



1937

American Attitude Toward the World Court: 1921-1926

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AMERICAN ATTITUDE TOWARD THE WORLD COURT 1921-1926

by

ALICE R. BARRON

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

IN

LOYOLA UNIVERSITY

JUNE,

1937

PREFACE

I was born in Chicago and received my secondary education at Lake View High School. Upon graduating from that institution, I enrolled at Northwestern University in the school of Liberal Arts. Since I have always been interested in history, I majored in that subject and minored in Political Science, English, and Latin. After graduating from Northwestern in 1927 I attended Chicago Normal College where I received my diploma and teacher's certificate. Since that time I have been connected with the Chicago Public Schools. My graduate work was started at Loyola University in December 1931 in the field of American History. The interest I have felt toward historical study has been intensified by the stimulating guidance that I have received from all of my professors.

Alice R. Barron

Chicago, June 1937

AMERICAN ATTITUDE TOWARD THE WORLD COURT 1921-1926

CHAPTER I. INTRODUCTION

CHAPTER I
INTRODUCTION

Article XIV of the Covenant of the League of Nations directed the League to formulate plans for a Court which would be competent to hear international disputes which the member parties submitted to it and to render advisory opinions upon any dispute or question referred to it by the Council or Assembly of the League.¹ Thereupon after the Treaty of Versailles, the Council of the League invited a committee of jurists to draw up plans for such a court. The committee consisted of Adatei of Japan, Altamira of Spain, Descamps of Belgium, Fernandes of Brazil, Hagerup of Norway, de Lapradelle of France, Loder of the Netherlands, Phillimore of Great Britain, Ricci-Busatti of Italy, and Elihu Root of the United States.² Mr. Root was assisted by Dr. James Brown Scott who acted as his legal adviser. The Court did not derive its existence from the Covenant of the League, for the latter's authority stopped with the provision that the Council should formulate plans for establishing a Court and submit them to the members of the League for adoption.³

1. Appendix, I

2. Manley O. Hudson The Permanent Court of International Justice, Harvard University Press, Cambridge, 1925, 6-7

3. Ibid., 175

The jurists worked on their plans during the summer of 1920. The project was then submitted to the Council which introduced modifications that were accepted at Brussels in October 1920. The revised form was placed before the first meeting of the Assembly of the League in November 1920. This body referred the draft as presented by the Council to a committee on which all the members of the League, forty-two in number, were represented. The task of studying the scheme was delegated by the committee to a subcommittee of jurists, namely, Adatci of Japan, Doherty of Canada, Fernandes of Brazil, Fromageat of France, Hagerup of Norway, Hurst of the British Empire, Huber of Switzerland, Loder of the Netherlands, Politis of Greece, and Ricci-Busatti of Italy. After a long discussion a number of amendments were agreed upon by the subcommittee and the committee. The Statute as amended was adopted by a unanimous vote of the Assembly on December 13, 1920 and was adjoined to the Protocol of December 16, 1920.⁴ This Protocol was submitted to the members of the League and the states named in the Annex to the Covenant of the League for their signatures and ratification.⁵

The Assembly resolved that as soon as the Protocol was ratified by a majority of the members of the League, the

4. Ibid., 7; 175

5. Appendix, 208

statute of the Court would come into force. During the summer of 1921 this was accomplished. Consequently, when the second Assembly of the League convened September 5, 1921, the Protocol had been signed by the representatives of forty-two League Members and ratified by twenty-nine of them.⁶

The Statute of the Permanent Court of International Justice thus linked this new court to the Permanent Court of Arbitration, as established under the Hague Convention of 1899 and 1907,⁷ by giving each national group in the latter the function of nominating four persons for judges not more than two of whom were to be of the group's own nationality.⁸ The United States could have participated in the nomination of candidates, for George Gray, John B. Moore, Elihu Root, and Oscar Straus were asked to submit nominations, but it was finally decided that they would make none. The other national groups, however, nominated four American names.⁹

As a member of the Committee of Jurists Elihu Root had suggested that the Assembly and the Council of the League collaborate in electing the judges who would thus be the choice of the large and small states.¹⁰ His suggestion was

6. Hudson, 7

7. *Ibid.*, 8

8. Manley O. Hudson, "Should America Support the New World Court?" *The Atlantic Monthly* CXXXI, 130 (January 1923)

9. Hudson, 177-178

10. *Ibid.*, 8

incorporated in the Statute and the Council and Assembly proceeded to vote independently on the persons nominated. A majority vote in both groups was necessary for an election to a judgeship.¹¹ The Statute provided that membership of the Court was to consist of eleven judges and four deputy judges regardless of nationality, but having the qualifications required in their respective countries for appointment to the highest judicial offices or being juriconsults of recognized ability in international law.¹² The electors were directed to bear in mind that the whole court was to represent the main forms of civilization and the principal legal systems of the world.¹³ The following judges were elected September 1921 to serve for nine years: Altamira of Spain, Anzilotti of Italy, Barbosa of Brazil, de Bustamante of Cuba, Finlay of Great Britain, Huber of Switzerland, Loder of the Netherlands, Moore of the United States, Nyholm of Denmark, Oda of Japan, and Weiss of France. The deputy judges selected were: Beechmann of Norway, Negulesco of Roumania, Wang Chung-Hui of China, and Yovanovitch of Yugoslavia. All of these men accepted their positions which were to expire December 31, 1930.¹⁴ But Judge Ruy Barbosa of Brazil died March 1, 1923 and was succeeded by Epitacio Pessoa of Brazil whose term expired

11. Appendix, 210-211

12. Ibid., 211

13. The Atlantic Monthly CXXXI, 130

14. Hudson, 9

December 31, 1930 with the other members of the Court. M. Ake Hammarskjöld of Sweden was chosen to be the registrar for the Court.¹⁵

The sessions of the Court were to open yearly on June 15 whether there were any cases on the docket or not.¹⁶ The expenses of the Court, which were paid out of the general funds of the League of Nations, included the salaries of the judges and other officers of the Court, as well as the administrative expenses of its meetings at The Hague. The litigant states had to bear their own expenses. If a non-member of the Court were party to a dispute, the Court fixed the amount which that party was to contribute.¹⁷ The United States paid no part of Judge Moore's salary. Even if we had signed the Protocol, it would not necessarily have meant that we would have had to contribute to the Court's fund since non-members of the League were not to be taxed.¹⁸ But if we had joined the Court, the situation would certainly have been changed, for although the treaty would not have obligated us to pay any part of the expenditure, we would undoubtedly have insisted on a separate agreement fixing our quota and determining the method of payment. This action on the part of the United States would

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15. "The Locarno Conference" World Peace Foundation Pamphlets IX, #1, World Peace Foundation, Boston, 1926, 84
16. The Atlantic Monthly CXXXI, 131
17. Hudson, 179-180
18. Ibid., 180

not have resulted in a greater participation in the election of judges unless it were expressly stipulated. So the formal signing of the treaty would not have greatly affected the situation except that the United States would have borne her share of the expenses.¹⁹

This Court was intended to be one of justice, not merely of arbitration. Its task was about the same as that of the United States Supreme Court in interpreting the Constitution.²⁰

The law applied by the Court was to be made up of:

1. Peace treaties and supplementary agreements since the war.
2. The work of the International Labor Conference and other technical bodies connected with the League.
3. International law as much as it had been clarified.
4. The accumulation of the Court's decisions which would form precedents that would have been woven into a body of case law.²¹

This Court was not organized as a private court for the League. From the beginning it had been open to states who were not members of the League, but who were mentioned in the Annex to the Covenant. In May 1922 it became a Court for the whole world²² when the Council of the League

19. Ibid., 218

20. Ibid., 12-13

21. Ibid., 15-16

22. Ibid., 185

under the power conferred by Article 35 of the Statute of the Court opened this tribunal to all nations regardless of membership in the League.²³ This was done on condition that the nation deposited a declaration which accepted the jurisdiction of the Court.²⁴ The United States had access to it without signing or ratifying the Protocol. It could have gone before the Court as a plaintiff or might have consented to being named by some other nation as a defendant. This situation would not have been changed if the United States signed and ratified the Protocol.²⁵

As to the jurisdiction of the Court, the Assembly decided that the basis of the Court's jurisdiction was to be an agreement between the parties of a dispute.²⁶ The Court was without compulsory jurisdiction even for the most justiciable cases.²⁷ In most cases each party in the dispute had to give its consent before the Court could deal with the matter. The great powers declined to accept compulsory jurisdiction and to dispense with the special consent which was to be obtained in each case.²⁸ The United States had the privilege of referring a dispute to the Court in case the other party were willing, or of accepting the Court's jurisdiction when another party sought to

23. Appendix, 214

24. Hudson, 185

25. Ibid., 177

26. Ibid., 19

27. David J. Hill The Problem of a World Court, Longmans Green & Company, New York, 1927, 37

28. Hudson, 203

refer a question to this tribunal. Even if the United States signed the Protocol, the conditions for invoking the Court's jurisdiction would presumably have remained the same; for it probably would not have accepted the optional clause which provided for compulsory jurisdiction.²⁹

The second phase of the Court's jurisdiction came under the provision of an optional clause in the Protocol³⁰ by which the states recognized the Court's supervision in every dispute which involved any question of international law, interpretation of a treaty, or the breach of an international obligation. The majority of the larger powers declined to accept this clause but many of the smaller nations ratified it.³¹

Finally, the Court had compulsory jurisdiction conferred upon it by treaties. For example, treaties for the protection of minorities between the Allied Powers and Poland, Czechoslovakia, Roumania, Yugoslavia, and Greece gave extensive jurisdiction to the Court which was to have been used without obtaining the consent of the parties. Other treaties were made with provisions for extensive jurisdiction on the part of the Court.³²

The procedure of the Court ruled that a case had to come up before nine judges, but usually eleven or more were

29. Ibid., 207-208

30. Appendix, 209

31. Hudson, 204

32. Ibid., 204

present. French and English were the recognized languages, but the Court authorized the use of some other tongue. This tribunal's procedure followed along the same lines as used in the Hague's Permanent Court of Arbitration. There were to be written cases, counter cases, and, if necessary, replies. Oral hearing of witnesses, experts, agents, counsels, and advocates were held. If there were a service of any notice upon an individual, it was to be effected through the government of that country. The hearings were held openly unless the Court or parties demanded otherwise. The Court itself promulgated its rules of pleading, practice, and evidence. It had the power to order a discovery, and could avail itself of expert's assistance. If it were thought necessary to conduct an inquiry, this was to be done through agents selected by the Court. A decision was rendered by a majority of the judges sitting, and any one who dissented in whole or in part could deliver a separate opinion. While awaiting the Court's opinion, provisional measures could be indicated to preserve the rights of either party. There was no provision made for the enforcement of final or interim judgements.³³

How were the decisions to be enforced since the Statute was silent on this question? For the members of the League there was a special obligation because in Article 13

33. Ibid., 23-25

of the Covenant they agreed to carry out in good faith any award that was rendered. They also promised not to resort to war against any member of the League who complied therewith.³⁴ Article XVI of the Covenant went further and prescribed certain consequences for any member who resorted to war in disregard of this undertaking.³⁵ Consequently, Articles 13 and 16 of the Covenant were regarded as applying to the decisions of the Court, although they did not govern the actions of non-members of the League. But it was felt that the greatest sanctions of the Court must be derived from the moral strength of this judicial body and the moral force of the world's opinion behind it.³⁶

Article XIV of the Covenant also provided that: "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."³⁷ In the first two years of the Court's existence eight of the nine questions brought before it were requests of opinions from the Council.³⁸

34. The Atlantic Monthly CXXXI, 134

35. Appendix, 207

36. The Atlantic Monthly CXXXI, 134

37. Hill, 42

38. Ibid., 42

CHAPTER II. ATTITUDE TOWARD THE WORLD COURT

1921-1923

Public Opinion 1921-1922
Presidential Action and the
Reaction of the Press
Attitude in 1923

CHAPTER II

ATTITUDE TOWARD THE WORLD COURT 1921-1923

While the Governments of Europe were considering the statute of the Court for acceptance or rejection, the United States on August 15, 1921 acknowledged the receipt from the Secretary General of the League of Nations of a certified copy of the Protocol of the Permanent Court of International Justice. This Protocol had been opened for signature on December 16, 1920 by the members of the League and the states mentioned in the Annex.¹ There was no immediate action by either the President or Congress, and the public seemed to be very indifferent to the question. S.C. Vestal of Washington, D.C. voiced the opinion that the United States Supreme Court decided legal questions while the President and Congress settled political matters. The disputes between nations, the real causes for war, were political, not legal. Since the United States Supreme Court was unable to decide political questions, Vestal did not see how a World Court could be capable of settling international disputes of a political nature.² It was not until November 11, 1921 that further sentiment was expressed in resolutions which were passed by the delegates of the National Council of

1. Quincy Wright, "The United States and the Court" International Conciliation #232, 329 (September 1927)
2. The New York Times, July 21, 1921, 16

Women who were meeting in their biennial session at Philadelphia. This Council included 10,000 women who were affiliated with the organized women of twenty-seven foreign countries. In their resolution they urged the participation of the United States in the World Court and favored an association of nations because they considered that the only hope of permanent world peace.³

The Court came into existence and held its first meeting January 30, 1922 but still there was no action on the part of the United States government.⁴

Some could see no adequate reason for the United States not joining the Court since it was independent of the League. The United States would not have had to lay all its disputes before this tribunal since there was no voluntary jurisdiction. Then too, representation of the United States in the Court was taken care of by states already in the League, which precluded all probability that the United States would ever have been without an eminent jurist in this body.⁵

Others felt that it was a tragedy that America held aloof from an organ which was a step toward world peace. This antagonism had its roots in the justified opposition

3. "Permanent Court of International Justice" Hearings before a Subcommittee of the Committee on Foreign Relations United States Senate, 68 Congress, 1 Session, April 30-May 1, 1924, Government Printing Office, Washington, 1924, 188

4. The Nation CXIV, 183 (February 15, 1922)

5. The New York Times, January 15, 1922, Part II, 6

on the part of the United States toward the Covenant and Treaty of Versailles. They felt that the machinery was at hand to settle international disputes but the will for peaceful adjustment was needed.⁶

On June 29, 1922 the Honorable William L. Frierson delivered an address before the Maryland State Bar Association at Atlantic City, New Jersey in which he said that while the Court was a creation of the League, an effort had been made to create a tribunal to which all nations could safely submit their disputes. The Council knew that the Court must be acceptable to all of the powers whether they were members of the League or not, therefore it asked a number of preeminent jurists from various nations to draw up the plans. Since this committee was unofficial, not one jurist spoke for, or represented his government. It was merely a meeting of individuals to formulate an expert opinion. Mr. Frierson thought that it was hardly to be expected that all nations would submit to such sweeping jurisdiction as the Court provided.⁷ Many disputes had been settled in former years by voluntary arbitration and some non-members of the League were not ready to have this means of peaceful settlement of disputes entirely supplanted. Therefore, the first article of the Statute provided that the World Court would exist in

6. The Nation CXIV, 183

7. Congressional Record, 67 Congress, 4 Session, 5318-5319
(March 3, 1923)

addition to the Permanent Court of Arbitration which had been organized at The Hague. The jurisdiction of the World Court included all cases referred to it, all matters specially provided for in treaties and conventions in force, and the compulsory jurisdiction clause which some of the nations had signed. The governments which were members of the League did not agree to submit disputes to this new Court, but they did agree to submit them either to the Permanent Court of International Justice or to the Permanent Court of Arbitration.⁸ Governments like the United States, which were not members of the League, did not agree to do either except in the case of arbitration treaties which they had entered into with other nations.⁹ It was Mr. Frier-son's opinion that it would have been shameful and humiliating for the United States to fail by proper negotiations to become a party to the agreement by which the members of the League were already bound. This agreement called for a submission of all their international controversies to a judicial court or a court of arbitration. He did not believe that the United States would or should ever have committed itself in advance to the submission of questions in-

8. The Permanent Court of International Justice was provided for by Article XIV of the Covenant of the League of Nations and was planned by a Committee of Jurists from the various nations. The Permanent Court of Arbitration was formulated at The First Peace Conference at The Hague.

9. Congressional Record, 67 Congress, 4 Session, 5319-5320 (March 3, 1923)

volving its rights to a Court whose judges we had no voice in selecting. But he did believe that the United States could have well agreed to submit these questions either to the judicial Court or to arbitration. In some controversies we might have preferred the Court, but it would have been unwise and unsafe to commit ourselves entirely to the jurisdiction of that tribunal.¹⁰ This was the essence of Mr. Frierson's opinion toward the adherence of the United States to the Court.

On July 13, 1922 Secretary of State Hughes said that he saw no prospect for any treaty or convention by which we would share in the Court until some provision had been made for this Government to have an appropriate voice in the election of judges without becoming a member in the League of Nations. This seemed to be the cause for the inactivity of our officials and these conditions had to be met to satisfy the United States.¹¹

Another reference was made to changing the Statute of the Court when, at the meeting of the American Bar Association in August 1922, Chief Justice Taft made a motion to instruct the Committee on International Law of the American Bar Association to suggest changes in the Statute of the Court. He thought that these changes would make it possible

10. *Ibid.*, 5320-5321 (March 3, 1923)

11. *Hudson*, 95; 209

for the United States to participate in this Court which was the result of American initiative, persistence, and ingenuity. Mr. Taft felt that it needed our moral support and that we should have adhered to an American idea.¹²

Later in that same year the official sentiment about United States adherence seemed to have been more optimistic for on October 30, 1922 Secretary Hughes in an address at Boston said that he thought suitable arrangements could be made for United States participation in the election of judges to the Court. With that provision he felt that this Government could give its formal support to the Court as an independent tribunal of international justice.¹³

If the United States ratified the Statute with reservations, it would not have committed the country to any provisions of the Covenant. Article XIII of the Covenant bound the members of the League to carry out in good faith any award, which included decisions of the Court, that might have been rendered. But such an agreement was not referred to in the Statute of the Court; therefore, in signing the Protocol the United States would not have been bound by the Covenant. Then, too, as a further precaution, the United States could have stated that she was in no way bound by Article XIV of the Covenant of the League.¹⁴

12. The New York Times, August 14, 1922, 10

13. Hudson, 45

14. Manley O. Hudson, "The United States and the New International Court" Foreign Affairs I, 82 (December 15, 1922)

On February 17, 1923 Hughes sent a letter to President Harding recommending that the Senate be asked for its advice on, and consent to the United States adhesion to the Protocol of December 16, 1920 on four conditions. President Harding acted accordingly and sent the letter and a message to the Senate on February 24, 1923.¹⁵

In his message Harding cited the fact that a court was functioning at the Hague in which the United States was able to bring suit, but that was not enough for a nation which had long been committed to the peaceful settlement of international controversies. He asked the Senate for approval of adhesion to the Protocol, because by the Hughes reservations we could adhere and remain free from any legal relation or assumption of obligation under the Covenant of the League.¹⁶ He believed that these conditions would be acceptable to the great nations, although nothing could be done until the United States offered to adhere on these reservations. The executive had no authority to make this offer until the Senate gave its approval and he therefore urged their favorable advice and consent.¹⁷

The letter from Hughes, dated February 17, 1923, which accompanied the President's message reviewed the active part which the United States had, in former years, taken in judi-

15. Hudson, 95

16. Congressional Record, 67 Congress, 4 Session, 4498
(February 24, 1923)

17. Ibid., 4498 (February 24, 1923)

cial settlement of international disputes. Prior to The First Peace Conference at The Hague in 1899 the United States had participated in fifty-seven arbitrations, twenty of which were with Great Britain. The president of the United States, in the past, had acted as arbitrator between other nations in five cases; ministers of the United States, or others chosen by the United States, had acted as arbitrators or umpires in seven cases.¹⁸ At The First Peace Conference at The Hague the Permanent Court of Arbitration was established. Its organization consisted of an eligible list of persons chosen by contracting parties from whom tribunals were constituted to decide such controversies as parties concerned might submit to them. It was always believed that the preponderant opinion in the country had not only favored judicial settlement of justiciable international disputes through arbitral tribunals, but had also desired that a permanent court of international justice be established and maintained. This idea was well supported in the fact that the delegates from the United States to The Second Peace Conference at The Hague in 1907 were instructed by Secretary of State Elihu Root to emphasize the fact that The Hague Tribunal might be developed into a permanent court of judges who were judicial officers and nothing else. The

18. "Message from President of United States Transmitting Letter from Secretary of State" Senate Document #309, 67 Congress, 4 Session, 2

idea was received well but failed because an agreement could not be reached in regard to the method of selecting judges.¹⁹

Hughes' letter discussed the World Court and maintained that the Statute establishing the Court did not become effective upon its adoption by the Assembly of the League, but rather by the signature and ratification of the signatory powers to a special Protocol. The reason for this argument was that, although the plan of the Court was prepared under Article XIV of the Covenant, the Statute went beyond the terms of the Covenant especially in making the Court available to states who were not members of the League.²⁰ A signatory power could accept as compulsory, and without special convention, the jurisdiction of the Court in all or any of the classes of legal disputes: namely, concerning the interpretation of a treaty, any question of international law, the existence of any fact which if established would constitute a breach of an international obligation, and the nature or extent of the reparation to be made in case of a breach of an international obligation. This was the optional clause and unless it were signed by a Power, the jurisdiction of the Court was not obligatory.²¹

Hughes then put forth his reservations and discussed them fully. He did not think that it was enough for the

19. Ibid., 3

20. Ibid., 4

21. Ibid., 5

United States to have the privileges of a suitor. The principles of the World Court conformed to American principles and practices and he was convinced that the American Government under appropriate circumstances should have become a party to the Convention which established the Court and should also have contributed its share toward the expenses.²² Under the Statute these expenses were borne by the League, which made up the budget and apportioned the amount among the members of the Court. The largest contribution toward expenses was little more than \$35,000 per year. When the members of the Council and the Assembly were making up the budget, they acted not under the Covenant of the League, but under the Statute of the Court. The United States would have wanted to share the expenses, if it adhered to the Protocol, and the amount of its contribution would have been subject to the determination of Congress. The reference to this subject would be in the terms of America's adhesion to the Protocol.²³

The subject of the second reservation was the selection of judges. The fact that the United States was not a member of the League was not an overwhelming obstacle. The Statute of the Court had a number of procedural provisions relating to the League, but none except the selection of judges would have created any difficulty in the support of the Court by

22. Ibid., 5

23. Ibid., 7

the United States despite its non-membership in the League. None of these conditions impaired the independence of the Court for it had a distinct legal status resting upon the Protocol and Statute. It was organized and acted in harmony with judicial standards and its decisions were not controlled or reviewed by the League of Nations.²⁴ One of the fundamental objections to United States adherence to the Protocol, and acceptance of the Court was the Statute provision that only members of the League of Nations were entitled to a voice in the election of judges. The fact that this Government was represented by its own national group in the Hague Court of Arbitration for the nomination of persons to be elected as judges of the Court did not meet these objections. For the election of judges rested with the Council and the Assembly of the League. The United States, with no belittling of the present judges, could not have been expected to give its support to a permanent international tribunal whose members were elected without its participation.²⁵ The practical advantage of the system of electing judges by a majority vote in both the Council and the Assembly, acting separately, was quite evident. It had solved the difficulty of providing an electoral system which conserved the interests of the great and small powers. Therefore, it would have been impractical to disturb the

24. Ibid., 5

25. Ibid., 6

essential features of this electoral system. The members of the Council and the Assembly of the League in electing the judges to the Court did not act under the Covenant of the League. but under the Statute of the Court and in this capacity of electors were performing the duties defined by the Statute.²⁶ It would have seemed reasonable that this Government, in adhering to the Protocol and accepting the Statute, would have prescribed as a condition that the United States, through representatives, designated for that purpose, should have been permitted to participate upon terms of equality in the Council and the Assembly for the election of judges, deputy judges, or to fill a vacancy.²⁷

To avoid any question that adhesion to the Protocol and the acceptance of the Statute of the Court would have involved no legal relation on the part of the United States to the League of Nations nor the assumption of any obligation by the United States under the Covenant of the League it would have been appropriate, if so desired, to have that point distinctly reserved as part of the terms of adherence on the part of this Government.²⁸ It would also have been appropriate to provide as another condition of United States adherence that the Statute was not to be amended without the consent of the United States.²⁹

26. Ibid., 6

27. Ibid., 6

28. Ibid., 6

29. Ibid., 7

Hughes concluded by asking that if these terms met the President's approval, the latter to request the Senate to take suitable action toward adherence of the United States to the Protocol of December 16, 1920. This action was to include the acceptance of the adjoined Statute of the World Court, but not the optional clause for compulsory jurisdiction. Such adhesion would have been upon the four conditions which were to have been made a part of the instrument of adherence.³⁰

Since this presidential message to the Senate on February 24, 1923 pertained to a treaty or protocol with foreign governments, it was read behind closed doors. Hughes' letter was not read. There were few Senators present as the business of the day was practically over. Upon a motion by Mr. Lodge of Massachusetts, the message and accompanying letter of Mr. Hughes were referred to the Committee on Foreign Relations.³¹ On February 27 this Senate Committee adopted a resolution offered by Mr. Borah calling on Harding for further information about his proposal. It was generally understood that this procedure was a move for delay intended to give the committee an excuse for not passing on the World Court question at that session.³²

30. Ibid., 7

31. "President Harding's Plea for the World Court" Current History XVIII, 39 (April 1923)

32. Ibid., 39

Mr. Hearst's opposition to the Court was vigorous. In the New York American, Hearst said that the judicial tribunal was a creation of the Versailles Treaty. He thought that President Harding meant well, but he was in hands too cunning and unscrupulous for him to resist. The American people refused to be led into the League of Nations through the front door, so they were to be seduced in through the kitchen door.³³ But Hearst did not represent the opinion of the majority of the public as indicated by individual statements.³⁴ Educators like Presidents Angell of Yale, Hibben of Princeton, and Butler of Columbia supported the Harding-Hughes plan.³⁵ Chairman A.C. Bedford of the Standard Oil Company of New Jersey said that he believed that there were advantages for ourselves and others to be gotten from the Court.³⁶ Samuel Gompers saw no argument against such a step as Harding recommended.³⁷ General O'Ryan of the New York National Guard and General Clarence R. Edwards of the New England National Guard both agreed that the United States should have participated in the World Court.³⁸ The question was a non-partisan issue for both Democrats and Republicans such as William J. Bryan, Oscar

33. "Starting the Fight to Join the Peace Court" The Literary Digest LXXVI, 8 (March 10, 1923)

34. Ibid., 8

35. Ibid., 8

36. Ibid., 8

37. Ibid., 8

38. Ibid., 8

straus, Alton B. Parker, Henry J. Allen, Ex-Governor Cox, Charles D. Hilles, Edward M. House, Henry W. Taft, and Charles W. Eliot approved of the Harding-Hughes World Court Plan.³⁹

Editorial approval was found in Democratic newspapers such as The New York Times, Brookly Daily Eagle, Brooklyn Citizen, Boston Post, Pittsburgh Post, The Cleveland Plain Dealer, and the Louisville Courier Journal; in such independent newspapers as the Springfield Daily Republican, Syracuse Herald, Providence Journal, Newark News, Philadelphia Public Ledger, Washington Evening Star, and the Washington Post; and in Republican papers such as Boston Evening Transcript, Hartford Connecticut Courant, New York Herald Tribune, Buffalo Morning Express, Manchester Union, Philadelphia Bulletin, Indianapolis Star, St. Louis Globe Democrat, The Omaha Daily Bee, Salt Lake Tribune and Portland, The Oregonian.⁴⁰

A letter was received from Bishop Dowell, who was chairman, and Reverend Dr. Watson, who was secretary of the Federal Council of the Churches of Christ in America. This organization represented thirty-two of the leading Protestant denominations in the United States consisting of 21,000,000 people. It expressed their gratification at the President's message which requested action on United States entrance into the World Court. There was no move which was more favorable to the unified churches of

39. Ibid., 8

40. Ibid., 8

this country.⁴¹ The Committee on International Law of the Bar Association of the City of New York reported on the Permanent Court of International Justice on February 28, 1923. It recommended the adoption of a resolution which stated that the United States should have supported the World Court and adhered to the Protocol in the manner set forth by the President in his message of February 24, 1923.⁴²

In international affairs three kinds of questions arise: namely, administrative, political, and judicial. In political questions there is no place for a judge, because even as an alternative to war the nations are unwilling, just as voters are, to leave political questions to a judicial court. The purpose of a court is to decide what is right and just under the law. Was there no place then for an international court? Yes, because one of the most powerful forces was international law. It could not have been expected that the World Court would have made war impossible or even improbable, but it was hoped that this institution would reduce the number of causes for war. No court of law could have adjusted conflicting political wills. Neither could the League as an administrative body or the Court as a judicial body have been expected to reach the causes of war because neither was effective in controlling national

41. Congressional Record, 67 Congress, 4 Session, 4827
(February 28, 1923)

42. Senate Subcommittee Hearings, 184

wills and, therefore, national policies.⁴³

Meanwhile in Congress, Senator King from Utah had introduced Senate Resolution 454 on February 26, 1923 which embodied the four reservations recommended by Mr. Hughes. It was laid upon the table until the next day.⁴⁴ It was hardly expected in the short time which remained before Congress adjourned that the Senate would be able to sanction the President's suggestions.⁴⁵ Some thought that the President was clever to make the proposal at this late date in the session with the thought of getting it before the country so there would be ample time for the people to consider it during the months of the Congressional recess.⁴⁶ Others criticized Harding in bringing forth the proposal too late for any action to be taken at that session. Both Harding and Hughes were accused of betraying a nervous dread in regard to the League of Nations. Hughes admitted that the Court could not have been established in any other way except under the League, yet it was said that he found it necessary to employ all his skill to persuade the Senate to join the Court without any legal relations to the League of Nations.⁴⁷

