by the Government itself, and the Act is extended to all territory under the jurisdiction of the United States.

The law of May 27, 1921, embodies the accepted principle of the right of a state to exercise jurisdiction within its own boundaries.

GEORGE GRAFTON WILSON.

THE RESOLUTION OF THE CONFERENCE ON LIMITATION OF ARMAMENT RESPECTING EXTRATERRITORIAL RIGHTS IN CHINA

Every friend of China must experience gratification in the Resolution of the Conference on Limitation of Armament, December 10, 1921, dealing with extraterritorial jurisdiction in that country. In its preamble that Resolution takes note of the various treaties whereby the United States and Great Britain and Japan have within a score of years agreed to aid China in judicial reforms with a view to ultimate relinquishment of extraterritorial rights.[1] It announces the sympathetic disposition of the assembled Powers towards the aspirations of China respecting jurisdictional and political and administrative freedom; it emphasizes the circumstance that appropriate action depends upon "the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial system and the methods of judicial administration of China" which the Conference is not in a position to determine. It is accordingly resolved:

> That the governments of the Powers above named shall establish a commission (to which each of such governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several Powers above named their findings of fact in regard to these matters and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China and to assist and farther the efforts of the Chinese government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.

It is declared that such Commission, to be constituted within three months after the adjournment of the Conference, is to be instructed (in accordance with detailed arrangements to be agreed upon) to submit its

[1]See also in this connection Act of March 23, 1874, Chap. 62, 18 Stat. 23, contemplating the relinquishment of the exercise of judicial functions by American officials in certain countries upon receipt by the President of satisfactory information that there were organized therein local courts on a basis likely to secure to citizens of the United States the same impartial justice which they then enjoyed by virtue of the exercise of judicial functions by American officers.

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report and recommendations within one year after the first meeting of the Commission. Each of the Powers retains the right to accept or reject all or any portion of the recommendation of the Commission; but in no case is its acceptance of any portion thereof either directly or indirectly to be dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic. Provision is also made for the adherence to the Resolution of non-signatory Powers having by treaty extraterritorial privileges in China, upon specified notice of their accession thereto. An additional Resolution adverts to China's satisfaction in the sympathetic disposition of the Powers assembled, and to its declared intention to appoint a representative to sit with the Commission as a member thereof, and to China's freedom to accept or reject any recommendations of that body; and it announces, furthermore, the readiness of China to cooperate in the work of the Commission and to afford it every possible facility for the accomplishment of its tasks.

It seems worth while to take note of a few considerations which must and doubtless will be reckoned with by the Commission in undertaking to formulate practical constructive plans.

Heretofore, in arrangements for the relinquishment of extraterritorial jurisdiction, the establishment and operation of judicial reforms have been regarded as a condition precedent to the surrender of jurisdictional rights. Thus President McKinley, in his message of December 5, 1899, dwelt at length upon the achievement of such reforms by Japan prior to the operation August 4, 1899, of its treaty with the United States of November 22, 1894, contemplating the relinquishment of extraterritorial jurisdiction.[2] The annex to the recent treaty between the United States and Siam of December 16, 1920, also gave heed to that principle.[3] In the present case it may be assumed that the Commission will make earnest endeavor to advise or devise such judicial reforms as are deemed essential to enable Chinese courts to bear well the burdens to be imposed by any transfer of jurisdiction to them.

There are, however, certain other considerations which although indirectly related to the matter of judicial reform, appear to have a distinct bearing upon the solution of the complicated problem involved. Attention is briefly called to a few of them.

The Republic of China asserts dominion over a vast area wherein its claims of sovereignty are undisputed by foreign states. Its population is thus spread over a wide territory within relatively small parts of which

[2] U. S. For. Rel. 1899, XXIV.

[3] U. S. Treaty Series, No. 655. It may be observed that this treaty was proclaimed by President Harding, October 21, 1921.

The Treaty of Sèvres of August 10, 1920, did not appear to contemplate any relinquishment by the Powers of extraterritorial privileges in Turkey, but rather a plan looking to the modification or reform of the Capitulary system there prevailing. See Art. 136, Supplement of this Journal, XV, 179, 207-208 (July, 1921).

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there is contact with the western world or with the civilization produced by it. The situation in this regard differs sharply from that which has ever confronted either Japan or Siam. In certain parts of China there is believed to remain much difficulty (apart from any of a purely legal or constitutional aspect) in protecting foreign life and property from injustices begotten of ignorance or passion. States avowing attachment to the principles of western civilization have experienced a like difficulty when possessed of extensive territories. Mexico has always been face to face with it. Less than fifty years ago the United States found itself, in the circumstances of the particular case, either unable or unwilling to protect numerous Chinamen in Wyoming against wholesale mob violence. Thus, in the case of China, the question arises as to what should be the territorial limits within which extraterritorial jurisdiction may wisely and ultimately be relinquished. If those limits should not be co-extensive with the territory under the flag of the Chinese Republic, there still remains the problem as to whether they should be extended to all places open to foreign trade or residence, or to foreign missionary enterprise; or whether the opening by Chinese authority of any place to any form of foreign life should simultaneously operate to clothe Chinese tribunals with fresh rights of jurisdiction therein; or whether some other principle should indicate the geographical bounds within which a transfer should be effected. Obviously the fitness of any Chinese courts, especially those of first instance, to adjudicate with respect to foreigners would seem to be dependent in large degree upon the location of the forum in a community in close contact with western life by reason of the number of the aliens there residing. The Commission may possibly, therefore, reach the conclusion that, at the appropriate time, the yielding of jurisdiction to Chinese tribunals should generally follow a scheme of geographical progression, limited at first to zones or areas wherein conditions are acknowledged to be most favorable for the successful operation of the transfer.

