

Another Civil War in China?

The historic meeting of the British Premier, Mr. Ramsay MacDonald, and President Herbert Hoover of the United States, to advance the cause of world peace will be forever remembered by the human race. For sometime there had been grave dangers of a race in naval armament between these two leading world powers, inspite of the disarmament conferences called within the last few years. It has become the general feeling that such formal conferences attended by delegates of different nations with a view to advancing their own national interests will hardly accomplish much for the sake of world peace, and this applies with greater force to the sessions of the League of Nations. Though conceived by President Wilson with the express purpose of making the world safe for democracy, the League has from the very beginning proved a disappointment to all its well-wishers, and the United States, the original promoter of the institution, had to keep out of it and let the European Powers use it as a political toy. On the other hand, frank and open-minded discussion between two such statesmen like Mr. MacDonald and President Hoover is far more productive of practical results. The whole world now acclaims the encouraging result of their meeting.

Always a peace-loving nation, China under the tutelage of Dr. Sun Yat-sen's *San Min Principles*, gives an even more hearty welcome to news of world peace. Thousands of years ago we already dreamed of the time when there would be universal peace, when there would be even no struggle among the individuals for worldly goods, but every one would do his best to make the world a better place for all to live in. There would be no need for the individuals to guard against robbers, nor the nations against foreign intruders. Such is the age-honored Chinese Doctrine of Universality, further emphasized and propounded by our late Leader in his *Principle of Racial Democracy*, sometimes misinterpreted as

the *Principle of Nationalism*. China believes in world peace, and not international struggle for selfish national interests.

Such being the psychology of the Chinese people and the avowed principles of the Kuomintang, is it not an unusual coincidence to have renewed outbreak of civil warfare in our country just at the time when optimism begins to prevail in world peace? The 18th anniversary of the Republic celebrated a week ago was also the second anniversary of the unification of China under the Nationalist rule. Great hopes were entertained that unification would become permanent, now that all the leaders—especially those who speak with the force of armies—all avowed their allegiance to the doctrines of the late Leader. All generals had borne arms in the name of the *San Min Principles* with the end of unifying China under the Kuomintang. Yet during the brief period of two years of unification, at least five punitive campaigns were undertaken by the National Government against military leaders who opposed its rule. Any further fighting among the Nationalist generals naturally will raise serious doubts in the minds of the people as to whether there is such a thing as fighting for the sake of principles.

The meetings held during this year and the last between Generals Chiang Kai-shek, Feng Yu-hsiang, Yen Hsi-shan and others in Peiping and Nanking aroused much hope among the people of the possibility of settling sectional differences by a frank interchange of views, just as we hope for world peace through the meetings of Premier MacDonald and President Hoover. The latter, as far as we can see, seems to be insured of real success. Will not another meeting among our own generals, held with equal frankness and openmindedness, bring about similar results for our country? Otherwise, when will the National Government be through with the process of disarming its opponents?

Abolition of Extraterritoriality in China

By Li Tz-hyung (李花馨)

(Second Prize Winner)

One of the outstanding issues calling for an immediate and urgent readjustment between Nationalist China and the interested foreign Powers following the recovery by China of her right of tariff autonomy is no other than the burning question of extraterritoriality. The practice of extraterritoriality is that foreign nationals residing in China, or in the treaty ports rather, are amenable to the jurisdiction of their respective home states instead of that of the territorial sovereign. This exceptional condition of things has been brought about solely by virtue of treaty stipulations rather than by cus-

tom or usage. It gives rise to an arrangement under which China is caused to surrender one of its fundamental sovereign rights, namely, the right to determine the status of aliens in her territory and to exercise jurisdiction over them. The machinery set up for exercising jurisdiction over such aliens in China is known as the consular courts inasmuch as the consular officers of their home states take up the extra-functions of a judge, in addition to their duty as consuls. The laws applied in these consular courts are the laws of the extraterritorial nations; the only exception is the case where rights of

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reality are involved, where the "lex situs" applies. The system, as it has worked, renders foreign nationals enjoying the privilege not only immune from the judicial process of local tribunals, but also from civil as well as political responsibility throughout the country.