The answers to Mr. Borah's inquiries were ready and re-

43. "Can a Court Prevent War?" The Outlook CXXXIII, 391-392 (February 28, 1923)

44. Congressional Record, 67 Congress, 4 Session, 4632

45. The New York Times February 25, 1923, 1

46. Ibid., February 26, 1923, 2

47. Ibid., February 26, 1923, 12

turned to the Foreign Relations Committee by the President on March 2, 1923. It was felt that the Committee had been delaying and the quick response was a score in favor of the administration.⁴⁸ The letter from Harding stated that the information sought, relative to the adherence of the United States to the Permanent Court of International Justice, had been given by Secretary of State Hughes and the forthcoming answers had his approval. Their first inquiry was whether the President favored an agreement which obliged all powers or governments which had signed the Protocol to submit all question about which there was a dispute? These questions included all matters which could not be settled by diplomatic efforts in regard to interpretation of treaties, or any question of international law. They also involved the existence of any fact, which established, would have constituted a breach of an international obligation. Finally, such questions as the nature or extent of reparations to be made for the breach of an international obligation, and the interpretation of a sentence passed by the Court were topics subject to judicial action.⁴⁹ From this inquiry it was understood that the opinion of the President, in performing his constitutional authority to negotiate treaties, was asked about favoring an undertaking to negotiate a treaty

48. Ibid., March 1, 1923, 1

49. "Letter from President of United States to Senator Henry C. Lodge" Senate Document # 342, 67 Congress, 4 Session, Government Printing Office, 1923, 1

with such obligatory jurisdiction between the United States and the other powers.⁵⁰ The answer was no, because the Senate had often clearly defined its attitude in opposing such an agreement. Until that attitude was changed it would have been futile for the executive to negotiate such a

treaty.⁵¹ In January 1897 the Olney-Paunceforte treaty, with provisions for broad compulsory arbitration, was supported by Cleveland and McKinley. Despite safeguards which were established by treaty, the provisions for compulsory arbitration met with disfavor by the Senate, and the treaty failed. In a series of arbitration treaties concluded in 1904 by Secretary Hay with twelve nations the Secretary limited the provision for obligatory arbitration. But the Senate so limited it that in every individual case of arbitration a special treaty would have had to be made with the advice and consent of the Senate. Because of this fact Hay announced that the President would not submit it to the other governments. And so on numerous occasions the Senate had ruled against compulsory arbitration of international differences.⁵²

In view of this record it would have been a waste of effort for the President to try to attempt to negotiate treaties with other powers providing for an obligatory jurisdiction of the scope stated in the inquiry. If

50. Ibid., 1

51. Ibid., 1

52. Ibid., 2-3

the Senate or even the Committee on Foreign Relations indicated that a different viewpoint was entertained, then the advisability of negotiating such agreements might have been considered.⁵³

The second inquiry of the Committee was that if the President favored such an agreement, did he think it advisable to communicate with the other Powers to find out whether they were willing to obligate themselves as fore-said? In other words, were the signers of the Protocol willing to obligate themselves by agreement to submit such questions as were stipulated, or were they to insist that such questions should only be submitted in case both or all parties interested agreed to the submission after the dispute arose?⁵⁴ The purpose was to give the Court obligatory jurisdiction over all justiciable questions on the interpretation of treaties, all questions of international law, to the existence of facts which constituted a breach of international obligation, to the interpretation of the sentences passed by the Court to the end that these matters were to be finally determined in a court of justice.⁵⁵ The answer to this question was sufficiently answered before. The Statute had provided in Article 36 whereby compulsory jurisdiction could have been accepted if desired in any or

53. Ibid., 3

54. Ibid., 3

55. Ibid., 3

all classes of legal disputes concerning the interpretation of a treaty, any question of international law, any fact which if established would have constituted a breach of international obligation, and the nature and extent of reparation to be made for the breach of an international obligation. The optional clause was attached to the Protocol whereby the signatories could have accepted this compulsory jurisdiction.⁵⁶ Up to February 1923, of the forty-six states who had signed the Protocol about fifteen had ratified the optional clause for compulsory jurisdiction. Great Britain, France, Italy and Japan did not.⁵⁷ In his letter to President Harding on February 17, 1923 Hughes did not advise adhering to the optional clause because of all the reasons stated above.⁵⁸

In the third place the Committee wanted to ascertain whether it was the purpose of the administration to have this country recognize Part XIII, on labor, of the Treaty of Versailles as a binding obligation. The answer to that was no, because Part XIII of the Treaty relating to labor was not one of the parts under which rights were reserved to the United States by our treaty with Germany. It was distinctly stated in that treaty that the United States should assume no obligations under Part XIII. It was not

56. Ibid., 4

57. Ibid., 4

58. Ibid., 4

to be thought that the United States would at a later date assume any obligations of that sort.⁵⁹ Article 26⁶⁰ of the Statute of the Court to which the Committee referred in its inquiry related to the manner in which labor cases referred to in Part XIII of the Treaty of Versailles should be heard and determined. This provision of the Statute would not have involved the United States in Part XIII. The United States, by adhering to the Protocol, would not have been a party to treaties to which it was otherwise not a participant or in disputes in which it would otherwise not have been involved.⁶¹ The function of the Court was to determine questions which arose under treaties, but only two of all the powers concerned in maintaining the Court might be parties to the particular treaty or to the particular dispute. There is a host of treaties to which the United States is not a party. None of the signatory powers made themselves parties to treaties or assumed obligations under treaties between other parties.⁶²

And lastly, the Committee wanted to know what reservations, if any, had been made by those countries who had adhered to the Protocol. Hughes answered that he knew of no other state which had made reservations on signing the

59. Ibid., 4

60. Appendix, 212

61. Senate Document #342, 67 Congress, 4 Session, 4

62. Ibid., 4-5

Protocol.⁶³ This letter from Hughes was received by the Committee, but it was decided to postpone all consideration of the subject until December for it was too late to take any step at the convening session about the United States joining the Court.⁶⁴

On March 3, 1923 Mr. King of Utah offered Senate Resolution 471 in the form of a motion which resolved that the Senate, with two-thirds concurring, advise and consent to the adherence of the United States to the Protocol of December 16, 1920, excepting the compulsory jurisdiction clause. Such adhesion would have been upon the four Harding-Hughes reservations which would have been made a part of the adherence.⁶⁵ The Senate by a vote of 49 to 24 refused to take up the question.⁶⁶

Several senators at this point gave their views on the World Court situation. Mr. Edge of New Jersey believed that United States participation would have been wise with the proper reservations. He voted against considering King's resolution because it would not have been disposed of in that session. There were many other important bills which could have been disposed of and he wanted to clear the calendar.⁶⁷ The time was too short to take care of the

63. Ibid., 5

64. The New York Times, March 3, 1923, 1

65. Congressional Record, 67 Congress, 4 Session, 5273
(March 3, 1923)

66. The New York Times, March 4, 1923, 1

67. Congressional Record, 67 Congress, 4 Session, 5316
(March 3, 1923)

lengthy discussion which would probably have taken place.⁶⁸

Senator Shields of Tennessee pointed out that Mr. King had formerly introduced a resolution for United States adherence to the Court on February 26, 1923. Then he said that Mr. King moved to proceed to its consideration without giving the Senate an opportunity to debate it. Furthermore, the resolution was never referred to the Committee on Foreign Relations for a report and it had not been debated in the Senate. The resolution was called up only a few hours before Congress was to adjourn and no time was allowed for a discussion of the resolution which had not been prepared with the usual clearness of Mr. King.⁶⁹ An international court where justiciable controversies could have been decided on impartial justice was favored by Mr. Shields. But he thought that The Hague Court plus approximately thirty-five treaties with the various nations for adjusting international differences were feasible without surrendering the sovereign rights of any government and without obligating the people to sacrifice themselves for others.⁷⁰ He still favored a world court, but not one with compulsory jurisdiction or decrees which were to be carried out with the force of armies and navies.⁷¹ He would not have favored a court where the United States could have been sued without its consent. He

68. Ibid., 5316 (March 3, 1923)

69. Ibid., 5316 (March 3, 1923)

70. Ibid., 5317 (March 3, 1923)

71. Ibid., 5317 (March 3, 1923)

believed in voluntary international conferences where the representatives of nations could discuss all controversies which threatened war. The jurisdiction of a court should have been voluntary on the part of the nations with the only sanction that of public opinion. Jurisdiction should also have been confined to justiciable questions or those not involving vital interests, independence, or the honor of the disputing countries.⁷² There was no stipulation in the resolution offered that the Court should not consider these questions which had always been reserved in the arbitration treaties and agreements of the United States.⁷³ He was not prejudiced against the World Court because it was established by the League of Nations, but he did object to the obligations required under the Protocol. The ratification of the Protocol would have committed the United States to the principles of the Covenant of the League without reservations. It would have led to full membership in that organization, and would have involved us in the political contentions and wars of Europe. Finally, we would have joined indirectly what we refused to do directly.⁷⁴ For although it was provided that the United States was not to bear any legal relation to the League, yet the reservations

72. Ibid., 5317 (March 3, 1923)

73. John Shields, "Would United States Help Europe by Joining World Court" (Contra-view) The Congressional Digest II, #8, 239 (May 1923)

74. Congressional Record, 67 Congress, 4 Session, 5317 (March 3, 1923)

stipulated that we should participate in the election of the judges and the proceedings for amending the Statute of the court. Therefore, it was provided that the United States should be represented in the Council and the Assembly of the League in the most important matters which were offered by the Statute and the Protocol to the nations under the jurisdiction of the Court. It would have been impossible for a nation to have been in part a member of the League and participate in its deliberations, which were binding, and yet have had no legal relations with it.⁷⁵ It looked to him as though the President had changed his views in regard to entangling alliances for it was impossible to see how the Senate could have favored his suggestions and not have gone into the League. If this country had changed its views and favored the disposal of our traditional policy, it should have been done in a manly way. We should have gone in the front door assuming all obligations of the Covenant and not attempted to get in the back way.⁷⁶

Mr. Frierson thought that it was important for the united States to give its nationals adequate rights and protection in foreign countries and this could only have been done by giving reciprocal rights in our own country. By treaty, aliens may acquire the right to inherit and hold

75. The Congressional Digest II, #8, 239

76. Congressional Record, 67 Congress, 4 Session, 5318
(March 3, 1923)

property anywhere in the United States notwithstanding states rights to the contrary. We could have excluded aliens, but that would have resulted in retaliation and unfriendly relations. Our courts were open to assert private rights claimed under treaties which they interpreted for themselves and likewise our nationals in other countries were subject to the treaties as interpreted by the courts of those countries.⁷⁷ If we conferred jurisdiction upon an international court to interpret treaties, we would have had to surrender the power to determine some of the rights of aliens in this country, just as other governments had surrendered a like power over the rights of American nationals. Such considerations as these should have made us cautious in establishing relations with an international court. But Mr. Brierson did not think they were serious enough to stop the United States from giving to that Court a jurisdiction which was necessary if it was to be a means of insuring the peaceful settlement of disputes.⁷⁸ It was possible that the Court would have given to a treaty relating to the exclusion of aliens, for instance, an interpretation entirely different from what we intended. Thus it would have committed us to a policy which we would never knowingly have adopted. The consequences of this would have to be guarded against. We should have accepted the decisions of the Court as our

77. Ibid., 5321 (March 3, 1923)

78. Ibid., 5321 (March 3, 1923)

responsibilities up to the time when they proved dangerous. But the right should have been reserved to immediately terminate any treaty which could be construed contrary to what we intended.⁷⁹ The remainder of the Court's jurisdiction consisted of determining the law and facts of international obligations as well as the redress of international wrongs. Without this control the Court would have been in no real sense an international court.⁸⁰ Even in an effort to promote peace we could not have afforded to enter into an agreement which would not have left our Government free to promote the interests and well being of our citizens as efficiently as possible. To any plan of cooperation the test of whether it tended to accomplish the purpose for which this Government was established must always have been applied. As a final word, Mr. Frierson wished to state his advocacy of the World Court because he believed that our Government could not have done otherwise without failing to use the greatest opportunity it had ever had to serve the purpose for which the Constitution was made. There was never an unsettled question which so directly involved the well being of the American people as the administration of international justice.⁸¹

Mr. Towner of the House noted the fact that objections

79. Ibid., 5321 (March 3, 1923)

80. Ibid., 5321 (March 3, 1923)

81. Ibid., 5323 (March 3, 1923)

had been made on the ground that there should have been no international court until a code of international law had been established. But he maintained that there was available a large body of international law to direct the Court in its decisions. Every treaty was international law and binding to the parties to such a pact. With such a large number of treaties it was important to have a court established to interpret and settle differences concerning them.⁸²

Dr. Nicholas Butler thought that the League had demonstrated its incapacity to deal effectively with the economic and political rehabilitation of the world. A satisfactory answer was still awaited on an effective association of nations which would have enforced international law and conducts. Meanwhile, it was a forward step to put the influence of the United States behind the only existing instrumentality for the extension of rule by law in the life

of the nations.⁸³ The Harding proposals were to the effect that the American Government should act in a way that would back up its often repeated declarations of policy. The plan of the President would not have involved us in the League and could have been accepted without further negotiations. If the Senate had been representative of American public opinion, it would have accepted the President's proposal

82. Ibid., 5687 (March 4, 1923)

83. Dr. Nicholas Butler, "Do the American People Favor the World Court Proposal" (Favorable-view) The Congressional Digest II, #8, 245 (May 1923)

immediately.⁸⁴

Again on March 5, 1923 President Harding reiterated his proposal in a letter to Lieutenant-Governor Bloom of Ohio saying that it was unthinkable that the American people who had been devoted to this ideal should refuse adherence to such a program as this tribunal represented. This letter was regarded as indicative of the fact that the President was determined in the nine months of the Congressional recess to keep his proposal before the American people.⁸⁵

Amos J. Peaslee of the international law firm of Peaslee and Compton maintained that the Hughes reservations amply protected the rights of the United States and there should have been no hesitation in approving the proposals.⁸⁶ Senator Johnson of California, on the other hand, spoke at the twenty-ninth annual dinner of the Bronx Board of Trade of New York and warned against America's entering the Court because it was a part of the League of Nations. The situation in the Ruhr convinced him how hollow the appeal was to save civilization by becoming involved in European affairs.⁸⁷ Joining an international tribunal might have seemed in itself an inconsequential act, but its possibilities might have changed it into a matter of great im-

84. Congressional Record, 67 Congress, 4 Session, 5121
(March 2, 1923)

85. Current History XVIII, 39

86. The New York Times, March 4, 1923, 1

87. Ibid., March 9, 1923, 1

portance.⁸⁸ The World Court was not a court as a court was commonly understood, because it was little more than what existed under our arbitration treaties. It did not function like an ordinary court because it could not bring recalcitrant countries before it nor could it assume jurisdiction over the disputes of nations. Therefore, Senator Johnson thought that it was a mere arbitral tribunal to which nations submitted disputes if they say fit, and only those questions which were submitted could be heard. Great Britain, France, Italy, and Japan refused compulsory jurisdiction reserving for themselves the right to decide if and when a controversy should come before the Court. If the United States also declined to adhere to the compulsory jurisdiction, in case of a controversy with one of the powerful nations without the latter's consent, the Court could not have acted even though we desired it.⁸⁹

There were also arguments on the other side, for the World Court was not a duplication of the old Permanent Court of Arbitration. There was need for this latter tribunal for cases in which arbitration was desired. This old Court was also needed to nominate candidates from whom the judges were elected. But the World Court was planned as permanent, as a court, as having continuous life of decisions, and as a con-

88. Hiram Johnson, "Would Court Entry Prove Wise Step for America?" (Contra-view) The Congressional Digest II, #8, 244 (May 1923)

89. Ibid., 244

sistent body of jurisprudence which furnished the sound basis for the renovation of international law.⁹⁰ Nor was the Court a private institution for the League, because its use was never restricted to League members and especially since 1922 it had been open to all of the world. In fact Hungary appeared before the Court even before she was a member of the League.⁹¹ The stand which the majority of the countries took in refusing compulsory jurisdiction was not so unusual, because the United States had taken this same position at both The Hague Conferences.⁹² The United States, too, had access to the Court on terms of equality with any other state. We had the right to refer disputes, in which we were involved, to the Court if the other party consented, and vice versa. We, therefore, reaped the profits of a ready tribunal for our own, as well as for other nations' disputes. Yet we paid no share of its expenses. It was necessary, because of the voluntary nature of its jurisdiction and the moral nature of its authority, that this court have a united world supporting it.⁹³

Others welcomed heartily President Harding's recommendations to the Senate if they meant that he realized the world's desperate situation was only to be solved with the

90. Manley O. Hudson, "Would Court Entry Prove Wise Step for America?" (Favorable-view) The Congressional Digest II, #8, 244 (May 1923)

91. Ibid., 244

92. Ibid., 244

93. Ibid., 244

aid of the United States. Favor would not have been given to this action if it had meant the final entry of the United States into the League of Nations, but that was guarded against by the Hughes reservations.⁹⁴ The Court itself was not a real court nor one which gave adequate hope of having a more determining influence upon the affairs of the nations than did The Hague Tribunal. The fact that the Court failed to receive obligatory jurisdiction was disappointing, but a faint hope rested in the voluntary jurisdiction clause which the nations had the option of signing.⁹⁵ The failure to establish obligatory jurisdiction continued the old distinction of justiciable and non-justiciable disputes.⁹⁶ As long as that condition existed a quarrel might be classed by a nation as a non-justiciable affair which involved its sacred honor and, therefore, could not be regarded as an ordinary judicial cause. In that way the Court was bound by severe limitations.⁹⁷ Since the United States was the spiritual father of the world court idea, the proper step to take would have been to participate in the Court's function, no matter how limited, to support the tribunal, and then to work toward a better and

94. "Let Us Join the World Court of Justice" The Nation CXVI, 258 (March 7, 1923)

95. Ibid., 258

96. A non-justiciable case is one in which a government claims that its sacred honor is involved and for that reason, cannot be regarded as an ordinary judicial affair. This was the principle upon which dueling was based. In a non-judiciable affair, right is subordinated to might.

97. The Nation CXVI, 258

stronger court which was entirely free from the League. The Court was not entirely free from the League, but it was not true that the decrees were to be enforced by the League of Nations. There was no law enforcing machinery and that was as it should have been.⁹⁸

Senator Knox was convinced that the decrees of such a court needed no army or navy to uphold them and this assertion was substantiated throughout the long history of international arbitration. The rule had always been that the judgements of the deciding referee were accepted and loyally carried out by the parties involved in the dispute.⁹⁹ The nations were not to be content with the Court as it was formed, but strive to build it up into a supreme court of the world with powers as complete, relatively, as those of the Supreme Court of the United States.¹⁰⁰

Others could not see how this Court could have had any more influence than some local Y.M.C.A. would have had in abolishing diphtheria because the only way to do away with a disease was to determine by scientific study the cause of the malady and then apply the remedy. There was not the least danger that the World Court or any other agency of the League of Nations would have taken steps to diagnose the causes of war. The imperialists, profiteers, and their

98. Ibid., 258

99. Ibid., 258

100. Ibid., 258

political puppets, who made up the oligarchy of the League, took good care that there never would be any such effort to interfere with their business; for when the Council and the Assembly adopted the plan of the Committee of Jurists it whittled and reshaped here and there to make sure that the Court would not become an embarrassment to imperialist aggression. It inserted a proviso that a nation had to consent to be brought before the Court, that the decisions were not binding on the nations not parties to the case, and that the judgements were not to serve as precedents.¹⁰¹

During April of 1923 a petition was drawn up by the Temple Sisterhood of Mickve Israel which indorsed the President's recommendation to the Senate advocating participation of the United States in the World Court.¹⁰²

Mr. Wood, as United States Representative from Indiana, and Chairman of the National Republican Congressional Campaign Committee, voiced the opinion that the people of Indiana were more opposed to the World Court than they had been to the League of Nations. He believed that if the United States wished to go into the World Court it should have started one of its own or revived The Hague Tribunal. Party leaders from all over the country had expressed amazement to the National Republican Congressional Campaign Committee

101. "Much Ado" The Freeman VII, 4 (March 14, 1923)

102. Congressional Record, 68 Congress, 1 Session, 438
(December 20, 1923)

Chairman that such a court was advocated at that time when there was no need for it.

103

In an address before the Associated Press, New York, April 24, 1923 President Harding again laid his views before the American people. He said that it was only after he was satisfied that the Court and the League were not connected that he proposed adherence to the Court Protocol with the assent of the Senate. Furthermore, as another precaution, the Secretary of State suggested suitable reservations to give the United States ample guaranty that no obligation toward the League would be assumed.

104

Some said that it was a move toward becoming a member in the League of Nations, but there was no such thought among those officials who shaped American foreign policy. Others said that entanglement with the League was unavoidable. But any relationship with the League would have required the assent of the Senate, and this was not to be feared. But if by some chance the Senate approved of such action, he promised that his administration would not complete the ratification.

105

There was one political bugbear in the fact that in the Assembly of the League the British Empire had six votes in that branch of the Court electorate, but only one in the electorate of the

103. William Wood, "Do American People Favor World Court Proposal" (Contra-view) The Congressional Digest II, #8, 245 (May 1923)

104. "President Harding's First Public Address on World Court Proposal" The Congressional Digest II, #8, 232 (May 1923)

105. Ibid., 233

Council. In view of the fact that no nation could have more than one judge it seemed less formidable in the Court than when applied to the League. Furthermore, if other nations accepted this voting strength of the British dominions, we too should have done so in view of the natural ties of the English speaking race.¹⁰⁶ Finally, Harding commended it because it was a great step in the direction of peaceful settlement of justiciable questions. It was a more certain agency of international justice through law than could have been hoped for in arbitration which was influenced by the prejudices of men and the expediency of politics.¹⁰⁷

On April 26, 1923 Mr. Elihu Root spoke as President of the American Society of International Law stressing the facts that the judges represented the main forms of civilization, and the principal legal systems of the world.¹⁰⁸ The Court elected its own president, appointed its own clerk, and made its own rules. A quorum of nine judges was required for hearing and deciding a case except in special cases when summary procedure was provided for. Before discharging his duties, each judge was required to make a solemn declaration in open court that he would exercise his powers impartially and conscientiously. No member of the Court represented a state and the personal judgement of the judge decided a case.¹⁰⁹ As

106. Ibid., 233

107. Ibid., 233

108. Congressional Record, 69 Congress, 1 Session, 2039 (January 14, 1926)

109. Ibid., 2039-2040 (January 14, 1926)

for the provisions of the Protocol, it was stated therein that there were two classes of states in the World Court membership: first, the Members of the League, secondly, other states that were not members of the League. It was proposed that we join the Court as a non-member of the League.¹¹⁰ Also by express terms of the Protocol no power could have had more than one of its nationals in the Court. The self-governing dominions of the British Empire could not have gained a member of the Court by their votes because their citizens were all nationals of the British Empire and there could be but one national of that Empire in the Court.¹¹¹

Senator Lodge wrote a letter to Governor Hyde of Missouri on April 28, 1923 in which he said that the policy of the United States and the Republican party had always been to promote the settlement of international differences by arbitration. In the past the United States had supported the Permanent Court of Arbitration. If the World Court had judges who were appointed by the nations severally and independently and not by a majority of the Council and Assembly of the League, the Senate and the American people would probably have approved.¹¹²

The General Federation of Women's Clubs with its membership of 2,500,000 women adhered to measures which were to

110. Ibid., 2042 (January 14, 1926)

111. Ibid., 2042 (January 14, 1926)

112. "Senator Lodge Makes Initial Statement on World Court Proposal" The Congressional Digest II, #8,233 (May 1923)

lead to the establishment of international peace. In its council meeting of May 1923 all practical moves and measures to that end were indorsed.¹¹³ In that same month the Oregon Bar Association at Portland passed a resolution favoring the adjudication of international disputes and proposed that the United States adhere to the Protocol of the World Court.¹¹⁴

Edward Borchard, professor of law at Yale University, delivered an address before the Academy of Political Science in New York City on May 9 and 10, 1923 about the Permanent Court of International Justice. He thought that the Court issue was becoming political in nature.¹¹⁵ The supporters of the Court had the idea that this tribunal would furnish a substitute for war through peaceful adjudication. The obligatory submission of disputes which was recommended by the Committee of Jurists was a good idea. But with the voluntary jurisdiction of the Court, as it was established, it seemed likely that it would discourage rather than promote the submission of important disputes to the Court.¹¹⁶ One of the main sources of power for the Court was in the caliber of men elected to it by the Council and the Assembly. Were the nations as willing to submit important questions as they were to elect important men, the future of the Court would

113. Senate Subcommittee Hearings, 139

114. *Ibid.*, 186

115. Edwin M. Borchard, "The Permanent Court of International Justice" Proceedings of the Academy of Political Science
X, #3, 125 (July 1923)

116. *Ibid.*, 125; 128-130

have been promising. A nation would not have been likely to submit a case if the personnel of arbitrators or judges were not suitable. A biased judge would not be conducive to a nation who wanted to submit a case. Therefore, the only chance for securing a respectable docket for the Court was in providing for obligatory jurisdiction. For instance, an English authority on international law, W.E. Hall, had made critical remarks about American policy. If he were a judge in the Court, the United States would probably not have submitted a case to it. As a result the contribution of the Court toward the promotion of peace was felt by Mr. Borchard to be slight for the Court was barred from obtaining jurisdiction of those questions which commonly led to war.¹¹⁷

The first four cases were advisory opinions. It seemed likely that the Court would get most of its business from the weak nations. This was indicated by the signatory states to the obligatory jurisdiction clause, for the law was the only protection that these weaker nations had. The fact, that the nations seriously wanted an international court to settle disputes, was not well founded. The nations established an international tribunal when the dispute was unimportant or would not justify the expense of war, or in short, when the nations felt that they had more to gain by arbitration or other peaceful means than by war. But when

117. Ibid., 130-133

peaceful adjustments seemed inappropriate then they were not chosen, as for example, in the Wilson and Vera Cruz incident. The temper of the world seemed less disposed to adopt civilized methods of adjusting conflicts than it had for many generations.¹¹⁸

Why then should there have been an international court? In an address before the American Society of International Law Charles E. Hughes answered this question in the following manner. There were controversies which should have been decided by a court. There were numerous international contracts or treaties to be interpreted and there were rights and duties under international law which needed the best possible international tribunal to decide them. It was essential to world peace that controversies, not our own, should have been peacefully and impartially determined.¹¹⁹ The question might be well put as to why there should have been a permanent court instead of a temporary arbitral tribunal. Because arbitrators were selected to determine a particular dispute after it had arisen. Then, after the decision, the tribunal ceased to exist. As a result there was the unnecessary expense in creating a separate tribunal for each case. There was also a loss in the experience of the judges because of the lack of continuity in service which

118. Ibid., 133-136

119. Charles E. Hughes, "Should United States Join the Permanent Court of International Justice?" (Favorable-view) The Congressional Digest II, #8, 238 (May 1923)

caused the development of law to suffer. Probably the most serious defect was that the arbitral tribunal was selected by the parties in the dispute. Therefore, the members of the tribunal, who were the separate choice of each party, tended to become advocates rather than judges. The fifth member on this tribunal committee was the umpire and the selection of this person was far from easy especially if the dispute was a serious one. As a result the process tended to the intrusion of political interests and a solution by compromise rather than the proper judicial determination. The Court on the other hand was constituted under the Statute which defined its organization, jurisdiction, and procedure.¹²⁰

In an address before the Women's Civic League in Baltimore Mr. Hammond voiced his opposition to joining any international organization which involved a super government or which in the slightest degree caused the derogation of our national sovereignty.¹²¹ To him it did not seem possible for our Government to be represented on the International Court as it was then constituted. The Court in his opinion was a paid agent of the League of Nations and as such could have been called upon to advise the League on matters submitted to it. As a proof of this fact, the first four cases decided by the Court had been advisory opinions to the League

120. Ibid., 238; 248

121. John Hammond, "Should United States Join the Permanent Court of International Justice?" (Contra-view) The Congressional Digest II, #8, 238 (May 1923)

rather than disputes between nations. The United States would have found itself in an embarrassing position if it supported an institution which dealt with questions about which the United States had disclaimed all responsibility and in which she had refused to become involved. Such issues would have arisen under the Treaty of Versailles in international labor questions, international communication questions, and the protection of minorities.¹²² To deal with non-justiciable disputes there should have been a Council of Conciliation, so that by means of a world court and a council of conciliation a body of international law would have developed resulting in the elimination of many disputes from diplomatic intervention. No serious minded person thought that this Council of Conciliation and world court would have eliminated war, but it would have greatly reduced the possibilities of such. This idea would also have been free from the enforcement of peace by military power, because its strength would have depended upon the pressure of public opinion.¹²³ In addition there should have been a separate branch which had jurisdiction over purely commercial questions dealing with the investment of foreign capital and with foreign commerce.¹²⁴

