The United States and the world court.

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THE UNITED STATES
AND THE WORLD COURT

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THE UNITED STATES AND THE WORLD COURT

by

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. THE ORIGINS OF AND PRECEDENTS FOR THE IDEA OF A WORLD COURT</td>
<td>1</td>
</tr>
<tr>
<td>II. THE UNITED STATES AND THE LEAGUE OF NATIONS</td>
<td>33</td>
</tr>
<tr>
<td>III. THE PERMANENT COURT OF INTERNATIONAL JUSTICE</td>
<td>70</td>
</tr>
<tr>
<td>IV. THE UNITED STATES AND THE COURT 1921-1930</td>
<td>93</td>
</tr>
<tr>
<td>V. THE UNITED STATES AND THE COURT 1930-1935</td>
<td>115</td>
</tr>
<tr>
<td>VI. SUMMARY AND CONCLUSIONS</td>
<td>171</td>
</tr>
<tr>
<td>APPENDICES</td>
<td>204</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>210</td>
</tr>
</tbody>
</table>
CHAPTER I

ORIGINS OF AND PRECEDENTS FOR THE IDEA OF WORLD COURT

The Permanent Court of International Justice was one of the major institutions established after the World War to further the development of the peaceful settlement of international disputes. It marked the culmination of a long series of efforts to convert the idea of a world court into a reality. It was no sudden or ill-considered idea of the value of such a court that induced its integration into the framework of peace treaties. It was rather the culmination of a long and continuous recognition among many philosophers and some statesmen of the necessity for such a tribunal that made the realization of the idea possible.

The first definite plan for an international court, as far as can be determined, was drawn up in the Middle Ages (1306). The author of this plan was Pierre Dubois, a French jurist, who, like all cultured men of his day, wanted to unite the Christian world against the infidels. Dubois believed that the unity of Christianity could best be ensured if justice rather than war were used to settle international disputes. He proposed an alliance of all the powers in the Christian world for the establishment of a
permanent court of Arbitration through which to settle differences arising among its members.\(^1\)

Another attempt at unifying the states of the world was put forth by Dante in his "De Monarchia", written about 1309, but not published until 1559. In that work, he proposed a "world state" under the guidance of a central court of justice which would serve to dispose of international disputes.\(^2\)

About the middle of the fifteenth century came a series of humanistic plans for the creation of tribunals for the settlement of international disputes. King Podiebrad of Bohemia negotiated for the formation of a "Federal State" made up of all existing Christian powers and held together by a congress of ministers which was to be permanent.\(^3\)

At the close of the period of the rise of European monarchies and the break-up of feudalism, came the first authoritative treatise on the Law of Nations. This treatise was prepared by Hugo Grotius, commonly called the "Father of International Law", a man of great learning, of long

\(^1\) Antonio S. De Bustamante, The World Court, p. 8.

\(^2\) George A. Finch, The Sources of Modern International Law, p. 11.

\(^3\) Ibid., p. 10.
experience in public affairs, and of uncommon knowledge of Roman Law. His international law had two sources, the law of nature, and the consent of all or most nations; the law of nature furnished the legal basis for Grotius' work and from it he derived his fundamental idea of the equality and independence of sovereign states. States, like men, were, according to him, controlled in their actions and relations by the operation of a law of nature. He believed that law constituted a standard by which the conduct of states and individuals could finally be judged and that Roman Law afforded an historical example of its successful application in international affairs. This theory of his has had to endure for centuries the incessant attack of criticism and test of practical experience but still stands as a monument to the excellence of his work.  

Another plan was that of Henry IV of France, who proposed to divide Europe equally among fifteen powers and so do away with any possibility of jealousy over or fear of a balance of power in Europe. The Catholic, Calvinist, and Lutheran religions were to be formally recognized; and any disputes arising between nations were to be settled by representatives of each in a council which was to be modelled after the Amphictyonic Council of ancient

Greece. In 1596, Henry and Elizabeth of England signed a treaty of alliance which was to have prepared for the formation of such a league; but Elizabeth died, and Henry was assassinated before any final plans were completed.5

Perhaps the most famous plan of the period was that of Emeric Cruce called "Le Nouveau Cynée" which came out in 1623. The author in his plan advised the rulers of Europe to avoid war and to settle their difficulties by arbitration. He proposed a union not of Europe alone (as had all the other writers on the subject) but of the whole world.6

Other schemes (most of them proposed in the eighteenth century) which deserve mention are: "The European Diet, Parliament or Estates" of William Penn, published about 1694; the "Senate" of the Abbé Saint-Pierre, presented about 1712-13; "The Perpetual Peace" of Immanuel Kant, published in 1795.

"The European Diet" proposed the establishing of a body to convene at regular intervals where the rulers of Europe could formulate rules of justice and could settle all differences among themselves which could not be decided by diplomacy. The decisions of this tribunal were, if necessary, to be enforced by all its members.7

5 Finch, op. cit., p. 10.  
7 Idem.
6 Ibid., p. 11.
The Abbé Saint-Pierre's project was really only an enlargement of the plan of Henry IV. It provided that if any nation had a complaint to make against another, it must present it before a "Senate" made up of twenty-four representatives of the powers of Europe. The "Senate" was to try to solve the problem by a commission of mediation; but if no agreement could be reached, an arbitral decision was to be given. This decision required a majority vote on the preliminary questions and a three-fourths vote for a final settlement. It provided that any government which refused to carry out the decision as rendered was to be declared an enemy of the other nations, which were to band together to exterminate it. All costs were to be paid by the rebellious state.

The philosopher Immanuel Kant, in "The Perpetual Peace" published in 1795, stated that perpetual peace was the prime purpose of international law. He proposed the formation of a congress of nations which would be voluntary and permanent and to which every nation was invited. He believed that this congress of nations was the only way that a public law for all nations could be established by which differences could be determined in a civil method and not by war.

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8 De Bustamante, op. cit., p. 10-11.
9 Finch, op. cit., p. 12.
Early in the nineteenth century the philosopher Jeremy Bentham proposed a plan for perpetual peace, in which he stated that the maintenance of peace could be greatly facilitated by the establishment of a court of justice for the settlement of international differences, even though the court might not have the power to execute its decisions.  

Although all of the proposals for ensuring perpetual peace were perhaps too Utopian to be realized, nevertheless they drew the public attention to the idea that relations between states could be settled better by arbitration than by war, and they prepared the way for the Court of Arbitration, The Court of Arbitral Justice and the Central American Court of Justice, which in turn were to serve as precedents for the Permanent Court of International Justice.

**The Hague Conference of 1899**

In August, 1898, the youthful Emperor of Russia surprised the world by sending to the diplomatic representatives of the foreign nations, accredited to his Court, his famous proposal for a World’s Peace Conference.  