It is a fundamental principle in international law that every sovereign state exercises supreme control over all the people, native or alien, within the bounds of its territory; further, the law dictum as universally accepted states that "laws have no extra-territorial force," and that "laws are territorial in their application." It was at the cannon's mouth, however, that the Powers, or to be specific, Great Britain, wrung from China the privilege of extra-territoriality. The origin of the extra-territorial regime in China dates back to the days of the Opium War. It is true that the Treaty of Nanking in 1842 did not expressly provide for the enjoyment of extra-territorial rights by British subjects within the dominion of China, but in the subsequent General Regulations governing the British trade at the five Ports of Canton, Amoy, Foochow, Ningpo, and Shanghai concluded on October 8, 1843, the unilateral concession of extra-territoriality was for the first time granted. Since then, the other treaty Powers have at various times obtained the same privilege. For the present there are sixteen states that still exercise jurisdiction over their nationals within the territory of China. Alphabetically arranged, these extraterritorial Powers may be named as follows: the United States of America, Belgium, Brazil, the British Empire, Denmark, France, Italy, Japan, Mexico, the Netherlands, Norway, Peru, Portugal, Spain, Sweden, and Switzerland. However, out of the twelve countries that have concluded new treaties with China, five countries, to wit, Denmark, Portugal, Belgium, Italy and Spain have pledged to relinquish extraterritoriality by January 1, 1930, subject to certain conditions.

Having traced the origin, and described the working of extraterritoriality, it will be useful to enter into a close examination of this system as a means to compose differences and administer justice between mixed peoples. It is no exaggeration to say at the outset that the system is artificial in the extreme and full of permanent drawbacks on account of which a satisfactory administration of justice is impossible. Under the shelter of extraterritoriality, there has grown up a number of illegal practices on the part of the treaty powers which, in accordance with the well-established principles of international law, should have come under Chinese jurisdiction, but which, according to the present usage, either by virtue of an unwarranted interpretation of treaty stipulations or without treaty basis at all, have been arbitrarily included in foreign jurisdiction. Foreign post-offices and radio stations established in Chinese territory, police boxes or stations established by Japan in Manchuria, and the maintenance of foreign troops in China, some duly authorized, and some unauthorized either by treaty or law, may be pointed out as outstanding cases.

Consular jurisdiction is objectionable, because it constitutes a derogation and an infringement of Chinese sovereignty and its continued existence is invariably

looked upon by the Chinese people as a national disgrace of the first magnitude. Consular officers in many instances are found unsuitable as judges on account of their lack of legal and judicial training, their principal concern being commercial matters. The duty of a consul as a protector of his nationals conflicts with his capacity as judicial officials, being always susceptible to bias in the administration of justice in favor of his own nationals, the defendants, against the Chinese and other foreign nationals, the plaintiffs. Apart from his commercial duties, he is well-nigh overburdened with judicial functions; he performs the numerous roles pertaining to law, not only of a judge having in charge of civil and criminal acts instituted against his fellow-nationals, of a coroner, registrar, probate judge, and police magistrate, but also that of an advocate in the court of the native defendant on behalf of his aggrieved fellow-national. The concentration of all the judicial functions in the person of a commercial agent is most dangerous in view of the fact that there is no right of appeal from consular decisions in most cases except the United States and Great Britain. Though the other Powers also allow appeals from decisions, but that must go to the highest tribunal in the country of the treaty state. So the right is only nominal rather than real in view of distance and expense. Justice is practically denied thereby to the Chinese people.

Consular jurisdiction is personal, since its competence is limited only to nationals of each individual state. The consular courts are not provided with the means to subpoena witnesses to testify that are not of the defendant's nationality, nor is it the prerogative of such courts to punish perjury or contempt of court committed by a person of another nationality. Further, it is not with the authority of such courts to accept a counter-claim instituted by the defendant of their own nationality against the plaintiff of another nationality in the dispute before it. The interrelation of consular courts has contributed virtually to a state of legal confusion, when one injured party has reason to complain of nationals of several treaty states: he has to file as many suits as there are defendants of the many nationalities in each of the consular courts concerned and to deal with as many systems of the foreign laws. The law to be applied is the law of the defendant's nationality. So while the case is the same, different judgments will be pronounced under different laws. Such multiplicity of courts and diversity of laws give rise to evils of judicial uncertainty and disparity of judgment and punishment.

Another defect of these consular courts is the difficulty of obtaining evidence where a crime is committed by a foreigner in the remote interior. The limited number of consular courts (numbering less than fifty in all) have to cope with a jurisdiction coextensive with the whole Chinese Republic. They are invariably found in the treaty ports, which are situated far apart. Yet according to the treaties governing the matter, it was provided, "he shall be handed over to the nearest consul for punishment, but he must not be subjected to any ill usage in excess of necessary restraints." Under

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| No. 11 | d. 9.55 | a.19.27 d.20.07 | a.13.26 d.13.46 | a.12.18 d.12.28 | a.16.05 |
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| No. 23 | d. 5.40 | a.21.44 | | | |
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| No. 12 | d.10.50 | a.14.51 d.14.56 | a.13.13 d.13.33 | a. 7.32 d. 8.12 | a.17.30 |
| No. 4 | d.13.30 | a.16.01 d.16.03 | a.10.05 | | |
| No. 10 | | | d.17.41 | a. 9.33 d.10.13 | a.18.35 |
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| No. 26 | | | d.22.34 | a. 2.15 | |
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such circumstances, any immediate, efficient, and fair administration of justice is rendered well-nigh impossible in view of the distance and expense involved to obtain satisfactory evidences. The system is a complete farce so far as justice for Chinese people is concerned. This has been correctly observed by the American Minister, Mr. Reed, saying, "This rendered into plain language means that the foreigner who commits a rape or murder a thousand miles from the seaboard is to be gently restrained, and remitted to a consul for trial, necessarily at a remote point where testimony could hardly be obtained and ruled on."

