

EDITORIAL COMMENT

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It has been said that statesmanship is the ability to see today the effects which a particular policy will have ten years hence. Judged by any such test the Governments of Great Britain and France were singularly lacking in statesmanship when they set their hands not only against a political union of Austria and Germany, but even against a restricted customs union which might have brought economic relief to Austria without the necessity of closer political ties. Excuse may doubtless be found for the failure of the British and French Governments to foresee as early as 1919 the ultimate advantages that would come from leaving Austria free to decide her own destiny. For the chaotic conditions in central Europe immediately following the World War obscured the view of probable future developments. But by 1926 the smoke and dust of the war had largely cleared away. Germany was now being admitted to membership in the League of Nations; the Weimar Republican Constitution appeared to be a stable document; democratic institutions were in full operation; and treaties were still regarded as creating legal obligations. A mere customs union might not have relieved the economic situation for Austria; but the withdrawal of prohibitions against it would have eased the political situation and would have greatly strengthened the democratic forces both in Austria and in Germany.

Today we witness not a customs treaty between two independent states, not even a confederation of Austria and Germany leaving the national integrity of Austria unimpaired, but the complete assimilation of Austria into Germany. Austria is henceforth to be a mere province of Germany, and the name of a country, whose origins go back to the tenth century or earlier, is now erased from the annals of international law. Diplomatic relations of Austria with third states will be merged with those of Germany. Treaties made with Austria come to an end; and there is only the question of the extent to which Germany may be expected by law to succeed to obligations once binding upon Austria.

What is to be the attitude of other members of the international community towards the forcible extinction of one of their associates? By no process of legal legerdemain can the coercion, exercised by Germany upon the *de jure* Government of Austria be resolved into an act of voluntary consent on the part of Austria to the union. Whatever be the results of the plebiscite to be held as a means of obtaining formal confirmation of the accomplished fact, the initial use of force by Germany must taint all subsequent proceedings with illegality. In the case of the members of the League of Nations the legal obligation is explicit enough, whatever difficulties may be in the way of giving

practical effect to the obligation. For the experience of recent years has shown that collective security can not be counted upon unless the vast majority of the community is on the side of law and order, so that their combined strength greatly exceeds that of the lawbreaker and his accomplices. Collective security must inevitably fail when those who challenge the law are so powerful that they can only be suppressed at a cost to the community which appears to outweigh the suffering of the victim. Under such circumstances each member of the international community will be tempted to take a narrower view of its national interests and to seek its present safety at whatever cost to the general principle of cooperative defense.

For the states parties to the Pact of Paris there are no treaty obligations calling upon them to take action in consequence of the violation of the Pact. But apart from treaty obligations they have a right under international common law to protest against the violation of a treaty and to support their protest by such methods as they may see fit to adopt. The doctrine of non-recognition should logically be applied to the annexation of Austria as to a territorial conquest, since otherwise the protest against the violation of treaty provisions would be nullified by acceptance of the results. Further methods of protest might go so far as the prohibition of the shipment to the treaty-violating state of the raw materials of war industries and even the temporary recall of diplomatic representatives.

Once more the international community is presented with evidence of the fact that acquiescence in the commission of acts of lawlessness almost inevitably leads to a general breakdown of law and order. Steadily, for the past seven years, the community has witnessed treaties broken, territories invaded and annexations proclaimed. The situation has been reached where economic sanctions that might in the beginning have proved effective are no longer adequate. Concessions by way of alleviation of economic distress, which might ten years ago have stayed the tendency to resort to violence, can now be made only at the price of strengthening the hand of the violator of the law and making it less likely that he will listen to the voice of reason. Such is the vicious circle in which the world has been caught. It is a tight circle and it can only be broken by the boldest of moves—an offer on the part of the one powerful country that stands outside the present balance of power in Europe to lend its aid to the rebuilding of the foundations of international law that have been so seriously undermined.

How might this be done, conceding the slim chance of its success? It might be done by the prompt reassertion of the fundamental principles of international law and the pledge of the United States to give its moral support and the full measure of its economic aid to the maintenance of those principles. Foremost among those principles is the repudiation of violence as a means of enforcing claims: that no state may take the law into its own hands. Second only to this principle is the one that has been discussed so much during the past ten years but is still largely a matter of promise rather than of perform-

ance—that the raw materials and the markets of the world be made more readily accessible to all nations.

It may be that it is now too late to bring about that combination of military, economic, and moral disarmament which has been all along the one means of stemming the tide of international anarchy, but which has not been put into effect simply because of the lack of a determined will to do so. But the greater the danger that faces the nations, the more imperative it is that they make that last bold effort which, if it should succeed, would save our civilization from a calamity greater than any that has yet come upon it.

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PEACEFUL WAR IN CHINA

Japan began her present military operations in China following an outbreak between Chinese soldiers and Japanese troops near Peiping on July 7, 1937. The Japanese thereupon attacked Shanghai, and since then hostilities in China have been increasing in extent and violence until it is said about a million troops are engaged on both sides with all the mechanical accessories of modern warfare and until all of the maritime provinces from Shanghai to Manchukuo are involved.¹

During the course of hostilities the Japanese forces have admittedly committed certain outrages against third Powers which it is difficult to reconcile with Japanese pronouncements. They include the military bombing and sinking of the *U. S. S. Panay* and three American steamers and the machine-gunning of the refugees, the assault on the diplomatic representative of the United States engaged in his official duties, the entry of American property and institutions and the removal of goods and employees therefrom, and the tearing down, burning or otherwise mutilating the American flag. Similar attempts have been made against the rights and interests of other Powers.

The rights of foreigners in China are governed by a series of treaties dating from about the middle of the last century when the Hermit Kingdom began to open its doors to Western intruders. The right of Americans or American institutions to establish themselves and to own property and to carry on business in China dates from the Treaties of 1844 and 1858.² This privilege was expanded by subsequent treaties and the most-favored-nation clause so that citizens may frequent, reside and carry on trade, industry and manufactures in the Open Ports and may rent, purchase houses, places of business

¹Meanwhile the Japanese Government was writing to the American Government, "The Japanese Government wishes to express its concurrence with the principles contained in the statement made by Secretary of State Hull on the 16th of July, 1937 concerning the maintenance of world peace."

²In addition, special "foreign residential areas," "settlements" and "concessions" were set aside by treaty in certain Open Ports for residence and use of foreigners under leaseholds. These areas are under their own local administration and not subject to Chinese laws.