of general principles and that the actual and factual elements of international differences must be explored to their foundations if any real contribution is to be made to the maintenance of international peace.

ARTHUR K. KUHN

RECOGNITION OF BELLIGERENCY

During the course of the past summer a discussion, having some of the features of a debate, on the recognition of belligerency took place in the columns of the *London Times* in which a number of well-known English jurists and scholars participated. The discussion was started by a letter published by Mr. Noel-Baker, M.P., in the issue of July 5 which was followed by another one by him in the issue of July 10, in both of which he defended, on grounds of policy and of international law, the policy of the British Government in declining to recognize the belligerency of the Spanish insurgents.

Recognition of belligerency of the Spanish insurgents, aided as they are by large contingents of German and Italian troops, he asserted, would be "to legitimize by implication what everyone agrees to be a covenant-breaking invasion." No one denied, he went on to say, that the action of the German and Italian Governments "in dispatching those troops and armaments was a flagrant violation of the Covenant and the Kellogg Pact." And he added: "If we granted belligerent rights to General Franco's forces, *i.e.*, to these Germans and Italians, the political interpretation placed on that concession by other Powers would inevitably be that we condoned the violation of the most important and the most solemn of all treaties." Moreover, a recognition of their belligerency would carry with it the duty of neutrality on the part of the recognizing state, but, as had once been asserted in a famous British Government White Paper, no member of the League of Nations is ever justified in adopting a policy of neutrality toward a state which is violating the Covenant. If, therefore, the British Government were to recognize the belligerency of Franco's military forces, including the German and Italian troops arrayed with them against the legitimate government of Spain, "it would be yet another blow at that 'rule of law' on which, as the Foreign Secretary has said, our hopes of peace depend."

There were in addition, he argued, reasons based upon international law