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The Progress of the Permanent Court of International Justice

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THE PROGRESS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

RARELY if ever in the growth and development of International Law has its progress been more marked than in the last decade. It can no longer be said that the administration of international law is something known and understood only by Jurists for today the widest interest has been aroused in the subject of outlawing war, the judicial determination of international disputes and the pacific settlement of disputes between civilized nations.

Modern international law is said to have had its beginning in the seventeenth century. In 1625 Hugo Grotius, a Dutch jurist and statesman, known as the *Father of International Law,* published his volume *De Jure Belli ac Paces.* Grotius had been in the foreign service of Sweden and had actually served as Swedish Ambassador to the French Court from 1635 to 1645, during a period of enforced exile from his native Holland.[1] A brilliant jurist as well as an able statesman, he did much to stimulate the desire for a code of ethics to govern the nations of his time in their relations with each other.

In 1648 the Thirty Years War was brought to a close. The signing of the Treaty of Peace at Westphalia was the beginning of a new order of diplomatic relations in Europe. The war had been tense and bitter and all Europe had been devastated and ravaged. One can well understand that with such conditions existing, the idea of establishing rules of conduct between the nations for the regulation of their diplomatic intercourse was especially essential if the nations of Europe, as then constituted, were to survive. A code of diplomatic procedure and law then began to develop. Customs and usages in foreign affairs gradually became established and came to be known as international law. In Anglo-Saxon jurisdictions, at least, these early customs and usages are considered as a part of the common law.

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[1] Reeves, *Grotius, De Jure Belle ac Paces, A Bibliographical Account* (April, 1925) 19 AM. J. INT. LAW 251.

From time to time the great powers have called conferences to settle international disputes, and to determine just what the international practice was on a given point. This has been the method of settling international differences for centuries, and will continue to be the *modus operandi* until the day comes when differences on matters international in scope will be passed upon by a court having compulsory jurisdiction. The Paris Conference of 1856; the Berlin Conference of 1878, called at the instance of Bismarck; the Algeciras Conference of 1905; the Washington Conference for the Limitation of Armaments, called in 1921 by President Harding; the Locarno Conference of 1925; the Armament Conference, called by President Coolidge, and the Kellogg Pact well illustrate the international practices referred to.

David Dudley Field gave expression to the idea of many thinking people when he published his *Outline of an International Code* in 1872. From then on there has been a growing realization, upon the part of jurists and statesmen, that if an International Court, competent to act, could be established, many troublesome questions arising under treaties and international law could be amicably settled.

The idea of such a tribunal has long been sponsored by the leaders of the American Bar and the Government of the United States. In 1897 President McKinley referred in his inaugural address to the desire to found such a tribunal, and then stated that difficulties between nations should be settled by judicial methods rather than by force of arms.

The Permanent Court of Arbitration.

At the first Hague Conference in 1899, the American delegation was instructed by President McKinley and Secretary Hay to act upon "the long-continued and widespread interest among the people of the United States in the establishment of an International Court, and to propose a plan for an International Tribunal to which nations might submit all questions of disagreement between them, excepting such as may relate to or involve their political independence or territorial integrity." [2] Serious difficulties were encountered

[2] See M. O. Hudson, The Permanent Court of International Justice and the Question of American Participation (Harv. Univ. Press, 1925).

at the first Hague Conference when it sought to devise a method for the selection of Judges. Curiously enough the opposition to formulate any definite plan came from representatives of the German Empire. A convention for the pacific settlement of disputes was drafted and the Permanent Court of Arbitration was established.[3] This Conference did much to develop and increase the influence of the idea to adjudicate international disputes. To the Court of Arbitration, established under the Convention in 1900, President Roosevelt in 1902 submitted the *Pius Fund* case. This dispute between the United States and Mexico was the first case submitted to the Court.

This Permanent Court of Arbitration, however, was not in any true sense a Court.[4] It was merely a list of jurists numbering about one hundred and thirty, available to hear parties engaged in an international dispute. The arbitrators were chosen from this especially prepared list, and those selected passed upon such matters as were submitted to them for consideration. It thus lacked the fundamental characteristics of a judicial body and never fulfilled the hopes of the sponsors of the Conference.