Twenty-six nations were invited, and among them the United States was invited. The purpose of the Conference was

10 De Bustamante, *op. cit.*, p. 11.

11 Ibid., p. 3.
a consideration of the reduction of armaments as a political method of preserving enduring peace. The delegates soon realized, however, that a program for disarmament was doomed to failure unless the causes of armament were removed. The efforts of the delegates were, therefore, directed toward the consideration of the rules and principles of that branch of law which seemed to offer a real foundation of peace, namely, justice.

In order to facilitate its work, the Conference was divided up into three committees, one to study disarmament, the second to study the laws and customs of naval warfare, and the third to study peaceful methods of adjusting international disputes. It is this third committee which was important in the development of plans for the establishment of the World Court.12

The American delegation to the Conference, consisted of Andrew D. White, noted educator and American Ambassador to Germany from 1897-1902, Seth Low, President of Columbia University, Stanford Newel, Minister at the Hague, Captain Mahan of the United States Navy, Captain Crozier of the United States Army, and the Honorable Frederick W. Holls, as secretary.

President McKinley and Secretary Hay instructed these delegates to strive for the establishment of an inter-

12 De Bustamante, op. cit., pp. 41-42.
national court and to propose a plan for a tribunal to which nations might bring all their disputes, with the exception of those which might jeopardize their political independence or territorial integrity.13

With the instructions of their State Department in mind, the American delegation drew up and presented the following provisions which they hoped would be a valuable contribution to a working plan for a court of arbitration:

1. The highest court of justice in each nation was to nominate one member from its own nation to sit at the court as judge.

2. The tribunal was to be organized after nine states had assured adherence.

3. The disputing states were to select judges to hear and decide the case.

4. All the members might be called to sit or any uneven number down to a minimum of three; but if there were as few as three, none of the judges could be a native citizen or subject of the states in dispute.14

5. The judgment rendered was to be subject to revision before the same judges that had handed down the decision, in case material circumstances which had not been know at the time of the decision should come to light.15

The actual work of the Third Committee of the Con-


15 De Bustamante, op. cit., p. 43.
ference was done by a sub-committee called the "Comité d'examen". This committee chosen for the purpose of drafting a plan for international arbitration and mediation, heard the suggestions offered by the various delegations. The English proposal, which was presented by Sir Julian Pauncefote, was accepted as the basis of the committee's work. This proposal in turn was greatly modified and enlarged by suggestions from both the American and Russian delegations, and those of the other members of the committee. 16

In order to show more clearly to what extent the suggestions of the American delegation were embodied in the final convention drawn up by the committee, I shall present, first, a summary of the convention; second, the fundamental ideas of an American corollary to the main plan; and third, the reasons why several parts of the original American plan were not acceptable to the committee.

The following are the points included in the final convention:

1. The Permanent Court was to be competent for all arbitration cases, unless the parties concerned agreed to set up a special tribunal.

2. An International Bureau was to be set up at the Hague to serve as a channel of communications for the business of the court and as the custodian for all the transactions of it.

16 Scott, The Hague Peace Conferences, American Instructions and Reports, p. 51.
3. Within three months following the ratification of the act creating the court, each signatory power was to choose a maximum of four persons who were competent in the questions of international law and who were to serve as arbitrators. Two or more members might agree on the selection of one or more arbitrators in common. Their terms were to be six years.

4. Powers who wished to have recourse to the court were to notify the Bureau of their desire and give the names of the arbitrators whom they had chosen.

5. Powers not signatories to the act were also to be able to have access to the court under the conditions laid down by the convention.

6. The powers which brought disputes to the court were to sign a special act (compronis) which contained the subject of the dispute and the extent of the arbitrator's powers. This act implied the agreement of the parties to submit in good faith to the arbitral award.

7. The decision was to be binding only on the parties who concluded the "compromis".

8. Each party was to pay its own expenses and an equal share of the honoraria of the arbitrators and the expenses of the tribunal.17

As an addition to the convention drawn up by it, Mr. Holls of the United States presented to the committee a proposal for special mediation. Special mediation, he said, was to be used when all other methods had failed, and when war, therefore, seemed inevitable. According to his plan, both states in dispute were to choose a neutral arbitrator.

power through which they might enter into communication with each other in order to prevent the breaking down of peaceful relationships. This period of communication between these seconds was not, except by special agreement, to be over thirty days. During that period the seconds were to use their greatest tact to settle the disagreement. If, however, peaceful relations were severed, the seconds were still to stand by and use the first opportunity to restore peace. Mr. Holls said special mediation was based upon the undeniable fact that there would always be differences between nations and governments which neither arbitration nor mediation could prevent. Yet it would be wrong to say that in such cases the disagreements must naturally be climaxed by a war. Holls believed he had a solution to such disputes and so submitted it to the committee.\(^{18}\) It, in turn, was accepted by the convention as Article 8 under the section Good Offices and Mediation.\(^{19}\)

From the summary of the draft finally evolved by the Third Committee, it can be seen that several parts of the original plan of the American delegation were not acceptable to the rest of the delegation. The fundamental idea presented by the Americans was a permanent, continuous

\(^{18}\) Scott, The Proceedings of the Hague Peace Conferences --, pp. 188.

\(^{19}\) Ibid., p. 236.
court made up of not fewer than nine judges from whose number the states in dispute might choose judges to hear their cases. There was in the American proposal a provision for the meeting of the entire tribunal at one time. This idea of a meeting of the whole tribunal at once was not acceptable to most of the Continental states because they believed that there had not been sufficient experience with arbitration to warrant a continuously sitting tribunal. Another objection to the full membership's sitting continuously was based on the fear that the court would assume a dignity and importance for which the nations as yet were quite unprepared. Also they believed that the expense involved in payment of permanent judges' salaries was likely to emphasize the undesirable side of an international court which might have little to do. Sir Julian Pauncefote's plan avoided these difficulties by providing for a permanent court, not unlike the supreme court of the State of New York, consisting of a comparatively large number of judges who never sit as a whole body but who exercise their judicial functions either alone or in separate groups made up from their number.\(^\text{20}\) The American plan differed from the final one in the choosing of judges. The American suggestion provided for the choosing of one judge from

each country adhering to the convention. The British proposal suggested two judges from each country. Upon the advice of the German delegate, however, the final number was increased to not more than four, and the powers were not restricted to their own citizens in their selection of judges, for two or more countries could choose the same judge. 21

Several sections of the American draft were accepted by the committee without change. One was the proposal that every case submitted to the court be accompanied by a written agreement, on the part of both the states, to abide by the decision of the court. Another part which was unanimously adopted by the committee was the proposal that the Convention go into effect immediately after its ratification by nine states. Also the American proposal that the bench of judges be chosen from the list of members of the tribunal was accepted without change. 22

The part, however, which was flatly rejected by the committee was the proposal that the judges of the court be elected with the co-operation of the highest courts in each country. Many of the nations concerned had no one highest court comparable to the Supreme Court of the United States. Also the courts of the Continental countries,

21 Ibid., pp. 54-55.

22 Ibid., p. 55.
being based on Roman law, had excluded the idea of any selection by a judicial tribunal of a man for any particular purpose, even for a judicial position. Also in many European states the members of the highest court were prevented from having any knowledge of the ability or reputation of the most noted lawyers or judges since no one was allowed to practice before the highest court unless he was a resident of the city of its location and a member of its particular bar. In those countries the judges of the high courts were not the best advisers for selection of creditable legal representatives. Out of courteous regard for this proposal of United States, however, the comité d'examen ordered the reporter to mention the importance of complete disregard of political considerations in choice of members to the court.23 The failure on that point is not particularly significant in as much as it had little actual importance in the running of the court itself.

