Abolition of Extraterritoriality in China

(Continued from last issue)

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b. Turkey.

In 1856, Turkey brought up the question of the Capitulations at the Paris Peace Conference. A protocol was drawn up and signed by the Powers attending the Conference, embodying the wish (veu) that a conference should be convened at Constantinople, after the conclusion of the peace, to deliberate upon the matter. The promised conference, however, never came about.

At the beginning of the late European War, Germany and Austria-Hungary offered their consent to abolish the Capitulations as the price for Turkish assistance in the conflict. This was later confirmed by the treaty of 1917 with Germany and by that of 1918 with Austria-Hungary. Besides, Russia concluded a treaty with Turkey in 1921, which terminated Russia's extraterritorial rights in Turkey.

At the Conference of Lausanne, convened in the winter of 1922, a Commission was charged with the examination of questions relating to the regime of foreigners in Turkey. Under this Commission three Sub-Commissions were created, the first of which was to deal with the legal position of foreign persons in Turkey. From the very beginning, the discussion at the meetings of that Sub-Commission revealed a considerable divergence of views between the Turkish and Allied Delegations. What was most strenuously opposed by the Turkish Delegation was the proposal made by the Powers that foreign judges should be engaged by the Turkish Government. After repeated consultations, the Treaty of Peace was signed on July 24, 1923. Article 28 of the Treaty provided: “Each of the High Contracting Parties accepts, in so far as it is concerned, the complete abolition of the Capitulations in Turkey in every respect.” By a declaration annexed to the Treaty, the Turkish Government undertook to engage for a period of not less than five years a number of European legal counsellors, to be selected from a list prepared by the Permanent Court of International Justice and comprising jurists nationals of countries which did not take part in the World War. These counsellors were to serve as Turkish officials, under the Ministry of Justice in an advisory capacity and were not clothed with any judicial authority.

c. Siam

The method adopted by Siam in the restoration of her judicial autonomy was that of separate negotiation with each of the foreign Powers concerned. The story of Siam’s case is a long one and may be briefly summarized as follows:

Between 1883 and 1896 Great Britain concluded a series of treaties with Siam consenting to the establishment, within designated areas, of International Courts composed of Siamese judges for the trial of cases involving British subjects. According to these treaties, the British consuls in the stated areas were to exercise the right of evocation whenever it was deemed necessary. In 1904, France entered into a similar treaty with Siam, and in 1905 Denmark and Italy did likewise. In 1907, France concluded another treaty with Siam, which provided for the application of the above-mentioned arrangements to all the Asiatic subjects and proteges of France, and for the abolition of the international court regime after the promulgation and putting into effect of the Siamese Codes. In 1909, Great Britain agreed by a new treaty to extend the jurisdiction of the International Courts to “all British subjects in Siam registered at the British consulate before the date of the present treaty.” The transfer of the jurisdiction of the International Courts to the ordinary Siamese courts was also promised on the same conditions as were laid down by the French treaty of 1907. All other British subjects in Siam not belonging to the class mentioned above were subjected to the jurisdiction of the ordinary Siamese courts. The right of evocation was maintained but it should “cease to be exercised in all matters coming within the scope of codes of laws regularly promulgated.”

At the Paris Peace Conference of 1919, Siam prepared a Case for the revision of her treaty relations. One of the treaty obligations which Siam sought to get rid of was that of extraterritoriality. But all Siam succeeded in doing at Paris was to secure from the defeated Powers, i.e., Germany, Austria, and Hungary, the abrogation of their extraterritorial rights in Siam.

On December 16, 1920, the United States entered into a treaty with Siam, containing a protocol, article 1 of which announced that the system of extraterritorial jurisdiction established in Siam for citizens of the United States “shall absolutely cease and determine on the date of the exchange of ratifications” and that thereafter all citizens of the United States in Siam should be subject to the jurisdiction of the Siamese courts. However, until the promulgation and putting into force of all the Siamese codes, and for a period of five years thereafter, but no longer, the United States, through its diplomatic
and consular agents in Siam, whenever in its discretion it deemed proper so to do in the interests of justice, might evoke any case pending before any Siamese courts except the Supreme Court, in which an American citizen was defendant or accused.