Herbert Hoover, who was then Secretary of Commerce, ex-

122. Ibid., 238
123. Ibid., 238
124. Ibid., 238

pressed his favorable opinion upon the Court. The United States would not have had to assume any obligation, to use arms, nor to make any commitments that limited our freedom of action. This was because the Court relied upon the up-building of the processes of justice between nations and upon public opinion for their enforcements.¹²⁵ Furthermore, the Court provided a place where judgements could be given on the merits of a great number of questions which formerly had no process of settlement except negotiation or arbitration. Oftentimes in the past this process of direct negotiation had begun calmly enough, but had led to friction, distrust, hatred, and sometimes to war.¹²⁶ The Court was by no means the total solution of international cooperation for peace, because the field of political action as distinguished from judicial action remained unsolved. But this step was a sound minimum one in eliminating the causes of war.¹²⁷ The Court could not have led us into political entanglements for its decrees were not upon political agreements. No nation had the right to summon the United States before the Court which could not even exert moral compulsion on us. The connection between the Court and the League was so remote, that if we insisted on tearing down this tribunal body just because it

125. Herbert Hoover, "Would United States Help Europe by Joining World Court?" (Favorable-view) The Congressional Digest II, #8, 239 (May 1923)

126. Ibid., 239

127. Ibid., 239

was created by a conference called by the League, it would have been one of the most unseemly suggestions of national selfishness that could be conceived.¹²⁸

William E. Borah, the staunch opponent of the League and the World Court, could not understand why the United States refused to join the League, and yet insisted upon joining everything that the League created. It was an impossible proposition, yet political necessity seemed to require it.¹²⁹ Mr. Borah asserted that the sole source of the existence and maintenance of the Court was the League. There could have been no Court unless the creating, electing, sustaining, and maintaining power, namely, the League, continued to exist. If the Court was preserved the League must be preserved too. If we became a member of the Court, we would have wanted to maintain it and build it up so that as a result we would have become vitally interested in everything which would have preserved the strength of the League. One reason given in favor of joining the Court was that the United States should have defrayed the expenses of this tribunal. That was right; we should have paid if we made use of it. But the expenses of the Court were a small item in maintaining the League. After we had the benefits of the Court, would we have refused to share the expenses of the League without which there could

128. Ibid., 239; 250

129. William Borah, "Could United States Join Court without Joining League of Nations?" (Contra-view) The Congressional Digest II, #8, 240 (May 1923)

have been no Court? If we believed in the Court as a good thing, would we not have been called upon to support its main foundation and then where would our reservations have been?¹³⁰

Another strong opponent to the Court was David J. Hill, President of the National Association for Constitutional Government. He thought that without further classification and extension of international law a world court established upon the broadest and highest principles would have been of limited ability.¹³¹ Even if the three nations mentioned in the Annex of the Covenant became members of the Court it would still have been the League's court and not a real world court, because these additions would have been annexed to the Court as eligible for admission to the League.¹³² All members of the Court thus far had been Members of the League, which had created, elected, and maintained the Court. The United States could have become a member of the Court without being a member of the League, but in order to elect the judges it would have had to become associated with the Assembly and Council of the League. It was said that as electoral bodies these two organs did not act under the League. By what process was the transformation made from

130. Ibid., 240; 246

131. Dr. David Hill, "Important Comments on President Harding's Proposals" (Contra-view) The Congressional Digest II, #8, 242 (May 1923)

132. Ibid., 242

being the whole of the League to no part of the League when the business was the election of judges for the Court? Since the United States was one of the three nations mentioned in the Annex to the Covenant, its influence would have been secondary as compared with the Assembly and the Council when considered as an electoral bloc. It might have been just as well to renounce the privilege of electing the judges and leave that entirely to the Assembly and the Council.¹³³ The danger to the United States did not lie in its membership in the League, where it would always have had the right to veto, but in its membership in a Court whose decisions were to be accepted as declarations of international law.¹³⁴ Mr. Hill did not overlook the fact that the Covenant, by its provisions, set aside whole sections of what was previously accepted as international law, and assumed for the League of Nations the rights and prerogatives of intervention, prescription, and punishment which were never before assumed by an organized international body. What the Constitution of the United States is to the Supreme Court of the United States, the Covenant was to the Permanent Court of International Justice.¹³⁵ In addition to its judicial duties the Court acted as an advisory body to the League and its mere opinion based on the prerogatives of the League became the

133. Ibid., 242

134. Ibid., 242

135. Ibid., 250

law for all who recognized its decisions. As long as the Court was in any way the League's Court, the law of the League would have been the law of the Court. It would have been safer to become a member of the League where preventive action could have been taken than to accept the decisions, opinions, and decrees of the League's court as constituting international law.¹³⁶

The Senator from Wisconsin, Robert LaFollete, thought that the movement for the United States to join the World Court had two sinister aspects for the American people. First, it was a part of a clever scheme conceived by the international bankers to entangle the United States in European affairs so that American wealth, soldiers, and ships could have been used to safeguard and protect their almost worthless investments in bonds, currencies, and enterprises of the tottering nations of Europe. Secondly, it was an attempt to draw a red herring across the trail of domestic issues and thus save the administration and its supporting special interests from the wrath of an aroused people. They wanted the bankrupt farmers to turn to the devastated area of Europe and forget their own deplorable conditions. They wanted the American workers to become interested in the oppressions of Europe and forget the attempts of the railroad and industrial trusts to crush their organizations and reduce

136. Ibid., 250

the wage earners to helplessness. But the attempt would not succeed for the people knew it was false to American traditions and interests. Nothing could be done by the United States until the Treaty of Versailles was wiped out and the people of Europe cast hatred and revenge from their minds.¹³⁷

Two views of the question were considered by Washington papers. In an editorial, "How the World Court Would Fatally Entangle the United States," the Washington Herald upheld the contra-view by stressing the fact that one of the Court's duties was to interpret treaties. Under the Constitution of the United States, treaties are the law of the land. So, the law of the land, as far as was found in treaties, might have been interpreted by a foreign court. Some of these treaties dealt with matters which reached into the nation's vital interest, namely, immigration. A treaty exists between the United States and Great Britain regarding the Panama Canal. Under the treaty Great Britain claimed that her merchant ships had the right to use the canal by paying the same tolls as the American ships. The United States disputed this point. In proposing adherence to this Court, it was proposed to place in the hands of strange peoples and governments the fate of American interests. The only defense to this argument was the fact that the judges were impartial.

137. Robert LaFollette, "Would United States Benefit by Joining World Court?" (Contra-view) The Congressional Digest II, #8, 243 (May 1923)

But it was maintained that that was a false defense because an Englishman on the bench would still have been an Englishman and the same applied to the French.¹³⁸

The favorable-view on the Court question was upheld in the editorial, "An American Policy" from the Washington Evening Star. Attempts to attribute Harding's recommendations to the sinister influence of international bankers were inspired by a desire to becloud the question before the American people. If there was international intrigue inspired by the bankers in 1899 there was no evidence of American suspicion then. The policy of promoting and participating in a world tribunal to lessen war and promote peace was approved in 1899 and again in 1906 by this country without reference to partisan politics. It was regarded then as sound American doctrine.¹³⁹ It was proposed that the United States join a World Court. What happened to cause the proposal to be attacked as dangerous, un-American, and unfriendly to the nation's integrity and security? It was simply that the agency which was used by the other nations to maintain this Court was generally disapproved of in this country. Secretary Hughes pointed out that only a determined partisan could have failed to see the usefulness of the League as a means to the end of a world court. But that did not mean that it involved

138. "Washington Papers Take Issue on World Court Proposal" The Congressional Digest II, #8, 247 (May 1923)

139. Ibid., 247

membership in the League itself.¹⁴⁰

The national convention of the National Federation of Business and Professional Women's Clubs held in Portland, Oregon in June 1923 unanimously indorsed the Harding-Hughes reservations for the Permanent Court of International Justice. It seemed to them to be the first step toward permanent peace.¹⁴¹

On his trip to Alaska in the summer of 1923 President Harding stopped in St. Louis and on June 21 spoke about the Court, laying down two conditions which he regarded as indispensable:

1. That the tribunal should be in theory and in practice a World Court and not a League Court.
2. That the United States should occupy a plane of perfect equality with every other power.¹⁴²

He further stated: "There admittedly is a League connection with the World Court though I firmly believe we could adhere to the Court Protocol, with becoming reservations, and be free from every possible obligation to the League, I would frankly prefer the Court's independence of the League."¹⁴³

He went on to praise the Court as it was constituted, but suggested that it be made self perpetuating in one of two ways:

140. Ibid., 247

141. Senate Subcommittee Hearings, 144

142. Hill, 55

143. Ibid., 55

1. By empowering the Court to fill any vacancy which arose from the death or retirement of a member without interposition from any other body.

2. By transferring the power of electors from the Council and the Assembly to the remaining members of the Permanent Court of International Justice so that in fact the Court's members elected their successors.¹⁴⁴

In this spirit of compromise it seemed to many editors that the President was not making a choice of weapons, but was withdrawing from the battlefield. The St. Louis Star thought that he strengthened the hands of his opponents and weakened the morale of his own supporters.¹⁴⁵ The Philadelphia Public Ledger did not believe that Harding had lessened the bitterness of his foes by such tactics. On the contrary, they would hail this as a sign of weakness, and evidence that internal war and threats in his own party had worn away the President's determination.¹⁴⁶ The Wall Street Journal, Springfield (Massachusetts) Daily Republican, Philadelphia Record, Atlanta Journal, St. Louis Globe Democrat, and the Milwaukee Leader attacked the idea of a self perpetuating Court as un-American, unworkable, and unseemly.¹⁴⁷

Other newspapers thought that the President's policy

144. "Courting the Court's Critics" The Literary Digest
LXXVIII, 9 (July 14, 1923)

145. Ibid., 9

146. Ibid., 9

147. Ibid., 9

was not to consider the Hughes reservations as the only conditions under which the United States might adhere to the Court because he had put forth suggestions of other possibilities. They thought that this was likely to win over both the Senate and public opinion.¹⁴⁸ His tactics against the foes of the Court were those of patience and not an attempt to force his proposal through Congress by legislative manipulation or executive pressure. He did not try to impose his will upon the Senate. The Charleston, West Virginia Daily Mail, The Atlanta Constitution, and the New York Herald Tribune thought that this was the best of tactics that he could have used.¹⁴⁹

At the seventh convention of the American Federation of Teachers held in Chicago from July 11 to 13, 1923 the participation of the United States in the World Court was indorsed.¹⁵⁰ The annual meeting of the American Bar Association was held at Minneapolis in August 1923 where a resolution was passed indorsing support of the Court in the manner set forth by President Harding.¹⁵¹ At a meeting of the Connecticut Federation of Churches in November 1923 a resolution was passed which represented the opinion of the Baptist, Congregational, Methodist Episcopal, Methodist Protestant, Presbyterian,

148. Ibid., 8

149. Ibid., 8

150. Senate Subcommittee Hearings, 137

151. "Minneapolis Meeting Shows Association's Increasing Strength" American Bar Association Journal IX, 569 (September 1923)

protestant Episcopal and Universalist Churches. In this memorial these groups expressed their approval of Harding's message of February 24, 1923. It seemed to them lamentable that the United States was not a member of a court which owed its existence so largely to the thought and work of American statesmen and jurists. They earnestly petitioned the President to renew his recommendation, and the Senate to take prompt action to carry out that recommendation.¹⁵² The Girls' Friendly Society in America with about 60,000 members and representatives in nearly every state passed a resolution in their council meeting held in Baltimore in November 1923 urging the adherence of the United States to the World Court.¹⁵³

The citizens of Elberton, Georgia assembled at the First Methodist Church to observe Armistice Day in 1923. A resolution was passed by a great majority in favor of United States adherence to the Court.¹⁵⁴ The Philathea Class of the First Baptist Church of Augusta, Georgia expressed the hope that America would become a member of the World Court.¹⁵⁵ The American Association of University Women at its Portland, Oregon convention held in the summer of 1923 passed a resolution favoring the participation of the United States in the

152. Senate Subcommittee Hearings, 173 (For full text of the resolution see Appendix, 218-219)

153. Ibid., 140-141

154. Congressional Record, 68 Congress, 1 Session, 438 (December 20, 1923)

155. Ibid., 438 (December 20, 1923)

World Court. This association's branches in Rome, Atlanta, and Augusta, Georgia during November 1923 indorsed this national action.¹⁵⁶ The Atlanta, Georgia Section of the Council of Jewish Women in accordance with the resolution passed at the triennial convention of the National Council of Jewish Women, held at St. Louis during November 1923, indorsed the entrance of the United States into the Court.¹⁵⁷ Like action was passed by the League of Women Voters at its quarterly meeting, November 19, 1923.¹⁵⁸ The North Georgia Conference of the Methodist Episcopal Church, south, representing a constituency of 140,000 members was in session in Atlanta, Georgia November 21 to 26, 1923. They resolved to request the Senate to adhere to the Protocol of the Court.¹⁵⁹

In his message to Congress on December 6, 1923 President Coolidge said: "Our foreign policy has always been guided by two principles. The one is the avoidance of permanent political alliances which would sacrifice our proper independence. The other is the peaceful settlement of controversies between nations. By example and by treaty we have advocated arbitration. For nearly twenty-five years we have been a Member of the Hague Tribunal, and have long sought the creation of a permanent world court of justice. I am in full accord with both of these policies. I favor the establishment

156. Ibid., 438 (December 20, 1923)

157. Ibid., 438 (December 20, 1923)

158. Ibid., 438 (December 20, 1923)

159. Ibid., 437 (December 20, 1923)

of such a court intended to include the whole world. That is, and has long been, an American policy.

"Pending before the Senate is a proposal that this Government give its support to the Permanent Court of International Justice, which is a new and somewhat different plan. This is not a partisan question. It should not assume an artificial importance. The Court is merely a convenient instrument of adjustment to which we could go, but to which we could not be brought. It should be discussed in the entire candor, not by a political, but a judicial method without pressure and without prejudice. Partisanship has no place in our foreign relations. As I wish to see a court established, and as the proposal presents the only practical plan on which many nations have agreed, though it may not meet every desire, I therefore commend it to the favorable consideration of the Senate, with the proposed reservations clearly indicating our refusal to adhere to the League of Nations."¹⁶⁰

On December 10, 1923 Senator King introduced a resolution (Senate Resolution 36) which called for United States adherence to the World Court, with the exception of the compulsory jurisdiction, under the Harding-Hughes reservations. It was referred to the Committee on Foreign Affairs.¹⁶¹

That same day Senator Lenroot of Wisconsin offered a

160. Ibid., 96-97 (December 6, 1923)

161. Ibid., 153 (December 10, 1923)

resolution to the Senate (Senate Resolution 29) which called for adherence to the Protocol of the Court under certain conditions:

1. United States adhesion to the World Court would not mean any legal relationship to the League.
2. That such an adhesion would not take place until the Statute of the Court provided that all independent states, having diplomatic representatives to The Hague, be permitted to adhere to the Statute of the Court. The election of judges was to be done by the states adhering to the Protocol under a two group plan: Group A to include the British Empire, France, United States, Italy, Japan, Germany and Brazil. Group B to include all of the other states. The electors of group A were to perform the duties of the Council of the League and the electors in group B were to perform duties and exercise the powers conferred upon the Assembly.
3. The duties performed by the Secretary of the League were to be transferred to the registrar of the Permanent Court of International Justice.
4. The electors of the judges were to decide in what way the expenses were to be paid.
5. The Court was to be open to all independent states and when a state not adhering to the Protocol appeared before the Court, the latter would fix the amount to be contributed.
6. The Statute of the Permanent Court adjoined to the

Protocol was not to be amended without the consent of the United States.

7. When the President was satisfied that the Statute had been amended as herein provided, he could have proclaimed the adhesion of the United States to the Protocol. This resolution was also referred to the Committee on Foreign Relations.¹⁶²

Mr. Walsh, a Senator from Montana, presented a large number of petitions only one of which was printed in the Record, but all of which were referred to the Committee on Foreign Relations. The one which appeared in print was from the Montana League of Women Voters which petitioned the President and Congress to take immediate action upon United States entrance into the World Court.¹⁶³ On December 20, 1923 the Y.W.C.A. Board of Directors of Savannah, Georgia sent an appeal to Senator Harris urging him to do everything possible toward adherence of the United States to the World Court.¹⁶⁴

162. Ibid., 151 (December 10, 1923)

163. Ibid., 419 (December 19, 1923)

164. Ibid., 438 (December 20, 1923)

CHAPTER III. CONGRESSIONAL ACTION AND PARTY

ATTITUDE 1924

Public Opinion
Senate Subcommittee Hearing
Lodge's Plan
Majority and Minority Reports
Presidential Attitude
Republican and Democratic Party
Attitudes

CHAPTER III

CONGRESSIONAL ACTION AND PARTY ATTITUDE 1924

The year 1924 seemed to climax the interest and the force behind the drive to get the United States into the World Court. As will be shown efforts were made on the part of many organizations, clubs, and prominent citizens to get the Senate to consider and act favorably upon this issue. A resolution was passed which called upon all the clubs affiliated with the General Federation of Women's Clubs and their individual members to make known their opinion of the World Court and to petition the Republican and Democratic parties to place planks in their 1924 platforms favoring American acceptance of it.¹

On January 22, 1924 Senator King from Utah broadcasted a speech in which he said that the opportunity was at hand for the United States to make an important contribution to the lasting peace of the world. In order to bring this about international law, and courts to interpret it, were essential. He pointed out that a world international court had been projected as a practical and rational scheme because justice and peace were matters of law and existed only in a state of public international order. Disputes which pro-

1. The New York Times, January 10, 1924, 8

voked war had to be settled by judgement and only in a world court could these principles be applied.² The World Court could not have been set up by one nation, but had to be a joint act of all the Powers. To have brought all of the nations into an agreement upon a project of this kind Mr. King felt was of itself a worthy deed. For the United States to refuse to ratify would have been regarded by many as a repudiation of the project for peace and justice.³

Senator Willis of Ohio presented a petition from the Ohio League of Women Voters with 12,000 signatures of men and women of voting age who expressed the hope that the President and the Senate would act favorably upon United States entrance into the World Court. This was presented to the Senate on March 27, 1924 and referred to the Committee on Foreign Relations.⁴

Senator Reed of Missouri was a staunch opponent to the idea of the United States joining the Court because he felt that the American people were ignorant of the attitude and opinions of the judges who made up the tribunal.⁵ He wondered if the people knew whether or not these judges in whose hands American affairs were being placed were comparable to the men on the United States Supreme Court. Yet so many

2. Congressional Record, 68 Congress, 1 Session, 1266 (January 22, 1924)

3. Ibid., 1266 (January 22, 1924)

4. Ibid., 5075 (March 27, 1924)

5. Ibid., 5075 (March 27, 1924)

proposals had been made to limit the power of this latter tribunal. It appeared to him that the only thing legal about the World Court was its name. It had no constitution to limit its powers, no legislative body to regulate its procedure, and no precedents to govern its conduct.⁶ It proceeded under international law, but what was international law? At best, it seemed to him that it was a codification of rules which the law writers had undertaken to bring forth from the general customs and habits of the nations, and from treaty obligations which had been recognized by some and disregarded by others. So to all appearances the World Court to Mr. Reed was a law unto itself.⁷ It would have been intolerable for the United States Supreme Court to decide questions as it saw fit, to make its own rules, or to regulate its own conduct for that would have been a judicial oligarchy. Yet that was the position in which the advocates of the Court found themselves. There was nothing corresponding to a jury in this international Court so that questions of fact were to be decided by foreigners who might have hated us and have been glad to injure us. For example, Mr. Reed thought that if a case came up between the United States and Great Britain over the free passage of United States ships through the Panama Canal, the judges whose countries' interests were the same as England's would have

6. Ibid., 5075 (March 27, 1924)

7. Ibid., 5076 (March 27, 1924)

decided in favor of Great Britain for the love of country would have towered over all.⁸

During 1924 the following bar organizations expressed their approval of the Court: Boston Bar Association, Mississippi Bar Association, Erie County Bar Association, New York State Bar Association, Ohio Bar Association, and the Vermont Bar Association.⁹ William D. Guthrie, president of the New York State Bar Association, said that we could have signed the Protocol accepting the Court without committing ourselves directly or impliedly to the League.¹⁰ Dean Wigmore added that it should have thrilled every lawyer when he heard of the establishment of the Court.¹¹

On April 7, 1924 Senator Pepper from Pennsylvania came forth with a plan which he submitted in the form of a resolution to the Senate (Senate Resolution 204) which asked that body to advise the President to call another world conference similar to the ones held at The Hague to consider questions affecting the peace of the world. The agenda was to include a consideration for plans of a world court either through the development of the present Permanent Court of Arbitration at The Hague or through the disassociation of the World Court from the League of Nations. This resolution

8. Ibid., 5076-5077 (March 27, 1924)

9. Hudson, 135

10. Ibid., 175

11. Ibid., 44

was referred to the Committee on Foreign Relations.¹²

Representative Moore of Virginia offered House Resolution 258 which favored approval by the Senate of the President's message of February 24, 1923. This was sent to the Committee on Foreign Affairs.¹³

On April 24, 1924 resolutions favoring United States participation in the World Court were presented by Senator Frazier of North Dakota from the Sorosis Club of Harvey, North Dakota;¹⁴ by Senator Shipstead of Minnesota from a committee of the League of Women Voters;¹⁵ by Senator Lodge from 35,000 women of Iowa;¹⁶ and from the Philadelphia Federation of Churches. All of these resolutions were referred to the Committee on Foreign Relations.¹⁷ Senator McCormick of Illinois presented telegrams and letters from the following individuals and groups who favored support of the World Court: F.E. Gillespie, an instructor at the University of Chicago, Eleanor Perkins of Detroit, Harold Gosnell, a teacher of political science at the University of Chicago, N.A. Tolles, The Diplomatic Club at the University of Chicago, Robert Cutting of New York, Everett Colby of New York, George Wickersham of Washington, D.C., and the Quincy,

12. Congressional Record, 68 Congress, 1 Session, 5726-5727 (April 7, 1924)

13. Ibid., 6598 (April 17, 1924)

14. Ibid., 7001 (April 24, 1924)

15. Ibid., 7001 (April 24, 1924)

16. Ibid., 7000 (April 24, 1924)

17. Ibid., 7000 (April 24, 1924)

Illinois Branch of the American Association of University
Women.¹⁸

The subcommittee of the Senate Committee on Foreign Relations which included Messrs. Pepper of Pennsylvania, Brandegee of Connecticut, Shipstead of Minnesota, Swanson of Virginia, and Pittman of Nevada held hearings on April 30 and May 1, 1924 in which representative citizens were given an opportunity to express their opinions on the World Court.¹⁹ The first speaker was Bishop Charles H. Brent who urged speedy adherence to the Protocol under the Harding-Hughes-Coolidge conditions. He cited the fact that the Court was essentially American in conception and principle.²⁰ A year had elapsed without any official action on the part of the United States and Senator Lodge claimed that the Court did not require immediate attention because the United States had fifty individual arbitration treaties with other powers. Lodge had also maintained that since the United States was a signatory of The Hague Convention which established the Permanent Court of Arbitration, in case of any controversy demanding arbitration this country could have secured it through The Hague Court or through the fifty special treaties. Furthermore, Lodge had contended that the delay had been caused by other matters which required the immediate at-

18. Ibid., 7527 (April 30, 1924)

19. "Foreign Entanglements in the Coming Campaign" The Literary Digest LXXXI, 13 (May 17, 1924)

20. Senate Subcommittee Hearings, 3

tention of the committee. Bishop Brent felt that a measure which was originally so important as to call for nation wide advocacy had been passed over for other proposals which were unknown to the country at large. Indifference was the worst form of depreciation.²¹ Moreover, Elihu Root was aware of the existence of the fifty treaties of arbitration and the Permanent Court of Arbitration when he worked on the establishment of the World Court. He would not have established a Permanent Court of International Justice if it just duplicated the previous organizations. These individual treaties provided for a peaceful understanding between the United States and individual nations while the World Court provided for the peace of the world. Therefore, their scope and method were entirely different.²²

The people who supported the Court, irrespective of political affiliations, constituted the majority of the thinking citizens of the country. Organizations demanding immediate action on this question by the Senate were The American Federation of Labor, The American Bar Association, the Federal Council of the Churches, the National Association of Credit Men, the National League of Women Voters, the Chamber of Commerce of the United States, and the American Association of University Women and they represented the feeling all over the country.²³ Bishop Brent asserted that

21. Ibid., 3

22. Ibid., 4

23. Ibid., 4

he had been with many and large groups of people, organized and unorganized, in the various states east of the Mississippi River. Wherever the question of the Court was discussed it met with favor and sometimes was indorsed by spontaneous consent.²⁴ He also found that the student bodies who were studying international affairs desired American adherence to the Court in an intelligent and discriminating way. Among the Christians and Jews who made up the majority of the American population, there was a multitude who advocated orderly processes as a practical substitute for war. They recognized in the World Court a helpful step in this direction. The people knew that the World Court was not perfect or final, but it was hoped that through its adoption some day reason and sentiment, law and order, common sense and a sense of humor would govern international policy. Therefore, the Permanent Court of International Justice seemed to him to be the next logical step against war.²⁵

The next speaker before the subcommittee was Mrs. James Lee Laidlaw who had cooperated with women's clubs and organizations in an educational World Court campaign. She had directed large groups and a corps of speakers and during the seven months previous to April 30 she herself had spoken before more than one hundred organizations. Every one of them had been in favor of the entrance of the United States

24. Ibid., 4

25. Ibid., 5-6

into the World Court with the Harding-Hughes reservations.²⁶
In March 1924 there had been a gathering of 600 women at the Biltmore Hotel in New York. As representatives of 18,000,000 organized women they were all united in advocating the World Court and went on record as favoring the earliest possible entrance of the United States into it.²⁷ All over the country was found a rising feeling of an indignant sense of wrong that the public was being balked. Intense dissatisfaction was shown because the Government was not responsive enough to record and execute so widespread and overwhelming a demand. In the public meetings she had addressed, after World Court resolutions had been passed, men and women often sprang to their feet and asked what good it did to pass such resolutions if the will of the people was disregarded. Oftentimes, on the floor of a convention or public meeting, people proposed a motion that everything else be dropped and a constitutional amendment be pushed which required only a majority vote in the United States Senate on any international measure like the World Court. Sometimes very absurd resolutions had been passed in very personal bodies in regard to methods for perhaps curbing the time a proposition could be left in any Senate committee. But foolish as they might have been, these things were indications of thought and purposeful effort on the part of law abiding citizens to make

26. Ibid., 7

27. Ibid., 7

the Government more flexible.²⁸

Mr. Walker D. Hines, speaking on behalf of the Chamber of Commerce of the United States, stated the position of the business men of the United States as expressed in the attitude which had been taken from time to time by the organization. The Chamber of Commerce of the United States had 1,000 local units of chambers of commerce, boards of trade, and other similar organizations, plus 300 trade associations. It had direct, associate, individual, and firm members amounting to 14,000. Through these commercial organizations it represented an underlying individual membership of about 750,000. The methods used by the National Chamber of Commerce in determining the sentiment of its membership were thorough, so that when the Chamber spoke about the general sentiment of its members it did so with definite authority.²⁹

In their 1922 annual convention which was attended by approximately 2500 delegates from all the constituent organizations the Chamber adopted a resolution that the United States had always stood for the peaceful settlement of controversies. Since a Court had been established which was consistent with these principles, it urged the United States Government to take its place with the other nations of the world in the Permanent Court of International Justice.³⁰ In

28. Ibid., 7-8

29. Ibid., 9

30. Ibid., 10

its 1923 Convention 3,000 delegates met representing the constituent bodies. By that time President Harding had recommended to the Senate that the United States participate in the World Court. The Chamber adopted by a unanimous vote a resolution which reiterated its conviction that the United States should adhere to the Protocol of the World Court and expressed its gratitude in the measures that had been taken by the Government to that end.³¹

The sentiment expressed by the business men was that this permanent Court was sound and business-like. They felt that it was sound because it was a permanent court which was more satisfactory and gave more promise for an orderly development of international relations than the fragmentary schemes of the occasional courts of arbitration had done. It dealt with matters which were regarded as legal controversies or justiciable matters as distinguished from matters of policy and politics.³² The Court was permanent and it could be assumed that if properly supported would bring about a steady development of a system of international law, interpretation of treaties, and a method of dealing with justiciable matters.³³ A sensible method had been devised of selecting its members who were trained in jurisprudence which was far superior to the haphazard selection of individuals

31. Ibid., 10

32. Ibid., 10-11

33. Ibid., 11

to act as judges in a particular arbitration case. It was a way which insured a competent personnel and which met the natural conflict of interest between the large and small States.³⁴ The Court rested on the good faith of the members who submitted cases and upon the educated public opinion which would result from the Court's decisions. There was no scheme by which the countries who supported the Court were obligated to compel the defeated litigants to comply with the Court's decrees and this had recommended itself to the business sentiment of the country. There was no compulsion on the United States to submit any controversies that it did not see fit to submit. The business men believed that the Harding-Hughes reservations protected the United States in every way, and still allowed it to add its moral support to this forward step in the development of the orderly processes in dealing with international affairs.³⁵ They also felt that it would have been impracticable to attempt to reconstruct a court which was functioning well, and which could have been entered into by the United States without any embarrassment or disadvantage. Many said that the Court was connected with the League in various ways which would have involved entanglements. The business men felt that the only connections between the two bodies were in matters of detail and convenient machinery. Furthermore, these

34. Ibid., 11

35. Ibid., 11

contacts did not make the Court subject to the League or those supporting the Court subject to any obligation to the League.³⁶ Finally, the business men saw the Court as a successful going concern, sound in principle and organization, and rendering useful service. They saw no substance whatever in the criticism directed against the Court and if the whole structure was reorganized in accord with these objections, the outcome would have been no better for the United States, no freer in substance from the League, and no more satisfactory in any respect. They believed that the Court was meritorious in all its characteristics and that it was worse than unwise to fail to support it. The talk of scrapping this Court and substituting another would have given no better results or one any freer from entanglements.³⁷

George W. Wickersham, who spoke on behalf of the American Bar Association, was the next speaker. At a meeting in Minneapolis, August 1923, the American Bar Association had passed a resolution by almost unanimous vote which represented the sentiment of a body of lawyers drawn from all over the United States and which was probably indicative of the bar in general. The resolution was a recommendation that the United States Senate should give its adhesion to the recommendation of President Harding and Secretary Hughes, which was later renewed by Coolidge, to accept the Perma-

36. Ibid., 12

37. Ibid., 13

ment Court of International Justice on certain conditions.³⁸

Mr. Wickersham gave several of his own opinions about this matter. He said that the Statute of the World Court provided that the jurisdiction of the Court comprised all cases which parties referred to it and all matters specially provided for in treaties and conventions in force. Every treaty in which the United States was a party which provided for the submission of questions, which might have arisen, to judicial settlement by arbitration or otherwise contained a reservation that no controversy was to be submitted under that treaty until the article affecting that case was first approved by the United States.³⁹ The United States never committed itself, even while avowing the principle of arbitration, to the arbitration of any dispute until the agreement about the particular dispute and the terms of submission had been previously approved by the United States Senate. If we adopted the recommendation of Secretary Hughes to accept the Court, every specific case would have had to be submitted to the Senate for ratification. All existing arbitration treaties probably contained the provision that the compromise in any individual case should be submitted to the Senate for its approval before the board of arbitration took effect.⁴⁰ Then, Mr. Wickersham discussed the use of the

38. Ibid., 14

39. Ibid., 17

40. Ibid., 17-18

League as an agent for the election and payment of the Court's personnel. He thought that since the Protocol of the Court was a treaty with each individual nation, it could have been changed at any time so that the nations would not use the League if they all preferred not to.⁴¹

Dr. A. Lawrence Lowell, President of Harvard University, spoke in behalf of the World Peace Foundation answering these two questions: (1) do we want any such court at all? (2) if we do want any such court, do we want this court? The advantage of a permanent court over an arbitral body, such as The Hague tribunal, was that it taught people how to keep out of disputes. Settling a controversy after it arose was important, but it was vastly more important to prevent people who knew their rights from becoming involved in any dispute. That was the reason for having a permanent court instead of The Hague tribunal. If we assumed that America wanted a real permanent tribunal, this World Court had great merits. Its decisions showed good sense, judgement, and impartiality. In the case where the Council asked advice over the French and British affair in Tunis and Morocco the French judge voted with the majority against his own country. If he had been an arbitrator, he would have stood by his own country against the majority as the German did in the 'Wimbledon' case.⁴² The judges were to sit for a number of years, but if one looked

41. Ibid., 25

42. Ibid., 29-31

at their ages you would see that one term would probably be a sufficient length of time for them to serve. One was eighty-two years old and would not have been likely to serve a second term. Therefore, the idea of the League controlling the judges by a threat of not re-electing them was absurd.⁴³

Dr. Lowell maintained that the position of the United States was defined well by the Harding-Hughes amendments. He believed that the selection of judges could not have been left to the Court of The Hague because that would not have been wise. Under the voting conditions there were two sifting processes which was a very good thing. The fact that the electoral body had other functions under the League did not disqualify it because it was the only practical way at that time in which to constitute the Court.⁴⁴ So in summing up his ideas Dr. Lowell assumed that the United States did want The Permanent Court of International Justice.

