

THE SETTLEMENT OF THE NANKING INCIDENT

The settlement of the Nanking Incident which was effected by the simultaneous exchange on April 2, 1928, of three sets of diplomatic notes signed on March 30th, by United States Minister MacMurray and General Hwang Fu, Minister of Foreign Affairs of the Nationalist Government of China, reflects credit both on the governments concerned and upon their diplomatic representatives. The settlement is an example of what can be accomplished by technical, diplomatic skill when inspired by good feeling and controlled and guided by that *rara avis* in human affairs,—ordinary common sense.

The Nanking incident occurred on March 24, 1927, in the midst of the revolutionary convulsion which has been sweeping over China. The incident itself and the immediate diplomatic steps to which it led were described by President Coolidge in his address of April 25, 1927, at the dinner of the United Press in New York City, in the following restrained language:

One of our citizens was murdered, another was wounded, our consulate was violated, and when the house in which our people had taken refuge was surrounded and they were actually under fire it became necessary for one of our ships, and one of the British ships in the harbor, to lay down a barrage, to drive away the soldiers and the mob who were making the attack and to enable our citizens to reach a place of safety on our ships in the river. We presented with the other powers who had suffered like attacks identic notes of protest, to which a reply has been made, which although conciliatory in tone and to a certain degree responsive, leaves the final disposition of the issue a matter for further consideration by our Government.¹

The "identic" (not joint) "notes of protest" of April 11, 1927, to which President Coolidge refers, presented the following terms:

1. Adequate punishment of the commanders of the troops responsible for the murders, personal injuries and indignities and material damage done as also of all persons found to be implicated.
2. Apology in writing by the Commander-in-Chief of the Nationalist army including an express written undertaking to refrain from all forms of violence and agitation against foreign lives and property.
3. Complete reparation for personal injuries and material damage done.

The United States was disinclined to proceed to extremes when the reply of the Nationalist Government was not entirely satisfactory, and there ensued separate negotiations for settlement on the part of the various Powers whose nationals had suffered injury, negotiations which have now been successfully concluded on the part of the United States.

1. The first exchange of notes effected by Minister MacMurray and

¹ For a detailed account of the events at Nanking on March 23 and 24, 1927, see report of Consul John K. Davis to the Secretary of State, dated March 28, 1927, made public in press notice of the Department on May 7, 1927.

General Hwang Fu relates to the Nanking incident proper. General Hwang's note is as follows:

With reference to the Nanking incident which took place on the 24th of March last year, the Minister for Foreign Affairs of the Nationalist Government has the honor to inform the American Minister that, animated by a desire to promote the most friendly feelings happily subsisting between the American and Chinese peoples, the Nationalist Government are prepared to bring about an immediate settlement of the case, along the lines already agreed upon as a result of the discussions between us beginning from the 26th February of this year.

In the name of the Nationalist Government, the Minister for Foreign Affairs has the honor to convey in the sincerest manner to the Government of the United States of America their profound regret at the indignities to the American flag and to official representatives of that Government, the loss of property sustained by the American Consulate, and the personal injuries and material damages done to the American residents. Although it has been found, after investigation of the incident, that it was entirely instigated by the Communists prior to the establishment of the Nationalist Government at Nanking, the Nationalist Government nevertheless accepts the responsibility therefor.

The Nationalist Government have in pursuance of their established policy, repeatedly issued orders to the civil and military authorities for the continuous and effective protection of the lives and property of American residents in China.

With the extermination of the Communists and their evil influences which tended to impair the friendly relations between the Chinese and American peoples, the Nationalist Government feel confident that the task of protecting foreigners will henceforth be rendered easier; and the Nationalist Government undertake specifically that there will be no similar violence or agitation against American lives or legitimate interests.

In this connection, the Minister for Foreign Affairs has the pleasure to add that the troops of the particular division which took part in the unfortunate incident, at the instigation of the Communists, have been disbanded. The Nationalist Government have in addition taken effective steps for the punishment of the soldiers and other persons implicated.

In accordance with the well accepted principles of international law, the Nationalist Government undertake to make compensation in full for all personal injuries and material damages done to the American Consulate and to its officials and to American residents and their property at Nanking.