Attention has been called to the fact that the whole plan for the court and its use was voluntary so far as sovereign states were concerned. In order that the United States should make its position concerning the court doubly clear, the delegation made a declaration in full session of the Conference to the effect that in signing the Convention concerning the peaceful settlement of international

23 Ibid., p. 56.
disputes, they understood that:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions." 24

With this reservation the United States' delegates signed the arbitration Convention. This reservation did not seem to draw any verbal protests from the other members.

In addition to the court, there was also established a permanent Administrative Council set up for the purpose of supervising the organization of the Bureau, which was to remain under the direction and control of the Council. It was composed of the diplomatic representatives of the signatory powers accredited to the Hague. 25

The fame of the Hague Conference of 1899 rests mainly on the fine work done by the Convention in unanimously agreeing upon the settlement of international disputes by arbitration rather than by war and upon the creation by it of the Permanent Court of Arbitration to put the theory of arbitration into actual practice. 26

24 Ibid., p. 57.
25 Choate, op. cit., p. 38.
26 Ibid., p. 19.
Evidence of the practical value of the Court is found in the fact that, since its creation there have been several hundred disputes settled and over one hundred and forty-four standing arbitration treaties concluded by means of it. 27

The Second Hague Conference

Among the movements which prepared the minds of governments for an accord in the direction of assured peace among men, a high place may be fittingly given to the Interparliamentary Union, for it was that body which prepared the way for the meeting of the Second Hague Peace Conference.

In September, 1904, its annual meeting was held in the United States at St. Louis. At the completion of its session, there was passed by a unanimous vote a resolution to have the governments of the world send delegates to an international conference to be held at a time and place to be agreed upon for the purpose of considering:

1. problems left unsolved by the First Hague Conference.

2. negotiation of arbitration treaties between nations who sent representatives there.

3. the advisability of establishing an international congress to convene periodically for the discussion of international questions.

The delegates to that Interparliamentary Union paid the honor and respect to President Theodore Roosevelt of requesting him to be the leader in inviting all the nations to send delegates to the proposed conference. That honor he gladly accepted. 28

President Roosevelt sent notices of the proposal for a second conference to all the governments which had taken part in the first conference. In the notices he made no attempt to do more than indicate the general topics which the Final Act of the First Hague Conference had named as unfinished matters for future consideration and add the suggestion that it might be desirable to adopt a procedure whereby states not signatories to the First Conference might become parties to a second one. 29

With the conclusion of the Russo-Japanese War in 1905, the time and place for the meeting of the conference were set for June 15, 1907 at The Hague.

The American delegates, Joseph H. Choate, Horace Porter, Uriah M. Rose, David J. Hill, George B. Davis, Charles S. Sperry, and William I. Buchanan, went with instructions from Secretary of State Elihu Root to work for a more effective system of arbitration to which the nations

29 Ibid., p. 64.
might more readily have recourse and which would be obligatory. He instructed them to work for the development of the Hague Tribunal into a permanent tribunal composed of judges who would be paid adequate salaries, and who would hear and decide cases with judicial methods and with a sense of judicial responsibility.\(^3\)

The work of the Conference was so complicated and widespread that it was considered advisable to divide the Conference up into four commissions similar to the three commissions of the First Conference. In the study of the origins and precedents for a world court the first Commission on arbitration and international commissions of inquiry is of greatest interest and significance.\(^3\)

The American delegation proposed to the Committee the following detailed and complete plan for the establishment of a Permanent Court of Arbitral Justice. The Court was to consist of fifteen judges, of whom nine were to constitute a quorum. They were to be of the highest standing morally and of the most competence in international law. They and their successors were to be appointed according to a plan to be drawn up by the Conference, but chosen so that the several systems of law and principal languages

\(^{30}\) Ibid., pp. 77-80.

\(^{31}\) Ibid., pp. 91-92.
should be fairly represented on the court. Their terms of office were to be decided by the Conference. The Court was to meet annually at the Hague at the date specified and was to remain in session as long as necessary. It was to elect its own officers and, except for stipulations of the Conference, draw up its own rules and regulations. All the judges were to be equal in rank and were to receive a salary large enough to enable them to devote their whole time to their judicial duties. In no case was a judge to take part in the consideration of a case in which his nation was a party. The court was to have the power to review and determine all cases concerning international affairs of sovereign nations which had not been solved by means of diplomacy. The judges of this court were deemed competent to act as judges on any special tribunal for arbitration which might be constituted by any power for the consideration of any dispute. The Court of Arbitration established by the 1899 Convention was to constitute the basis of the new Court provided that the powers who signed the 1899 Convention were represented on it.32

The establishment of a permanent court as proposed by the American delegation was accepted and supported in principle by the German and British delegations and the

proposed court as framed and recommended by the Conference was the result of the co-operation of the German, British, and American delegations along with the loyal support of the French.\textsuperscript{33}

With agreement upon the establishment of a Permanent Court of Arbitral Justice concluded, there remained still one problem to be solved, namely the choosing of the judges. Until a method of selecting them was found, no nation was willing to submit a case to the Court. Proposal after proposal was submitted and rejected. Each nation argued that it should be represented on the court on a plane of equality with the others whether it was bigger or smaller. Since, however, there were some forty-four countries represented at the Conference, it was quite obvious that a court consisting of forty-four judges would be unwieldy and impossible.\textsuperscript{34} Under these conditions all that the Conference could do was to recommend that the plan for establishing a Permanent Court of Arbitral Justice be adopted and that, as soon as agreement was possible, a convention providing for the method of electing judges be added.\textsuperscript{35}

The establishment of the Court was not a mere wish

\textsuperscript{33} Scott, \textit{The Hague Peace Conferences}, American Instructions and Reports. p. 135.

\textsuperscript{34} De Bustamante, \textit{op. cit.}, pp. 53-54.