The next speakers presented statements urging adherence to the World Court as recommended by Harding and Hughes. The Reverend John M. Moore of the Northern Baptist Convention which was a representative body of 1,250,000 people from thirty-five states sanctioned this idea, as well as did Mr. Thomas D. Taylor, chairman of the Methodist Men Committee of One Hundred of Philadelphia.⁴⁵ The Reverend Sidney L. Gulick

43. Ibid., 33

44. Ibid., 33-34

45. Ibid., 36; 47

representing the Federal Council of the Churches of Christ, which was the official agency of twenty-nine organizations in the United States, presented a document as a memorial to the United States Senate. This statement had been signed by over 1,000 of the outstanding leaders in the various denominations of the religious bodies of the United States who sponsored Harding's proposal in his message of February 24, 1923.⁴⁶

Mr. F.P. Turner then presented a resolution from another group, the Foreign Missions Board of the United States, which had seventy-eight organizations associated with it representing over fifty different denominations. They favored United States participation in the World Court on the Harding-Hughes plan.⁴⁷ Telegrams favoring a world court had been received and were presented from the following bishops of the Methodist Church, especially those who were working in these mission churches: William F. McDowell of Washington, D.C., Theodore Henderson of Detroit, Thomas Nicholson of Chicago, Luther B. Wilson of New York, Herbert Welch of Tokio, Fred B. Fisher of Calcutta, Edgar Blake of Paris, F.J. Birney of Shanghai, Johnson of Africa, Frank M. Bristol of Chattanooga, and Joseph F. Berry of Philadelphia.⁴⁸ The Reverend Dr. Arthur J. Brown, representing the Presbyterian Board of Missions, indorsed the

46. Ibid., 44-45

47. Ibid., 46

48. Ibid., 47

proposal of the Court in the name of those he represented.⁴⁹ The objection that the Court was an agency of the League was not taken seriously by this group. They felt that it would have been as reasonable to object to the Supreme Court because its personnel was selected by the President, ratified by the Senate, and supported by money provided by Congress.⁵⁰ Speaking on behalf of the 15,000 American citizens who were missionaries in distant parts of the world, Dr. Brown said that he knew something of their views. These religious workers were free from local entanglements and could see the policy of the United States in perspective. These people were perplexed by the position of the United States Government and expressed feelings of humiliation and resentment at the inaction of the officials.⁵¹

Dr. Samuel H. Chester, from the Southern Presbyterian Church, and Dr. Charles N. Lathrop of the National Council of the Protestant Episcopal Church, spoke in favor of the World Court under Harding's plan.⁵² Dr. Jason Noble Pierce, representing the Congregational Churches, gave the next statement. He was the spokesman of a smaller group with about 6,000 churches and 800,000 members. But they were scattered throughout the country in such a way that a typical cross section view could be obtained from their attitude. This

49. Ibid., 49

50. Ibid., 49

51. Ibid., 50

52. Ibid., 51; 54-55

sentiment was found to be unanimously in favor of the World Court.⁵³

The Society of Friends and the Central Conference of American Rabbis were represented by Mr. J. Scattergood and Rabbi Simon, respectively, who added the approval of their groups to the favorable sentiment offered in regard to the World Court.⁵⁴ Dr. F.W. Bootwright from the Southern Baptist Convention and Rabbi Adolph Coblentz, representing the Synagogue of America, indicated their groups' acceptance of the World Court and urged the Senate to sanction it at once.⁵⁵ Professor William I. Hull of Swarthmore College spoke as a representative of the Church Peace Union. He was opposed to the United States entering the League of Nations, but did not believe that the United States should delay entering the Court until international law had been codified because the development of the Court would mean a gradual formulation of that law.⁵⁶ If the Senate thought that even with the Harding-Hughes reservations the tie was too close between the Court and the League, there was a possibility of cutting even this slightest contact. For example, he said that in paying the judges the League was not a necessary agent because the Universal Postal Union had for years been paid its salaries without a League of Nations. Or as another example, the

53. Ibid., 56
54. Ibid., 58-59
55. Ibid., 60-61
56. Ibid., 68; 71

election of judges might have been changed so that the 150 judges of the International Court of Arbitration would elect the World Court personnel. When doing this they could have been divided into two houses as the Council and the Assembly were when acting as the Court's electors. In any case the opposition to the use of the Council and Assembly as electoral bodies was trivial in comparison to the big object to be accomplished. And he thought that it was baseless to fear that if we entered the Court we would have been drawn into the League.⁵⁷

Dr. Nehemiah Boynton from the World Alliance for International Friendship through the Churches came before the subcommittee after just completing a campaign in the northern states of Montana, Idaho, Washington, and Oregon. He reported to the group that he found the young as well as the adult people in that territory interested in the question of the World Court. He stated that he had also found in the high schools and colleges that no topic was a subject for debate more often than, "Resolved that America should become a member of the World Court."⁵⁸

Mr. Thomas Raeburn White of the Philadelphia Bar came before the subcommittee next at the request of the Society of Friends of Philadelphia. To him the establishment of the Court was a great event in the history of civilization. It

57. Ibid., 58-61; 68; 71

58. Ibid., 72; 74

was not to be expected that it would abolish war immediately, but it was open to decide legal questions which sometimes turned into political disputes if they were not settled properly.⁵⁹ In The Hague Tribunal both sides chose two judges apiece and the fifth member was impartial and served as the umpire. The four representatives naturally looked upon themselves as representatives of the state which chose them. But the one who really made the decision was the umpire and the judges were there primarily for the purpose of seeing that the claims of both sides were given proper consideration. Mr. White agreed that this was an admirable way to compromise and adjust difficulties, but it was not a judicial decision.⁶⁰ In view of our interest in arbitration it seemed proper that the United States should approve of this new World Court if the interests of this Government were not jeopardized. There seemed to have been one serious objection raised against United States adherence to the Court and that was the manner in which the judges were chosen. In a letter to the Governor of Missouri, Lodge had advocated the plan that the nations acting independently appoint the judges. In answer to this method of election Mr. White pointed out that in an ordinary court the representatives of the litigants had no place on the judicial bench. So in a national court the state representatives had no right on the bench unless it

59. Ibid., 78; 85

60. Ibid., 79

were a compromise rather than a judicial decision. If a judge were appointed by a state he would have been obligated to see that the claims of the state were understood by his colleagues. But he would not have looked upon himself as completely impartial. On the other hand, if he owed his election to a world body, he would not have felt allegiance to the state from which he came, but to the abstract principles of right and justice. Therefore, it seemed to Mr. White that the appointment of judges by the states whose cases came before the Court was wrong.⁶¹

Mrs. James W. Morrison of Chicago, Illinois stated that she as Chairman of the Department of International Cooperation to Prevent War of the Illinois Federation of Women's Clubs had spoken during 1923-1924 before women audiences in Ohio, Michigan, Wisconsin, Indiana, Illinois, Kansas, Minnesota, and Montana. The listeners had always been interested in her lectures no matter how dry and technical they were. Mrs. Morrison claimed that she had not found a meeting at which the World Court question had been discussed that had not passed a resolution favoring United States participation in the Court on the Harding-Hughes terms. The assemblies were always willing to write letters to their Senators and to Mr. Lodge urging such action.⁶² Mrs. Morrison said that some Senators might have objected to the Court because the matter

61. Ibid., 80-81

62. Ibid., 86-87

was bound up with the League, but the women's organizations reacted differently. They felt that there was a great difference in the willingness to assume a political obligation of an uncertain character by entering the League and the willingness to cooperate with a valuable piece of work which was connected with the League.⁶³ Many newspaper and public men in Illinois favored an international court, but, opposed a League Court as they called it. This had confused some people, but usually only those who did not understand the organization and jurisdiction of the World Court.⁶⁴ So according to Mrs. Morrison an understanding of the Court usually resulted in favorable attitudes.

Another speaker from Chicago was Mr. W.B. Hale of the Chicago Bar Association who believed that no nation or individual could pretend to be above law. In order that law might be known there had to be some institution of an international character which determined and codified it into what was really an international body of law. Up to that date about ninety percent of the international law was in regard to war. Mr. Hale thought that there was an urgent need for some court to build up a body of international law so that when disputes arose precedents could be referred to. It was necessary not to have merely the precedents of the decisions of arbitration courts, but also the opinions and decisions

63. Ibid., 87

64. Ibid., 87

which embodied and established international law. Therefore, a move should have been made in establishing international law to keep away, to some extent, from the possibility of war.⁶⁵

Eastern sentiment was expressed by Mrs. Thomas Rourke of Bridgeport, Connecticut who stated that in her state the chambers of Commerce of every city, as well as every worthy organization, had put themselves on record as favoring the idea of international cooperation as evidenced in the World court.⁶⁶ Mr. Edward Filene of Boston, Massachusetts presented the business man's viewpoint. He said that the United States could not afford to be isolated. Since the European nations wanted to export but not to import, this balance of trade naturally would have affected America. The Court was not harmful to the United States, but rather necessary and practical to make possible the stability and prospects of lasting peace that would have made a safe basis for the recovery of the markets of the world.⁶⁷

Mr. Charles E. Bower had no statement to make, but instead presented telegrams and letters from various representative people throughout the country favoring and urging the Senate to indorse the United States' entry into the Court under the Harding-Hughes plan. He presented these

65. Ibid., 91-93

66. Ibid., 94-95

67. Ibid., 95-96

messages from the North Carolina Federation Women's Clubs consisting of 15,000 women, William G. Guthrie of New York, Ray Lyman Wilbur of Leland Stanford University at Palo Alto, California, Henrietta Roelofs of the Legislative Committee of the National Board of the Y.W.C.A. of the United States of America, Charles A. Richmond, President of Union College, Isaac M. Ullman of New Haven, Connecticut, Paul D. Cravath and Henry L. Stimson of New York, John H. McCracken from Easton, Pennsylvania, William Lawrence of Boston, Massachusetts, Samuel Mather of Pasadena, California, John Grier Hibben from Princeton, New Jersey, and Charles W. Dabney of Jewett, Texas.⁶⁸

The opinion held by Nicholas Murray Butler toward this question was given in his speech, 'The Political Outlook' delivered before the New York County Republican Committee on January 17, 1924. He believed that the record of the Republican Party on the question of the World Court was clear and definite. Ever since 1900 when the Republican National Convention commended the part played by the United States in the first Hague Conference, every national party declaration had in more or less specific terms indorsed the principles of the judicial settlement of international disputes.⁶⁹ This Party stood for an agreement among nations to preserve world peace. Such an international association had to be based on

68. Ibid., 98-102

69. Ibid., 102; 109

international justice and had to be equipped with the means to maintain the rule of public right by the development of law and the decisions of impartial courts. But Mr. Butler believed that this could have been done without compromising national independence.⁷⁰

The five administrations of McKinley, Roosevelt, Taft, Harding, and Coolidge had maintained the principle of the World Court and had done what they could to gain its acceptance. He maintained that the adoption by the Senate of the Harding-Coolidge recommendations would have conformed with the Republican declarations and at the same time kept the United States out of the League. The rejection of this Republican recommendation and policy on the ground of its relation to the League was a false issue.⁷¹

Letters were presented from Samuel McCune Lindsay of Columbia University urging adoption of the World Court, and from Gertrude Weil stating that the North Carolina League of Women Voters, a state wide organization of Republican and Democratic women, had unanimously favored United States entrance into the Court.⁷²

Mr. W.A. White of Emporia, Kansas in his letter to Senator Lodge stated that he believed that there was a growing sentiment in favor of the World Court in the Middle West particularly among Republicans.⁷³ Mr. White

70. Ibid., 109

71. Ibid., 109

72. Ibid., 111-112

73. Ibid., 112

had asked a number of prominent Republicans of Kansas to help promote a better understanding of world relations and world peace. He had sent a number of letters to the Republicans of Kansas and had succeeded well, so he felt that this acted as a good basis for his assertion. Assisting him in the enterprise were former Senator Chester I. Long of Wichita, T.A. McNeal, editor of the Topeka Mail and Breeze, Chancellor Lindley of the State University at Lawrence, Honorable Charles Q. Chandler of Wichita, former Congressman Charles F. Scott of Iola, A.A. Hyde of Wichita, and others who were not known outside of Kansas. He was satisfied that the Republicans of Kansas were willing to back up the Senate in their acceptance of the Court under conditions stated in the messages of Harding and Coolidge.⁷⁴ Robert Scoon, Chairman of the Princeton, (New Jersey) branch of the League of Nations Non-Partisan Association, also hoped for a favorable report from the Senate subcommittee on the World Court.⁷⁵ This ended the hearings before the subcommittee on April 30, 1924.

Business was resumed on May 1 with the opening speech before the subcommittee given by Manley O. Hudson. He said that he had addressed the Missouri, Ohio, and City of Boston Bar Associations who all favored the World Court. The Nevada, Oregon, Erie County, and New York State Bar Associations had passed resolutions demanding that the United States maintain

74. Ibid., 112

75. Ibid., 112

the World Court.⁷⁶ Professor Hudson, after citing these opinions, then discussed several phases of the Court. The procedure followed by the Permanent Court of International Justice was considered by Professor Hudson to be the same as that outlined at the second Hague Conference of 1907, with the only significant difference in the selection of judges.⁷⁷ During the first years of the United States Supreme Court's existence, namely, in 1790, 1791, and 1792, there had been no business. The World Court had to meet once a year according to the Statute, but unlike the American tribunal, there had been so much business in its first two years that it had to hold three extra sessions.⁷⁸ In the Court's first year (1922) it handed down three advisory opinions which helped to smooth out constitutional difficulties in functioning international organizations. Therefore, Hudson welcomed this power of the Council of the League to ask for advisory opinions and delighted in the jurisdiction of the Court to give them.⁷⁹ In regard to the provision that a litigant could have a representative on the Court for its particular case, Hudson considered that a wise measure. For if it happened that the United States had a case before the Court and no judge on the bench, we would have wanted a United States representative there to explain the American viewpoint to the

76. Ibid., 113

77. Ibid., 115

78. Ibid., 118

79. Ibid., 120

others when they deliberated on the matter.⁸⁰ All of the Court's cases of 1922-1923 had been carefully deliberated upon and argued by competent counsel with the most eminent lawyers in the world appearing before its bar.⁸¹ Therefore, he considered that the Court's first two years had been very successful ones.

Mrs. Raymond Morgan, Chairman of the Women's World Court Committee, spoke for a group of women who represented eleven of the great national organizations numbering about 7,000,000 members. These representative women had formed a committee in a united endeavor to secure from the United States Senate favorable action at that session upon Harding's proposal.⁸² First, these eleven organizations which included the American Association of University Women, American Federation of Teachers, General Federation of Women's Clubs, Girls' Friendly Society in America, National Congress of Mothers' and Parents' and Teachers' Associations, National Council of Jewish Women, National Council of Women, National Federation of Business and Professional Women's Clubs, National League of Women Voters, National Board of Y.W.C.A., and National Service Star League had taken action at their national conventions or through their national boards held since the Harding proposal. This action was in the form of

80. Ibid., 122

81. Ibid., 126

82. Ibid., 127

resolutions favoring and urging United States adherence to the World Court under the Harding-Hughes recommendations.⁸³ Then, a communication from these organizations signed by their representative was addressed to the Senate urging early action in that session of Congress in favor of the World Court.⁸⁴ It said that they realized that the European situation was full of possibilities of another World War. They had no illusion that the World Court was going to end war, but they did believe that it was a first possible step in that direction. They believed that this move provided for the possibility of the development and recognition by the great powers of the principles of justice and equity as applied to international affairs.⁸⁵ The proposal to adhere to the World Court was believed by these organizations to be in line with public opinion throughout the country. In a weekly magazine an estimate was published in August 1923 which had been drawn from a survey conducted in the forty-eight states showing that eighty-four percent of the American citizens favored entry into the World Court.⁸⁶ The groups believed also that the Hughes reservations safeguarded our relations to the League of Nations, and, therefore, could have been supported on a non-partisan basis.⁸⁷ The communication

83. Ibid., 127-130
84. Ibid., 130; 132
85. Ibid., 131
86. Ibid., 131
87. Ibid., 131

to the Senate further stated that the Women's World Court Committee supported the Hughes reservations because this proposal was acceptable to the forty-seven signatory powers and would have allowed the United States to enter the Court without delay. Any other plan might not have allowed this and thus would have postponed our entrance into this tribunal. The question before the Senate was not what kind of a court we should have established, but whether or not we should have entered the Court then functioning. It was hardly reasonable to suppose that the nations which were already using the Court would have consented to change it to something different even at the instance of the United States. This country could not have afforded to wait because a two year delay might have meant a changed situation. Peace movements should have been joined then and these women wanted constructive action at once.⁸⁸

The Chairman of the International Relations Department of one of these organizations, the General Federation of Women's Clubs, said that she had found men and women throughout the country interested in the action on the part of the Government in regard to the World Court.⁸⁹ The members of the General Federation of Women's Clubs passed a resolution that their Board of Directors heartily favored the entrance of the United States into the World Court.⁹⁰ They pleaded with

88. Ibid., 132

89. Ibid., 133

90. Ibid., 133

every woman that her duty as a citizen was not completed until by study she had formed an opinion on this important subject and had expressed that belief to the two United States Senators from her state.⁹¹ At their Council meeting in Atlanta, Georgia on May 7 to 11, 1923 the members had voted that war should cease and indorsed all practical measures to have international friction give way to international peace. The best means to carry out this aim was by hearings and adjudications under an orderly judicial procedure. They resolved to indorse the development of these principles along the lines proposed for the acceptance of the nations.⁹² The following states reaffirmed this resolution adopted by the Council of the General Federation: Georgia (50,000 members), Massachusetts (136,972 members), North Dakota (4,000 members), Louisiana (8,200 members), Ohio (100,000 members), Maine (7,000 members), New Hampshire (13,000 members), and Illinois (70,000 members).⁹³ Furthermore, half of the states of this organization held their conventions in the fall of 1923. The California group with 59, 612 members called upon their members to support the constructive effort toward a permanent world organization for peace.⁹⁴ The following state conventions recommended international understanding and judicial procedure in international

91. Ibid., 133
92. Ibid., 136
93. Ibid., 136
94. Ibid., 133

controversies and supported the proposal of Harding in regard to the World Court: Connecticut (7,600 members), Iowa (40,000 members), Nevada (2,200 members), New Jersey (37,000 members), New York (350,000 members), and Rhode Island (21,200 members).⁹⁵ Vermont with 7,329 members resolved to cooperate with the General Federation in indorsing all practical measures working to that end.⁹⁶ Pennsylvania, with a membership of 62,000 women, resolved to indorse the effort of the American Peace Award to find a practicable plan acceptable to the majority of the American people as well as to the American Senate; a plan by which the United States might have cooperated with the other nations to further the peace of the world.⁹⁷ And finally, Michigan, with 5,500 members, by a vote in its convention showed that it favored the adherence of the United States to the World Court. This assembly stated that it would have welcomed the calling of an economic conference whenever the administration thought it timely. This should have been done in order to settle the reparation question which would have been the first step toward stablizing the currency and foreign exchange.⁹⁸

The next statement given to the subcommittee of the Senate was by Dr. Charles Keyes, President of Skidmore College at Saratoga Springs, New York. He presented a petition of the

95. Ibid., 134-135

96. Ibid., 135

97. Ibid., 135

98. Ibid., 134

faculty and students of that college urging that the subcommittee recommend to the Committee on Foreign Relations the entrance of the United States into the World Court at the

earliest moment.⁹⁹ The next speaker, Dr. William H. Welsh of Johns Hopkins University, was only one of a delegation of some sixty men and women from Maryland. They could have gotten a greater number, but did not think that it was important to do so. These sixty represented Johns Hopkins university and other educational interests, the Women's Civic League, and other organizations. He said that in the question of the United States' adherence to the Court the fact should have been recognized that the tribunal was open to all countries regardless of their attitudes toward the League of Nations.¹⁰⁰

Mr. Edgar Wallace, representing the American Federation of Labor, told the subcommittee that this organization had adopted by a unanimous vote a resolution favoring the United States' entrance into the World Court.¹⁰¹ The American worker recognized that an isolated position on the part of the United States was impossible because this country was a great exporting and importing nation. In view of this condition whatever affected the political and economic position of the people in the farthest part of the world also af-

99. Ibid., 149
100. Ibid., 150
101. Ibid., 155

pected the people of the United States.¹⁰² This organization also favored United States participation in the Court because they believed that the United States could not and should not have kept aloof of an attempt to stop armed conflicts. As in labor, so in world interests, such a court should have gone far toward a better understanding by bringing clashing interests together to talk over and present their views on a subject.¹⁰³ Mr. Wallace then presented a statement from Mr. Gompers who favored the United States' entry into the Court and regretted that there was any division of opinion on the matter. He felt that the United States in taking its place in world affairs, was but adopting a measure of self-protection. The country would have been helping to protect civilization against the forces of decay, superstition, and destruction.¹⁰⁴ Mr. Gompers felt that those who had been clamoring for isolation had been clever in their arguments. They had buried their heads in old documents and quoted what suited their needs. As a beginning in a thoroughgoing and adequate participation in world affairs, he believed that the United States should have joined the World Court for it would have been stimulating to Americans and to the people of the world.¹⁰⁵

In his statement, Mr. Theodore Marburg of Baltimore,

102. Ibid., 155
103. Ibid., 156
104. Ibid., 157-158
105. Ibid., 158-159

Maryland said that he felt that the institution of the World Court would bring us the international law that we wanted.¹⁰⁶ He raised the question that if we joined the Court whether the representative of the United States in the electoral college would have cast his vote in accordance with his own individual judgement or have acted under instructions from his Government. Mr. Marburg thought that it would have been better for our representative to act as a friend of the world as well as a friend of his own country.¹⁰⁷

Professor John H. Latoné of Johns Hopkins University in his address to the subcommittee discussed this question of whether or not the American representative would have gone to the Council and Assembly instructed or whether or not he would have acted on his own initiative. He thought that it would have been unfortunate to send a man there who was bound by ironclad instructions.¹⁰⁸ In Europe some of the larger states were possibly attaching more importance to the conference of ambassadors at Paris than they were to the Council of the League. They were sending ex-ministers or prominent men to represent them at the electoral college of the Court while the smaller states in America and Europe were taking the matter more seriously. The latter were sending members of the ministry and foreign secretaries who spoke

106. Ibid., 160

107. Ibid., 161

108. Ibid., 165

directly for their Governments.¹⁰⁹ It was sheer nonsense to talk about outlawing war, thought Professor Latoné, because that would not be accomplished until some other method of adjusting international controversies had been built up to replace the failure of diplomacy. The world had been drawing closer together since the days of the Reformation and some machinery was needed to handle the disputes of the nations. The Court seemed to him to be the answer. In time, he thought that it would be developed into a true court with a true system of international law.¹¹⁰ In regard to enforcing the decrees of the Court, it might have been pointed out that there was not an important case on record where the United States had gone into arbitration and not accepted the result. If the nations once agreed to submit a case to arbitration or judicial settlement, he felt that they were almost sure to abide by the result.¹¹¹

The Middletown (Connecticut) branch of the League of Nations Non-Partisan Association passed a resolution which was signed by Reverend E. Acheson, Bishop of the Protestant Episcopal Church of Connecticut. This measure urged upon the Senate the indorsement of the World Court without making it a partisan question.¹¹² This report was unanimously accepted by the New York Conference of the Methodist Episcopal Church.

109. Ibid., 164

110. Ibid., 168

111. Ibid., 165-166

112. Ibid., 172

This conference was composed of ministers of the Methodist Episcopal Church, one of the largest bodies of American Christianity in an area which included western Connecticut and southeastern New York.¹¹³ Dr. Edward Cummings reported that the American Unitarian Association had also approved of the Harding proposal and urged the speedy advice and consent of the Senate.¹¹⁴ Dr. Cummings who was also general secretary of the World Peace Foundation said that he knew of the widespread demand for prompt action on the part of the Senate from the people all over the country. There was also an increasing inquiry for World Court literature. High school as well as organization debates constantly asked for accurate information about the Court.¹¹⁵

The Women's Auxiliary of the John W. Lowe Post of the American Legion, Unit 53 at Dallas, Texas and the Council of the Federations of Women's Church Societies, representing 15,000 church women in Massachusetts and Rhode Island, urged American entrance into the World Court.¹¹⁶ A. Barr Comstock sent to Secretary Hughes and each member of the Foreign Relations Committee a petition in favor of the World Court with the Hughes reservations which had been signed by 328 representative Boston lawyers, including leaders of the bar.¹¹⁷

113. Ibid., 173

114. Ibid., 176

115. Ibid., 177

116. Ibid., 184

117. Ibid., 184

This ended the hearings before the subcommittee of the Committee on Foreign Relations.