The Nationalist Government propose that for this purpose there be a Sino-American Joint Commission to verify the actual injuries and damages suffered by the American residents at the hands of the Chinese concerned, and to assess the amount of compensation due in each case.

Minister MacMurray, after acknowledging and quoting General Hwang's note in full, accepts the terms offered in the following language:

In the full realization of the inherent justice and honor of the Chinese people when not affected by the incitations of subversive influences,

and with a deep appreciation of the sorrow and humiliation caused to all elements of that people by the Nanking incident, and believing that the earnest given as to the punishment of those guilty of the incident will be completely fulfilled at the earliest opportunity—particularly as regards Liu Tsu Han, who was personally responsible for the incident—the American Minister accepts in behalf of his Government the terms set forth in the note from the Minister for Foreign Affairs in definite settlement of the questions arising out of that incident.

Confident of the spirit of sincerity in which the present settlement has been made, the American Government looks to the loyal fulfillment of the said terms of settlement, as affording a measure of the good faith and good will with which it may anticipate being met, by the Nanking authorities, in other phases of the relationships between the American and the Chinese peoples.

A perusal of these notes shows that Minister MacMurray obtained a substantial compliance with the terms of the identic notes of April 11th.

First, as to punishment: It is understood that at the time of the exchange certain of the minor Chinese officers implicated in the outrage of March 24, 1927, had already been executed and that the arrest and punishment of Liu Tsu Han, to whom Minister MacMurray refers, had already been ordered. Liu Tsu Han was the head of the Propaganda Bureau of General Cheng Chien's Army (the troops involved), and thus the man most directly responsible for stirring up the hatred of foreigners which resulted in the outrages at Nanking.² To be sure, poetic justice would also have involved disciplinary action against General Cheng Chien himself, who, although he did not arrive in Nanking until the following day, was nevertheless legally and perhaps morally responsible for the misconduct of his troops, but such punishment was as a practical matter obviously beyond the power of the Nationalist Government at the moment, and complete poetic justice in the matter of punishment of those thought to be guilty was not even attained by the very drastic combined action of the Powers in Boxer days.

Second: As to the matter of an apology and an undertaking for the future, the formal assumption of responsibility for the outrages by the Nationalist Minister of Foreign Affairs, his expression of "profound regret" therefor, and his assurance that "the Nationalist Government undertake specifically that there will be no similar violence" seems entirely adequate.

Third: The identic notes of April 11, 1927, called for "complete reparation," and General Hwang Fu promises just that, namely "compensation in full." The demand of April 11th was for compensatory, not punitive, damages. The situation in no wise approached conditions in Boxer days when the Chinese Government itself was *particeps criminis* and, as is well known, the United States by its first remission of the Boxer Indemnity in 1908, repudiated the idea of punitive damages even in that case.

The identic notes of April 11th do not specify any method of assessing

² Peking Leader, April 5th; see also Chinese Social and Political Science Review, January, 1928, p. 147 *et seq.*

damages. The provision in the present exchanges for a "Sino-American Joint Commission" to pass upon the question of damages is correct in principle and there is no reason to believe that it will not be satisfactory in practice.

2. General Hwang "made up his record" on the bombardment question in the following concise language:

Referring to the notes exchanged this day on the subject of the settlement of the questions arising out of the Nanking incident of March 24, 1927, the Minister for Foreign Affairs of the Nationalist Government has the honor to invite the attention of the American Minister to the fact that on that date fire was opened upon Socony Hill, at Nanking, by the American war vessels, *Noa* and *Preston*, then lying in port. In view of this fact, the Nationalist Government earnestly hope that the American Government will express regret at this action.

To this Mr. MacMurray replied:

The American Minister has the honor to acknowledge the receipt of a note of today's date from the Minister for Foreign Affairs, in which reference was made to the fact that on March 24, 1927, the American war vessels, *Noa* and *Preston*, then lying in port, opened fire upon Standard Oil Company hill at Nanking, and in which the hope was expressed that the American Government would indicate their regret at this action. In reply, the American Minister has to point out that the firing referred to was in fact a protective barrage, strictly confined to the immediate neighborhood of the house in which the American Consul and his family and staff, together with many others, had been driven to seek refuge from the assaults of an unrestrained soldiery: and not only did it provide the only conceivable means by which the lives of this party were saved from the danger that immediately threatened them, but it also made possible the evacuation of the other Americans residing at Nanking, who were in actual peril of their lives. The American Government therefore feels that its naval vessels had no alternative to the action taken, however deeply it deplores that circumstances beyond its control should have necessitated the adoption of such measures for the protection of the lives of its citizens at Nanking.