This growing desire on the part of jurists and statesmen to increase the influence and supplement the work of the First Hague Conference paved the way for the Second Hague Conference. The American delegation to this conference was instructed by President Roosevelt and Secretary Root, to urge the necessity of creating "a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries and who will devote their entire time to the trial and decision of international cases by judicial methods and under a sense of judicial responsibility." The Conference met in 1907 at The Hague and then agreed to a general plan for the creation of a Permanent Court of Arbitration. The British, German and American delegations sought to establish a court with limited jurisdiction, but their efforts failed because an agreement could not be reached as to the method of selecting judges of the Court

[3] See 2 SCOTT, THE HAGUE PEACE CONFERENCE 24.
[4] WILSON, HAGUE CASE (1915).

that was to be created and so little, if anything, was accomplished at that Conference.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

At the conclusion of the World War a treaty of peace between Germany and the Allied and Associated Powers was negotiated at Paris, signed at Versailles on June 28, 1919. This treaty was formally ratified January 10, 1920. Article 14 of Part 1 of the Versailles Treaty provided as follows:

> "The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

The Council of the League of Nations lost no time in carrying out this mandate. At its second session in February, 1920, the Council invited a group of distinguished jurists to frame a plan for a world court.[5] The committee met and in due course made a report to the Assembly which was finally adopted on December 13, 1920. A protocol for signature was opened on December 16, 1920, and the project for the Court was approved by the Council and Assembly of the League of Nations shortly thereafter.

The Court is composed of fifteen judges and four deputy judges, who are elected for a term of nine years.[6] A judge can be removed only by the unanimous consent of the other members of the Court.[7] A new court is elected every nine years and all members are eligible for re-election.[8] The duties of the judges are either judicial or administrative.[9]

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[5] Russell D. Greene, *America and the World Court* (May 1926) THE BRIEF OF PHI DELTA PHI.
[6] Art. 13.
[7] Art. 18.
[8] Art. 13.
[9] Art. 16.

While the Statute provides for the annual session of the Court to open on June 15th and to continue until the business of the Court is completed, extraordinary sessions may be called by the President of the Court from time to time.[10] A preliminary session was held in 1922 to draw up the rules of the Court.[11] The Court remains in session until its *agenda* is exhausted.[12]

A Committee of Jurists met on March 11, 1929 to consider the revision of the Statute[13] and many important changes were recommended. These changes were embodied in a Protocol of Revision of the Statute which was opened for signature on September 14, 1929,[14] but this Protocol of Revision has not yet gone into effect. This amended Statute increased the number of judges to fifteen, while the office of deputy judge was abolished. The Court will remain in session for practically the entire year.[15]

The Court, contemplated under Article XIV of the Covenant, was to be "competent to hear and determine any dispute of an international character which the parties thereto submit to it." In working out the Protocol that included the Statute of the Court this broad principle was carefully adhered to.

The Statute provides for two classes of jurisdiction. The Court is "open to the Members of the League and to states mentioned in the Annex to the Covenant." In Article XXXIV of the Covenant of the League of Nations, it is stated, "Only States or Members of the League of Nations can be parties in cases before the Court."

The second paragraph of Article XXXV of the Covenant of the League of Nations grants to the Council, "subject to the special provisions contained in the treaties in force," the authority to lay down the conditions under which the Court shall be open to other states than those mentioned. This was covered by a resolution of May 17, 1922, which provided that the Court is to be open if "such State shall previously have

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[10] Art. 23.
[11] O. HUDSON, *op. cit. supra* note 2 at 11.
[12] Art. 23.
[13] 2 L. OF N. PUB. (1929).
[14] Official text printed in L. OF N. PUB. (1929) pp. 1843 *et seq.*
[15] Art. 23.

deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Covenant of the League of Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to carry out in full good faith the decision or decisions of the Court and not to resort to war against a state complying therewith."

Article XXXVI of the Covenant of the League of Nations provides that "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force."