A statement was issued by the committee representing the fifty national organizations which had appeared before the Senate subcommittee in which they maintained that they had completely refuted the idea that the Court was related to the League of Nations. This was signed by John H. Clare of the League of Nations Non-Partisan Association, Dr. John Finley of the Federal Council of Churches, Dr. William P. Merrill of the Church Peace Union, Dr. William Faunce of the World Peace Foundation, Miss Ruth Morgan of the National League of Women Voters, Mrs. Raymond Morgan of the Women's World Court Committee, and James G. McDonald of the Foreign Policy Association.¹¹⁸ It was felt that Senator Lodge had intensified rather than decreased the agitation for American participation in the Court.¹¹⁹

On May 6, 1924 Senator Swanson submitted Senate Resolution 220 which was referred to the Committee on Foreign Relations. It provided that the Senate advise and consent to the adhesion of the United States to the Protocol of December 16, 1920, with the exception of the compulsory jurisdiction clause, on reservations practically identical with those proposed by Hughes on February 17, 1923. There was one additional condition which provided that the United

¹¹⁸. The New York Times, May 19, 1924, 1

¹¹⁹. Ibid., May 19, 1924, 1

states would not sign the Protocol until the signatories had indicated through notes their acceptance of the reservations as a part and condition of adherence by the United States to the Protocol.¹²⁰

On May 8, 1924 Senator Lodge introduced Senate Joint Resolution 122, which he wanted referred to the Committee on Foreign Relations, and asked that a pamphlet be printed with it as a Senate Document. The joint resolution requested the President to propose the calling of a Third Hague Conference for the establishment of a world court.¹²¹ It was read twice by its title and with the accompanying pamphlet was referred to the Foreign Relations Committee. On a motion by Mr. Lodge the accompanying paper entitled "A Plan by Which the United States May Cooperate with Other Nations to Achieve and Preserve the Peace of the World" was ordered to be printed as Senate Document 107.¹²²

The pamphlet accompanying Senator Lodge's Joint Resolution which was printed as Senate Document 107 was written by Chandler P. Anderson. It said that the United States had been active in the Hague Convention of 1907 which had established international commissions of inquiry, the Permanent

120. Congressional Record, 68 Congress, 1 Session, 7904
(May 6, 1924)

121. Ibid., 8084 (May 8, 1924)

122. Ibid., 8084 (May 8, 1924)

Court of Arbitration, and a Court of Arbitral Justice.¹²³
Pending a meeting of The Third Hague Conference which was to have taken place in 1915 the draft convention of 1907 for a court with arbitral justice was supplemented by an agreement. This contract was drawn up between the United States and three powers who proposed to put into operation the suggested court of justice as soon as it had been ratified by eight powers. But the war interrupted these plans. However, this project served as a basis for the Court of International Justice which was adopted by the League of Nations. But since it was established under the auspices of the League, and not through The Hague Conference it formed no part of the World organization.¹²⁴

Mr. Anderson recommended that:

1. The United States should have resumed its former leadership in the development of international law. It should have lead the organization of the world for peace through the respect for law and jural equality of all nations.

2. The United States should have taken steps to convene a Third Hague Conference:

a. To reaffirm and develop world organization for peace as embodied in The Hague Convention of

123. Chandler P. Anderson, "Organization of the World for Peace--A Plan by Which the United States May Cooperate with Other Nations to Achieve and Preserve the Peace of the World" Senate Document #107, 68 Congress, 1 Session, Government Printing Office, Washington, 1924, 1-4

124. Ibid., 4

1907.

- b. To transform the League Court into a world court as part of The Hague peace organization.
- c. To formulate and agree upon further rules and principles of international law especially in regard to justiciable questions and restraints on unjustifiable wars.

3. Pending the meeting of another Hague Conference the United States and other powers should have entered into preliminary agreements defining justiciable questions, unjustifiable war, and legal restraints upon the legality of war.¹²⁵

This plan as offered to the Senate by Lodge was the subject of adverse and favorable criticism. The Raleigh, (North Carolina) News and Observer claimed that it was a bribe to pacify the impressive demands for the World Court. The Hartford, (Connecticut) Times said that it was a piece of colossal impudence toward the fifty-one nations which had put the World Court into operation. Besides it was an affront to the intelligence of the American people. The Kansas City Star asked why Senator Lodge interfered with the World Court. And the Albany, (New York) Knickerbocker-Press asserted that the only purpose served by the Lodge plan was the muddling of the World Court question in the public mind.¹²⁶ Against

125. Ibid., 10-11

126. "Lodge's Plan for a New World Court" The Literary Digest LXXXI, 13 (May 24, 1924)

the scores of editorials from all over the country condemning Lodge's proposal we find three newspapers which defended it. The Brooklyn Times thought that it would have been better for all nations if the Lodge plan had been substituted for the League tribunal. The Chicago Journal of Commerce believed that Lodge's proposal for a court separated from the League would have been an improvement. While the Chicago Daily Tribune said that if the people really had wanted a World Court, they would have taken Lodge's idea. Then the United States could have safely subscribed to a world court.¹²⁷

Meanwhile expressions in favor of the Court were heard from Mr. Watson of Pennsylvania, a Representative in the House. He believed that the question of the method of electing judges, the objections that facts were not developed by a jury, and that the judges had or had not an international interest in the disputes were points that could have been adjusted. Nevertheless, he saw it as a stride forward in arresting the vigor for wars which in time would bring universal peace.¹²⁸ Mr. Fletcher of the Senate presented a statement in the nature of a petition in regard to the adherence of the United States to the World Court which was signed by John Finley, Chairman of the Commission on International Justice and Good Will of the Federal Council of Churches of Christ in

¹²⁷. Ibid., 13

¹²⁸. Congressional Record, 68 Congress, 1 Session, 8530
(May 14, 1924)

America, William Merrill, President of Church Peace Union, John H. Clarke, President of the League of Nations Non-Partisan Association, William Faunce, President of World Peace Foundation, Ruth Morgan, Chairman of the Committee of International Relations of the National League of Women Voters, Mrs. Raymond Morgan, Chairman of the Women's World Court Committee, and James G. McDonald, Chairman of the Foreign Policy Association.¹²⁹ The statement said that American public opinion overwhelmingly demanded prompt adherence on the conditions formulated by Hughes and championed by Harding and Coolidge. Organized churches, labor, women voters, members of the bar, university women, merchants, business and professional women, teachers and women's clubs, which represented a vast majority of the voters of the United States, expected this approval. More than fifty state and national organizations were interested in the subcommittee hearings on April 30 and May 1.¹³⁰ The petition stated that in addition to the organizations actually represented at the hearings the following groups in their conventions had approved United States adherence: House of Bishops of the Protestant Episcopal Church, National Council of Congregational Churches, Annual Conference of the Methodist Episcopal Clergy, United Society of Christian Endeavor, International Missionary Union, National Association of Credit

129. Ibid., 8853 (May 19, 1924)

130. Ibid., 8852 (May 19, 1924)

Men, Baptist World Alliance, and the Union Ministers' Meeting.¹³¹ The following either appeared at the hearings or

sent their approval of the Harding-Hughes plan: Paul D. Cravath of New York, Charles Dabney, ex-president of the University of Cincinnati, Edward A. Filene of Boston, William Guthrie of New York, William B. Hale of Chicago, John G. Hibben, president of Princeton, Charles Keyes, president of Skidmore College, Reverend Lawrence, Samuel Lindsay of New York, Samuel Mather of Cleveland, John McCracken, president of Lafayette College, Charles Richmond, president of Union College, and Isaac Ullman of New Haven.¹³²

In a letter addressed to Senator Lodge and the Senate Committee on Foreign Relations a group of prominent Republican and Democratic men demanded action on the World Court before the adjournment of Congress. This group included Henry A. Stimson, John W. Davis, William Allen White, and Lyman J. Gage who saw no chance for the success of Lodge's plan among the nations of the world.¹³³ The New York Herald Tribune in May 1924

doubted whether any major governmental proposal had ever commanded so overwhelming a support. Editorial advocacy of it was found in a host of newspapers including practically the entire Democratic Press and also influential Independent and Republican journals. But the opponents to the World

131. Ibid., 8852 (May 19, 1924)

132. Ibid., 8853 (May 19, 1924)

133. The New York Times, May 19, 1924, 1

Court were not unrepresented in the newspapers. The Hearst papers still objected to the proposal as well as the Washington Post and The Kansas City Star.¹³⁴

On May 22, 1924 Senator King reminded the Senate that he had offered a resolution immediately after Harding's message to Congress. He said that the vote upon this measure showed that the Republicans had repudiated their President and refused his recommendations. The final tally showed that every Republican had voted against the resolution and all but three Democratic Senators had voted for it.¹³⁵ To Senator King the resolution which Senator Lodge had offered on May 8, 1924 seemed unacceptable to those who believed in a vital and live international court which would bring the world into a closer relation. He was also convinced that the adhesion of the United States to the Protocol should have been based on the reservations of his former resolution. Thereupon, he presented Senator Walsh's Resolution which was Senate Resolution 233.¹³⁶ It provided for United States acceptance of the Court, except the compulsory jurisdiction clause, on the condition that the Statute of the Court be amended to allow the United States to participate on an equal plane with the other powers in the election for judges and vacancies. The Statute of the Court was not to be

134. The Literary Digest LXXXI, 13 (May 17, 1924)

135. Congressional Record, 68 Congress, 1 Session, 9143-9144 (May 22, 1924)

136. Ibid., 9144 (May 22, 1924)

amended without the consent of the United States. And no obligations were to be assumed by the United States under Part I of the Treaty of Versailles.¹³⁷ This resolution was referred to the Committee on Foreign Relations.

On the same day Senator Pepper offered Senate Resolution 234 to his branch of Congress and that, too, was referred to the Committee on Foreign Relations.¹³⁸ It provided for remodelling the Court so as to make it into a world court, without destroying its structure, but yet separating it entirely from the control of the League. That meant a rewriting of the Protocol and a thorough revision of the Statute of the Court.¹³⁹ In the new form the Protocol was to be signed by all members, old and new, and deposited with the Secretary-General of the Permanent Court of Arbitration at The Hague. The Protocol was to remain open for the signatures of all the nations which were generally recognized by treaty or diplomatic relations with the signatories.¹⁴⁰ The United States was to sign the new protocol with the understanding that it disclaimed all responsibility for the use by the Court of the jurisdiction to give advisory opinions. Also, the United States wanted to make it clear that it in-

137. Ibid., 9144 (May 22, 1924)

138. "Resolution advising the Adherence of the United States to the Existing Permanent Court of International Justice with Certain Amendments" Senate Documents, #116, 68 Congress, 1 Session, Government Printing Office, Washington, 1924, 1

139. Ibid., 1-4

140. Ibid., 2

tended to adhere to the Monroe Doctrine. The new statute as proposed was to take effect as soon as all the signatories of the December 16, 1920 Protocol had assented to it.¹⁴¹ The Senate was to approve of the adherence of the United States to a world court based upon the terms mentioned above, with the exception of the compulsory jurisdiction clause. This Congressional body also was to advise the President to call a Third International Conference similar to The Hague Conferences of 1899 and 1907. This conference was not to be summoned later than 1926 for the further development of international law.¹⁴² The Senate Committee on Foreign Relations adopted this plan offered by Senator Pepper and in Senate Report 634 recommended its passage to the Senate.¹⁴³

The praise for this plan from the press was mild even in the Republican newspapers. The Chicago Evening Post stated that if it was the best plan possible that at least it was a step in the right direction. The New York Herald Tribune held that it was a skillful compromise between the extravagant demands of Senator Lodge and the moderate plan of Hughes.¹⁴⁴ The greatest criticism came from those who wished to stay out of the Court entirely and those who were

141. Ibid., 1-2

142. Ibid., 1-2

143. "Pepper Plan Reported by Senate Foreign Relations Committee" The Congressional Digest III, 300 (June 1924)

144. "Another Twist for the World Court" The Literary Digest LXXXI, 11 (June 14, 1924)

friends of the World Court. The former group included the Washington Post and the Chicago Daily Tribune. While the latter group was made up of the Boston Herald, The Christian Science Monitor, Philadelphia Record, and Chicago Daily News.¹⁴⁵

Mr. Swanson, a member of the Senate Foreign Relations Committee, spoke over the radio and explained that he had introduced to the committee a resolution which embodied the recommendations of Harding, Coolidge and Hughes.¹⁴⁶ Later a plan had been introduced by Senator Pepper as a substitute for the Harding-Hughes proposal.¹⁴⁷ The Committee on Foreign Relations refused to support his resolution (Senate Resolution 220) by a vote of ten to eight. It directed that the Pepper plan be reported to the Senate for consideration and action.¹⁴⁸ So Senator Swanson submitted a minority report on May 31, 1924 which was embodied in Part 2 of Senate Report 634 and signed by the seven Democratic members of the Committee. These were Mr. Pittman (Nevada), Mr. Shields (Tennessee), Mr. Robinson (Arkansas), Mr. Underwood (Alabama), Mr. Walsh (Massachusetts), and Mr. Owen (Oklahoma).¹⁴⁹

Mr. Swanson felt that this action of the committee

145. Ibid., 11

146. Congressional Record, 68 Congress, 1 Session, 10975 (June 6, 1924)

147. See pages 115-116

148. Congressional Record, 68 Congress, 1 Session 10975 (June 6, 1924)

149. The Congressional Digest III, 300 (June 1924)

destroyed the possibility of any favorable action on United States adherence to the Court in that session of Congress. He said that it was recognized that this would be the result when the Pepper plan was reported.¹⁵⁰ The two issues before the Senate were: (1) to join the existing World Court, or (2) to create a new court. The Pepper plan, if adopted, made it impossible for the United States to become a member of the World Court. It created a new method of electing judges which each of the forty-eight states had to accept before it would become effective. The United States was asking the nations to drop a satisfactory court for a new, untried plan that was inferior to the existing method of selecting judges. The Pepper plan had many amendments which had to be agreed upon by each of the forty-eight nations before it could be put into operation. This was felt by Mr. Swanson to be a sure way to defeat United States adherence to the Court.¹⁵¹ He said that the proposal could not receive the two-thirds vote of the Senate nor the assent of the forty-eight members of the Court. If the United States did not wish to join the existing tribunal, it should have said so in a frank way and not have tried to injure indirectly an institution that was doing so much for world peace. The plan as submitted might have been beneficial for political purposes, but Mr. Swanson

150. Congressional Record, 68 Congress, 1 Session, 10975
(June 6, 1924)

151. Ibid., 10975 (June 6, 1924)

felt that it did not have the slightest chance of ever being a practical method of obtaining adherence of the United States to the Statute of the World Court.¹⁵²

President Coolidge, in a Memorial Day address, said that Harding's proposal had already been approved of by him. He did not oppose the other reservation, but felt that any material changes would probably not receive the consent of many of the nations and for that reason would be impractical.¹⁵³ He thought that the United States could not take such a step without assuming certain obligations and surrendering something. But the situation had to be faced and an ambiguous position would accomplish nothing. The fear of entanglement with the League seemed unlikely to President Coolidge especially with the Hughes reservations. He thought that the United States should have sustained a Court which it had advocated for years.¹⁵⁴

During the presidential campaign of 1924 both major political parties favored American participation in this tribunal.¹⁵⁵ One plank of the Republican Party which was adopted at Cleveland on June 12, 1924 stated: "We indorse the Permanent Court of International Justice and favor the adherence of the United States to this tribunal as recom-

152. Ibid., 10976 (June 6, 1924)

153. "The World Court--Who Are Its Enemies" The Outlook CXXXVII, 219 (June 11, 1924)

154. Ibid., 219

155. Hudson, 134

mended by President Coolidge. This Government has definitely refused membership in the League of Nations to assume any obligations under the Covenant of the League. On this we stand."¹⁵⁶ The Democratic platform provided: "It is of supreme importance to civilization and to mankind that America be placed and kept on the right side of the greatest moral question of all time, and therefore, the Democratic Party renews its declaration of confidence in the ideal of world peace, the League of Nations and the World Court of Justice, as together constituting the supreme effort of the statesmanship and religious conviction of our time to organize the world for peace."¹⁵⁷

Ogden L. Mills cited the fact that for twenty years the Republicans had advocated the establishment of a world court. As a matter of honor and good faith he did not see how that party could have refused to support the proposition that the United States should become a member of the tribunal. He wanted the United States to join the Court on the Harding-Hughes basis and in order to do that was willing to make every reasonable concession to meet sincere objections.¹⁵⁸

In the fall of 1924 the American Peace Award started a systematic campaign to work for the World Court. A com-

^{156.} Congressional Record, 69 Congress, 1 Session, 1757

^{157.} Ibid., 1071

^{158.} Ogden L. Mills, "The Obligation of the United States Toward the World Court" The Annals of the American Academy of Political and Social Science CXIV, 129; 131 (July 1924)

mittee was chosen consisting of eminent Republicans and Democrats.¹⁵⁹ They believed that the people of the United States desired the adherence of the United States to the Court on the Harding Hughes proposal. Their object was to focus popular sentiment on this point so that the Foreign Relations Committee would recognize a genuine expression of the people's will. In order to accomplish this they considered that the best means was to have a World Court meeting in every possible community. From December 1, 1924 to the end of February 1925 World Court mass meetings took place all over the United States in small communities as well as in large cities.¹⁶⁰ Outstanding members of the section served on these committees and all types of organizations were invited to cooperate in the rallies. It was estimated that this drive received the cooperation of ninety percent of the people.¹⁶¹ First, the subject of the World Court was discussed within the local committee which was planning the assembly. A member was appointed to represent the American Peace Award at the mass meeting. He was to indorse on behalf of this organization a reservation asking for Senatorial action on the World Court on the Harding-Hughes terms.¹⁶² At the meeting itself the World Court was discussed from every

159. M. Bentley, "Do Americans Want the World Court?" Review of Reviews LXXI, 628 (June 1925)

160. Ibid., 629

161. Ibid., 629

162. Ibid., 629

angle. Local and national speakers, both Republican and Democratic, addressed the people. Ultimately, resolutions indorsed by local organizations were passed which were sent to the surrounding newspapers, to the two United States Senators from the state, and oftentimes to all the members of the Foreign Relations Committee.¹⁶³ By March 4, 1925 the American Peace Award had succeeded in stimulating and receiving expressions of opinion on the United States and the World Court from every state in the Union.¹⁶⁴

In his annual message to Congress on December 3, 1924 President Coolidge said: "I believe it would be for the advantage of this country and helpful to the stability of other nations for us to adhere to the Protocol establishing that Court upon the conditions stated in the recommendation which is now before the Senate, and further that our country shall not be bound by advisory opinions which may be rendered by the Court upon questions which we have not voluntarily submitted for its judgement. This Court would provide a practical and convenient tribunal before which we could go voluntarily, but to which we could not be summoned, for a determination of justiciable questions when they fail to be resolved by diplomatic negotiations."¹⁶⁵

163. Ibid., 629

164. Ibid., 629

165. Congressional Record, 68 Congress, 2 Session, 55
(December 3, 1924)

CHAPTER IV. HOUSE AND SENATORIAL ACTION IN 1925

Public Opinion
House Committee Hearings
House Report
Senate Resolutions

CHAPTER IV

HOUSE AND SENATORIAL ACTION IN 1925

When the approval to the World Court was not sanctioned by the Senate before its adjournment in 1924, the number of petitions to Congress dwindled, but it was not a dead issue by any means. Opinions continued to be voiced in Congress during 1925 but in fewer numbers. Mr. Sterling, a Senator from South Dakota, presented a petition and resolution of the Federation Council of the Churches of Christ of South Dakota which was referred to the Committee on Foreign Relations. This Federation Council representing most of the Protestant denominations in the state had adopted the resolution indorsing Coolidge's proposals of December 6, 1923 and December 3, 1924 favoring participation in the Court.¹ Mr. Sterling also presented petitions of sundry citizens of Hurley and Turner Counties in South Dakota asking for United States participation in the tribunal. These, too, were referred to the Committee on Foreign Relations.² Mr. Bayard, also of the Senate, presented resolutions from the Council of the Mayor and the Council of Wilmington, Delaware who expressed the belief that the United States should have de-

1. Congressional Record, 68 Congress, 2 Session, 1195
(January 5, 1925)

2. Ibid., 1195 (January 5, 1925)

ecided if it wished to enter into the Court. They urged the Foreign Relations Committee to place before the Senate for a vote a resolution providing for the participation of the United States on the Harding-Hughes terms. They also resolved to send a copy of this resolution to their Senators and the Senate Foreign Relations Committee.³

The House of Representatives took definite action in expressing its sentiment about the World Court question. On January 2, 1925 Mr. Fish of New York submitted House Concurrent Resolution 36 and on January 6 House Concurrent Resolution 38 which were referred to the Committee on Foreign Affairs.⁴ On January 21 this House Committee met and hearings were held. The first speaker was Manley O. Hudson who pointed out that in December 1924 President Coolidge in his message to Congress added a new condition to Hughes' four original reservations. It was that the advisory opinion of the Court should not bind the United States in any matter which the United States had not voluntarily submitted to the Court. That recommendation did not seem harmful to Professor Hudson, but he saw no necessity for it.⁵ The advisory opinions of the Court were very much like the advisory

3. Ibid., 2399 (January 23, 1925)

4. Ibid., 1120; 1360 (January 2, 6, 1925)

5. "Favoring Membership of United States in Permanent Court of International Justice" Hearings Before the Committee on Foreign Affairs House of Representatives, 68 Congress 2 Session, January 21, 27, 31, 1925, Government Printing Office, Washington, 1925, 2

opinions of the Supreme Courts in various states of the United States in that the Court did not feel bound to follow them. In one instance the Massachusetts Court took a different view when the matter came up for judgement from that which it had taken when it gave an advisory opinion. An advisory opinion was exactly what it was planned, namely, that it did not bind in the sense that a judgement did. Nor did it set a precedent which had to be followed even if one accepted the Anglo-American principle of following precedents.⁶ In every case in which an advisory opinion was given by the Court it related to a specific question, well-defined and clear, which had arisen in the course of an actual dispute. The Court had not been called on to give opinions on abstract questions of law.⁷ Professor Hudson said that it was a misleading statement to say that because the Court gave advisory opinions at the request of the Council of the League that it had somehow become the legal adviser or attorney general of the League. One might just as well have said that the supreme judicial court of Massachusetts was the attorney general of that state because it gave opinions to the governor or the legislature.⁸

Furthermore, Professor Hudson explained that the money collected for the Court was carried in the general budget

6. Ibid., 2-3

7. Ibid., 4

8. Ibid., 5

of the League. Whenever a dollar was received at Geneva, on the account of the general budget, eight cents of it had to be set aside for the Court. Our contributions to the Court could have been sent to the financial director at Geneva. If we liked, we could have sent our check to the financial director at Geneva; or we could have sent it to the registrar of the Court at The Hague and thus not have come in contact with Geneva.⁹

During the second session of the hearings before the House Committee on Foreign Affairs which were held on January 27, 1925 House Concurrent Resolution 38 was discussed. This resolution maintained that since warfare was a menace to civilization and because the United States was an advocate for the peaceful settlement of controversies between nations and because through its presidents, Harding and Coolidge, a proposal had been made that the United States adhere to the Protocol of the World Court. "Therefore, be it Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress of the United States that the proposal that the United States adhere to the Protocol establishing a Permanent Court of International Justice at The Hague, with certain reservations, recommended by President Harding and President Coolidge, is in harmony with the traditional policy of our country, which is against aggressive war and for the maintenance of perma-

9. Ibid., 10

ment and honorable peace; and that said proposal deserves to receive and ought to be given prompt and sympathetic consideration as a forward step toward outlawing war through peaceful settlement of justiciable questions."¹⁰

A similar attitude was expressed by House Resolution 258 which was considered by the committee on this same day. It stated that President Harding had recommended some time before that the United States join the Permanent Court of International Justice and the House felt that favorable action on his recommendation would meet the general approval of the people of the United States. "Therefore, be it Resolved that it would view with grave concern and regret the failure of the President's recommendation to secure approval with as little delay as possible, and that the House is prepared to participate in the enactment of the legislation that will be necessary following such approval."¹¹

Speakers before the House Committee on that day included a representative from the Federal Council of the Churches of Christ in America who stated that as far back as December 1921 action had been taken by the Executive and Administrative Committees of the Federal Council showing their belief in international law, universal use of international courts, and boards of arbitration.¹² In May 1922 the Federal

10. Ibid., 41

11. Ibid., 41

12. Ibid., 44

Council had urged United States participation in the World Court.¹³ A year later in May 1923 resolutions favoring the Court were passed by ecclesiastical and other bodies, including: the Northern Baptist Convention, Central Christian Convention, National Council of Congregational Churches, International Convention of the Disciples of Christ, General Committee of the Eastern Conference of the Primitive Methodist Church, General Assembly of the Presbyterian Church in the United States, Board of Bishops of the Methodist Episcopal Church, House of Bishops of the Protestant Episcopal Church, General Assembly of the United Presbyterian Church of North America, American Unitarian Association, General Conference of Unitarian and Other Christian Churches, Universalist General Convention, World's Sunday School Association, National Board of the Y.W.C.A., World Alliance for International Friendship through the Churches, and the National Women's Christian Temperance Union.¹⁴ In that same month resolutions in favor of the Court were adopted by state and city church federations and councils, including: Connecticut Federation of Churches, Chicago Church Federation, Baltimore Federation of Churches, Massachusetts Federation of Churches, Church Federation of St. Louis, Ohio Council of Churches, Federated Churches of Cleveland, and the Philadelphia Federation of Churches.¹⁵

13. Ibid., 44

14. Ibid., 44-47

15. Ibid., 47-48

Again in December 1924 at Atlanta, Georgia the Federal Council of the Churches of Christ in America had indorsed the World Court.¹⁶

A memorial to the United States Senate indorsing United States adherence to the Court as proposed by Harding and Coolidge which had been signed personally by more than 1,000 church leaders in the various Protestant Churches was shown to this House Committee.¹⁷

The hearing were not resumed until January 31 when a representative of the Methodist Episcopal Church stated that at their general conference in quadrennial session at Springfield, Massachusetts in May 1924 the Senate had been urged by them to sanction immediate entrance into the World Court on the part of the United States. In the twelve months preceeding this general conference the Presbyterians, Baptists, Congregationalists, Protestant Episcopalians, and all other churches of the conference had adopted similar resolutions.¹⁸ With this evidence before them the House Committee on Foreign Affairs ended its hearings.

On February 3, 1925 Mr. Burton of Ohio introduced into the House, House Resolution 426 which favored membership of the United States in the Permanent Court of International Justice. It was sent to the Committee on Foreign Affairs.

16. Ibid., 43

17. Ibid., 70

18. Ibid., 89-90

Mr. MacGregor of New York by request submitted House Joint Resolution 366 on February 20, 1925 which provided for adhesion of the United States to the World Court. This, too, went to the Foreign Affairs Committee.¹⁹

On February 24, 1925 Mr. Burton from the Committee on Foreign Affairs reported House Resolution 426 which favored membership on the part of the United States in the Permanent Court of International Justice without amendment out of the Committee. This was accompanied by House Report 1569 which was referred to the House Calendar.²⁰ In this report the Foreign Affairs Committee stipulated that it had had under consideration House Resolution 258 and House Concurrent Resolution 38, each of which related to the World Court. Upon consideration of these above resolutions the Committee decided to report as a substitute House Resolution 426 in the following words: "Whereas a World Court known as the Permanent Court of International Justice has been established and is now functioning at The Hague and
'Whereas the traditional policy of United States has earnestly favored the avoidance of war and the settlement of international controversies by arbitration or judicial processes; and

"Whereas this Court in its organization and probable development promises a new order in which controversies between

19. Congressional Record, 68 Congress, 2 Session, 2978; 4304 (February 3, 20, 1925)

20. Ibid., 4621

nations will be settled in an orderly way according to principles of right and justice: Therefore be it

Resolved, That the House of Representatives desires to express its cordial approval of the said 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.