Obviously the United States could not express regret for action necessarily taken to protect the lives and property of its citizens, but clearly there can be no real objection to explaining the necessity for that action and expressing regret that it was necessary. It is argued that this explanation will be misinterpreted on the principle *qui s'excuse s'accuse*. Possibly; but was not the necessary action of the American warships also being misinterpreted as aggressive? It is submitted that the action taken was not only expedient but right, and in the long run will lead to understanding rather than misunderstanding.

3. As respects treaty revision, General Hwang Fu wrote as follows:

Referring to the notes exchanged this day on the subject of the settlement of the questions arising out of the Nanking incident of March 24, 1927, the Minister for Foreign Affairs of the Nationalist

Government has the honor to express the hope that a new epoch will begin in the diplomatic relations between China and the United States; and to suggest that further steps may be taken for the revision of the existing treaties and the readjustment of outstanding questions on the basis of equality and mutual respect for territorial sovereignty.

And Minister MacMurray replied:

Although the questions of treaty revision can scarcely be considered germane to that of amends to the American Government and its nationals for the Nanking incident, the American Minister is not averse to setting forth at this time what he has already made known in that regard to the Minister for Foreign Affairs in conversations with him last month.

It is unnecessary to recall the traditional friendship existing between the United States and China. As is manifest alike from the course of action consistently pursued by the American Government and from the statement of policy made by the Secretary of State on January 27, 1927, the Government and the people of the United States are in full sympathy with the desire of the Chinese people to develop a sound national life of their own and to realize their aspirations for a sovereignty so far as possible unrestricted by obligations of an exceptional character. With that in view, the American Government entertains the hope that the remedying of the conditions which necessitated the incorporation of such provisions in the earlier treaties may from time to time afford opportunities for the revision, in due form and by mutual consent, of such treaty stipulations as may have become unnecessary or inappropriate.

To that end, the American Government looks forward to the hope that there may be developed an administration so far representative of the Chinese people, and so far exercising real authority, as to be capable of assuring the actual fulfillment in good faith of any obligations such as China would of necessity have for its part to undertake incidentally to the desired readjustment of treaty relations.³

In pointing out in his reply that treaty revision "can scarcely be considered germane" to "amends" for the Nanking incident, Minister MacMurray himself makes the only criticism which has been suggested of this exchange. But if the Nationalist Minister of Foreign Affairs wished to ask an irrelevant question to which there was a plain answer which had already been given, was there any sound objection to repeating that answer? It is submitted that there was not, but on the contrary there was everything to gain and nothing to lose by once more calling attention to the statement which had already been made by the Secretary of State on January 27, 1927.

The settlement as a whole takes into account not only the interests but also the sensibilities of both peoples concerned. It is a good omen for the successful negotiation of "equal" treaties.

This comment would not be complete without some mention of the reac-

³ The texts of the notes in this series, which were signed on March 30, 1928, and exchanged at Shanghai on April 2, 1928, were made public by the Department of State in a press notice dated April 3, 1928.

tion to the American-Chinese settlement of the Nanking incident of public opinion in the Chinese Treaty Ports as reflected in the local press representing the various foreign nationalities. For Treaty Port foreign public opinion is one of the elements which must and should be considered in every international complication between any of the Western Powers and China. It will be recalled that the other countries involved in the Nanking incident were also pursuing their separate negotiations for settlement with the Chinese authorities. So far none of these negotiations had resulted successfully, and the British negotiations, which seemed to be prospering, were broken off, temporarily at least, shortly before Minister MacMurray reached his agreement with General Hwang Fu. Under these circumstances it was inevitable that the Treaty Port press representing other nationalities than the United States should ask in one form or another the question frankly put by one British newspaper in the words "How has Mr. MacMurray succeeded where Sir Miles Lampson has failed?"⁴ And it was to be expected that there should be a disposition at first to view the American settlement with "surprise tinged with regret,"⁵ and to accuse the United States of breaking the solidarity of the Western Powers and of complicity in "a return to the old policy of playing off one nation against another."⁶