Experiments in the exercise of Chinese jurisdiction over foreigners are likely to be most fruitful in cases where the consequences of a denial or miscarriage of justice serve to expose to the smallest degree of harm the alien litigants involved. Thus jurisdiction in civil matters (under a code sharply distinguishing civil from criminal procedure, and preventing the imposition of criminal penalties in cases arising from tort or contract) may be deemed worthy of relinquishment prior or preliminary to the surrender of jurisdiction over criminal cases. Again, distinctions according to the nature of offenses may suggest a reasonable theory or method of giving up jurisdiction in criminal matters. Thus it may be deemed expedient at the outset to test Chinese magistrates sitting as criminal judges with adjudications over offenses regarded (at least in America or England) as misdemeanors, before yielding jurisdiction in cases where the offense possesses the character of a crime, and would in consequence, according to

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the codes of any of the interested foreign Powers, subject a guilty person to the imposition of a grave penalty. If jurisdiction is to be ultimately relinquished to Chinese courts where aliens are charged with the commission of heinous offenses, ample provision for appeals by the simplest processes and to the Supreme Court of the Republic should obviously safeguard the rights of accused persons, especially if they are deprived of recourse to the judicial as distinct from political aid of their own countries.[4]

In its exercise of duties of jurisdiction a state may find that certain of its tribunals and processes which amply suffice in the administration of justice with respect to nationals are wholly inadequate when an alien is a party to the litigation, and especially if he be the victim of local prejudice. The United States has had such an experience. In cases, for example, arising from mob violence directed against resident aliens, it has been found impossible to convict offenders in the State courts.[5] Both the Constitution of the United States and certain acts of Congress have given heed to the general problem, by conferring upon aliens the right under some circumstances to invoke the aid of the Federal Courts.[6] Such action is not designed to afford the alien more favorable treatment than is accorded the national, but rather to place within reach of the former by a different process, an equal opportunity to secure such a degree of justice as should be available to every resident who invokes the aid of the courts. This principle is to be reckoned with in any project purporting to clothe Chinese courts with jurisdiction over aliens. It may be found that there exist, or are capable of establishment, certain Chinese tribunals which, by reason of their composition or grade or organization or personnel are peculiarly fitted for the task of adjudication, and, like the Federal courts of the United States, able to afford a solid means of protecting the rights of alien litigants. Such tribunals should be utilized accordingly, regardless of

[4]According to Prof. Willoughby: "The most promising mode by which the Chinese could be aided in bringing about a situation under which it would be expedient to abolish extraterritoriality would be for the Powers to permit the Chinese, as a first step, to establish courts for the trial of cases in which foreigners are parties either as defendants or plaintiffs, that would be truly 'mixed' in character; that is, tribunals presided over by two or more judges of whom one at least should be a foreigner learned in the law and experienced in its administration. These courts would be Chinese courts, and the judges Chinese officials, the judges who are foreigners, however, to be appointed upon the nomination of, or at least, with the approval of, the foreign offices of the Treaty Powers." (W. W. Willoughby, Foreign Rights and Interests in China, Baltimore, 1920, 79-80.)

[5]In at least two instances, however, damages have been collected by dependents against a county or municipality rendered liable in such cases by local statute, through an action maintained in the Federal Court.

[6]See Constitution, Art. III, Section 2; see also paragraph 17 of Federal Judicial Code, 36 Stat. 1093, clothing the District Courts of the United States with original jurisdiction "of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States."

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local practices or laws withholding from them jurisdiction in matters pertaining solely to nationals of China.

A further consideration must not go unheeded. It might prove disastrous to yield irrevocably privileges of jurisdiction, in spite of judicial reforms or geographical limitations or skilfully devised restrictions and distinctions pertaining to criminal matters, until at least after the lapse of an experimental period. The success of Chinese judges in administering justice in matters concerning solely Chinese litigants or Chinese persons charged with crime under the most approved system devised to safeguard the rights of such individuals would hardly suffice as a test. There would seem to be required opportunity for Chinese tribunals under a new régime to adjudicate with reference to aliens under conditions such that in the event of an abuse of power, cases might be removed by a process of requisition to the judicial authorities of their own State. The recent convention with Siam offers an interesting precedent. It will be recalled that it is there provided that pending a certain interval of time following the promulgation and operation of certain specified laws and decrees, the diplomatic or consular representative of the United States may requisition causes pertaining to American citizens pending in the lower Siamese courts. This principle may be well applied and extended in the case of China. The Commission may, for example, wisely conclude that during a specified interval of time the appropriate foreign authority may requisition cases pending in the Chinese courts, and even in communities where there is reason to believe that the relinquishment of jurisdiction is most safely yielded. During such an experimental period it may be fairly presumed and possibly provided in terms, that normally cases should be left in Chinese hands, and that no requisitions should be made on frivolous grounds or at the caprice of a foreign official. Moreover, it may even be provided that where a case is requisitioned the appropriate Chinese code rather than that of the foreign State should be applied by its judicial representative. The principle needs emphasis in any formal plan for ultimate adoption that the experimental period is designed not merely to safeguard foreign rights, but equally with a view to ascertain the essential fitness of Chinese tribunals to exercise jurisdiction over foreigners.

The western world is far from disposed to thwart the aspirations of China. The Resolution of the Conference reflects the general sentiment. Chinese statesmen may, however, serve well their own country by perceiving that the shortest path to the attainment of jurisdictional independence is likely to involve the early and complete satisfaction of a series of elementary and progressive tests to be laid down by friendly foreign Powers.

Charles Cheney Hyde.

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