Resolved further, That the House expresses its readiness to participate in the enactment of such legislation as will necessarily follow such approval."²¹

The report admitted that it was not argued that the House should act upon all treaties or upon slight occasion, but because it expressed the preferences of the people better than any other body there was not only a right but a duty to express itself upon certain important international policies. The question of the right of the House to take action was in this case affected by the fact that two Presidents had urged adherence to the Court.²²

The report cited a large number of precedents which served as a background for this action upon the resolution. For example, on January 2, 1797 the House had asked for information on a treaty between the United States and the Dey

21. "Favoring Membership of the United States in the Permanent Court of International Justice" House of Representatives Report #1569, 68 Congress, 2 Session, February 24, 1925, 1

22. Ibid., 10

and Regency of Algiers. On December 17, 1802 the House had sought information on the violations of Spain toward an existing treaty. January 8, 1811 was the date of the passage of a House Joint Resolution which stated that the United States could not look with indifference on any part of the Spanish provinces east of the Perdido River passing into the hands of any foreign power. Again on January 17, 1822 the House had passed a resolution calling for papers which related to the treaty of Ghent. On February 28, 1823 President Monroe was requested by a House resolution to negotiate with several maritime powers of Europe to effectively abolish the African Slave Trade. And so on through the years at times the House passed resolutions upon vital current problems.²³

The report concluded by showing that by a resolution originating in the House adherence to the World Court could have been secured by legislation. But such a method was subject to the objection that negotiations with numerous countries would have been necessary for the acceptance of the reservations. Thus, the ordinary methods by treaty were preferable.²⁴

On March 3, 1925, before the roll call was taken on House Resolution 426 which was accompanied by House Report 1569, Mr. Burton spoke on the propriety of the passage of

23. Ibid., 11-12

24. Ibid., 16

such a resolution by the House. He explained that the treaty making power was really invested in the Senate and the President, but the House had the power to adopt important legislation which was initiated in the lower house to carry out those treaties. He said that the representatives were nearer to the people than any other branch of the Government; they had a keen interest in foreign affairs, and the right to express an opinion and take action upon such questions. Even Mr. Webster had upheld this view in 1826 in a debate on the Panama Mission. Thereupon, Mr. Burton moved to pass House Resolution 426. The roll call was taken and resulted in 303 yeas, 28 nays, with 100 not voting. Since two-thirds had voted in the affirmative, the rules were suspended and the resolution was passed.²⁵

Mr. Wefald of Minnesota, one who had voted against this resolution, took advantage of the general extension granted to all members relative to the resolution passed by the House. He maintained that the resolution came before the body and was debated only forty minutes. All who had spoken were in favor of the World Court, and not a minute was given to anyone who did not favor the resolution. In no other country would such a measure have passed without a debate.²⁶ Since it was the duty of the Senate to advise the President in

25. Congressional Record, 68 Congress, 2 Session, 5404; 5413-5414 (March 3, 1925)

26. Ibid., 5420 (March 3, 1925)

such matters as this, an attempt by the House to urge entrance into the World Court was nothing short of a slap in the face of the Senate.²⁷ To him it was an open question whether or not the Court was a back door to the League. The benefits from this tribunal were still hazy and the people should have had a clearer view of what this undertaking would have meant before it was embarked upon. The repudiation of war debts might have been brought before this Court where every other representative came from a debtor nation.²⁸ Moreover, many people of the country over-estimated the moral force which the United States exerted on the world. He thought that after all it was money and man power which forced respect. Thus, the United States should not have thought of entering the Court until all those who were members of the League or the Court had agreed to a complete disarmament and an open judicial tribunal.²⁹

During February and March 1925 when the House was busy with Resolution 426, favorable public opinion was expressed through various resolutions and memorials. Mr. Dale of the Senate presented a joint resolution from the Legislature of the State of Vermont. It favored the Court on the Harding-Hughes terms and had been approved of on February 10 by Frank Billings, Governor of the State.³⁰ At a mass meeting

27. Ibid., 5420 (March 3, 1925)

28. Ibid., 5420 (March 3, 1925)

29. Ibid., 5420 (March 3, 1925)

30. Ibid., 3700 (February 14, 1925)

of citizens in Orlando, Florida on February 12 it was resolved to request the Foreign Relations Committee of the Senate to report out for discussion and action on the floor a resolution committing the United States to adherence to the Protocol.³¹ A joint memorial from both houses of the Legislature of Montana was sent to the Senate urging immediate action on this question.³² The Ohio and Colorado Legislatures also passed a favorable resolution on United States adherence to the Court.³³ All of these were referred to the Senate Committee on Foreign Relations. Mr. Leavitt of the House of Representatives presented a resolution in his branch of the Legislature demanding that the Committee on Foreign Relations place before the Senate as soon as possible the question of the participation of the United States in the World Court with the Harding-Hughes reservations. This was signed by eight Montana Women's Clubs, namely, Mary G. Mitchell, chairman of the League Women Voters, Jessie E. Patton, President of City Federation, Jennie Douglas, oracle Primrose Camp R.M.A., Reola Appel, secretary of American Association of University Women, Faye Miller of the Woman's Club, Eva Walker of the Woman's Christian Temperance Union, Emeline Wolfe of the Delphian Society, and Gracia C. Beard, president of the Travel Club.³⁴

31. Ibid., 3786 (February 16, 1925)

32. Ibid., 4306 (February 21, 1925)

33. Review of Reviews LXXI, 630

34. Congressional Record, 68 Congress, 2 Session, 3771 (February 14, 1925)

President Coolidge added his voice to the demand for adherence to the World Court in his inaugural address of March 4, 1925. He said, "In conformity with the principle that a display of reason rather than a threat of force should be the determining factor in the intercourse between nations, we have long advocated the peaceful settlement of disputes by methods of arbitration and have negotiated many treaties to secure that result. The same conditions should lead to our adherence to the Permanent Court of International Justice."³⁵ Mr. Coolidge believed that where great principles were involved, and movements which promised much for humanity were under way we should not have withheld our sanction because of some small inessential difference.³⁶

Let us now see what action was taken by the Senate. On January 8, 1925 Mr. Willis submitted an amendment in the nature of a substitute which he intended to propose to Senate Resolution 234, Mr. Pepper's plan, advising adherence of the United States to the World Court with certain amendments. It was ordered to lay on the table and be printed.³⁷ On January 17, 1925 Mr. Shipstead pointed out that the Senate Subcommittee on Foreign Relations had had a public hearing. The Committee on Foreign Relations had discussed various proposals for the World Court and had finally reported to the

35. Ibid., 69 Congress, Special Session, 5

36. Ibid., 5

37. Ibid., 68 Congress, 2 Session, 1437 (January 8, 1925)

Senate, Resolution 234 advising adherence of the United states to the World Court with amendments. The resolution was on the Senate Calendar at that time and the work of the Committee on Foreign Relations was finished. Further action was now up to the Senate and they had been waiting for those Senators who supported adherence to the Court to move consideration of the resolution in the Senate.³⁸

February went by with no Senatorial action on the question of the Court, but on March 6, 1925 Senator Swanson offered Senate Resolution 5 which was similar to the one he had offered before for adhesion of the United States to the World Court. It was referred to the Committee on Foreign Relations. It stated that since the President asked for the adherence of the United States to the World Court without accepting the compulsory jurisdiction clause, the Senate should have consented on the following conditions: (1) that no legal relations to the League of Nations or any obligations under the Covenant constituting Part I of the Treaty of Versailles were to be assumed; (2) the United States had the right to participate in electing judges and deputy judges or filling vacancies on an equality with the other members of the Council and Assembly of the League; (3) the United States was to pay a fair share of the expenses of the Court as determined and appropriated by Congress; (4) the Statute

³⁸. Ibid., 2023 (January 17, 1925)

of the Protocol of the Court was not to be amended without the consent of the United States; (5) the United States was not to be bound by any advisory opinion of the Court which was rendered unless it had requested such in accordance with the terms of the Statute. The powers were to indicate through notes that they accepted these reservations as a part of the condition of United States adherence to the Protocol before this country put its signature on the document.³⁹

On that same day Mr. Willis submitted Senate Resolution 6 which was almost identical with the resolution offered by Mr. Swanson. This, too, was referred to the Committee on Foreign Relations.⁴⁰

Mr. Curtis on March 13, 1925 proposed that on December 17, 1925 the Senate would proceed to consider the resolution which provided that the Senate advise and consent to the signature of the United States to the Statute. The consideration of the Protocol was to be in an open executive session. Since Mr. Dill objected to this, on that same day Mr. Robinson moved that on December 17, 1925 the Senate in open executive session proceed to consider Senate Resolution 5 which had been submitted on March 6, 1925 by Mr. Swanson. Mr. Robinson demanded the yeas and nays on his motion. When the vote was taken there were seventy-seven yeas and two nays, so Mr. Robinson's motion was agreed upon. On a motion by Mr. Curtis the in-

39. Ibid., 69 Congress, Special Session, 10 (March 6, 1925)

40. Ibid., 10 (March 6, 1925)

junction of secrecy was removed from the foregoing proceedings and vote.⁴¹

Between March 1925 and December 1925, the month decided upon by the Senate for consideration of its consent to adherence of the Court, a few opinions were voiced. John Clarke believed that the judges were learned and experienced men who were well able to deal with many classes of disputes which were within the scope of a definitely defined jurisdiction.⁴² Henry Taft did not believe that the World Court was a solution for all of the world's troubles. He felt that the statement that the Court would contribute more to peace weakened the cause of this tribunal. But Mr. Taft maintained that by the United States' adherence to the Court the feeling of security in Europe would have been strengthened. The system of international law and its principles, he felt, came nearer to the natural law based on moral concepts than did municipal law. To be effective, though, it had to be supported by the public opinion of the supporting countries. Some said that the United States should not join the Court until the international law had been codified, but Mr. Taft said that that was impossible. There were about 11,000 treaties in effect and about 700 to 800 of them were on file

41. Ibid., 207 (March 13, 1925)

42. Justice John H. Clarke, "The Relation of the United States to the Permanent Court of International Justice" The Annals of the American Academy of Political and Social Science CXX, 116 (July 1925)

with the League. Questions were constantly arising about their interpretations. That was the administrative side of the law and only one branch of it at that. The World Court was established as an institution to which all free people might have gone. It was not perfect, because it was a human institution, but it did make a substantial contribution to world peace.⁴³

The Seventh National Convention of the American Legion held in Omaha on October 5 to 9, 1925 passed a resolution urging immediate adherence to the World Court.⁴⁴ The General Conference and Unitarian Association at its meeting in Cleveland on October 15 committed itself to the idea of united States adherence to the Court. The First Congregational Alliance (Unitarian) of Providence, Rhode Island urged the President and Congress to enter the Court at its coming session in December 1925.⁴⁵ The Providence Mother's Club in November 1925 went on record as favoring the Court and promised to do everything possible to help Coolidge in his efforts to have the United States adhere to the Protocol.⁴⁶ At a public mass meeting of the citizens of Providence, Rhode Island, held under the auspices of the Providence World Court

43. Henry W. Taft, "The World Court--Something the United States Can Contribute to Create a Feeling of Security in Europe" The Annals of the American Academy of Political and Social Science CXX, 125-127 (July 1925)

44. Congressional Record, 69 Congress, 1 Session, 1880 (January 12, 1926)

45. Ibid., 1476 (January 5, 1925)

46. Ibid., 1476 (January 5, 1926)

Committee, a resolution was drawn up expressing their favor of immediate adherence to the World Court under the Harding-Hughes-Coolidge terms.⁴⁷ A similar attitude was expressed by the citizens of Memphis who assembled on December 5, 1925 to listen to the plea of Major General John F. O'Ryan, commander of the 27th Division in the World War. This group further resolved to commend Senators McKellar and Tyson for their purpose to work and vote for the entry of the United States into the World Court.⁴⁸

For thirty-one years the United States had worked intermittently to get the nations to accept the idea of a permanent court. Finally, when forty-eight powers had joined such an institution and great men like Roosevelt, Taft, Wilson, Harding and Coolidge had indorsed the idea, then the United States would not join the Court. "It is just a bit curious, isn't it? There is also another word for it!"⁴⁹

47. Ibid., 1475 (January 5, 1926)

48. Ibid., 607 (December 10, 1925)

49. Edward M. Bok, "Just A Bit Curious, Isn't It?" Collier's The National Weekly LXXVI, 25 (November 28, 1925)

CHAPTER V. THE WORLD COURT IN THE 69 CONGRESS OF

1925-1926

Presidential Message

Petitions

Senatorial Debates

Senate Resolution 5

Final Vote

CHAPTER V

THE WORLD COURT IN THE 69 CONGRESS OF 1925-1926

When Congress convened in December 1925, the question of the World Court was brought up. Mr. Robinson of Arkansas reviewed the fact that during the special session in March 1925 a special order was made in executive session with closed doors providing for a consideration of Senate Resolution 5. This measure provided for the favorable advice and consent of the Senate to the adhesion to the Protocol of December 16, 1920 with reservations. The date for such a consideration was set for December 17, 1925. Mr. Curtis submitted a request for unanimous consent that on December 17, 1925 the Senate proceed to a consideration of this resolution in open executive session. It was determined by a vote of seventy yeas and two nays that such would take place.¹

Before considering the discussion which took place in the Senate on this matter let us observe what President Coolidge stated in his annual message to Congress on December 8, 1925. He said that the proposal to adhere to the Court had been pending before the Senate for nearly three years. America had taken a leading part in laying the foundation on

1. Congressional Record, 69 Congress, 1 Session, 377
(December 7, 1925)

which this institution rested, namely, The Hague Court of Arbitration. The Court seemed to him to be independent of the League because it had been created by the Statute. This Statute was really a treaty made among approximately forty-eight different countries and might have been called the constitution of the Court.² When the Council and the Assembly acted as electors for the Court, they were acting as instruments of the Statute and not as agents of the League or Court of Arbitration. This would have been even more apparent if the United States' representatives sat with the Members of the Council and Assembly in electing judges.³ The members of the Court, he asserted, were not paid by the League but rather through the League by funds supplied by the members of the League and the United States, if we accepted. The judges were paid by the League only in the same sense that it could have been said that United States judges were paid by Congress. The Court could have gone on functioning if the League disbanded, at least until the judges' terms expired.⁴

Coolidge again stressed the point that careful provisions had been made in the Statute in regard to the qualifications of the judges. It was hard for him to see how human ingenuity could have better provided for the estab-

2. Ibid., 459 (December 8, 1925)

3. Ibid., 460 (December 8, 1925)

4. Ibid., 460 (December 8, 1925)

lishment of a court which would uphold its independence. Such liberty was, to a great extent, a matter of ability, character, and personality. Even in our own country some effort had been made in the early beginnings to interfere with the independence of the Supreme Court. But it did not succeed because of the quality of men who made up the tribunal.⁵

President Coolidge did not believe that the authority to give advisory opinions interfered with the independence of the Court. Advisory opinions in and of themselves were not harmful, but might be used for a beneficial purpose. They tried to prevent injury rather than merely offer a remedy after the harm had been done. The Court gave opinions when it judged that it had the jurisdiction, and refused to do so when it thought that it lacked the authority. Nothing in the work of the Court had as yet indicated that this was an impairment of its independence.⁶ No provision of the Statute appeared to Mr. Coolidge to give the Court any authority to be a political rather than a judicial court. Probably political question will be submitted to the World Court, but up to that time the Court had refused to consider such. However, the support of the United States would have a tendency to strengthen it in that refusal.⁷

5. Ibid., 460 (December 8, 1925)

6. Ibid., 460 (December 8, 1925)

7. Ibid., 460 (December 8, 1925)

The United States was not proposing to accept compulsory jurisdiction. After the adherence of this country there would have been no more danger of others bringing cases involving our interests before the Court, than there would have been if we did not adhere. If we were going to support any court, it would not have been one that we set up alone or which reflected only our ideals. Other nations had their customs, institutions, thoughts, and methods of life. If a court was to be international, its composition had to yield to what was good in all these various elements.⁸ Neither could it have been possible to support a court which was letter perfect or one under which we assumed no obligations. This institution seemed to the President to be helpful to the world in its stability, tranquility and justice.⁹

Senator Bingham presented a number of petitions from Connecticut organizations favoring American adherence to the World Court: namely, Woman's Christian Temperance Union, Women's Foreign Missionary Society of the Congregational Church, and the Women's Foreign Missionary Society of the Methodist Episcopal Church of Higganum.¹⁰ He also presented letters and papers in the nature of petitions favorable to the Court from the Board of Directors of the Fairfield County Republican Women's Association, Mount Carmel Book Club of

8. Ibid., 460 (December 8, 1925)

9. Ibid., 460 (December 8, 1925)

10. Ibid., 607 (December 10, 1925)

Mount Carmel, Bridgeport section of the National Council of Jewish Women, Men's Class of the Second Congregational Church of Watertown, Woman's Christian Temperance Union of Stafford Springs, Middlefield, Eastern Enfield, Montville, Wallingford, Essex, Plantsville, Wethersfield, Central Village and New Haven; from The Christian Endeavor Societies of the Congregational and Baptist Churches of Clinton, Woman's Study Club of Naugatuck, directors of the Chamber of Commerce of Waterbury, Hartford section of the National Council of Jewish Women, Current History Class of New London, directors of the Chamber of Commerce of Middletown, Republican Woman's Club of Stamford, Woman's Club of Waterbury, League of Women Voters of Wallingford, Terryville and Salisbury; and from sundry citizens of Watertown, New Milford, and Middlebury, all of the Interchurch Federation.¹¹

Mr. Bingham also presented petitions which asked for United States adhesion to the World Court from the Council and the Associated Chambers of Commerce of Honolulu, Hawaii. These, together with the petitions from the Connecticut organizations, were referred to the Committee on Foreign Relations.¹²

Other favorable resolutions were presented from the Board of Directors of the Washington State Chamber of Commerce at Olympia, the citizens of Marietta, Ohio, and mem-

11. Ibid., 607 (December 10, 1925)

12. Ibid., 607 (December 10, 1925)

bers of the Summer School of Missions which represented eighteen states and five foreign countries.¹³

But all of the public opinion was not in favor of the United States joining the Court as one might imagine from the number of favorable petitions received. Mr. Douglas of the House submitted a statement from Mr. Tinkham of Massachusetts in which he said that the only course for the United States was to adhere only to a court of international justice which represented the sovereign nations directly and not one which represented a political and military intermediary, namely, the League of Nations. This procedure would have been in accordance with her traditions of the administration of international justice and the avoidance of foreign political entanglements. As he saw it adherence to the Court meant entanglement in European political affairs and the surrendering of the Monroe Doctrine to a jurisdiction other than our own. For the Monroe Doctrine and the World Court seemed to him to be irreconcilable.¹⁴ Adherence to the Court also meant that the United States would be compelled to adopt the international law code of the League of Nations. This was brought about by the fact that the Covenant which was to govern the Court supersided much of the prevailing international law. This would have dangerously abrogated the rights and imperiled the liberty of the United States.

13. Ibid., 606-607 (December 10, 1925)

14. Ibid., 757 (December 12, 1925)

Since the Court received much of its jurisdiction from the Covenant, adherence to this tribunal would have meant an entry into the League of Nations.¹⁵ No reservations of the United States which prevented the provisions of the Covenant from applying to it could have precluded its moral liability for the decisions and acts of the Court. Mr. Tinkham alleged that the tribunal was not independent because without the League of Nations it could not exist, for courts do not exist apart from governments.¹⁶

Under Article 418 of the Treaty of Versailles¹⁷ he thought that the Court might apply economic sanctions to any country violating any international labor convention, or in other words, it had the power to black list or to boycott. These powers, which were political rather than judicial, held the seeds of error.¹⁸ Then, too, under several sections of the Covenant of the League of Nations the Court's decisions were enforceable by the Council of the League without qualifications as to the method and time. To these decisions the United States would have been morally bound.¹⁹ The interpretation or application of all mandates under the Versailles Treaty were also subject to the jurisdiction of the Court. Mr. Tinkham cited the fact that there was an inde-

15. Ibid., 757 (December 12, 1925)

16. Ibid., 757 (December 12, 1925)

17. Appendix, 217

18. Congressional Record, 69 Congress, 1 Session, 757 (December 12, 1925)

19. Ibid., 757 (December 12, 1925)

pendent, nonpolitical Permanent Court of Arbitration at The Hague. It had as much authority for settling international controversies as the World Court, because both Courts could settle only the cases submitted to them. If it were thought advisable to have permanent judges, he thought that a third Hague tribunal could have set up such a bench.²⁰

On December 17, 1925 Senator Swanson opened the debate on Senate Resolution 5. He reviewed the fact that an advisory committee of jurists met at The Hague in 1920 to form a permanent court. On the motion of Mr. Root, this group accepted as a basis for its discussion the plan of a court which had been submitted by the American delegates to The Hague Conference in 1907. This American plan became the foundation upon which the World Court was constructed.²¹ Later, when the Assembly of the League was considering the Statute of the Court, much discussion arose upon the manner in which the Statute should be adopted by the states concerned. One view was that the Statute of the Court could and should be ratified by the vote of the Assembly alone. If this view had prevailed, the Court would have become a creature of the League. The other view was that the 'members of the League' meant the separate states who had agreed to the Covenant of the League; according to this it was necessary for the individual states to ratify the Statute.

20. Ibid., 757 (December 12, 1925)

21. Ibid., 976 (December 17, 1925)

This latter view which allowed the Court to be free and independent of the League was the one which prevailed.²² Furthermore, to emphasize the independence of the Court it was provided that the Statute should become operative as soon as it had been ratified by a majority of the members. Thus, a nation could have been a member of the League and not of the Court.²³

Next, Mr. Swanson asserted that the Court derived its power from its own Statute and not from the Covenant since the League could enact no law, no rule or no regulation governing the Court; and had no power to modify in any respect the Statutes of the Court. Neither could the League remove any of the judges, because this could only be done by a unanimous vote of the members of the Court.²⁴

Provisions were also made that when no candidate received a majority vote of both the Council and the Assembly, a conference would be held between the two bodies. This insured an election and prevented a deadlock. Mr. Swanson maintained that the United States should have participated on an equal plane with the other states in the election of the judges.²⁵ Since the electors acted under the Statute of the Court, the United States could have participated in this without incurring any obligations under the Covenant of the

22. Ibid., 976 (December 17, 1925)

23. Ibid., 976 (December 17, 1925)

24. Ibid., 976 (December 17, 1925)

25. Ibid., 976-977 (December 17, 1925)

League. The Statute of the Court, and not the Covenant of the League, determined whether or not the United States would be granted this privilege. If the members of the Court assented to this, it could have readily been done without amending the Covenant or the Statute.²⁶

In order to give the Court jurisdiction over any matter affecting the United States, it would have been necessary for the president to enter into an agreement with the other nation so that the matter could be referred to the Court for a decision. This agreement by the president would have to be done by and with the advice and consent of two-thirds of the Senate. If the Protocol of the Statute were ratified, the people of the United States would thus have had the full protection of their rights in all matters referred to this Court for decision.²⁷ Some said that the Monroe Doctrine would have been jeopardized. While the United States could not be bound legally except by a submission to which they assented, yet the opponents to the Court insisted that the United States might be greatly embarrassed morally in adhering to a Court to which other nations might refer a matter affecting the Monroe Doctrine. If this were true, such would have occurred under The Hague Convention of 1907 which established a court with jurisdiction over such matters as could be brought before the World Court. Any matter in regard to

26. Ibid., 977 (December 17, 1925)

27. Ibid., 979 (December 17, 1925)

the Monroe Doctrine that one court could consider was subject to the jurisdiction of the other.²⁸

Then, too, Mr. Swanson cited the fact that some foes of the Court said that this tribunal had no law except its own will and therefore was a law making and not a law judging body. They insisted that the Court should not be created until international law had been codified. We would have had to wait centuries for that codification according to the Senator. International bodies had tried to codify even the law of prizes and the administration of international prize courts, but were unsuccessful.²⁹ The World Court was not left to its own will to administer law, because there were provisions which the Court had to apply in reaching its decisions.³⁰

The Statute of the Court did not mention advisory opinions specifically, but by implication incorporated the provision of Article XIV of the Covenant of the League in its Statute. The Court decided that it would determine whether or not to give an opinion in each particular case. In rendering these opinions it conformed as nearly as possible to judicial procedure. The impression that advisory opinions could be rendered in an advisory sense or as an advising counsel for the Council and Assembly of the League

28. Ibid., 979 (December 17, 1925)

29. Ibid., 981 (December 17, 1925)

30. Appendix, (Article 38 of Statute) 215

was precluded by the rules and actions of the Court. Giving advisory opinions by courts was not a new thing. A number of Canadian courts, English judges, Colombian and Panama courts, as well as the justices of the Massachusetts Supreme Court had the jurisdiction to render such.³¹ In the first place, the opinions of the World Court were not binding when given, and furthermore, could not be binding according to the United States reservations unless this country was a party to the request for such an opinion. Those rendered by the World Court had been wise, just, and judicial and no political opinion was ever given.³²

To substantiate his point in favor of the advisory opinions of the Court, Mr. Swanson cited the case of the boundary dispute between Turkey and Great Britain. The latter acted for Iraq over which it held a mandate. There was a dispute over the Province of Mosul which was claimed by Turkey and Iraq. The question was not settled in 1923 at the Peace Treaty of Lausanne. It was finally agreed that if it was not settled within nine months, it would be referred to the Council of the League. Turkey insisted that the matter was referred to the Council as a mediatory or conciliatory body and not as a deciding body. It also maintained that if the Council gave a final decision, it must do so by a

31. Congressional Record, 69 Congress, 1 Session, 981
(December 17, 1925)

32. Ibid., 982 (December 17, 1925)

unanimous vote with Turkey sitting as a member of the group. Great Britain maintained that under the Treaty of Lausanne the Council was empowered to give a final decision by a majority rather than a unanimous vote. The matter was sent to the Court asking for an opinion as to the capacity of the Council in this question.³³

The Court gave an opinion in which it stated that according to the treaty the matter was properly placed before the Council. The fate of the territories depended upon the decision of this body. The Council was to reach its decision by a unanimous vote excluding the representatives of both Turkey and Great Britain.³⁴ This opinion of the Court, according to Mr. Swanson, was confined to the interpretation of a treaty and the Covenant of the League which were proper subjects of judicial determination. It rejected the contention of Great Britain, thus showing its independence and fairness.³⁵

Thus closed the first speech on the floor of the Senate in favor of the World Court. This was followed by the presentation of a number of petitions and resolutions all favoring adherence to the Court on the part of the United States. Mr. Robinson of Arkansas presented a resolution adopted by

33. Ibid., 987 (December 17, 1925)

34. Ibid., 987 (December 17, 1925)

35. Ibid., 987 (December 17, 1925)

the students of Henderson Brown College of Arkadelphia, Arkansas;³⁶ Mr. Willis presented a petition of sundry citizens of Cleveland, Ohio; and Mr. Copper presented a petition from sundry citizens of Rice County, Kansas.³⁷ Mr. Bingham brought forth a petition signed by ninety-five citizens of Yalesville, Connecticut, as well as resolutions adopted by the Temple Sisterhood of the Congregation of Beth Israel of Hartford, the Woman's Club of New Haven, the Sisterhood of Temple Israel of Waterbury, a mass meeting of the citizens of Bridgeport and Middleton, and the members of the Blue Hills Baptist Church of Hartford, all of which were in the state of Connecticut.³⁸ Mr. Fletcher of Florida submitted a short letter from Mr. Myrick. He stated in this that by a vote of 2,089 to 1 a petition had been sanctioned by the citizens of Springfield, Massachusetts which asked the Senators to put the United States into the World Court.³⁹

The next day, December 18, 1925, Mr. Lenroot opened the executive session to the consideration of Senate Resolution 5 with a speech in which he reviewed much of the same ground that Mr. Swanson had covered. He discussed the origin, the creation, and the independence of the Court. He emphasized the fact that this tribunal was not a duplication of the Hague Court of Arbitration.⁴⁰ Another point he stressed was

36. Ibid., 989 (December 17, 1925)

37. Ibid., 989 (December 17, 1925)

38. Ibid., 989 (December 17, 1925)

39. Ibid., 989 (December 17, 1925)

40. Ibid., 1067-1069 (December 18, 1925)

that the qualifications necessary for a judgeship provided for an independent body of judges who had no allegiance to any country, but only to the law of truth and justice. An example of their independence was found in the Morocco case in which France was one of the contending parties. There was a representative of France sitting on the bench, yet he had joined in the unanimous opinion of the Court against his country.⁴¹

Mr. Lenroot said that some claimed that the Court statute did not mention advisory opinions and that it was the Covenant which conferred this jurisdiction.⁴² But Article 36 of the Statute⁴³ expressly provided that the jurisdiction of the Court comprised all cases which the parties referred to it and all matters especially provided for in treaties and conventions in force. The Covenant of the League was such a treaty or convention. Since the request for advisory opinions was a matter especially provided for in the Covenant, under Article 36 of the Statute the Court had the jurisdiction to give such opinions.⁴⁴ This jurisdiction was not confined to rendering advisory opinions to the League alone. In case of a treaty between the United States and Great Britain which provided that either could request an advisory opinion from

41. Ibid., 1068 (December 18, 1925)

42. Ibid., 1068 (December 18, 1925)

43. Appendix, 214-215

44. Congressional Record, 69 Congress, 1 Session, 1068 (December 18, 1925)

the Court, the tribunal would have had the right to render such, just as it did for the League of Nations.⁴⁵

The Court by its own action had shown its independence of the League when the Council asked for an advisory opinion of it in the Eastern Karelia case. This was a dispute between Russia and Finland and since Russia was not a member of the League, it declined to consent to the jurisdiction of the Court to render such an opinion. For that reason the Court refused the request of the League.⁴⁶

Mr. Lenroot knew that the Court's opponents maintained that the United States would have been compelled to submit to the Court the interpretation of the Monroe Doctrine, any question of immigration, and the settlement of the foreign debt. But according to Article 36 the jurisdiction of the Court comprised all cases which the parties referred to it. It also provided that matters especially provided for in treaties and conventions in force could be referred to the Court in any dispute which arose thereafter. Therefore, it seemed clear to Mr. Lenroot that unless a country expressly agreed, by action in a particular case or by entering into a treaty, to refer a matter to the Court the latter had no jurisdiction.⁴⁷

According to Mr. Lenroot there were two defects in the

45. Ibid., 1068 (December 18, 1925)

46. Ibid., 1068 (December 18, 1925)

47. Ibid., 1069 (December 18, 1925)

Statute. First, the fact that the judges were elected under the League made that electoral group dependent on the duration of another body. If the League were not permanent, then the machinery for electing judges would disappear and a new one would have to be created. The same situation was true in regard to the judges' salaries and the expenses of the Court. But whether the League lasted or not the jurisdiction and powers of the Court would not be affected.⁴⁸ Secondly, the fact that in case of a dispute between two nations if one or both did not have a national sitting as a judge the nation or nations having the dispute had the privilege to select a national of their own to sit with the Court. This seemed to him to be contrary to the strict idea of a court of justice, but that would not necessarily have deterred the United States from adhering to it.⁴⁹

Mr. Borah was the next speaker of the day and he stated that he would confine himself to the relationship of the Court to the League of Nations. He intended to show this by the remarks and testimony given by the friends of the Court. Mr. Borah cited the passage in Judge de Bustamanta's book "The World Court" which said that any storm upon the League would inevitably affect the Court.⁵⁰ Senator Borah claimed that the intent and purpose of those who served on the Com-

48. Ibid., 1070 (December 18, 1925)

49. Ibid., 1070 (December 18, 1925)

50. Ibid., 1071 (December 18, 1925)

mittee of Jurists such as Mr. Root, Lord Philimore and M. Bourgeois was not to create a Court separate and independent of the League. The Secretary-General of the League in writing to the jurists inviting them to serve upon this committee advised them as follows: 'The Court is to be the most essential part of the organization of the League of Nations'.⁵¹ And Mr. Borah claimed that they deviated not at all. M. Bourgeois said that the Court had to have a political organization to supply it with the law it was to apply, and to give it the necessary authority. Similarly, the League had to have a court of law for the administration and interpretation of its rules and regulations. Mr. Root was quoted as saying that the Court must be provided as a part of the system of which the League was a factor. Mr. Root felt that the jurists could not have accepted the invitation of the Council and then planned for a court which did not form a part of the system of the League of Nations.⁵² These instances were given to illustrate the deliberate interdependence which existed between the two bodies.