\textsuperscript{35} \textit{Ibid.}, p. 63.
or desire on the part of the Conference, but a recommendation to the powers to undertake the establishment of the court. The Conference in turn, on accepting the convention as the organic act, recommended that the Court be definitely and permanently established by the powers as soon as they should have agreed upon the method of appointing the judges. It will be noted that the number of powers necessary to establish the Court was not stated, nor was the number of judges specified.36

The Court of Arbitral Justice as provided for in the Convention was not to interfere with the Court of Arbitration established by the Conference of 1899. The latter was only a temporary tribunal, erected for a particular purpose to decide as arbiters a case submitted. The Court of Arbitral Justice, on the other hand, was meant to be a permanent court, composed of judges acting under a sense of judicial responsibility, representing the various legal systems of the world, and capable of assuring the continuity of arbitral jurisprudence. The contracting powers were free to appoint either a large or small number of judges, but the judges so appointed were to hold office for a period of twelve years and were to be chosen from among persons enjoying the highest moral consideration in their

36 Scott, The Hague Peace Conferences, American Instructions and Reports, p. 132.
respective countries and who were jurists of recognized competency in matters of international law.\textsuperscript{37}

From these provisions, it is evident that the proposed institution was to be not merely in name, but in fact, a court of justice and that it was to be permanent in the sense that it did not need to be constituted for any and every case submitted to it, whereas the Court of Arbitration had been only a temporary tribunal composed of arbiters who sat in on disputes, not with the purpose of rendering a decision based on international law and equity, but with the purpose of suggesting a compromise agreeable to the disputing parties. Therefore, the new court might be considered a supplement to the older court.

Along with the problem of the establishment of a Permanent Court of Arbitral Justice came the question of making arbitration obligatory.\textsuperscript{38} In the meeting of the First Commission, Mr. Choate, the American delegate to the Commission, presented a proposal for such arbitration. His plan contained the proposal that judicial differences or differences in the interpretation of treaties which had failed to be settled by diplomacy, be submitted to the Permanent Court of Arbitration at the Hague, provided that the independence or honor of the respective states was not

\textsuperscript{37} \textit{Ibid.}, p. 133.

\textsuperscript{38} \textit{Ibid.}, pp. 77-78.
jeopardized in any way. It was up to each power, he said, to decide for itself whether or not its honor was at stake. It provided that, in each case which came up, a special agreement should be concluded to determine exactly the subject of the controversy, the powers of the arbitrators, and the procedure and details to be followed. It provided for ratification of the treaty and its communication to the signatory powers. In the plan there was also a provision for the denunciation of the arbitration treaty by the parties. 39

In the final act of the Conference the arbitration convention was concluded. It was to cover questions already existing and future ones. It provided for general or private treaties making arbitration obligatory on the part of the signatories to the treaties. 40 Thus it can be seen that the plan of the United States delegation was followed closely in the framing and adoption of the arbitration declaration. Since, however, the convention as adopted was vague and indefinite as compared to the proposal laid before the Committee, the United States delegation refrained from voting on it. It was finally agreed that those who favored it could enter into the agreement while others

39 Ibid., p. 78.
40 Ibid., p. 129.
could stay out or come in later as they pleased. No one was compelled to be a party to the treaty. The declaration concerning obligatory arbitration as drawn up by the Conference read:

"The Conference, conforming to the spirit of good understanding and reciprocal concessions which is the very spirit of its deliberations, has drawn up the following declaration, which, while reserving to each one of the Powers represented the benefit of its votes, permits them to affirm the principles which they consider to have been unanimously accepted. It is unanimous:

1. In accepting the principle of obligatory arbitration.

2. In declaring that certain differences, and notably those relating to the interpretation and a application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restrictions."\[41\]

The American delegation admitted that the declaration on principle of obligatory arbitration was an advance, but they continued to hold that it was not the advance for which they had hoped.

The conventions and declarations drawn up in 1907, although they could not be put into action because of the lack of agreement about the election of judges, were filed in the records of the conference to serve as a working basis when the court was finally established. Therefore, although the Court as planned by the Second Hague Confer-

\[41\] Ibid., p. 130.
ence did not become a reality within the period of the Conference, the proposals and declarations for it served to further the cause of international justice by keeping the idea before the world and by providing a fine foundation for the much desired court of international justice.

A second project before the Second Hague Conference was the establishment of an International Court of Appeal in Prize Cases. The question of validity of capture had been the source of disputes for many years. When war broke out, it had always been the custom for each of the nations at war to set up national prize courts of their own to pass on the validity of every capture. With such a plan the usual result was a judgment of the case in favor of the stronger nation. This decision was final as far as the law was concerned. If the decision involved the disposition of a great amount of property, or was one which seemed to violate the rules of national justice and equity, diplomacy was resorted to, in order to obtain reparation for the neutral whose property had been captured. Sometimes joint commissions, appointed by the two nations, reversed the decision of the national court of the belligerent, but this action was of little value since the belligerent was not bound to join the commission. It was obvious, then, that the solution to this problem lay in the establishment of an international court which was unbiased by national
interests, and which could judge the cases on the established principles of equity and justice.  

Great Britain and Germany proposed plans for the establishing of such a court, but each with a different motive. Great Britain with her great navy could seize and condemn neutral property with ease, while Germany with a much smaller navy at that time, took the chance of being a neutral at her mercy. The American delegation did not present a plan at first, but gave its general consent to the idea of the Court and waited the development of the two plans of Germany and Great Britain and possible controversies which were bound to arise from motives so different.

The British and German plans disagreed on four points concerning the organization and functioning of the Court, and it was at the appearance of these difficulties that the American delegation came forward to try to find a common basis for an understanding. First, Germany believed that since the whole purpose of the Court was the provision for a place of international appeal, the appeal should come after the first decision of the national court. Great Britain, with the great reputation of her prize courts, wanted the appeal to come as a last resort only. Second, Great Britain insisted that the court be a permanent one,

42 Choate, op. cit., pp. 64-66.
whereas Germany wanted it to be called together only at the outbreak of war. Third, Germany wanted the appeal to be made by the owner of the captured property, whereas Great Britain wanted it taken by the nation of the owner. Fourth, Great Britain insisted that the judges of the court should be pure jurists, whereas Germany believed that a court concerned with naval matters should be made up of admirals.  

In spite of the divergence of opinions, the Americans were able to effect a compromise covering the four points. Concerning the question as to when the appeal should come, the American delegation made a suggestion which provided for the appeal after the second trial by the national court. This compromise made certain the action of the Supreme Court of the United States in any case in which the United States might be concerned. After a discussion of some length, the American compromise was accepted by both parties. Concerning the question of the permanency of the court, the American delegation sided with Great Britain and finally persuaded Germany to yield and to agree to have the court a permanent one.  

In regard to which should bring the

43 Ibid., pp. 69-70.

appeal, the owner of the property or his government, the American suggestion that the owner of the property under regulation of his government bring the suit was accepted by both contestants. In regard to the composition of the Court, the American delegation agreed with the British plan, but it also saw the value of the German plan to have admirals with experience in naval warfare on the court. Therefore they proposed that, although the admirals should not be made justices, no case should be decided without a naval representative of each party present and without their opinions being carefully considered. With a little pressure from the American delegation the German representatives accepted the plan and a final agreement was reached. The compromise was adopted by the Conference in that form.