The following States have accepted the Court Statute: [16]

States	*Date of Signature*	*Ratification*
Albania	June 18, 1921	July 13, 1921
Australia	June 16, 1921	Aug. 4, 1921
Austria	June 18, 1921	July 23, 1921
Belgium	May 9, 1921	Aug. 29, 1921
Bolivia	June 20, 1921	
Brazil	Before Feb. 25, 1921	Nov. 1, 1921
Bulgaria	April 10, 1921	Aug. 12, 1921
Canada	March 30, 1921	Aug. 4, 1921
Chile	Sept. 7, 1921	July 20, 1928
China	Before Feb. 25, 1921	May 13, 1922
Colombia	Before Feb. 25, 1921	
Costa Rica	Before Jan. 28, 1921	
Cuba	Before Feb. 25, 1921	Jan. 12, 1922
Czecho-Slovakia	May 19, 1921	Sept. 2, 1921
Denmark	Before Jan. 28, 1921	June 13, 1921
Dominican Republic	Sept. 30, 1924	
Estonia	Oct. 18, 1921	May 2, 1923
Ethiopia	July 12, 1926	July 16, 1926
Finland	June 28, 1921	April 6, 1922
France	Before Feb. 25, 1921	Aug. 7, 1921
Germany	Dec. 10, 1926	March 11, 1927
Great Britain	Before Feb. 25, 1921	Aug. 4, 1921
Greece	Before Feb. 25, 1921	Oct. 3, 1921
Guatemala	Dec. 17, 1926	

[16] This data was furnished through the courtesy of Charles B. Hagan, M.A., University of Virginia, graduate student in International Law at Harvard University, 1932.

States	*Date of Signature*	*Ratification*
Haiti	Before Sept. 5, 1921	Sept. 7, 1921
Hungary	Aug. 1, 1923	Nov. 20, 1925
India	Before Feb. 25, 1921	Aug. 4, 1921
Irish Free State		From Aug. 21, 1926
Italy	Before Feb. 25, 1921	June 20, 1921
Japan	Before Feb. 25, 1921	Nov. 16, 1921
Latvia	Sept. 11, 1923	Feb. 12, 1924
Liberia	Before Sept. 1, 1921	
Lithuania	Oct. 5, 1921	May 16, 1922
Luxemburg	Before Feb. 25, 1921	Sept. 15, 1930
Netherlands	Before Feb. 25, 1921	Aug. 6, 1921
New Zealand	Before Feb. 25, 1921	Aug. 4, 1921
Nicaragua	Sept. 14, 1929	
Norway	Before Feb. 25, 1921	Aug. 20, 1921
Panama	Before Feb. 25, 1921	June 14, 1929
Paraguay	Before Feb. 25, 1921	
Persia	April 4, 1921	April 25, 1931
Peru	Sept. 14, 1929	
Poland	Before Feb. 25, 1921	Aug. 26, 1921
Portugal	Before Jan. 28, 1921	Oct. 8, 1921
Rumania	April 15, 1921	Aug. 8, 1921
Salvador	Before Jan. 28, 1921	Aug. 29, 1930
Siam	Before Feb. 25, 1921	Feb. 27, 1922
South Africa	Before Feb. 25, 1921	Aug. 4, 1921
Spain	April 6, 1921	Aug. 30, 1921
Sweden	Before Feb. 21, 1921	Feb. 21, 1921
Switzerland	Before Jan. 28, 1921	July 25, 1921
United States of America	Dec. 9, 1929	
Uruguay	Before Jan. 28, 1921	Sept. 27, 1921
Venezuela	Before Feb. 25, 1921	Dec. 2, 1921
Jugo-Slavia	May 30, 1921	Aug. 12, 1921

The following States have accepted the Optional Clause:

States	*Effective Until*
Albania	Sept. 17, 1935
Australia	Aug. 18, 1940
Austria	March 13, 1937
Belgium	March 10, 1941
Brazil	Feb. 5, 1935
Bulgaria	Indefinite
Canada	July 28, 1940

States	*Effective Until*
Denmark	June 13, 1936
Estonia	May 2, 1938
Finland	April 6, 1937
France	April 25, 1936
Germany	Feb. 28, 1933
Great Britain	Feb. 5, 1940
Greece	Sept. 12, 1934
Haiti	Indefinite
Hungary	Aug. 13, 1934
India	Feb. 5, 1940
Irish Free State	July 11, 1950
Italy	Sept. 7, 1936
Latvia	Feb. 26, 1935
Lithuania	Jan. 14, 1935
Luxemburg	Sept. 15, 1935
Netherlands	Aug. 6, 1936
New Zealand	March 29, 1940
Norway	Oct. 3, 1936
Panama	Indefinite
Portugal	Indefinite
Rumania	June 9, 1936
Salvador	Indefinite
Siam	May 7, 1940
South Africa	April 7, 1940
Spain	Sept. 21, 1938
Sweden	Aug. 16, 1936
Switzerland	July 25, 1936
Uruguay	Indefinite
Jugo-Slavia	Nov. 24, 1935

