

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.

The habitual sense of fairness of Secretary Hughes was understood by foreign representatives accredited at Washington; and it added profoundly to the influence upon them of his considered views. And so it was that the Department of State itself gained in foreign prestige from the loftiness of purpose revealed by Secretary Hughes in his every contact with the outside world.

Secretary Hughes manifested a generosity of spirit that was perhaps unique at a time when the innate selfishness of states was a warning to all that diplomatic moves were invariably to be regarded as inspired by motives which ceaselessly, if not patently, were ungenerous. Thus, on one occasion Mr. Hughes, in the real hope that a certain European state might be persuaded to pursue a course that he deemed advantageous to that country as well as his own, proposed that its Ambassador at Washington take the Secretary's idea as his own, forward it to his Government, and proclaim as its own proposal the doctrine or plan which he had formulated. It is not recalled that the path suggested by Mr. Hughes was followed; but the circumstance does not detract from the generosity of his suggestion.

Entering the Department of State when he did, and at a time when the first World War was not terminated and when, moreover, this country was not prepared to accept the Treaty of Versailles, Secretary Hughes was faced with the enormous difficulty of endeavoring both to secure an adequate peace with the enemy and its satellites and of preserving its rights as against its co-belligerents who, in a variety of ways, sought to keep it within leash and to make of it preposterous demands.¹ This was a two-fold task involving great sagacity and persistence for its accomplishment. In the conclusion of the Treaty of Berlin, ratified by the President on October 21, 1921, and by Germany on November 2 of that year, and which was proclaimed by the President before the end of 1921, Secretary Hughes sought with success to gain for the United States what Germany had already agreed to yield for its benefit, as well as for that of its Allies in their common victory.

It is not here sought to marshal the several achievements of Mr. Hughes while he was Secretary of State. Still, attention is called to a few of them. He was confronted with the controversy with the Allied Powers in regard to German overseas possessions and with the matter of mandated territory. The Conference on the Limitation of Armament, 1921-1922, and in special relation China and the Far East, reestablished continuity of thought on, as well as the meaning of, the "Open Door in China." Incidentally, it may be observed that dangers of an Anglo-Japanese alliance permanently disappeared.

¹ In another place this writer has endeavored to show how Mr. Hughes succeeded in this task. See *American Secretaries of State and Their Diplomacy* (New York, 1929), Vol. X, pp. 225-230.

The problem of the recognition of the Soviet régime as the Government of Russia came to a head and was dealt with by Secretary Hughes without gloves. Lack of good faith of the Soviet régime and of its thought and purposes in relation to the United States made him adamant in declining recognition.²

Secretary Hughes was vitally interested in the proposal for the adherence of the United States to the Protocol establishing the Permanent Court of International Justice. On February 17, 1923, he recommended to the President that he request the Senate to advise and consent to the adhesion by the United States to the Protocol of December 16, 1920, accepting the adjoined Statute of the Court (but not the Optional Clause) upon four "conditions and understandings to be made a part of the instrument of adhesion," which he laid down.³ It will be recalled that Mr. Hughes was elected a judge of that tribunal in 1928, resigning two years later to become Chief Justice of the United States on the appointment of President Hoover.

In the course of attending international conferences in foreign lands Mr. Hughes occasionally spoke his heart, revealing with engaging frankness what took hold of it. At the meeting of the American Bar Association at London in 1924 he did so. Thus, on July 21st, at Westminster Hall, he said:

The fundamental conception which we especially cherish as our heritage is the right to law itself, not as the edict of arbitrary power, but as the law of a free people, springing from custom, responsive to their sense of justice, modified and enlarged by their free will to meet conscious needs, and sustained by authority which is itself subject to the law . . . the law of the land.⁴

Rarely, if ever in his career, did Mr. Hughes give utterance to a nobler thought, or one that more incisively expressed the common tradition of British and American lawyers.

During the same visit, at a dinner of the Pilgrims of Great Britain, Mr. Hughes spoke his mind on the matter of peace. He said in part:

There are certain things upon which you can count in your relations with the United States. You can count upon us as a non-aggressive

² See statement by him dated July 1, 1924, on the foreign relations of the United States (p. 45), where he said: "The essential fact is the existence of an organization in the United States created by, and completely subservient to, a foreign organization striving to overthrow the existing social and political order of this country. The subversive and pernicious activities of the American Communist Party and the Workers' Party and their subordinate or allied organs in the United States are activities resulting from and flowing out of the program elaborated for them by the Moscow group." (Quoted by this writer in *American Secretaries of State and Their Diplomacy* (New York, 1929), Vol. X, p. 287.)

³ Cong. Rec., 67th Cong., 4th Sess., Vol. LXIV, p. 4499.

⁴ American Bar Association Visit to England, Scotland and Ireland, 1924, Memorial Volume (1926), pp. 90-91.

power devoted to the interests of peace. We wish to promote friendship with all nations and among all nations. . . . Our people have a passion for peace; and you may count, as I have said, upon America's devotion to this cause, and upon our purpose to co-operate with you and others, in every way that is congenial to our institutions in the interests of peace.⁵

It is not difficult to appraise qualities of mind and soul that sustained Mr. Hughes as Secretary of State. They were obvious to all who worked with him. They sprang from a rare mental and spiritual endowment that produced a vast mental power that, however, left no trace of arrogance or ill-will in the possessor. The kindness and graciousness of the man, mingled with his innate sense of justice, inspired trust and confidence abroad and at home. But few wanted to cross swords with him or enjoyed the task when instructed to do so. Few whom he least trusted were aware of his opinion of them. The vigor and sanity of the successful lawyer and patient judge united to clothe Mr. Hughes with qualities that he needed and used for the sake of his country. As it turned out, the United States in its contacts with the outside world found itself blessed in Charles Evans Hughes with the strongest Secretary that it had known since the days of John Quincy Adams.

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⁵ Charles E. Hughes, *The Pathway of Peace, and Other Addresses* (1925), pp. 102-108.