The Convention for the creation of the International Prize Court was opened to signature on October 18, 1907, but ratification failed because of the lack of agreement as to what law should be applied in prize cases.

The Central American Peace Conference of 1907

The interest of the United States in a court for the


46 *Manley O. Hudson, The Permanent Court of International Justice -- Treatise*, pp. 73-74.
settlement of disputes between states was not confined to the Hague Tribunals, but also was directed toward the establishment of the Central American Court of Justice created by the Central American Peace Conference at Washington.47

Prior to 1907, the five Central American Republics had been in continual turmoil economically and politically as a result of wars and revolutions. In 1906, there had been a war between Guatemala and Salvador in which Honduras was an ally of Salvador. At that time, President Theodore Roosevelt asked President Diaz of Mexico to join him in offering mediation. This offer resulted in the peace conference held aboard the U.S.S. Marblehead, during which the belligerents agreed to end hostilities and attend another conference to draw up a treaty of peace. The proposed second peace conference was held at San Jose, Costa Rica. But President Zelaya of Nicaragua, denying the right of the United States to interfere in the affairs of Central America, refused to send a representative. At the same time Zelaya was very successful in interfering in the internal affairs of the other Central American countries, especially Honduras. Finally, Guatemala and Salvador in their turn started to incite revolutions against him in both Honduras and Nicaragua.

In the summer of 1907, war among the Central American

47 Bradley, op. cit., p. 454.
countries seemed inevitable. Again the United States sought by diplomatic intervention to persuade the Central American governments to stop preparations for war.\(^48\) President Roosevelt, with the co-operation of President Diaz of Mexico, sent out identical notes to the five Central American governments offering the "good offices" of the United States to help in calling together a peace conference of representatives of the respective states to be held at Washington, D.C.\(^49\)

The invitations to the Conference were cordially accepted by all the governments, which unanimously proposed that both the United States and Mexico send representatives to it. So it was that Mr. William I. Buchanan was chosen as the delegate of the United States and Señor Don Enrique C. Creel, the delegate of Mexico.\(^50\)

Elihu Root, Secretary of State of the United States, called the Conference to order November 17, 1907. During the Conference, a number of conventions were drawn up, the most important of which provided for the establishment of a Central American Court of Justice.\(^51\) The court, to be


established for a ten-year period, consisted of five judges, one from each of the Central American countries. Those countries agreed to submit to it without reservations of any kind all disputes which could not be settled by diplomacy. In this way the arbitration was truly obligatory.  

Although the United States government was not a party to the conventions, it considered them informally binding.  

The court was set up at Cartago, Costa Rica, on May 24, 1908, with representatives from both Mexico and the United States taking part in the inauguration ceremonies. With the establishment of the court, came a fine gesture of goodwill and friendship on the part of the American people in the form of a gift of one hundred thousand dollars for the erection of a temple of peace for the exclusive use of the court.  

Unfortunately for the peace for Central America, the court was not to have the success for which its advocates had hoped. Ironically enough, it was the United States which contributed ultimately to its failure.  

It served

52 Samuel Crowther, Romance and Rise of the American Tropics, p. 192.
53 Ibid., p. 193.
54 Stuart, op. cit., p. 312.
55 Idem.
its purpose of maintaining peace in Central America for ten years and then went out of existence with the disagreement over the Byran-Chamorro Treaty between the United States and Nicaragua in 1916. In that treaty the United States was given canal rights on the San Juan River which separated Nicaragua from Costa Rica. The United States was also given the right to fortify Fonseca Bay which controlled not only the Pacific coastline of Nicaragua but also that of Salvador and Honduras. The other Central American states claimed that Nicaragua had legally no right to effect a treaty which affected them so seriously without consulting them. And furthermore, they said that Nicaragua had no right to give away that which did not belong to her. The Court agreed with the Central American states and decided the case against Nicaragua. Nicaragua, however, with the tacit consent of the State Department at Washington ignored the decision. With this refusal of Nicaragua and the backing of the United States, the other states naturally lost all confidence and saw no value in the Court if its members were free to ignore its decisions. Therefore, in 1917, they refused to renew the agreement which had created it. Therefore, ironically enough, that which the United States had helped to create, it had also helped to destroy.
CHAPTER II

The United States and the League of Nations

The next important period in the international relations of the United States which had an important influence on its attitude toward the creation and establishment of the World Court, came with the close of the World War and the conclusion of the terms of peace in the form of the Treaty of Versailles. Since that same treaty embodied in it the provisions for the establishment of an international court, the history of the court would be incomplete without at least a brief study of the League and the reaction of the United States to it.

The idea of a league of nations had been developing in the United States during the years of the war, until on June 17, 1915, there was formed in Independence Hall, Philadelphia, a League to Enforce Peace. Within a year of its formation, it had branches in almost every congressional district in the country. In the statement of its principles, the League held it to be desirable that the United States join a league of nations which would bind the signatories (1) to submit all justiciable questions to an international court of justice "both upon the merits and upon any issue as to its jurisdiction of the question", 
(2) to submit all other questions to a council of conciliation for hearing, consideration, and recommendation, (3) "jointly to use forthwith both their economic and military forces" against any member committing acts of hostility against another before submitting to arbitration or conciliation, and (4) to hold periodic conferences to formulate and codify international law.1

Presidential opinion was made public when President Wilson, in his 1916 campaign, stressed the hope that the war would bring about the creation of an international tribunal which would produce some sort of joint guarantee of peace on the part of the great nations of the world.

Until this time there was virtually no dissent in the United States from the idea of an organized peace to replace the old drifting policy which always had led and forever must lead to war. The active leaders of both parties had committed themselves wholeheartedly to a league for peace which would protect the rights of all.2

On January 22, 1917, Wilson delivered a speech in which he stated that he believed that it was the mission of the American democracy to show mankind the way to liberty; and in the settlement of new world conditions, he felt

2 Ibid., p. 12.
that it could perform a great service. That service, he said was nothing less than adding its authority and power to the authority and power of other nations in order to guarantee peace and justice throughout the world. It was his belief that the United States Government should frankly formulate the conditions upon which it would feel justified in asking its people to approve formal adherence to a League of Peace. He felt that the conditions necessary to a permanent peace were: (1) a peace without victory, because a dictated peace would have to be accepted in humiliation and would leave but a bitter memory upon which peace could not permanently rest. (2) the right of self-determination, (3) the freedom of the seas, (4) disarmament, and (5) a league of nations to administer the peace. He stressed the point that there was no entangling alliance in a concert of power and that, if peace was to be made to endure, it had to be a peace organized by the major force of mankind. 3