The American treaty was the first of a series of treaties which have practically put an end to the regime of extraterritoriality in Siam. The Powers which followed in the footsteps of the United States were Japan (1924), Great Britain (1925), Denmark (1925), the Netherlands (1925), Portugal (1925), Spain (1925), Sweden (1925), Belgium (1926), Italy (1926), and Norway (1926). The importance of these treaties lies in their subjection of the nationals of the Powers in question to the jurisdiction of the ordinary Siamese courts without providing for the intermediary stage of the international court regime required by the old British and French treaties. The only guarantee the various Powers have deemed it necessary to impose on Siam is that of evocation, which can take place only in the rarest cases of miscarriage of justice and only for a limited period of time.

The French treaty of 1925, however, is somewhat different from the group of treaties reviewed above. According to this agreement, prior to the promulgation and putting into force of the Siamese codes the nationals of France should continue to be under the jurisdiction of the International Courts. After the promulgation and putting into force of the Siamese codes, the international court system should be abolished and cases involving nationals of France should be tried by the ordinary Siamese courts, but for a period of five years thereafter the French diplomatic and consular representatives should exercise the right of evocation. As to the Asiatic subjects and proteges of France, prior to the promulgation and putting into force of the Siamese codes, some of them are subjected to the jurisdiction of the International Courts and others to that of the ordinary Siamese courts; in the case of some the French diplomatic and consular representatives may exercise the right of evocation and in the case of others they may not. The details need not be given here.

In a word, the history of the passing of extraterritoriality in Siam teaches us one lesson, i.e., that the primary reason for the success of Siam lies in her judicial reform. On this fact too much emphasis cannot be laid.

What has just been said of Siam is equally applicable to Japan, Turkey and other countries where extraterritoriality has existed. China, being desirous of emulating the examples set by these countries, should profit by the precedents created by them.

It is true that the practice of extraterritorial jurisdiction is fraught with imperfections and abuses, and it is equally true that a fundamental objection to its continuance is its incompatibility with the principle of sovereignty. For this reason it is not to be wondered at that the National Government has made up its mind to effect the unconditional abolition of the extraterritorial regime. It is but the sacred duty of every patriotic Chinese citizen to give his wholehearted support to the cause of his country and to collaborate in bringing about its consummation. The Powers, on the other hand, are beholden to give every sympathetic consideration to the conscientious efforts made by a striving people toward the restoration of their rightful attributes of sovereignty.

However, in all fairness to the legitimate expectations of our foreign friends, it is not to be overlooked that a certain degree of assurance commensurate with the sovereignty of China should be accorded to their lives and property in this country. No matter how much we may frown upon the extravagant and incessant demands of the foreigner in China, we are certain that he is entitled to such a measure of protection as is commonly conceded by international usage. The recent Mandate issued by the National Government exhorting against the violation of individual life, liberty and property cannot but be heralded as a step in advance in the legal reform of China, and it is hoped that other moves like it will be made by the National Government in the immediate future.

For the present we venture to suggest the following measures which, it is believed, will help to cause the abolition of extraterritoriality considerably, if they are conscientiously carried out. It is needless to add that none of these measures are calculated to derogate from China's sovereignty.

1) Promulgation of the Civil and Commercial Codes.

In the new treaties concluded by the National Government with Belgium, Italy, Spain, Denmark and Portugal, there is a declaration to the effect that China shall promulgate the Civil and Commercial Codes on or before January 1, 1930. The General Principles of the Civil Code have already been completed by the Legislative Yuan and the other parts of the same Code as well as the Commercial Code are being prepared. It is hoped that the two Codes will be completed and promulgated on the date specified in the above-mentioned declaration. The consummation of this work will not only enhance the confidence of the foreigners in the laws of China but will furnish undeniable evidence of the good faith of our Government in living up to its treaty commitments, entailing an obligation on the part of the foreign Governments to reciprocate.

(2) Promulgation of a Law Governing the Punishment of Military or Other Unlawful Interference with the Administration of Justice.