Naturally, the exchanges of notes in regard to the bombardment and the proposed revision of unequal treaties came in for most of the criticism, particularly before the exact texts of these notes were made public, the crafty supposition being that the United States must have bought its "diplomatic victory" by an unworthy surrender on these points. The publication of the actual texts of these notes rendered much of this criticism ridiculous, and the *South China Morning Post* of April 5th (British) is fair enough to say in the light of the text of Mr. MacMurray's note *re* the bombardment, "If that means no more than it says it is an eminently proper reply," and as to the note *re* treaty revision it frankly confesses that "superficially at least the American attitude is the same as the British." In other words, by making one "eminently proper" statement and another statement which is sound as tested by the attitude of the British Government itself, Mr. MacMurray had obtained a satisfactory settlement.

The *North China Daily News* (British) led the way (April 2nd) in attributing the course of the United States to the approaching Presidential election, and this found a frequent echo in other local British papers which sought to blame the "politicians at Washington" for tying Mr. MacMurray's hands.⁷ This view was promptly challenged by the local American press,⁸ which loyally supported the terms of the settlement.⁹

⁴ *South China Morning Post*, April 3, 1928.

⁵ *China Mail*, April 3, 1928.

⁶ *Hong Kong Telegraph*, April 4, 1928.

⁷ *China Mail*, April 3rd; *South China Morning Post*, April 3rd; *Central China Post*, April 4th; *Hong Kong Telegraph*, April 4th; *North China Herald*, April 7th.

⁸ *North China Star*, April 4th.

⁹ *Peking Leader*, April 5th; *Nanking Herald*, April 10th; *China Weekly Review*, April 7th.

The Japanese-controlled *North China Standard* of Peking (April 5th) goes so far as to remark that "China's 'face-saving' proclivities" had descended to "simian antics" and that the United States had been a party to this "puerile practice." It characterized the Chinese note of inquiry about the Nanking bombardment as "effrontery," maintained that it should have been "flung back in the teeth of the maker," and criticised the exchange of notes about treaty revision as "meaningless." Even the representative *Peking and Tientsin Times* (British) deems it necessary to acquit America of playing a "dirty trick," apparently, largely on the ground that the other "aggrieved powers have not coöperated whole-heartedly at any time since the outrages occurred," and that the "British Government by its December, 1926, Memorandum and its proposals of January, 1927, cut the ground from under the feet of other powers" and "did much to undermine international solidarity."

This tempest in the International Teapot of the Treaty Ports is not only interesting but characteristic. The state of mind which it represents is one of the elements which make a just and reasonable solution of the problems arising between China and the Western Powers so difficult, for the repercussion of local foreign sentiment in China is naturally and legitimately felt in every capital of the world. And the holding of a just balance between the legitimate interests, sentiments and demands of "the man on the spot," the legitimate aspirations of the Chinese people, and the true interests of the Western Powers and the world at large, is a task of peculiar delicacy. In this instance the balance has been held in a steady hand.

We have protected American life and property and secured the promise of adequate reparation for wrongs done to American citizens without unnecessarily humiliating a great people. We have coöperated in joint concerns with the other Western Powers without going to the point of making them the keepers of our national interests or our national conscience.

WILLIAM C. DENNIS.

THE RULE OF UNANIMITY AND THE FIFTH RESERVATION TO AMERICAN
ADHERENCE TO THE PERMANENT COURT

Sir John Fischer Williams, in his illuminating article concerning "The League of Nations and Unanimity," contributed to this JOURNAL¹ has stated that "unanimity is the necessary rule for international matters in this sense that no independent state can be compelled without its own consent to accept obligations," though he admits that the League of Nations "has in its own limited sphere broken with and passed beyond the principle of unanimity." It is now quite evident that the United States Senate, in its fifth reservation to the Protocol of Signature of the Statute of the Permanent Court of International Justice, has raised problems of fundamental signifi-

¹ July, 1925, p. 475.