On November 18, 1918, President Wilson announced that he would go to France to represent the United States at the Peace Conference. On November 29, the rest of the delegates were selected and they included Secretary of State Lansing, Colonel Edward M. House, Hon. Henry White, and General Tasker H. Bliss. 4

4 Ibid., p. 58.
Acute criticism was leveled at Wilson for making such a decision to represent the United States at the Conference. Colonel Roosevelt, among others, declared that no public end of any kind could be served by President Wilson's going to the Conference. He said that the President had no authority whatever to represent the American people at that time, and that the Congress came much nearer than he to having the right to speak the purpose of the American people.\(^5\)

During the interval between the Armistice and his departure on December 4, Wilson said little if anything about his peace plans. He was strongly censored for this error of not consulting his people before he left for Paris, especially since he had the opportunity to do so in his message to Congress on December 2, the day on which he officially announced his departure.\(^6\)

The campaign of 1916 does not seem to have produced any party cleavage on the question of the League. It did, however, bring about one issue between Woodrow Wilson and Henry Cabot Lodge which removed any basis for co-operation which may have existed between them. This disagreement came about after the Cabinet had approved Wilson's "strict accountability" note to Germany on the sinking of the

\(^5\) Ibid., p. 56.

\(^6\) Ibid., p. 61.
After Wilson had drawn up that note, Secretary Bryan privately persuaded the President to permit him to draft an instruction to Ambassador Gerard, advising the German government that the United States would be willing to submit the questions at issue to a commission of investigation. The State Department at once saw the inconsistency of the President's action, and Wilson was soon besieged with requests to reconsider. He did so, and, upon hearing the counter arguments, ordered the instruction suppressed. Senator Lodge of course heard about this play of forces within the administration and attempted to show that Wilson was indifferent to the protection of American rights and that his whole policy shifted with the currents of public opinion.  

This controversy eventually brought a reply from President Wilson to the effect that Lodges's statement was untrue and that his motives in a crisis had always been to do what was best and his best judgment had prevailed. Shortly after January 13, 1917, Wilson refused to speak from the same platform with Lodge, and there is no evidence that cordial relations were ever renewed between them.  

This disagreement between Wilson and Lodge, as will be seen in the later developments of the struggle to have the United States join the League, had the important effect of causing a definite split between the Republican and

8. Idem.
Democratic parties, and, according to some people, was one of the important causes for the failure of the United States to ratify the covenant.

Senator Lodge revealed his opinion on the question of the League and settlement terms in a speech in the Senate on February 1, 1917. In it he pointed out the dangerous implications of the principles laid down by the President and definitely parted company with the idea of a League of Nations. Although he did not approve of a League of Nations, he was not unwilling to use the power and influence of the United States for the promotion of permanent peace. He merely did not want to involve the country in a scheme which would create a worse situation than already existed. He said it was better to "bear the ills we have than fly to others that we know not of". 9 He had measures which he believed to be wholly practicable and which he highly commended. They were: (1) adequate national preparedness, (2) the rehabilitation of international law at the close of the war, (3) "within necessary and national limits, to extend the voluntary arbitration as far as possible," and mobilize public opinion behind it, and (4) to urge a general reduction of armaments by all nations. As a conclusion to his speech, he wished to support whole-heartedly the policy of Washington and Monroe in regard to foreign relations.

9 Congressional Record vol. 54. Pt. 3 p. 2369.
He said that he saw nothing but peril in abandoning the long established policy of the United States.\(^\text{10}\)

Senator Lodge had a very close friend in the person of Mr. White. Before he left, Lodge took him aside and presented him with a nine-page memorandum for a guide. In that memorandum Lodge stood for a harsh peace. He believed that heavy indemnities should be exacted from Germany and that Germany should be broken up "into its chief component parts". As for a league of nations, he said that the provision for it should, under no condition, be made part of the treaty of peace. He had clearly made up his mind that the League was to wait. He confidently asserted that the contents of the memorandum represented not only the views of the Republican Party, but those of the United States as well.\(^\text{11}\)

On December 3, the day before the departure of the delegation, Senator Knox offered before the Senate a resolution which declared (1) that our purposes in the Peace Conference should be confined to the aim of vindicating the ancient rights of navigation as established under international law and to remove forever the German menace to peace; (2) "that for the safeguarding of those aims the

\(^{10}\) Ibid., p. 2370.

\(^{11}\) Fleming, \textit{op cit.}, pp. 63-64.
first essential is a definite understanding that, the same necessity arising in the future, there shall be the same complete accord and co-operation . . . for the defence of civilization; and (3) that any project for any general league of nations or for any sweeping change in the ancient laws of the sea should be postponed for separate consideration, not alone by the victorious belligerents, but by all the nations, if and when, at some future time general conferences on those subjects might be deemed useful. 12

The attack on a league of nations was opened on December 6. At that time, former Senator Albert J. Beveridge of Indiana, in an address before the Massachusetts Bar Association, raised almost every conceivable question to a league of nations. The following is an example of the questions. He asked whether the League bound a country to make war if so doing was a violation of its own constitution. He said that the only reason given for the international super-state was the hope that it might prevent wars. He asked, on the contrary, whether it did not contain the very seeds of war. 13

The determination evidenced by Mr. Beveridge indicated that the League was going to deprive the accused of the ancient right of the benefit of the doubt. Instead

12 Congressional Record, 65th Cong. 3rd Sess. p. 23.
13 Fleming, op. cit., p. 66.
of being assumed innocent until proven guilty, it was to be assumed guilty on every account that could be raised against it. There was not to be the slightest presumption in its favor. If the American people accepted it, it would be in spite of every suspicion and fear that some of the best minds in the country could raise against it. Mr. Beveridge ended his address by saying that "our mission was to furnish the earth an example of a free and prosperous people, no less and no more!"\textsuperscript{14}

Immediately after Wilson's arrival in Paris on December 14, the American press carried a dispatch saying that the President thought that the creation of a league was the first task of the conference, and that the League should be the basis of the treaty.\textsuperscript{15}

On December 19, Senator Lodge gave notice in the Senate that he would address it on the question of peace and the proposed league of nations. His speech on that day was very long and began with an assertion of the right of the Senate to advise as well as consent and declared that it was then the solemn and imperative duty of the Senate to give advice which had not been invited by the negotiators. He said that the Senate was very capable of making its opinions known to both the President and the Allies.