The following States signed the Optional Clause but have not ratified it:

Colombia
Costa Rica
Czecho-Slovakia
Dominican Republic
Guatemala
Liberia
Nicaragua
Persia
Peru
Poland

Renewals:

Austria
Denmark
Estonia
Finland
Lithuania
Luxemburg
Netherlands
Norway
Sweden
Switzerland

Article XXX of the Covenant of the League of Nations further declares that, "The Members of the League of Nations and the states mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later date, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or state accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) The interpretation of a Treaty;
(b) Any question of International Law;
(c) The existence of any fact which, if established, would constitute a breach of any international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation."

All questions of jurisdiction are settled by the decision of the Court itself.

The Court in its deliberations applies international law derived from the following sources:

(1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
(2) International custom, as evidence of a general practice accepted as law;

(3) The general principles of law recognized by civilized nations;

(4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The first judgment of the Court was rendered in 1923, and since then final decisions have been given in cases involving Minorities, Mandates and the interpretation of peace treaties.

JUDGMENTS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

1. (August 17, 1923) First Judgment—Case of the S.S. *Wimbledon,* involved the freedom of the Kiel Canal.

2. (August 30, 1924) Second Judgment—The Mavrommatis Palestine Concessions.

3. (September 12, 1924) Third Judgment—Interpretation of the Treaty of Neuilly, Article 179, Annex, Paragraph 4.

4. (March 26, 1925) Fourth Judgment—Interpretation of the Court's Third Judgment.

5. (March 26, 1925) Fifth Judgment—The Mavrommatis Jerusalem Concessions.

6. (August 25, 1925) Sixth Judgment—German Interests in Polish Upper Silesia.

7. (May 25, 1926) Seventh Judgment—German Interests in Polish Upper Silesia. (The merits.)

8. (July 26, 1927) Preliminary objections to the jurisdiction of the Court to determine the existence and extent of Polish obligations for injuries incident to seizure of the nitrate factories.

9. The right of Turkey to punish foreigners for acts done in a collision on the high seas.

10. (October 10, 1927) Preliminary objections to jurisdiction in regard to concessions in Palestine.

11. (December 16, 1927) Interpretation of Judgment No. 7.

12. (April 26, 1928) Interpretation of the German-Polish Convention of 1922 relating to minority schools.

13. The Chorzow factory case.

14. (July 12, 1929) Decision as to whether certain Serbian loans issued in France should be paid in gold or paper francs.

15. (July 12, 1929) Decision as to whether certain Brazilian loans issued in France should be paid in gold or paper francs.

16. (September 10, 1929) Jurisdiction of the International Commission of the River Oder.

Orders of the Permanent Court of International Justice.

The case of *Belgium* v. *China,* where Belgium instituted a suit under Article 36 against China for denouncing a unilateral treaty. Four provisional orders were issued to preserve the rights of Belgians. The case was withdrawn by Belgium February 13, 1929.

In the case of *France* v. *Switzerland* in 1924, two orders were issued by the Court leaving the question open for further consideration.

Cases Now Pending Before the Court.

1. Free Zone of Upper Savoy and the District of Gex.

2. Legal status of certain parts of Eastern Greenland.

3. Delimitation of territorial waters between the island of Castellorizo and the coast of Anatolia.

ADVISORY OPINIONS.

Article XIV of Covenant of the League of Nations provides that the Court may give, at the request of the Council or the Assembly, "an advisory opinion upon any dispute or question referred to it."

The procedure of the Court in the matter of advisory opinions is similar to that of ordinary judicial proceedings in our legal system. The notification of a request for an opinion from the Court is forwarded to the Registrar, who thereupon gives notice to Members of the League and to States entitled to appear before the Court. Information in such instances is sought from all interested States or organizations. States not receiving notification but desiring to be heard are permitted to appear. The rules of Court provide that "Advisory opinions shall be read in open Court after notice has been given to the Secretary-General of the League of Nations and to the representatives of States, of Members of the League and of international organizations immediately concerned."[17]

Adequate publicity is thereby assured the proceedings of the Court.

The Protocol of Revision of the Statute of the Court amends the Statute so as to provide greater publicity.