One of the boons of modern constitutional government is the principle of judicial independence, which, to be very frank, is not found at all in China. Flagrant cases of miscarriage of justice have been common, and almost invariably these cases are attributable to military
interference with the administration of justice. Albeit the foreign Powers are regarding with favour the modern courts of China, they entertain serious objections to the Chinese judicial system when they think of the lack of independence on the part of the judiciary. In the report rendered by the Commission on Extraterritoriality in 1926, the very first commendation made by the Commission was that “the administration of justice with respect to the civilian population in China must be entrusted to a judiciary which shall be effectively protected against any unwarranted interference by the executive or other branches of the Government, whether civil or military.” In order to avert the suspicions of the foreigners, therefore, it is necessary to lay it down that no one except the judiciary has the right to assume jurisdiction in legal cases. To this end, a law should be drawn up by the Legislative Yuan providing for the punishment of all military, police, or other unlawful interference with the administration of justice, so that all legal proceedings may take place in accordance with the regular procedure. In the meantime, foreigners who are nationals of non-extraterritorial Powers should be placed under the jurisdiction of the regular courts. In this way, the fears and misgivings of the foreigners will soon vanish, and the Chinese judicial machinery will command increasing respect and confidence on the part of the foreigners.

(3) Guarantee of Judicial Appropriation.

Because of the lack of security in their payment, judicial officers in China have found it difficult to maintain even a decent living. In order to create absolute independence among these officials, it is necessary to provide them with secure pay. A definite appropriation should be made by the competent authorities for judicial expenditure, and the money should preferably be remitted by the maritime Customs from its receipts, so that payment may be guaranteed and the administration of justice may thus be made more efficient than heretofore.

(4) Extension of New Courts and Prisons.

Foreigners are as a whole satisfied with the new courts and prisons in China. When extraterritoriality is abolished, the need of increasing the number of these new courts and prisons will undoubtedly be felt. So, in the localities where they are still lacking, they should be established immediately.

(5) Engagement of Foreign Legal Counsellors.

As we have seen, the Turkish treaty provided for the employment of foreign legal counsellors for a number of years. Such a measure is by no means derogatory of territorial sovereignty and may be adopted by China, in order to show the foreign Powers the extent to which the Chinese Government is willing to profit by the experience of China’s foreign friends. For the present it would be sufficient for China to select from among the nationals of the countries which have given up their extraterritoriality a number of jurists and to invite them to be our legal counsellors. Their functions should be merely advisory in nature, and outside of expressing their opinions in regard to cases involving foreigners, these legal counsellors should not be allowed to participate in the actual administration of justice. If China will voluntarily make this concession and not wait until she is bound by treaty to do so, it will appear to be an act of such magnanimity that it will undoubtedly hasten the restoration of China’s judicial autonomy.

Forests, Silt and the Flood Problem

(Continued from last issue)

By D. Y. Lin (凌道揚)

Take first of all the Yellow River. This river, as we all know, is a unique river not only because of the enormous damage it has done but because of the strange migratory action of its channel or channels. It is recorded that the river in historic times has occupied as many as six channels and discharged into the sea at points over 350 miles apart. It was only during the 5th year of Hsien Feng or about 75 years ago that it switched its channel from Tung Wah Hsiang, Honan, and Tsing Kiang Pu, Kiangsu, to North of Tsinan, Shantung, and it will not be long before the whole river migrates again.

The migratory action of this great river of China is caused mainly by the great quantities of silt which it carries. As the river flows across the great plain with a slope insufficient to maintain a current swift enough, it is forced to deposit part of the silt held in suspension, along its way, thus gradually filling it up. The people living along the river build embankments along its sides in order to stop overflow. So the more the river is filled up, the higher embankments will be built and the result will be that the bed is much higher than the surrounding country, and when this unnatural stage is reached, the river simply breaks the embankments as it is doing now and, as time goes on, finds another course leading to the sea.

What has been said for the Yellow River may be repeated for Yungting Ho (永定河), Pei-yun Ho (北溝河) and in fact all other rivers in China especially those running through the Great Plain. The breaking of embankments is not so much the result of a superabundance of water as that of the choking up of the river channels by silt. We may say without fear of contradiction that as long as the silt problem remains unsolved, the embankments built to prevent floods can only be of a temporary value and floods are sure to occur frequently and more severely as time goes on; and to ameliorate such a condition, sufficient outlet of rain water to the sea must be provided for on the one hand, and the prevention of excessive silt from being carried down must be effected on the other.