\textsuperscript{14} Idem.  
\textsuperscript{15} Ibid. p. 68.
and that the Allies would therefore not be kept in the dark as to the views of the Senate on the question.16

The speech of Senator Lodge marked the beginning of the campaign to be waged by the Senate. Lodge advised the Senate not to reply to requests for advice made by the President, but to influence the negotiations contrary to his desires as fully as speeches in the open Senate could do so. The drive for postponement was to be pressed; and, in case it and other attempts to control the course of negotiations failed, the country and the Allies were to be made to understand that the treaty would be handled drastically in the Senate.17

The questions of the treaty of peace and the possible creation of a league of nations necessarily brought with them a change in party positions. Until this time it had been the Republican party, especially from the time of McKinley to that of Taft, which had worked with one accord to increase the influence of the United States among nations and to promote institutions for the safeguarding of the peace of the world. In 1919, there were, therefore, many Republicans who refused to accept the reversal of position which Lodge was endeavoring to engineer. They thought

17 Fleming, op. cit., p. 77.
primarily of the party and, in standing for the League, believed themselves the truer interpreters of the party policy and the best conservers of its future.\textsuperscript{18}

Similarly, there were many Democrats who were not able to stand on the new ground to which their leader brought them. The Democratic party had held to a strict construction of the powers and duties of government, especially when out of power, for too many generations to be able to see eye to eye with Woodrow Wilson. Most of them followed unquestioningly, however, because he was their party leader. Others followed reluctantly and still others not at all.

When all the angles of partisanship have been considered, there were numerous Democrats who, as debate proceeded, made up their minds wholly aside from party considerations that the new step was too dangerous. Also there were countless Republicans who ignored every appeal to partisanship and stood throughout for the League of Nations because they believed it was right.

That latter group of people, whose attitude toward the League was never determined by partisanship of any kind, was large in the country but small in the Senate. On the Democratic side, the one or two Senators who opposed the League in any shape or form at all were accused of

\textsuperscript{18} \textit{Ibid.}, pp. 82-83.
personal animosity toward Wilson. A considerable group of Democrats would have been glad to see reservations attached to the Covenant at the start. Many Republican Senators believed in the League at all times and would have been glad to see it ratified without reservation. Of all of them, however, the only one who voted for it as it stood and every other way was Senator Porter J. McCumber, of North Dakota. Although he was later the author of one of Lodge's reservations, no party considerations of any kind swerved him from his stand for the creation of the League.19

On January 7, 1919, Senator McCumber came forward in the Senate with a reply to the speeches which had been made against the immediate creation of the League. His was a sentimental appeal for those countries of Europe which had been torn apart by the war and were looking to the United States and the Peace Commission for some international arrangement which would help to make impossible another war. He told the Senate that, if after peace had been secured, victory could not secure reform then all sacrifices had been made in vain and pretended civilization was but foolish mockery. He said that he was optimistic, in that he believed that great world wars could be prevented, and that then was the time to adopt restrictive

19 Ibid., pp. 83-84.
measures and not some indefinite time in the future.

Senator McCumber next took up the "stock criticisms" aimed at a league of nations. As for the argument that such a league would interfere in the internal affairs of each nation, he said that there was no chance of an intelligent commission ever creating such powers for the League. If they should neglect such national sentiment, he believed that none of the great powers would ever ratify the treaty. In reference to the Monroe Doctrine, he said that certainly no league founded to guarantee the territorial integrity and political independence of all its members would be a menace to the doctrine which did the same for the nations of the Western World only.

In reply to the cry for postponement, he gave the Senate the clear warning that no matter how much they legislated, or how many resolutions they introduced and passed, three things were certain: (1) that the President was acting under his constitutional right when he appointed delegates to the Conference; (2) that those delegates would dictate and agree upon the terms of peace; and (3) that they would not stop from their deliberations or attach their signatures to any instrument of peace which would leave unsettled the question of the prevention of another war. 20

20 Ibid., pp. 84-86.
On January 13, the last message of Colonel Roosevelt was read before the Senate. In it Roosevelt stated that it was his belief that the Monroe Doctrine was the most important consideration, and that it should be strictly maintained. He said that Europe and Asia should be left to do their own policing and that the United States should take no position as an "international Meddlesome Matty". 21

The next day Senator Borah, of Idaho, delivered an attack on the whole idea of a league of nations. To him it was only the old Holy Alliance brought to life. He was wholly opposed to any kind of internationalism and argued that the nationalism which had won the war would be murdered by the proposed internationalism. 22

The Peace Conference was finally opened on January 12, 1919. President Wilson and Colonel House served as the representatives of the United States on the Commission which was to draw up the draft for a league of nations. The Covenant was completed on February 13, and presented by Wilson to a plenary session of the Conference on the next day. To that meeting he said that the Covenant was a definite guarantee of peace against aggression and was a

21 Ibid., pp. 89-90.
22 Ibid., p. 90.
means of putting armed force in the background.  

On February 15, the President sailed for home to attend the closing of Congress and to present the Covenant of the League to the American people. Before sailing, however, Wilson cabled an invitation to the Foreign Relations Committee of the Senate inviting them to dine with him as soon as he returned in order that he might explain the provisions of the Covenant to them.

The Senators had been complaining that they did not know what was going on in Paris. But now that they had their chance to really find out what had been done by one who knew, they, according to Mr. Fleming, did not want to have their objections removed by any sympathetic explanation of Mr. Wilson. Therefore, after about twenty-four hours deliberation, the leading Republican Senators declared that the project appeared to surrender American independence and upset the Monroe Doctrine. They appear to have feared that, instead of being permitted to approve the Treaty of Peace without a League, they were going to be forced to pass on the League itself first. They insisted that the Senate

23 Ibid., pp. 103; 110; 114.

would not endorse it, even by a majority vote, before the President returned to France. 25

Senator Poindexter, of Washington, opened the inevitable attack on the Covenant in the Senate on February 19. He made five specific charges against the League: (1) that under it we surrendered the power of disarmament, (2) that it called for compulsory arbitration of all questions without exception, (3) that it would compel the United States to "participate in the wars and controversies of every other nation" and to assume the burdens of a mandate over any part of Europe, Asia, or Africa that was assigned to it, (4) that the International Labor Bureau would interfere in our domestic affairs, and (5) that the United States would surrender to other nations the power "to regulate commerce with foreign nations in arms and ammunition." 26

Senator Borah took the floor on February 21, to maintain that the Covenant did abolish the Washington and Monroe Doctrines. He read into Article 10 a guarantee to England of the possession of every part of land then in the British Empire and hailed the League "as the greatest triumph for English diplomacy in three centuries of English diplomatic life". He asked for a direct vote of all the people of

25 Fleming, op. cit., pp. 120-121.
26 Congressional Record, 65th Cong. 3rd. Sess.
the nation on the question of entering the League and begged for the maintaining of full liberty of action in the future. 27

Senator Reed followed Borah the next day with a bitter blasting of the entire Covenant. He proved at length that Great Britain would control the League and came to the conclusion that in any controversy the votes of the British, French, and Italians and Japanese would always be against the United States. From the first and all times Europe and Asia would predominate over the United States. Moreover, he said that the powers of the League were almost unlimited, for he believed that every nation that entered the League would yield to its arbitrament and decision all controversies with other countries even though they involved the national honor or national life. 28 Such, then, were the arguments concerning the Covenant before President Wilson met with the Foreign Relations Committee.

