

the delegates themselves who expressed those fears did so more as a warning against the undue extension of the powers of the Council than as an absolute prohibition. For it is obvious that the decisions which the Council is called upon to make when requests are presented by particular states for the convocation of a Meeting of Foreign Ministers are obviously "political" ones, in the sense that they involve the judgment of the Council upon certain facts alleged by the complainant state to come within the terms of Articles 3 and 6 of the Rio Treaty. Reference was made at Bogotá to the resolution of the Havana Conference of 1928 prohibiting the Governing Board and the Pan American Union from exercising "functions of a political character." But that resolution lost much of its force with the creation at Buenos Aires in 1936 of the procedure of consultation and with the more specific organization of the procedure at Lima in 1938.

After all, the members of the Council speak in the name of their governments and are directly responsible to them. The danger lest the members of the Council, sitting in Washington, might be too much under the influence of the Government of the United States, if such danger still existed after the system of consultation was adopted, was practically eliminated by the resolution of the Mexico City Conference in 1945, when it was agreed that the Governing Board should be composed of *ad hoc* delegates, having the rank of ambassadors but not part of the diplomatic missions accredited to the United States. As a matter of fact, the members of the Council, although limited by the instructions of their governments, discuss problems with the greatest freedom; and it would seem fair to say that the experience of recent years has shown that the influence of the individual members of the Council is not based upon the power of the state which the particular member represents, but upon the intrinsic merits of the principles which he defends and upon the constructive character of the measures which he proposes for their application.

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UNITED STATES FOREIGN POLICY

This will probably be the last editorial that I shall write for the AMERICAN JOURNAL OF INTERNATIONAL LAW. It is my valedictory, so to speak.

That I am not in sympathy with the aims and procedure adopted by this Government is apparent to all readers. It will be more novel to learn that John Bassett Moore in at least three places of his forthcoming memoirs characterizes the policy of this Government—if it can be called a policy—as "insane." That means more for the reader than an ordinary invective. The ordinary reader must know that John Bassett Moore was a man of great moderation who used strong words but rarely. His opinion on a question of international law or policy is rated among the highest in this country. No one was more familiar with our history than he was.

Whatever the truth about American policy, the policy of alliances is a clear departure from the warning issued by George Washington in his Farewell Address. The reversal of American policy from non-intervention to a commitment to intervention in foreign quarrels is so violent a departure from the past that it must justify itself by extraordinary benefit to the United States. Who can assert that the policy of intervention has produced laudatory results? The decision of the United States to remain out of the League of Nations has been traversed by Mr. Hull and his successors. The flouting of the Founders of this country has brought returns which will strike the average citizen as extraordinary. Even if the plans worked out successfully, a burden of proof rests upon its proponents which cannot be met in a practical world. But when it is observed that the League of Nations no longer exists and the United Nations is regarded with dissatisfaction on all sides, it is especially harmful to the United States. One of the curious consequences which speaks volumes is that the American taxpayer knows so little about what is going on or seems unable to determine that the expenditure of American money means high taxes to the citizen. The United Nations is an improved League, and its friends must pay for the ignominy brought upon it by the interventionists.

A war with Russia must be prevented in the interests of the United States. While no one knows when a government becomes bankrupt, it is a certainty that large sums must be appropriated to this purpose. Even if it could be asserted that the United States would be a victor in that war, it would not convince the ordinary man that Communism is a disappointment and failure. We would undoubtedly spoil the Russian experiment, and we might ourselves find the American experiment unworkable. That would be an unfortunate result, but, it will probably be agreed, this existing civilization cannot stand another war without revolutionizing its basic principles. It seems unfortunate that the United States no longer has a free hand, which is all that isolationism has ever meant. The eight volumes of Moore's *Digest of International Law* are a standing refutation that there ever existed isolationism in the Hull sense of that word. To follow up our intervention by a treaty of alliance with five countries or more is to place American intervention in the hands of other people—a policy that can hardly be regarded as useful to us. It must always be remembered by its proponents that the existence of the United States is at issue. Thus far we have Russia denouncing the United States as an aggressor, and we reciprocate the impeachment. "Aggressor" is a word that can be used at random because it signifies nothing. It is an epithet hurled at the opponent for such use as the popular propaganda may have in view. But if it means anything, it is a charge that the *status quo* is under attack. All those in favor of the *status quo* must stick together. All opponents of the *status quo* also must stick together. The result is a world war, which, I have already suggested, this civilization cannot tolerate.

Of all the senseless wars which have been fought, a war by the United States against Russia and its principles would constitute a blunder of the first order. Perhaps war has reached the stage of diminishing returns through the discoveries of science. I would not knowingly subscribe to this view, but it is admitted that war is so expensive that it is not practical. But if nations pursue policies which can only lead to distemper, the charge must be refuted, whoever is engaged in war. In China we seem to have displayed the value of neutrality in foreign quarrels, be they civil or international. We backed up our selection of the wrong horse by taking from the American taxpayer some three billion dollars. Is this a defensible policy?

Although I am opposed to alliances, which only increase the risks of politics, I must confess, as a matter of law, that the United States is competent to enter into an alliance. Article VI of the Constitution does not authorize the Supreme Court to examine the question of the constitutionality of treaties, although every treaty thus far in issue has been held constitutional. Any treaty that is made on the authority of the United States, so long as it conforms to the restrictions contained in the Constitution itself, is a valid commitment. It becomes the duty of the Senate to carry out a treaty of the United States. That is all there is in the doubts harbored by Senators Connally and Vandenberg as reported in the press. Besides, one can say from history that the power of Congress to declare war is misleading. The President has the capacity to write any notes he sees fit, and thus far he has been enabled to go to Congress and ask it to back him. Congress has never refused such a draft.

EDWIN BORCHARD

CHARLES EVANS HUGHES—AN APPRECIATION

Charles Evans Hughes was elected President of the American Society of International Law in April, 1924, and retired as President in 1929. He was elected an honorary vice president of the Society in 1930, continuing to hold that position until his death in 1948. Appointed Secretary of State in 1921, Mr. Hughes brought to the Department, in consequence of his experience of almost six years as an Associate Justice of the Supreme Court, a judicial temperament that proved uniquely valuable in his handling of international legal problems with foreign governments. This was exemplified in a number of ways. He was loath to take a stand through the diplomatic channel that he felt was unsupported by international law, and he was unaffected in this regard by the readiness of certain other states to be unhindered at times by kindred scruples. Moreover, he was aware of instances where they were not. He frequently sat in a quasi-judicial capacity in controversies in the Department touching American policy, and he exemplified utmost deference for those views that, in his judgment, reflected respect for international law.