Mr. Borah said that many claimed that there was no other method of electing the judges. But he asserted that the real reason for voting under the League was stated in the jurists' report of the Statute to the Council: 'The new Court being the judicial organ of the League of Nations, can only be

51. Ibid., 1072 (December 18, 1925)

52. Ibid., 1072 (December 18, 1925)

created within the League. . . .As it is to be a component part of the League, it must originate from an organization within the League and not from a body outside of it.'⁵³ Dr. Scott, adviser to Mr. Root, said: 'The Court is the agent of the League, and therefore, is intimately connected with it.'⁵⁴ Judge Loder upheld the fact that the Court was free in its relationship to the League and said that the Court held: 'A place similar to that of the judicature in many states, which is an integral part of the state and depends upon the national legislature as regards all that concerns its constitution, its organization, its powers, its maintenance.'⁵⁵ But Mr. Borah added that whatever he thought about its independence he left no doubt that the Court was an integral part of the League just as a state supreme court is a part of the state government. Sir Eric Drummond, Secretary of the League was quoted as saying: 'The definite establishment of the Court completes the organization of the League.'⁵⁶ When Mr. Hagerup of Norway reported the Statute of the Court to the Assembly of the League in December 1920 he said: 'This is the first step which will lead to the entry of the United States into the League.'⁵⁷ These statements were offered by Mr. Borah to further substantiate his point.

53. Ibid., 1072 (December 18, 1925)

54. Ibid., 1073 (December 18, 1925)

55. Ibid., 1073 (December 18, 1925)

56. Ibid., 1073 (December 18, 1925)

57. Ibid., 1073 (December 18, 1925)

Mr. Borah maintained that the sole authority for advisory opinions and the right to ask for such was in the Covenant of the League. Therefore, it could not be contended that the Court was not a part of the League with the Covenant as its constitution. When he thought of the numerous political question about which the Court might have been asked to advise upon, he could not see how the United States as a member of the tribunal could have kept out of European politics.⁵⁸ According to Mr. Borah, Mr. Root opposed this advisory function of the League because he said that it was a violation of juridicial principles.⁵⁹ Judge John Bassett Moore was quoted as saying: 'Admittedly these advisory opinions are inconsistent with and potentially destructive of the judicial character with which the Court has been invested.'⁶⁰

Another fact the Senator noted was that the League controlled the accessibility of the Court in that only members of the League and States mentioned in the Annex could use the Court except upon such terms as the League stipulated. In 1922 when the Court was opened to other states outside of League Members the conditions imposed were: 'The Council of the League of Nations reserved the right to rescind or amend this resolution, which shall be communicated to the Court, and on the receipt of such communications by the registrar of

58. Ibid., 1073-1074 (December 18, 1925)

59. Ibid., 1074 (December 18, 1925)

60. Ibid., 1074 (December 18, 1925)

the Court, and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.⁶¹ Mr. Borah concluded with the statement that the reservations proposed for United States entry did not change any of the facts about the Court and the League.⁶²

Senator Walsh immediately answered Mr. Borah's arguments by saying that the question of whether the Court was an organ of the League did not concern the Senate as much as whether it was a Court to which international controversies could be intrusted to be solved upon legal principles. M. Bourgeois had his own views about the Statute of the Court, but the latter organization should have been judged by its work and not by the verbal opinions of its members. The views of Mr. Root and Judge Moore were of more consequence to the United States. Both were opposed at first to advisory opinions, as Mr. Borah showed. But by 1923 Root was one of the most earnest advocates of adherence by the United States to the Court.⁶³

Mr. Walsh was of the opinion that by Harding's proposal of February 1923 the United States would have been bound in no way by its ratification of the treaty except for its promise to maintain the Court. The United States did not

61. Ibid., 1077 (December 18, 1925)

62. Ibid., 1077 (December 18, 1925)

63. Ibid., 1084 (December 18, 1925)

agree to submit every controversy in which it became involved. This country assumed no responsibility for any decision the Court might make for the enforcement of the judgements it might render. Under the Statute of the Court a signatory nation was free to decide whether or not to submit to the Court any dispute in which it became involved.⁶⁴ Only controversies dependent upon some question of law were dealt with by the Court. For example, the controversial basis of the Spanish American War would not have been subject to the ruling of the Court. But those of the War of 1812 would have fallen within the Court's jurisdiction.⁶⁵ Mr. Walsh agreed with Mr. Swanson that the Monroe Doctrine would have come before the Court only if the United States brought it there.⁶⁶

After proving his point that the Court could not force a decision upon a nation, Mr. Walsh then considered what responsibility the United States assumed in regard to the judgements rendered by the Court. He said that this country made no pledge in regard to any judgement which the Court might render against us. The Statute provided for no enforcement of its decrees. Neither did we bind ourselves to enforce or assist in enforcing the obedience by a recalcitrant nation. Since no sanctions were provided for in the

64. Ibid., 1085-1086 (December 18, 1925)

65. Ibid., 1087 (December 18, 1925)

66. Ibid., 1086 (December 18, 1925)

Statute to which we would have prescribed, it was no consequence to us what was stipulated in the Covenant of the League in regard to this matter.⁶⁷ Sanctions, as applied to the decisions of the Permanent Court of Arbitration to which we belonged, and the judgements of the Permanent Court of International Justice referred only to members of the League.⁶⁸

Mr. Walsh next took up the relationship between the League and the Court. The two institutions were associated, but nevertheless, were separate because they rested upon separate treaties. The one case where the Council or Assembly could modify the Statute of the Court was in the provision that the number of judges might be increased from eleven to fifteen. This had to be done on the proposal of the Council of the League and concurred in by the Assembly. He maintained that with substantial accuracy it could have been said that the only relation between the Court and the League was that the judges were chosen by the Council and Assembly and paid from the treasury of the League.⁶⁹ The League had not or could not have any controversies before the Court. The cases were between states which might or might not have been members of the League. As a result of this the League was indifferent to the opinion handed down

67. Ibid., 1085-1086 (December 18, 1925)

68. Ibid., 1085 (December 18, 1925)

69. Ibid., 1090; 1092 (December 18, 1925)

no matter how vital it was to the individual state. The conclusion reached by the Court in regard to advisory opinions was also a matter of perfect indifference to the League. Finally, concluded Mr. Walsh, the idea that all controversies which led to war would go before the Court to result in an era of peace was a delusion. Adhering to the Protocol was a feeble and halting step in the direction of promoting world peace.⁷⁰

At this time a memorial to the President and Congress which had been drawn up by the members of the Flatbush Congregational Church situated in Brooklyn, New York was presented. It favored entry into the World Court by the United States under reservations which seemed advisable to Congress.⁷¹

Debate on this resolution was resumed on December 21 when Mr. Walsh spoke again. His first point was the matter of the activity of the Court. In the Mosul case between Turkey and Iraq statements had been made that Turkey was hailed before the Court without her consent. That was not true, he asserted.⁷² Another case brought before the Court was in regard to the Tunis dispute between France and Great Britain. The Court in this instance said that under ordinary circumstances matters of nationality were strictly domestic in character, but by reason of treaty engagements

70. Ibid., 1093 (December 18, 1925)

71. Ibid., 1806 (January 11, 1926)

72. Ibid., 1237 (December 21, 1925)

they might assume an international character. This case had ceased to be a purely domestic affair for this reason. The Court did not assert that matters of nationality, immigration, and such were an international concern rather than a domestic affair. It clearly stated that in the absence of a treaty dealing with these subjects, they were solely of domestic concern. But if a treaty were drawn up in regard to these matters, then it became an international problem.⁷³

Mr. Walsh went on to review the divisions of the Statute, namely, the organizations, competence, and procedure of the Court. Only new facts under these headings which were brought out by Mr. Walsh will be noted. If a state did not belong to the Court, but was a member of the League, it could still vote in the Assembly and the Council for judges. Abyssinia, Argentina, San Domingo, Ethiopia, Guatemala, Honduras, Irish Free State, Nicaragua, Peru, and Salvador were thus situated.⁷⁴ It was probably assumed in preparing the Statute that no member of the League would fail to subscribe to the Protocol. Mr. Walsh had found that indifference or neglect were the only causes for non-adherence to the Court.⁷⁵ In case of an election to fill a vacancy or vacancies the number of nominations was limited to twice the number of places to be filled. In case a nation were a member

73. Ibid., 1242 (December 21, 1925)

74. Ibid., 1240 (December 21, 1925)

75. Ibid., 1240 (December 21, 1925)

of the League and not a signatory to the Hague Conventions, a group of four nominators could be appointed who might propose candidates for the election.⁷⁶ To remove any bias on the part of the Court toward a country, it was provided that no two judges were to be of the same nationality. As an added precaution against sinister influence in the action of the Court, no judge including a deputy judge could exercise any political or administrative function or act as an agent, counsel or advocate in any case of an international nature.⁷⁷

Mr. Walsh admitted that it was true that an advisory opinion might greatly forestall a perfectly impartial hearing of a dispute afterwards submitted. But such might arise as a result of an earlier decision in any ordinary case. American and English courts deferred to precedent more than was approved by the continental courts. This was the reason for Statute 59, which stated that the decisions of the Court had no binding force except between the parties and in respect to that particular case. Notwithstanding Article 59 it was impossible for the judges who took part in earlier hearings not to be influenced by the ideas they brought forth. Equally so, it was impossible for an entire new bench not to be influenced by the conclusions of their predecessors. But one must remember that this was the Statute of an inter-

76. Ibid., 1240 (December 21, 1925)

77. Ibid., 1240 (December 21, 1925)

national court and that the other nations were entitled to some opinion as to its organization. The question had to be faced as to whether the feature was dangerous.⁷⁸

The claim that the League used the Court as its department of justice, was absurd in Mr. Walsh's opinion for the League had its own well-organized legal bureau headed by an eminent lawyer from Holland. It also maintained a staff of lawyers from whom it received advice on any matter. It was only when a controversy arose or when a situation which might lead to a dispute was presented that recourse to the Court was taken. The Monroe Doctrine might have been involved in a controversy to which the United States was not a party. The matter could have come before the Court upon an agreement between the two contesting parties as well as through the formality of a request for an advisory opinion.⁷⁹ From this discussion one can see that Mr. Walsh approved of joining the international tribunal as it was established.

To James N. Rosenberg the Court seemed connected to the League by Article XIII which said: "The members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable to submission to arbitration or judicial settlement they will submit the whole subject matter to arbitration or judicial settlement The members of the

78. Ibid., 1243-1244 (December 21, 1925)

79. Ibid., 1244 (December 21, 1925)

League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision the Council shall propose what steps should be taken to give effect thereto."⁸⁰ Several questions arose in the mind of Mr. Rosenberg. Since the members agreed not to resort to war against a complying member, what would they do to a member who did not comply? If the answer was found in the last sentence of the above quoted article would that have meant that the Council had the power to make war against a non-complying member? Suppose a nation could not comply with a decision because of financial or physical handicaps, what would the outcome have been? As he interpreted the situation the World Court was backed by the power of the League through Article XIII.⁸¹ In that case did the first reservation of the United States' adherence go far enough? It freed this country from the duty of joining with the League members in using force to carry out a decision. But did it exempt the country from the pressure of force if we failed to comply with a decision? To avoid any threat of force against the United States it seemed to Mr. Rosenberg that it should have been stipulated that our entry would be conditioned on the agreement of the League that no decrees of the Court would be

80. James N. Rosenberg, "Article 13" The Nation CXXI, 622 (December 2, 1925)

81. James N. Rosenberg, "Power to Decide, None to Enforce" The Nation CXXI, 650 (December 9, 1925)

enforced by the Court or Council through war or economic pressure. The purpose of such a court was to avoid bloodshed and force.⁸² The history of the United States Supreme Court had shown that a court could lack the power to compel the enforcement of its decisions and still serve a useful purpose. A World Court stripped of any enforcing power was the only kind to be of any real use, because a court backed by power became a court of arms instead of a court of justice.⁸³ Mr. Rosenberg felt that the Court severed from the League would have been stronger than ever before.⁸⁴

Professor Hudson answered the arguments put forth by James Rosenberg. He maintained that the World Court had been established pursuant to the Covenant only in a point of time. The Court had not been created to carry out the provisions of Article XIII of the Covenant for in Article I of the Statute it clearly stated that the Court had been established in accordance with Article XIV.⁸⁵ In speaking of an army behind the Court the United States was not to be bound in any way by the Covenant even if we supported the Court. The Covenant placed certain obligations upon the members of the League in regard to their disputes, but the United States in supporting the Statute would not have under-

82. James N. Rosenberg, "Reservations" The Nation CXXI, 700 (December 16, 1925)

83. The Nation CXXI, 650 (December 9, 1925)

84. The Nation CXXI, 700 (December 16, 1925)

85. Manley O. Hudson, "The World Court--A Reply" The Nation CXXI, 726 (December 23, 1925)

taken any of these. Mr. Hudson thought that it was impossible for the United States to lay down sanctions of respect and opinion for the whole world.⁸⁶

The members of the Senate Foreign Relations Committee were asked to make a statement on Mr. Rosenberg's problem that the Court was backed by the power of the League. The question was asked whether reservations should have been made for the entry of the United States only if the decisions were based on honor instead of on military force. Mr. Borah replied that there was no doubt but that by Articles XII, XIII and XVI of the Covenant the League claimed the right to enforce the decisions of the Court.⁸⁷ To Mr. Walsh it was plain that the Statute made no provision for the enforcement of the Court's judgements. A nation of the League might have been embarrassed by the Covenant if a decision of the Court went against it, but that could only have been met by a modification of the Covenant. The United States should not have attempted to secure such an amendment or made its adherence dependent on such a condition because there was no chance for the removal of sanctions from the Covenant.⁸⁸ Mr. Lenroot was not in favor of the reservation because he felt that the Statute provided for no sanctions and the Covenant was no affair of ours. Mr. Rosenberg's reservation seemed

86. Ibid., 726

87. "Ten Senators on the World Court" The Nation CXXI, 751
(December 30, 1925)

88. Ibid., 751

to him to be against the Covenant rather than the Court's Statute.⁸⁹ Mr. Pepper claimed that there was a distinction between the United States adhering to the Court and a League member joining the tribunal. A member of the League would be forced to carry out the decrees of the Court, but that obligation came under the Covenant. The United States did not intend to subscribe to the Covenant so it would not be bound under any of its sanctions.⁹⁰ Mr. Moses and Mr. McLean agreed with Mr. Rosenberg that Articles XIII and XVI of the Covenant gave the League the power to enforce the Court's decisions.⁹¹ Mr. Edge and Mr. Capper felt that the Harding-Hughes reservations were an adequate guarantee to the United States in its freedom from the League.⁹² So by a five to three majority this committee voiced its opinion against such a suggestion.

A magazine article described the massing of public opinion at Washington on behalf of the Court as an extraordinary spectacle. Republican, Democratic, and Independent women were crowded into the Senate Chamber.⁹³ It claimed that some went of their own initiative, but many were there as the representatives of organizations who were in favor of the United States joining the Court. It seemed to the writer.

89. Ibid., 751

90. Ibid., 751

91. Ibid., 751-752

92. Ibid., 751-752

93. "Mass Opinion at Work" The Nation CXXI, 749 (December 30, 1925)

to be the result of a campaign of intensive propaganda carried on by societies such as the American Foundation which was under the leadership of Mr. Bok.⁹⁴ Nothing had been heard of the improper use of money, as some of the Senators intimated, and the proponents and opponents of this legislation were within their rights. The writer felt that the pressure brought on Congress by endless church organizations, colleges and societies of all descriptions might have influenced the vote in the Senate if these men had not been experts in evaluating this propaganda. The country as a whole with the exception of the privileged classes of the East seemed uncertain in its attitude toward the World Court question.⁹⁵ Whatever was their opinion it could not be denied that the constituents had a right to let their representatives know how they felt, but this article claimed that to compel the Congressmen to vote against their conscience or beliefs was to substitute mob rule for a representative government.⁹⁶

To evaluate the newspaper attitude throughout the country, an unofficial survey was conducted by the American Foundation. It showed that in their editorials eighty percent favored adherence, twelve percent opposed it and eight percent took no stand.⁹⁷ This thorough examination showed

94. Ibid., 749

95. Ibid., 749

96. Ibid., 749

97. Editorial in The Christian Science Monitor December 14, 1925, 14

too that of the twelve percent opposed to the Court, twenty-two of the papers were owned by Hearst. If the totals had any significance, then the entire chain of papers controlled by one editorial policy should have been counted as one instead of twenty-two.⁹⁸ Another local paper, the Chicago Daily Tribune, was unswerving in its desire for neither the Court nor the League. To them American adherence would have meant only a step toward the League. They did not know if the majority of the people wanted the Court, but felt that a well-financed minority was driving toward United States membership in this tribunal. They thought that the money which had organized the promotion of the Court was back of the League too.⁹⁹

To return to the Congressional field, we find three more Senators professing their friendly attitude toward the Court. Mr. Willis of Ohio claimed that the Republican Party and the administration were obligated on this question and the people had the right to expect the party in power to redeem their pledges. He said that opponents of the Court had put forth misleading questions and answers in propaganda pamphlets and quoted many of such kind to prove his point.¹⁰⁰ Mr. Bruce of Maryland supported Senate Resolution 5 because

98. Ibid., 14

99. Editorials in Chicago Daily Tribune December 2 and 8, 1925, 8

100. Congressional Record, 69 Congress, 1 Session, 1420-1426 (January 4, 1926)

he thought that it did not transform the World Court so much so that the nations which were members of it would have been unwilling to admit the United States into it. He believed that entry into this tribunal would have showed our readiness to subject our claims to the test of reason rather than to war and thus would have renewed our connections with the illustrious past.¹⁰¹ Mr. Fess of Ohio claimed that he had examined the Statute carefully and had found not a single involvement with the League outside of the election of judges, the payment of their salaries, and the item about advisory opinions. He wished that another agency for selecting the judges had been chosen, but knew of no other to recommend. He would have voted against the United States entering the League, but upheld America's entrance into the World Court. He expressed his intentions to vote for the reservations, not because they were essential, but because they placated those Americans who were misled by the propaganda against the World Court.¹⁰²

Further indorsement of the Court was given by the following Rhode Island organizations: United League of Women Voters of Rhode Island, the Edgewood Woman's Club, the Woonsocket Round Table Club, and the Rhode Island Congress of Parents and Teachers.¹⁰³ The Woman's Christian Temperance

101. Ibid., 1479-1480 (January 5, 1926)

102. Ibid., 1576-1578 (January 6, 1926)

103. Ibid., 1476 (January 5, 1926)

Union of Rhode Island voted that their state executive accept a resolution reaffirming its faith in the World Court.¹⁰⁴

This same resolution was adopted by the Coventry Women's Club, Providence Section Council of Jewish Women, Rhode Island State Federation of Women's Clubs, Edgewood Civic Club, The Triangle Club, Four Leaf Clover Club, Chepachet Needle Book Club, Providence Association for Ministry to the Sick, Read Mark Learn Club, Nautilus Circle, Cranford Club, and Hope Valley Women's Club, all of which were in Rhode

Island.¹⁰⁵ Entry of the United States into the World Court was urged by a resolution passed by the Committee on International Justice and Good Will of the Atlanta City Council of Churches.¹⁰⁶

Adherence to the Court by the United States was also urged by Reverend John F. Garrison in an address at the Central Presbyterian Church in Brooklyn; by Reverend E. Everett Wagner in the West Side Methodist Episcopal Church¹⁰⁷ and by Bishop William T. Manning in the Cathedral of St. John the Divine.¹⁰⁸

Senator Williams of Missouri speaking next on the floor of the Senate claimed that Article 5¹⁰⁹ of the Statute provided that the Secretary-General of the League request those members of the Court of Arbitration who were mentioned in

104. Ibid., 1475 (January 5, 1926)

105. Ibid., 1475 (January 5, 1926)

106. The New York Times, December 16, 1925, 33

107. Ibid., December 21, 1925, 24

108. Ibid., December 26, 1925, 5

109. Appendix, 210-211

the Annex to the Covenant to nominate persons for judges. Thus the members of the Permanent Court of Arbitration who were not members of the League did not receive invitations to nominate judges. Under these conditions he claimed that The Hague Court could have been disbanded altogether and nominations could have been made by the states mentioned in the Annex to the Covenant.¹¹⁰ Furthermore, he believed that the Court got its authority to give advisory opinions from Article XIV of the Covenant of the League and not from the Statute of the Court.¹¹¹ The fifth reservation did not seem to maintain the dignity, independence, and equality of the United States on a plane equal to that of the great powers represented on the Council of the League. Any one of those countries could have prevented the Council from submitting to the Court any question which seemed to affect their interests. But the fifth reservation did not do this, because it stated that the United States was not bound by any opinion, but it did not stop an opinion from being rendered without our consent. Mr. Williams thought that unless this was done the United States would have occupied an inferior position which he did not favor.¹¹²

Mr. Walsh disagreed with Mr. Williams on the point of advisory opinions. His belief as was stated before was that

110. Congressional Record, 69 Congress, 1 Session, 1756
(January 9, 1926)

111. Ibid., 1756 (January 9, 1926)

112. Ibid., 1757 (January 9, 1926)

the Court's power to render these opinions was not derived from Article XIV of the Covenant, but from the Statute. Other Senators, namely, Swanson and Lenroot agreed with this viewpoint.¹¹³ Likewise in its Statute the Court was endowed with the power of jurisdiction over any matter especially referred to it by treaties and conventions in force. It had been provided in the Versailles Treaty and the Covenant of the League that the Court be given compulsory jurisdiction.¹¹⁴ But any authority taken by the Court on this point was derived from its own Statute and not from outside agencies.

Several days later Mr. Bingham presented a resolution adopted by the Bar Association of Hawaii favoring American participation in the Court.¹¹⁵ On the same day Mr. Willis presented a memorial of sundry citizens of Hocking County, Ohio, remonstrating against the participation of the United States in the World Court.¹¹⁶

On the following day Mr. Wheeler of Montana presented a telegram from the Montana World Court Committee which stated that the following Montana organizations had passed resolutions asking for United States adherence to the Court under the Swanson plan: Montana Educational Association, Montana American Legion, Montana League of Women Voters, Montana

113. Ibid., 1758 (January 9, 1926)

114. Ibid., 1758 (January 9, 1926)

115. Ibid., 1806 (January 11, 1926)

116. Ibid., 1806 (January 11, 1926)

Federation of Women Clubs, State Farmers' Union, State Osteopathic Association, several state church organizations, Kalispell Woman's Christian Temperance Union, North Central District Educational Association, Electric Highway Unit Educational Association, Bridger Women's Club, League Women Voters of Butte, Helena, Great Falls, Kalispell and Belt, United Mine Workers of Roundup and also of Klein, Smelterman's Union of Great Falls, Living Spring Women's Club, Wisdom Women's Club, Congregational Church at Livingston, Kalispell Commercial Club, Billings Commercial Club, Helena Commercial Club, Broadwater Farmers' Union, Helena University Association, University Women, and Helena Women's Club.¹¹⁷

The World Court Committee also notified Mr. Wheeler that by a vote of three to one a World Court memorial had passed both houses of the Montana Legislature.¹¹⁸ Mr. Willis presented more favorable resolutions from another state. They had been adopted at a mass meeting held at the Hippodrome Theatre in Marietta, Ohio under the auspices of the Ministerial Association of that city.¹¹⁹

At this point the following reservation was introduced by Mr. Shipstead as Senate Resolution 114. It asked that the Committee on Foreign Relations prepare an index of all the correspondence, interdepartmental and general, and all

117. Ibid., 1880 (January 12, 1926)

118. Ibid., 1880 (January 12, 1926)

119. Ibid., 1880 (January 12, 1926)

memoranda for departmental and bureau reference which existed in the Department of State in regard to the Permanent Court of International Justice. They were to publish for the Senate this index of authentic papers relating to the Court including the Protocol of 1920, the Statute, rules, decisions, and opinions. The expense connected with the compilation was not to exceed \$10,000 which was to be paid from the contingent fund of the Senate. This resolution was referred to the Committee on Foreign Relations.¹²⁰

Mr. Shipstead saw the World Court as an agent which must overlap the jurisdiction of the United States Federal Supreme Court. This seemed true because this international tribunal was to become the source of definitions and principles for the law of the nations.¹²¹ If the people wanted their liberty of action whittled down by external commitments then they had a right to promote the entrance of the United States into the European situation. But he felt that he could not support a tribunal which he considered inharmonious to our constitutional life. The Court was not an instrument of peace, but a part of the supergovernment of the League of Nations.¹²² Therefore, it seemed to be an agency to be avoided rather than sanctioned.

Favorable attitudes were expressed by Mr. Ferris of

120. Ibid., 1956 (January 13, 1926)

121. Ibid., 1958 (January 13, 1926)

122. Ibid., 1958; 1964 (January 13, 1926)

Michigan¹²³ and Mr. McKinley of Illinois. The latter claimed that the United States needed foreign markets for her farm produce. So an assurance of continual peace would have been to the interest of American welfare.¹²⁴ Mr. McLean, of Connecticut, another advocate of the Court, maintained that America with its six percent of the world's inhabitants might at sometime need the support of the other ninety-four percent of the world. He thought that if the United States wanted to live in a civilized world, that it was about time it treated its neighbors in a civilized manner. He saw no reason for being afraid of joining with the other nations in an effort to maintain their social and industrial sanity by peaceful methods.¹²⁵

Mr. Williams brought up the question of whether the World Court would have had the right to interpret such questions as a custom tariff or immigration.¹²⁶ Mr. Walsh answered this inquiry by stating that the World Court would discuss such questions as whether Japanese would be admitted into American or whether the United States should have a protective tariff only if a treaty were made with another country in these two respects. Then, if a controversy arose, and if the United States consented, the question would have been brought before the Court. But such questions could have come

123. Ibid., 2116 (January 15, 1926)

124. Ibid., 1969 (January 13, 1926)

125. Ibid., 1971 (January 13, 1926)

126. Ibid., 1969 (January 13, 1926)

before the judges only in this way.¹²⁷

More adverse attitudes on the part of Senators were expressed by Mr. Brookhart of Iowa, Mr. Blease of South Carolina, Mr. Fernald of Maine, Mr. Harreld of Oklahoma, and Mr. Moses of New Hampshire.¹²⁸ The latter introduced an article by Jonathon Bourne as Senate Document 40.¹²⁹ Mr. Bourne, a former United States Senator from Oregon, opposed the Court because he believed that it was connected in many ways with the League. He felt that none of the American reservations went to the root of the evil, namely, the grip that the League held on the Court.¹³⁰ In order to free the Court he believed that the Statute would have had to be scrapped and a new structure made. The mere fact that reservations were necessary showed him that the Senators realized that admission to the Court was dangerous for the United States.¹³¹

Another adverse attitude was expressed by Senator Borah who discussed the question of the Karelia case which was between Finland and Russia. The Court had decided by a vote of seven to four that the question involved a dispute in which Russia had a part and since Russia was not a member of the League it could not be compelled to submit the case.¹³²

127. Ibid., 1969 (January 13, 1926)

128. Ibid., 2046; 2103; 2118; 2499; 2190 (January 14, 15, 21, 16, 1926)

129. Ibid., 2281 (January 18, 1926)

130. Ibid., 2281; 2283 (January 18, 1926)

131. Ibid., 2283 (January 18, 1926)

132. Ibid., 2285 (January 18, 1926)

The Council claimed that it had the right to ask these questions, notwithstanding the fact that the absent state refused jurisdiction. Four members of the Court agreed to that claim.¹³³ But according to the contention of the Council, Mr. Borah said that if the United States joined the Court and a question of immigration arose, the Council would have had the right to ask whether the condition of affairs constituted an obligation upon the part of the Council to act even though we contended that it was a domestic question.¹³⁴ Mr. Borah further maintained that if the United States joined the Court there should have been some provision made so that an advisory opinion which concerned this country could not be called for without our consent. Since the United States was not on the Council of the League, it could not check on any question it did not want brought up. Moreover, at some future time the new judges might not hold to the views held by the majority on this case, namely, that a non-member of the League was not subject to the Court's opinion against its will.¹³⁵

Mr. Swanson pointed out that the only objection that Mr. Borah had raised at this point against the Court was an apprehension that the future Court might not have the same wisdom, courage, or ability as it had in the past. Mr.