Another weakness of the consular jurisdiction is that in many cases especially those of criminal character the extraterritorial courts have no law to apply; simply because such laws are not declared operative in China by their home Governments. So it frequently happens that certain offenses committed by foreigners in China which are otherwise punishable according to Chinese law, are allowed to go unpunished. Italians engaging in the illicit trade in opium prior to October, 1921, for instance, were immune from punishment on account of the fact that there was no such law in Italy punishing traffic in opium until that date.

The irregular extension of protection to Chinese citizens by extraterritorial Powers through the use of foreign premises and ships as quasi asylums and the registration of Chinese land and property with consular courts under names of foreign nationals removes such Chinese citizens and property from Chinese jurisdiction. This practice of hiring foreign names to cover transactions is not only limited to immovable property, but spread practically to all forms, especially in the export trade. This abuse has been a constant source of annoyance to the Chinese Tariff Administration, as the Chinese goods through an easily obtained foreign disguise may unlawfully escape various taxes and duties.

In view of the above-enumerated abuses and artificialities of the extraterritorial system under which both foreigners and Chinese suffer alike, there can not be the slightest doubt that the system in question should be abrogated at the earliest possible moment. As has been said, inter alia, in the Note of the National Government addressed to the various Powers on April 27 concerning the abolition of extraterritoriality in China, "It goes without saying that extraterritoriality in China is a legacy of the old regime which has not only ceased to be adaptable to the present-day conditions, but has become so detrimental to the smooth working of the judicial and administrative machinery of China that her progress as a member of the Family of Nations has been unnecessarily retarded. The inherent defects and inconveniences of the system of consular jurisdiction have been most clearly pointed by the Chinese Government on various occasions and also by the jurists and publicists of other countries in their official utterances as well as in their academic discussions. It is a matter for sincere regret that, while many Governments which are playing an important role

in international affairs are eager and persistent in their endeavour to promote genuine friendship and harmony among nations, such anachronistic practices as only tend to mar the friendly relations between the Chinese people and the foreign nationals should be allowed to exist at a time when justice and equity are supposed to govern the relations of nations."

The movement for the abolition of extraterritoriality in China has been a persistent and determined one. This is not the first time that China has approached the Powers for a satisfactory solution of the sore problem. Her patience is apt to reach a breaking point unless her reasonable request is complied with forthwith. It must be pointed out that hitherto her case has not been given a fair hearing on the part of the Powers. The answer that China has received during the past was a dilatory and evasive one. The extraterritorial Powers, in deference to the vested interests of their nationals in China, were none too willing to surrender the long-enjoyed unilateral right.

As early as 1902, China moved in this direction and succeeded in concluding a treaty with Great Britain on September 5, 1904, whereby she agreed to abolish this special right in China when she was satisfied that "the state of the Chinese laws, the arrangement for the administration, and other conditions" would warrant her in so doing. Subsequently China secured the consent from the United States to make a similar treaty on October 8, 1903, and from Japan in the treaty of the same date, and from Sweden in the treaty of July 2, 1908, and from Switzerland in the treaty of June 13, 1918, and from Portugal in the treaty of Nov. 11, 1904—the last being the only one which remains to-day unratified.

At the Paris Conference, 1919, China submitted her request *inter alia* for the abolition of extraterritoriality, to which the Powers turned a deaf ear, because the case was regarded as not within the competence of the said Conference. However, in consequence of her participation in the Great War, 1914-18, China succeeded in recovering extraterritoriality from Austria-Hungary, Germany, and subsequently Russia.

At the Washington Conference, 1912-22, China again availed herself of the opportunity to submit her request for the similar purpose. In response to China's claim respecting consular jurisdiction, a resolution was passed on Dec. 10, 1921, by the Powers represented at the Conference, other than China, which authorized the formation of an Extraterritoriality Commission within three months after the adjournment of the Conference to make necessary inquiries in China with a view to relinquishing either progressively or otherwise their respective rights of extraterritoriality. The Commission did not meet in China, however, until January 12, 1926. It adjourned on Sept. 16 of the same year, and a joint report was rendered consisting of four main points, namely, (1) Present Practice of extraterritoriality, (2) Laws and Judicial and Prison Systems of China, (3) Administration of Justice in China (4) Recommendations.