ADVISORY OPINIONS.

1. (July 31, 1922) First Advisory Opinion—Nomination of Delegates to the International Labor Conference.

2. (August 2, 1922) Second Advisory Opinion—Competence of the International Labor Organization as to conditions of labor of agricultural workers.

3. (August 12, 1922) Third Advisory Opinion—Competence.

4. (February 7, 1923) Fourth Advisory Opinion—Nature of the British-French dispute about nationality decrees in Tunis and Morocco.

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[17] Rules, Arts. 72, 73, 74.

5. (July 23, 1923) Fifth Advisory Opinion—Dispute between Finland and Russia as to Eastern Carelia.

6. (September 10, 1923) Sixth Advisory Opinion—Validity of the contracts and leases of German settlers in Poland.

7. (September 15, 1923) Seventh Advisory Opinion—Acquisition of Polish nationality by German settlers.

8. (December 6, 1923) Eighth Advisory Opinion—The Jaworzina boundary question between Poland and Czecho-Slovakia.

9. (September 4, 1924) Ninth Advisory Opinion—The Monastery of Saint Naoum and the Albanian Frontier.

10. (February 21, 1925) Tenth Advisory Opinion—Meaning of the term "established" in the Lausanne Convention for the exchange of Greek and Turkish populations.

11. (May 16, 1925) Eleventh Advisory Opinion—Dispute in regard to the Polish postal service in the Free City of Danzig.

12. (September 19, 1925) Twelfth Advisory Opinion concerning the interpretation of the Treaty of Lausanne.

13. (March 17, 1926) Thirteenth Advisory Opinion concerning the competence of the International Labor Organization to Regulate the Personal Work of the Employer.

14. (December 8, 1927) An opinion as to the jurisdiction of the Danube River Commission.

15. (March 3, 1928) An opinion as to the competency of the Danzig Courts in cases involving the Polish Railways Administration.

16. (August 28, 1928) An opinion interpreting the Greco-Turkish Agreement for exchange of populations.

17. (July 31, 1930) An opinion defining the Greco-Bulgarian Convention.

18. (August 26, 1930) An opinion as to whether Danzig was competent to become a member of the International Labor Organization.

19. (May 15, 1931) An opinion as to the minority schools in Upper Silesia.

20. (September 5, 1931) An opinion as to the compatibility of the proposed Austro-German Customs Union with the Geneva Convention and the Treaty of Trianon.

21. (October 15, 1931) Railway traffic between Lithuania and Poland. Interpretation of conventions.

22. (December 11, 1931) Access to, or anchorage in, the Port of Danzig of Polish war vessels.

23. (February 4, 1932) Treatment of Polish nationals and other persons of Polish origin or speech in the Danzig territory.

PENDING REQUESTS FOR AN ADVISORY OPINION.

Interpretation of the Caphandaris-Molloff Agreement of December 9, 1927. (Bulgaria and Greece).

The Court refused to give an Opinion where the Council had requested an interpretation of a treaty between Finland and Russia. The former was a Member of the League and the latter was not. Russia refused to appear before the Court or to aid in the proceedings. In refusing to consider the question submitted without the appearance or consent of Russia, the Court said:

> "It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States, either to mediation or to arbitration, or to any other kind of pacific settlement. Such consent can be given once and for all in the form of an obligation freely undertaken, but it can, on the contrary, also be given in a special case apart from any existing obligation. * * * The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court."

An interesting comment as to the Court's conception of international law is gained from the fourth opinion. A dis-

pute arose between England and France over certain nationality decrees concerning Tunis and Morocco. Because of treaties the matter was one solely within the domestic jurisdiction of France. The Court in its opinion said:

> "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain."

UNITED STATES AND THE WORLD COURT.

On February 17, 1923, the Secretary of State submitted a letter to President Harding, outlining the immediate questions involved in American adherence to the Permanent Court of International Justice.[18]

In that letter four points are raised as necessary to be settled prior to signature:

(1) That such adhesion shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Covenant of the League of Nations constituting Part 1 of the Treaty of Versailles.

(2) That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice, or for the filling of vacancies.