133. Ibid., 2286 (January 18, 1926)

134. Ibid., 2285 (January 18, 1926)

135. Ibid., 2288; 2294 (January 18, 1926)

Swanson declared that that could be taken care of when such an occasion arose. But it was no reason for the Senate not adhering to the Court.¹³⁶

Senator Tyson indicated that he was in favor of the United States' adherence to the Court.¹³⁷ Senator Nye of North Dakota said that he was not unqualifiedly against the Court, but that nevertheless, he would vote against the question. His reason for this was that he felt that the great number of American people did not understand the question. Under these conditions it would have been unfair to the Senate and the people to vote the United States into the Court.¹³⁸ Mr. Nye quoted an editorial from the Dearborn Independent which held that public opinion was still lacking on the question. All of the efforts of propaganda of women's clubs and clergymen could not change the fact that the people had expressed no opinion on the World Court.¹³⁹ Another editorial dated January 19, 1926 in the Chicago Daily Tribune was cited by Mr. Nye as showing that there was no point and no necessity for hurrying into the Court. It said that if the United States had interests in the Court, there were none being endangered by delay for this country had no disputes to arbitrate in a rush before a war broke.¹⁴⁰

136. Ibid., 2295 (January 18, 1926)

137. Ibid., 2637 (January 23, 1926)

138. Ibid., 2643 (January 23, 1926)

139. Ibid., 2644 (January 23, 1926)

140. Ibid., 2645 (January 23, 1926)

Whether or not the people understood the Court question, messages were continually sent to the Congressmen. The majority of them seemed to have been favorable to the issue, but a stronger opposition was expressed at this time than ever before. In the face of so much pro and con opinion it seemed appropriate to have Senate Resolution 119 presented at this point. It provided that the people be given the right to vote on the World Court question and fixed the date for such a balloting for December 8, 1926. This was read and laid on the table.¹⁴¹

First, the petitions favorable to United States adherence to the Court will be cited. Mr. Copeland of New York presented a telegram from the students at Syracuse University who approved of the Harding, Hughes, Coolidge reservations.¹⁴² The president of the Unitarian Laymen's League notified the Senate through Mr. Copeland that 12,000 Unitarian laymen from all parts of the United States urged a prompt vote on the World Court.¹⁴³ Dr. Staveley of Alabama, president of Birmingham Southern University, sent a telegram to Senator Heflin of Alabama signifying that he, the forty-nine faculty members, and 900 students urged the adoption of the reservations of adherence to the Court.¹⁴⁴ The students and faculty of Cornell¹⁴⁵ as well as the Woman's Temperance

141. *Ibid.*, 2347 (January 19, 1926)

142. *Ibid.*, 2439 (January 20, 1926)

143. *Ibid.*, 2439 (January 20, 1926)

144. *Ibid.*, 2497 (January 21, 1926)

145. *Ibid.*, 2762 (January 26, 1926)

Union of Cuyahoga County, Ohio favored the acceptance of the World Court treaty.¹⁴⁶

An impressive memorial was received by Senator Lenroot from the Constituent Bodies of the Federal Council of Churches of Christ in America. It stated that resolutions favoring the Court had been accepted during 1923 by Ecclesiastical and other bodies, including: Northern Baptist Convention, Central Church Convention, National Council of Congregational Churches, International Convention of Disciples of Christ, General Committee of the East Conference of the Primitive Methodist Church, General Assembly of the Presbyterian Church in the United States, Board of Bishops of the Methodist Episcopal Church, House of Bishops of the Protestant Episcopal Church, the General Assembly of the United Presbyterian Church of North America, the American Unitarian Association, General Conference of Unitarian and other Christian Churches, the Universalist General Convention, World's Sunday School Association, the National Board of the Y.W.C.A., and the World Alliance for International Friendship.¹⁴⁷

The people in the state of Connecticut showed their favor to the Court by petitions from 1200 citizens of Manchester, from sundry students of Yale Divinity School, members of the Monday Club of New Milford, Chamber of Commerce

146. Ibid., 2628 (January 23, 1926)

147. Ibid., 2497-2498 (January 21, 1926)

of Branford, the Board of Directors of the Women's Republican Club of Hartford,¹⁴⁸ Women's Republican Club of Hartford, Theological Seminary of Hartford, Seminary Foundation of Hartford, World Court Committee of Hartford, League of Women Voters of New Haven, League of Women Voters, and Woman's Christian Temperance Union of Meriden, and League of Women Voters of Wallingford and West Hartford.¹⁴⁹

The adverse criticism came from different parts of the country. First, Senator Copeland presented a communication from eight citizens of Ithaca, New York who asked him to do everything possible to keep the United States from joining this tribunal.¹⁵⁰ The New York citizens of the National Society Women Builders of America urged this Senator to oppose the entrance of the United States into the Court.¹⁵¹ The members of the John Jacob Astor unit of the Steuben Society of America which was located in New York added their voices to those opposing the Court.¹⁵² A telegram was received from Ralph Smith who stated that he believed that Tompkins County, New York was against entering the Court.¹⁵³

Senator Ferris presented memorials remonstrating against the Court from citizens of Antrim, Bay, Wayne, Shiawassee, Jackson, Lenawee, Dickinson, Kent and Oakland counties in

148. Ibid., 2628-2629 (January 23, 1926)

149. Ibid., 2763 (January 26, 1926)

150. Ibid., 2439 (January 20, 1926)

151. Ibid., 2439 (January 20, 1926)

152. Ibid., 2439 (January 20, 1926)

153. Ibid., 2762 (January 26, 1926)

Michigan.¹⁵⁴ More adverse opinions were received from the citizens of Michigan living in Detroit, Kalamazoo, Bay City, Oakland, Hartford, Munissing, Grayling, Royal Oak, Hart, Niles, Muskegon, Saginaw, Owosso, and Antwerp Townships.¹⁵⁵ Memorials were also presented by Mr. Bingham from the citizens of Windham County, Burnside, Stonington, Norwich, Mystic, Bridgeport, Statford, New London, Niantic, East Lynne, Ansonia, Derby, Shelton, Southbury, Seymour, Huntington, and South Britain, all of which were in Connecticut. They, too, opposed participation by the United States in the World Court¹⁵⁶ as well as did the citizens of Pine Bluffs, Wyoming.¹⁵⁷

More remonstrances were signed by citizens of the state of Ohio, and of Enterprise, Lyndon and Crawford, Kansas.¹⁵⁸ Mr. O'Keefe of El Paso, Texas expressed the hope that the Senate would delay action on the Court measure until a statement covering the purposes of the Court had been published.¹⁵⁹

Resolutions against the adherence to the Court were received from the Ancient Order of Hibernians, in Massachusetts and the Steuben Society and United German-American Societies of Mahoning County, Ohio.¹⁶⁰ A letter was re-

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154. Ibid., 2762 (January 26, 1926)
155. Ibid., 2762 (January 26, 1926)
156. Ibid., 2763 (January 26, 1926)
157. Ibid., 2763 (January 26, 1926)
158. Ibid., 2554 (January 21, 22, 1926)
159. Ibid., 2554 (January 22, 1926)
160. Ibid., 2628 (January 23, 1926)

ceived from J.A. Downey, Great Titan of Province Six, Realm of Ohio, Knights of Klu Klux Klan (Inc.) who wrote as a representative of numerous voters in Ohio who were opposed to the United States accepting the Court.¹⁶¹ Petitions protesting against United States adherence to the tribunal were received from the following groups all in Connecticut:

Ladies' Auxiliary Ancient Order of Hibernians Division #5 of Waterbury, Ladies' Auxiliary Ancient Order of Hibernians Division #1 of Naugatuck, Father McKeown Branch Ancient Order of Hibernians of New Haven, eighty-five citizens of New Haven, and seventy-five citizens of Fairfield County.¹⁶²

An opinion was given by Senator Stephens of Mississippi, an advocate of the entrance into the Court, who believed that the opposition to the World Court on the part of the Gaelic-Americans, the Hibernians, and the Irish-Catholic Newspapers was due to the fear that England would control the tribunal.¹⁶³ He pointed out that the Fellowship Forum, a newspaper which claimed to speak for the Klan, opposed the Court on the basis that the Pope would control the judges and thereby destroy the world and Protestantism.¹⁶⁴ Mr. Stephens emphatically declared that the fear that the rights of the United States would be overpowered by the dominance of

161. Ibid., 2628 (January 23, 1926)

162. Ibid., 2629 (January 23, 1926)

163. Ibid., 2801 (January 27, 1926)

164. Ibid., 2801 (January 27, 1926)

foreign nations, religious influences, or superstate control was wholly groundless.¹⁶⁵

A telegram was received at this time from the Cook County, Illinois convention of Republicans which was held in Chicago on January 26, 1926. There were about 3000 party members present. They expressed their belief in non-entangling alliances as the permanent policy of the United States. The World Court seemed dangerous to them because of the fear that it would result in involving the United States in the League of Nations.¹⁶⁶

Thus, the opinions both pro and con were placed before the Senators previous to the vote taken on the issue. It may be safely said that the number who expressed a desire for this tribunal was far greater than those who opposed it. But adherence to the Court was favored only under the Harding-Hughes-Coolidge reservations.

Seemingly to abate the fears held by some toward any connection with the Court Senator Swanson introduced modifications to Senate Resolution 5. The fifth reservation was changed to read: "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 state concerned, nor shall it without the consent of the United

165. Ibid., 2802 (January 27, 1926)

166. Ibid., 2816 (January 27, 1926)

States entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."¹⁶⁷ The second paragraph of this reservation was left the same.

Further modifications introduced by Mr. Swanson to this Senate Resolution were "Resolved further, as a part of this act of ratification That the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and Resolved further, That adherence to the said Protocol and Statute hereby approved 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 United States of its traditional attitude toward purely American questions."¹⁶⁸

On January 27, 1926, after an unsuccessful filibuster, the Senate by a vote of seventy-six to seventeen adopted

167. Ibid., 2657 (January 23, 1926)

168. Ibid., 2657 (January 23, 1926)

Senate Resolution 5 as modified by Mr. Swanson.¹⁶⁹ This provided for the adherence of the United States to the Permanent Court of International Justice, without accepting the optional clause for compulsory jurisdiction, upon the following reservations:

1. That the adherence would not involve any legal relation between the United States and the League of Nations. Nor would the United States assume any obligations under the Treaty of Versailles.

2. That the United States would participate through representatives on equal terms with the members of the Council and Assembly of the League in the election of judges, deputy judges or for filling vacancies.

3. The United States would pay a fair share of the expenses of the Court as determined by Congress.

4. The United States had the right at any time to withdraw its adherence to the Protocol. The Statute of the Court was not to be amended without the consent of the United States.

5. The Court was not to render any advisory opinion except publicly after notice had been given to the states adhering to the Court as well as to all interested parties. These opinions were not to be rendered until after public hearings had been given to any state concerned.

The Court was not to give an advisory opinion upon any
169. Ibid., 2824 (January 27, 1926)

question in which the United States claimed an interest without the consent of this country.

The United States would not sign the Protocol until the adhering powers had indicated their acceptance of the five reservations as part of the adherence by the United States.

The United States approved the Protocol with the understanding that recourse to the Court for a settlement of a dispute between the United States and any other state would be had only by an agreement through general or specific treaties between the parties of the dispute.

The adherence of the United States to the Court would not be construed to require a departure from the traditional policy of non-interference in foreign political affairs nor from the traditional attitude toward purely American questions.¹⁷⁰

The Chicago Evening Post, an earnest advocate of the Court, was not overjubilant about Senator Swanson's resolution as adopted by the Senate. They felt that it was better than nothing, but the amendments of January 27, 1926 seemed to make the resolution itself a futility. There was little hope that under the conditions imposed on United States entrance that this country would go to the Court as a means of settling disputes.¹⁷¹ The resolution as accepted

170. Ibid., 2824-2825 (January 27, 1926)

171. Editorial in The Chicago Evening Post January 27, 1926, 4

did not seem to them to be a fulfillment of the Republican Party platform which promised adherence to the Court on Coolidge's reservations.¹⁷²

172. Ibid., 4

CHAPTER VI. THE RESERVATION TO THE PROTOCOL OF
THE WORLD COURT

Press Comment
Reception by Foreign Powers
Final Action

CHAPTER VI

THE RESERVATION TO THE PROTOCOL OF THE WORLD COURT

It was natural that after the Senate had accepted the World Court with reservations that there were many opinions expressed about the action and its consequences. Senator Shipstead of Minnesota did not feel that such a move could have been accepted without protest. He thought that the Senate had taken to itself powers that it did not possess because such an act had not had the slightest mandate from the people. The result of such action he was sure would be the imposition of an external court upon our constitutional structure.¹ Representative Hill of Maryland also opposed this acceptance of Senate Resolution 5. If the United States decided that it could not further world peace by accepting the League, then this World Court could not advance harmony among the nations. Mr. Hill asserted that the power of the Court was based on force without which it was valueless.² To him it seemed that the difference between The Hague Court and the World Court was that the former represented sovereign nations while the latter stood for a superpower.³ Senator Robinson of Indiana agreed with Mr. Shipstead and Mr.

1. Congressional Record, 69 Congress, 1 Session, 8182 (April 24, 1926)

2. Ibid., 10290 (May 28, 1926)

3. Ibid., 10291 (May 28, 1926)

Hill in his opposition to this tribunal. He believed that such action would involve us in the League because the only way in which the United States could have participated fully was to become a member of the League.⁴

In the attitude of the newspapers, we find a wide difference of opinion expressed about the effect of the reservations. The New York Journal of Commerce hoped that some of the signatories would have enough self-respect to refuse to accept the reservations which made the Court a meaningless formula.⁵ The Boston Herald and Brooklyn Daily Eagle supported the attitude expressed by this New York paper. They thought that the United States was going into this treaty with fear and timidity rather than with the confidence of a nation who was well able to protect itself.⁶ But other journalistic sheets which were friendly in their attitude toward the Court took a more cheerful view of the reservations. The Philadelphia Public Ledger believed that such an act was better than no adherence at all.⁷ The Columbus Ohio State Journal viewed it as a hesitant acknowledgement of our world responsibilities.⁸ The Los Angeles Times considered that these reservations allowed the United States to accept a mem-

4. "Senate Discusses United States Entry into World Court"
The Congressional Digest V, 64-65 (February 1926)

5. "Where Will the World Court Lead Us?" The Literary Digest LXXXVIII, 6 (February 6, 1926)

6. Ibid., 6

7. Ibid., 6

8. Ibid., 6

bership in the Court without sacrificing our traditional independence.⁹ The World of New York was quite jubilant in telling friends of international cooperation that there was no doubt about the victory they had won.¹⁰ The Rocky Mountain News of Denver, Boston Post, and The Nation credited the passage of the reservations to the effect of propaganda and public opinion.¹¹ And the Chicago Daily Tribune, one of the leading anti-Court papers, thought that the reservations expressed a distrust which was justified. Even these, it felt, could not protect this country from all of the consequences of such action.¹²

This varied newspaper attitude was duplicated in the periodicals. There was the viewpoint that public opinion in America had assumed a more reasonable and realistic attitude toward cooperation between the United States and Europe.¹³ But on the other hand there were those journalists who felt that any real enthusiasm had not existed in the Senate for the Court.¹⁴ They admitted that there had been many organizations in favor of this tribunal, but felt that any real popular enthusiasm had not been roused. As for a popular

9. Ibid., 6

10. Ibid., 6-7

11. Ibid., 7

12. Ibid., 6

13. "The World Court and After" The New Republic XLV, 309 (February 10, 1926)

14. James G. McDonald, "Horizontal Lines--A Monthly Survey of Our New International Frontiers" The Survey LV, 626 (March 1, 1926)

hostility to the Court, there was almost none. In spite of the persistent efforts of the Hearst press, the Washington Post, and the campaign by the Klan, their influences had only affected two or three Senators.¹⁵ Even Coolidge's efforts were looked upon either as a skillful fight for prompt adherence,¹⁶ or lukewarm support which had cost him little.¹⁷

Other periodical opinion expressed the belief that the reservations made it as difficult as possible for the United States to make use of the Court. If the reservations were accepted, before this country could appear, it would have been necessary to gain the advice and consent of two-thirds of the Senate. In this way a minority group could have hampered a plea to the Court on the part of the United States or a response to another nation's appeal to it for justice.¹⁸ Or, in other words, the United States had given "lip service" to the theory, but in reality had withdrawn further away from the idea of settling disputes in a legal manner.¹⁹ The greatest critics among the periodicals expressed the opinion that adherence to the Court was of no great consequence, for it merely reopened the fight to join the League of Nations. As far as deriving benefits from the Court, that seemed futile because of the lack of compulsory jurisdiction. It was only

15. Ibid., 627

16. Ibid., 627

17. The New Republic XLV, 309

18. "International Justice--With A String To It" The Outlook CXLII, 201 (February 10, 1926)

19. Ibid., 201

a ridiculous hope that the World Court would immediately end war when the United States put its approval back of it.²⁰

Favorable public opinion was expressed by the members of the Women's World Court Committee representing the following organizations: American Association of University Women, American Federation of Teachers, American Home Economics Association, American Nurses' Association, Council of Women for Home Missions, General Federation of Women's Clubs, Medical Women's National Association, National Council of Jewish Women, National Council of Women, National Education Association, National Federation of Colored Women, National League of Women Voters, National Service Star Legion, National Woman's Christian Temperance Union, National Board of Y.W.C.A., National Congress of Parents and Teachers, and the National Council of Girls' Friendly Societies in America.²¹

On January 31, 1926 the Very Reverend Howard C. Robbins, dean of the Cathedral of St. John the Divine in New York, expressed his attitude in a sermon. He thought that the United States had emerged from an ungracious isolation to a more Christian relationship toward world affairs.²²

On March 2, 1926 Secretary Kellogg forwarded a copy of the Senate reservations to the Secretary-General of the

20. Richard W. Child "Smarter Than We Are" The Saturday Evening Post CLXXXVIII, 13; 157 (February 13, 1926)

21. Congressional Record, 69 Congress, 1 Session, 4119 (February 17, 1926)

22. Ibid., 4751

League and to all the signatories of the Protocol.²³ With this copy Mr. Kellogg sent a note saying that the United States adhered to the Protocol with reservations which the signatory powers had to accept as a part and a condition to the adherence of the United States. He also addressed each government asking if they would accept these terms as a basis of this country's adherence.²⁴

In the Council meeting of the League on March 18, 1926 the suggestion of Sir Austin Chamberlain was accepted and the League took the stand that since the Protocol was not a multilateral instrument, the American conditions should have been embodied in a similar instrument. It denied the right of acceptance by a series of separate exchange of notes.²⁵ It also pointed out that some of America's conditions affected the rights of the present signatories as established by a ratified instrument. This could not be varied by a mere exchange of notes.²⁶ Some of the reservations could have been interpreted to hamper the work of the Council and prejudice the rights of the members of the League, so in view of this the Council proposed that the signatory powers invite the United States to a meeting with the Council on September 1, 1926 at Geneva. There they thought new arrangements could

23. International Conciliation #232, 337

24. "America and the Permanent Court of International Justice" II World Peace Foundation Pamphlets IX, #8, World Peace Foundation, Boston, 1926, 617

25. International Conciliation #232, 337

26. Ibid., 337

have been made which would have been satisfactory to the United States.²⁷

Up to that time five signatories had accepted the reservations, namely, Cuba, Greece, Liberia, Albania and Luxemburg;²⁸ two signatories, San Domingo and Uruguay favored the acceptance; and forty signatories with the exception of Brazil, Cuba, Haiti, Bolivia, Colombia, Costa Rica, Paraguay and Salvador accepted the invitation to the meeting to be held in Geneva from September 1 to 23, 1926.²⁹

The invitation to this meeting was received by the United States from Sir Eric Drummond, Secretary-General of the League of Nations, on April 1, 1926.³⁰ Secretary Kellogg on April 17, 1926 declined for the United States to attend this meeting. His reasons were that the reservations were plain and had to be accepted by an exchange of notes between the United States and each one of the forty-eight signatory states before this country could have signed the Protocol.³¹ He had no authority to change this procedure.³²

The reaction in Congress to this invitation took form in a number of resolutions. Senator Blease submitted Senate Resolution 253 which requested the President and the Secretary of State not to take further action toward the United States

27. Ibid., 337

28. Ibid., 338

29. Ibid., 338

30. Hill, 115

31. International Conciliation #232, 337

32. Ibid., 338

joining the Court until further orders came from the people or the United States Senate.³³ This was laid on the table, but the next day was taken from there and referred to the Committee on Foreign Relations.³⁴ Senator Reed maintained that this invitation showed that the United States had to join the League and become a part of it or stay out completely.³⁵ Representative Gorman introduced House Resolution 231 into his branch of the legislature. It provided that the House desired to express its disapproval of the League and its agency, the World Court.³⁶ Mr. Black of New York introduced House Resolution 258 which provided to revoke the proposed adherence of the United States to the World Court. These two resolutions were sent to the Committee on Foreign Affairs.³⁷

A committee of fourteen which had been appointed by the signatory powers to study the American reservations reported on September 18, 1926 and advised that they be accepted.³⁸ The first three were passed on without qualifications. The fourth was received with a counter reservations which gave the signatory powers the future right to repudiate by a two-thirds majority the section which provided that the status

33. Congressional Record, 69 Congress, 1 Session, 11426 (June 17, 1926)

34. Ibid., 11426; 11503 (June 17, 18, 1926)

35. Ibid., 5829 (March 18, 1926)

36. Ibid., 7883 (April 20, 1926)

37. Ibid., 8872 (May 6, 1926)

38. "The Reply of the Nations to the United States World Court Reservations" Current History XXV, 244 (November 1926)

of the Court could not be amended without the consent of the United States.³⁹ As to the fifth reservation the committee thought that since it was then undetermined whether requests for advisory opinions required a unanimous vote, the United States under Reservation 5 could have been guaranteed equality with the states of the League.⁴⁰

It was assumed that this committee of fourteen took it for granted that the United States accepted the idea that the decisions had to be unanimous. On this basis this country would have had the same power as the other Council members. If, when interpreted legally, it was decided that a majority vote was sufficient to get an advisory opinion, then the claim of the United States to an absolute veto would have been rejected. This country would have had one vote like the other nations.⁴¹ If the United States still demanded a veto on advisory opinions in which we claimed an interest, notwithstanding the fact that voting was by majority, then this country would have been asking for a right which no other power possessed.⁴²

On November 11, 1926 President Coolidge noted the fact that no final answers had been received from the signatory powers. But with the situation as it was then, he felt that

39. "Our World Court Membership in Peril" The Literary Digest XCI, 10 (October 9, 1926)

40. Current History XXV, 244

41. "Testing America's Good Faith" The New Republic XLVIII, 132 (September 29, 1926)

42. Ibid., 132

he could not ask the Senate to modify its position. Furthermore, unless the Senate proposals were met by the members of the Court, Mr. Coolidge saw no prospect of the United States joining the tribunal.⁴³

President Coolidge was criticized by the following papers in his attitude for not trying to find other means of entering the Court: St. Louis Star, Memphis The Commercial Appeal, Brooklyn Daily Eagle, Chicago Evening Post, Milwaukee Journal, Schenectady Gazette, New York The World, The New York Times, The Mobile Daily Register, Nashville Tennessean, Macon Telegraph, and Louisville Courier Journal.⁴⁴ Other papers which were opposed to United States participation in the Court rejoiced in the President's acceptance of defeat: Asheville Times, Pittsburgh Gazette Times, Des Moines Capital, Oshkosh Northwestern, Philadelphia Bulletin, Council Bluffs Nonpareil, Portland (Maine) Express, The Omaha Daily Bee, Chicago Daily Tribune, New York Commercial, and News of Hamilton, Ohio.⁴⁵

In the next session of Congress, Representative Wilson of Mississippi introduced House Resolution 323 which asked the Senate to rescind its action favoring membership in the Court. This went to the Committee on Foreign Affairs.⁴⁶ The

43. International Conciliation #232, 360

44. "Giving Up the Fight for the World Court" The Literary Digest XCI, 7 (November 27, 1926)

45. Ibid., 7

46. Congressional Record, 69 Congress, 2 Session, 16 (December 6, 1926)

next day Senator Trammell of Florida submitted Senate Resolution 282 which provided that Senate Resolution 5 be rescinded.⁴⁷ This was referred to the Committee on Foreign Relations. Time went on and nothing was done about Mr. Trammell's resolution, so he moved that it be returned to the Senate and placed upon the calendar.⁴⁸ Mr. Borah and Mr. Robinson could not see that any benefit would have come from this action, so the latter moved that the motion be laid upon the table. This was carried by a vote of fifty-nine yeas and ten nays.⁴⁹ Thus, any revival of the World Court issue in the Senate was voted down.

47. Ibid., 37-38 (December 7, 1926)

48. Ibid., 3228 (February 8, 1927)

49. Ibid., 3327 (February 9, 1927)

APPENDIX

Covenant of the League of Nations

Article XIII: "The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement. - - -

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps shall be taken to give effect thereto."¹

Article XIV: "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 the 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

¹.Hudson, 315

the Assembly."²

Article XVI: "Should any Member of the League resort to war in disregard of its covenant under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the Several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."³

2. Ibid., 315

3. Ibid., 317

Protocol of Signature of the Permanent Court of International Justice, Opened at Geneva, December 16, 1920

"The Members of the League of Nations, through the undersigned, duly authorised, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920 is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision."⁴

4. Ibid., 333

Optional Clause Annexed to the Protocol of Signature of
December 16, 1920

"The undersigned, being duly authorised thereto, further declare, on behalf of their Government, that, from this date, they accept as compulsory, ipso facto and without special Convention, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, under the following conditions:"⁵

5. Ibid., 335

Statute of the Permanent Court of International Justice,
Adjoined to the Protocol of Signature of December 16, 1920

Chapter I

Article 4. "The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provision.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes."⁶

Article 5. "At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more

6. Ibid., 340

than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled."⁷

Article 8. "The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges."⁸

Article 9. "At every election, the electors shall bear in mind that not only shall all the persons appointed as members of the Court possess the qualifications required, but that the whole body should represent the main forms of civilisation and the principal legal systems of the world."⁹

Article 10. "Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected."¹⁰

Article 25."The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum

7. Ibid., 340-341

8. Ibid., 341

9. Ibid., 341

10. Ibid., 341

of nine judges shall suffice to constitute the Court."¹¹

Article 26. "Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under 11. Ibid., 343

Article 30 from a list of 'Assessors for Labour Cases' composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."¹²

Article 31. "Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the

^{12.} Ibid., 343-344

preceding paragraph."¹³

Chapter II

Article 35. "The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court."¹⁴

Article 36. "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 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 moment, 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

13. Ibid., 344-345

14. Ibid., 345-346

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 an international obligation.
- (d) The nature or extent of the reparation to be made for the breach of an international obligation."¹⁵

Article 38. "The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognised 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.

This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."¹⁶

15. Ibid., 346

16. Ibid., 346

Treaty of Versailles

Article 412. "The Commission of Enquiry shall be constituted in accordance with the following provisions:

Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

Upon application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint."¹⁷

17. "Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers" Senate Documents VIII, 67 Congress, 4 Session, Government Printing Office, Washington, 1923, 3510

Article 418. " The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government."¹⁸

18. Ibid., 3511

"We, the members of the Council of the Connecticut Federation of Churches, representing the Baptist, Congregational, Methodist Episcopal, Methodist Protestant, Presbyterian, Protestant Episcopal, and Universalist Churches of the State, assembled in our annual meeting, desire to express our hearty approval of the message of the late President of the United States, Warren G. Harding, presented to the Senate of the United States on February 24, 1923, recommending the entrance of this country into the Permanent Court of International Justice. We are proud of the service of distinguished American jurists who have in large degree prepared the way for the establishment of the World Court. We remember that in 1899, President McKinley and Secretary Hay instructed the American delegates to The First Hague Conference to propose a plan for an international court. We regard with satisfaction the fact that the principle of the world Court has been by every one of our Presidents since the opening of the present century. We rejoice that an American jurist, Elihu Root, was largely influential in shaping the plan of the Court as now organized, and that another American jurist, John Bassett Moore, is a member of that Court. It appears to us a lamentable fact that our country is not a member of the Court which owes its existence so largely to the thought and work of American statesmen and jurists. We earnestly petition the President of the United

States to renew the recommendation of his predecessor, and the Senate of the United States to take promptly the necessary action for the consummation of that recommendation."19

19. Senate Subcommittee Hearings, 173

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was one of the best I found. Two pamphlets which gave new facts were "The Locarno Conference" World Peace Foundation Pamphlets IX, #1 (October 5-16, 1925) World Peace Foundation, Boston, 1926 and "America and the Permanent Court of International Justice" II World Peace Foundation Pamphlets IX, #8 World Peace Foundation, Boston, 1926.

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The thesis "American Attitude Toward the World Court 1921-1926" written by Alice R. Barron, has been accepted by the Graduate School with reference to form, and by the readers whose names appear below, with reference to content. It is, therefore, accepted as a partial fulfillment of the requirements of the degree conferred.

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