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It will be remembered that the said Commission was held at a time when the country was in the throes of civil war and the authority of the defunct government was hardly effective outside the wall of Peking. Since the completion of that Report, conditions in China have radically changed. It will be both incongruous and unfair to view the present Chinese political machinery in the light of what is mentioned in the Report of 1926. With the unification of China recently achieved, civilian rule reigns supreme. Military interference either in the administration of justice or in civil affairs in general is fast becoming a thing of the past. Recently there was a mandate issued by the National Government to the effect that no military officer can be civil governor concurrently. As a direct contrast to the former northern feudal warlords in Peking prior to 1926, all the military authorities under the present regime have always been made accountable for good behavior to the Central Government at Nanking.

The said Commission has found the Chinese modern

courts and prisons to be satisfactory. And it has been the invariable practice that foreign nationals that have surrendered consular jurisdiction in China are exclusively subject to the jurisdiction of modern courts, but not that of the magistrate courts which exist mainly as legacy of the Manchus, and are being rapidly replaced by modern courts. Criminal cases, after a preliminary adjudgment by the district magistrate, are remitted to the pertinent modern courts and procuratorate, and in case of the absence of modern courts in the district, they are to be transferred to the nearest modern district court. The causes of anxiety on the part of the foreigners in China after the relinquishment of consular jurisdiction are, to say the least, more imaginary than real, and they are invariably born of an inherent contempt for Chinese administration of justice. All such arguments advanced by the Powers in refusing to comply with the legitimate aspiration of the Chinese people to recover their jurisdictional autonomy are far from being acceptable.

(To Be Continued)

South Manchuria Railway Company

(Continued from the last issue)

By Lowe Chuan-hua (駱傳華)

Before we conclude our study of the S.M.C. Company, we should scrutinise some of its menacing political implications. Of these the question of the Kirin-Hueining railway (吉會鐵路) is of chief importance. No sooner had the Japanese appeared on the Manchurian stage than they formulated the so-called double-line and double-port policy to consolidate their position. By the double-line and double-port policy is meant the enclosing of the vast South Manchurian prairies by means of two strong arms, namely, the South Manchuria railway and the Changchun-Hueining railway, which run to the sea at Dairen and Chingtsin (清津) respectively. With the Liaotung peninsula already under their thumb, the Japanese are now stealthily penetrating into Kirin and Heilungkiang through northern Korea.

Of the Changchun-Hueining line, two sections (the Changchun-Kirin railway and the Kirin-Tunhua railway) (吉敦鐵路) have already been constructed. Although they are owned by the Chinese Government, they are actually managed by the appointees of the S.M.R. Company.

In 1908 the Chinese Government contracted a loan of 2,150,000 yen with the S.M.R. Company for financing the Changchun-Kirin line. In 1917 the S.M.R. Company demanded a revision of the original understanding, and advanced a new loan of 6,500,000 yen for a term of thirty years. Part of this amount was applied for the redemption of the original loan. (11) Since that time, the management of the Changchun-Kirin railway has been taken over by the S.M.R. Company, which appoints the Chief Engineer, the Chief Accountant and the Traffic Manager.

By virtue of the Chientao Treaty ("閔島"條約) of 1909, the Japanese procured the concession to extend the

Changchun-Kirin railway to Hueining on the Korean border. But the matter was left in abeyance until 1918 when the Japanese advanced to the Anfu Clique 10,000,000 yen on the Kirin-Tunhua railway loan, which aroused nation-wide resentment. Finally in 1925, the Peking Minister of Communications signed a formal agreement with the representative of the S.M.C. Company for a loan of 18,000,000 yen for the construction of the Kirin-Tunhua line. It was provided that in case of necessity, the amount of the loan might be augmented by mutual agreement. The line was completed in 1928 at a total cost of 24,000,000 yen. It is estimated that the remaining section from Tunhua to Hueining will cost about 20,000,000 yen, but its construction is now vigorously opposed by the Chinese Government. (12)

In order to hasten the completion of the Tunhua-Hueining section, the Japanese, under the pretext of developing the silver and copper mines in eastern Kirin, have built a light railway to connect Tienpaosan with Shansanfeng on the bank of the Tumen river, which is just a little north of Hueining. At present, the Japanese are reported to be pushing their work toward Tunhua, in spite of the remonstrances of the Chinese authorities. The completion of the Kirin-Hueining railway will not only jeopardize the territorial integrity of the Three Eastern Provinces, but also give Japan several advantages of international significance. First of all, the new railway will divest much of the traffic which is now enjoyed by the Chinese Eastern Railway. Secondly, it will give Japanese capitalists access to the forests around Tunhua which are estimated to contain 2,000,000,000 tons of timber. This treasure can meet Japan's needs for about 200 years and will naturally cut off the rich lumber trade that now

11 *China Year Book*, 1928, p. 265.

12 *Pacific Affairs*, August, 1929, pp. 496-97.