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[18] 64 CONG. REC. pt. 5, pp. 4498 *et seq.*

(3) That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

(4) That the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

A week later, on February 14th, this letter was transmitted by the late President Harding to the Senate. Both the President and the Secretary of State, Charles Evans Hughes, urged favorable action. Two years later, March 3, 1925, the House of Representatives passed a resolution expressing "its cordial approval of the Court and an earnest desire that the United States give early adherence to the Protocol establishing the same, with the reservations recommended by President Harding and President Coolidge."

The following year, January 27, 1926, the Senate gave its advice and consent to the adherence with the following reservations: [19]

(1) That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.

(2) That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

(3) That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

[19] 67 CONG. REC. pt. 3, pp. 2824–2825.

(4) That the United States may at any time withdraw its adherence to the said Protocol and that the Statute of the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

(5) That the Court shall not render any advisory opinion except publicly after due notice to all states adhering to the Court and to all interested states and after public hearing or opportunity for hearing given to any states concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

It was also provided that the signature should not be affixed "until the Powers signatory to the Protocol shall have indicated through an exchange of notes their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol." The further reservation was added as follows:

> "This action shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions."

Secretary of State Kellogg transmitted these reservations to the Secretary-General of the League. At the instance of Sir Austen Chamberlain of Great Britain, the Council called a Conference of the Signatores in September, 1926.[20] The United States refused to take part in this meeting, Sec-

[20] L. OF N. O. J. (1926) pp. 535–536.

retary of State Kellogg having contended that acceptance be accomplished by an exchange of notes.[21]

A draft protocol was drawn up which, it was thought, would meet the requirements of the United States. It was transmitted to Secretary of State Kellogg in September, 1926.[22] Further action was delayed until the latter part of 1928. On February 6, 1928, the Senate considered a resolution urging further exchange of views on the part of the President.

The Assembly, shortly thereafter, directed its attention to the need of revising the Statute and suggested that the Council take appropriate action. A committee of Jurists was appointed and in March, 1929, this committee submitted draft protocols. After consideration of these by the Council and the Assembly these Protocols were opened for signature September 14, 1929. There are three Protocols relating to the Court. The Protocol of Signature of December 16, 1920, the Protocol of Revision of September 14, 1929, and the Protocol for the Adhesion of the United States of the same date.

The Protocol for the Adhesion of the United States to the Protocol of Signature of December 16, 1920, was an attempt to meet the Reservations of the United States Senate. The main difficulty presented was the question of Advisory Opinions and withdrawal of the United States from the Court. The Fifth Senate Reservation relates to the Court's procedure in Advisory opinions and deals with questions of jurisdiction.

The question of unanimous consent that may be required in a request for an advisory opinion has resulted in a divergence of views. The declaration in this Senate Reservation would, if accepted, bind the Court. It has been thought that the provision, "claims an interest," in the Senate Reservation, might hinder the rendering of advisory opinions which the League has come to consider an important function of this Court.

The specific problem of the Jurists was to reconcile these points of view. The Root formula suggested was as follows:

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[21] L. OF N. PUB. (1926) Vol. 26, annex 6, p. 71.
[22] *Supra* note 20 at 1565.

"The more hopeful system is to deal with the problem in a concrete form, to provide some method by which such questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other."

Article 5 of the Protocol provides:

"With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

"Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other states mentioned in the now existing Article 73 of the Rules of the Court, stating a reasonable time limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such a request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

"With regard to requesting an advisory opinion of the Court in any case covered by the preceding

paragraph, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

"If, after the exchange of views provided for in paragraphs 1 and 2 of this article, it shall appear that no agreement can be reached and the United States is not prepared to forego its objection, the exercise of the papers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

The Senate Reservation provides that the United States may withdraw its adherence at any time to the Protocol of December 16, 1920, and notification to the Secretary-General is sufficient to effect such separation. The Protocol of Adhesion provides it "shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the contracting states other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance." It is further provided that the United States may withdraw "without any imputation of unfriendliness or unwillingness to co-operate generally for the peace of the world."

By order of President Hoover, Secretary of State Stimson authorized the United States Charge d'Affaires at Berne to affix the signature of the United States to the three Protocols. On December 10, 1930, these were transmitted to the Senate for their advice and consent, which body is now considering these protocols.

The world cries out for peace. The sacrifice of the lives of millions upon the field of battle in the late war must not have been in vain. Let us hopefully look forward to the day not far distant when the orderly process of law will be substituted for the devastating processes of war.

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