The first White House conference between the President and the Committee took place on February 26. The Associated Press reported that the discussion covered a wide range, and that the President was questioned closely. He answered all questions freely and especially emphasized that

27 Ibid., pp. 3911-15.

28 Fleming, op. cit., p. 122.
his guests were free to discuss the conference and its information with newspapermen and others. The views of the Republican members remained unchanged, however, in spite of Wilson's explanations.29

Senator Lodge, courteously observing the President's request to be allowed to present his case, had used the interval to prepare a negative speech which he delivered in the Senate on February 28. He said that no question of equal importance had ever confronted the Senate and that therefore, there should be no undue haste in considering it. He said that it was his desire that not only the Senate, but the press and the people of the country should investigate every proposal with the utmost thoroughness and weigh them carefully before making up their minds. He stressed the thought that it was no idle thing to abandon entirely the policy laid down by Washington in his farewell address and by the Monroe Doctrine.

Eventually he had demonstrated "the uncertainties which cloud this instrument from beginning to end," and was compelled, he said, against his earnest desire to do everything that could be done to secure the peace of the world, to conclude that "this machinery would not promote the peace of the world, but would have a directly opposite effect."

29 Ibid., pp. 133-134.
He then asked if it was not possible to draft a better, more explicit, less dangerous scheme than the one presented by Wilson, and then proceeded to present certain propositions which he thought it might be well for the peace conference to consider. He suggested that it (1) put three lines into the draft for the League which would preserve the Monroe Doctrine, (2) exclude completely from its jurisdiction such questions as immigration, (3) provide for peaceful withdrawal and (4) state whether the League was to have an international force of its own or to have the power to summon the armed forces of the different members.

Senator Lodge apparently did not have much hope that the Covenant could be made over so that it would be acceptable, for he continued: "Unless some better constitution for a league than that can be drawn, it seems to me, that the world's peace would be much better, much more surely promoted, by allowing the United States to go on under the Monroe Doctrine, responsible for the peace of this hemisphere, without any danger of collision with Europe as to questions among the various American states, and if a league is desired it might be made up by the European nations whose interests are chiefly concerned, and with which the United States could co-operate fully and at any time, whenever co-operation was needed." In that way he disposed of the Covenant so casually that it hardly seemed
to be worthy of consideration, although he did add a final paragraph of warnings against it. 30

Very little attention had been paid up until this time to the position which public opinion concerning the Covenant and the possibility of a league of nations. The news previews up to March 1, indicated a clear preponderance of support for it. 31

President Wilson sailed back to France on March 5, leaving behind him an opposition in the Senate which he realized was definitely partisan and not open to reconciliation. Nevertheless he returned to his job, determined to press for the amendments which Senator Lodge had considered so necessary, although he believed that the ends sought by them were already attained in the Covenant as it stood. 32

Wilson therefore drew up, about March 22, the date when the League of Nations Commissions met for the revision of the Covenant, a set of amendments covering the points at issue. He succeeded in having three of the four desired amendments passed with comparatively little opposition. The desire for the right of withdrawal was met by an addition to Article I, saying that any member might withdraw

30 Ibid., pp. 136-139.
31 Ibid., p. 165.
32 Ibid., p. 173.
after two year's notice. An attempt to allay the anxiety as to interference with immigration and tariff was made by the addition of a clause to Article 15 which said: "If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement." The fear of Senator Lodge that a mandate might be forced upon the United States was countered by an insertion in Article 22, in describing those to whom mandates should be intrusted, of the phrase "and who are willing to accept it."33

Wilson postponed the combat with the Commission over the Monroe Doctrine amendment because he knew that the Doctrine had never been popular in Europe, except among the English. After delivering many speeches explaining the Doctrine to the Commission, Wilson finally succeeded in persuading it that the amendment would not injure in any way the working of the Covenant, the amendment was finally accepted and added to the Covenant as Article 21. It read as follows: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings,

33 Ibid., p. 184.
like the Monroe Doctrine, for securing the peace of the world."

However complete the success of President Wilson at Paris may have been, it was great enough to cause gloom in the band of men made up of Senators Lodge, Borah, Knox, Reed, Poindexter, and Beveridge, who had determined to deny him the creation of the League of Nations. The League had not only been created, but its Covenant had been amended to meet the principal American objections raised against it. The entire Treaty of Peace was also completed and Wilson was soon to be returning with the finished document containing the League of Nations so woven into it that it would be impossible to separate the two. Added to their troubles was the fact that the leaders of public opinion still stood overwhelmingly in favor of the League.

With the influence and belief of the nation's leaders strongly behind the League, there was only one recourse left, to arouse the masses by persistent repetition of the cries already raised and many others that seemed likely to stir the emotion of a considerable block of people. The opposition decided, therefore, that if the nation would not think anti-League, it must be made to feel so. Also they believed that the nation could be eventually wearied

34 Ibid., p. 185.
of the whole League business if action on it could be delayed long enough. 35

This strategy of joining the irreconcilables and reservationists was agreed upon by Lodge and Borah and was undoubtedly clever and most ably followed up in months to come. The reservationists included Senators Lenroot, Frelinghuysen, Cummins, McNary, McCumber, and Kellogg. It was, moreover, a good bargain for both leaders. If it could be executed, Lodge had had the practical certainty that at the worst the Republican trademark would be stamped on the League; Borah knew from long experience that he need not have much fear of any treaty that Mr. Lodge set out to "perfect". 36

One first requisite was essential to success—the control of the Senate machinery. This control was in their hands as a result of the election of the November before in which the Republicans had secured a majority. That majority meant also a majority in the Senate Committee on Foreign Relations and the power to delay or hasten the action as the needs of their policy dictated. 37

Not only was the victory in the Committee on Foreign Relations one for the Republicans, but also for the "Irrecon-

36 Ibid., p. 208.
37 Idem.
cilables" of the party. With the irreconcilable Senators Knox, Borah, the Committee included Lodge, really an irreconcilable, Senator McCumber, the most outspoken advocate of the League among the Republican senators, and two staunch party regulars who could be trusted to follow the party leaders.

The extraordinary composition of the Committee drew bitter comments from both Republicans and Democrats. Senator Hitchcock, in appealing to the Republicans who favored the League, pointed out the membership of the Committee as evidence that there was a settled purpose to make a political issue out of the Treaty. No explanation was offered by any Republican leader in the Senate. The sole comment made by Lodge was that it was a strong committee and such as the existing conditions demanded.38

With the Committee on Foreign Relations safely under their control, the irreconcilables faced the future with greater confidence. They were still, however, far from their ultimate victory and their immediate program met with failure. Senator Knox introduced a resolution demanding that the Senate be given the opportunity to ratify the Treaty of Peace without the Covenant which was

38 W. Stull Holt, Treaties Defeated by the Senate, p. 279.
to be left for future consideration.\textsuperscript{39} Enough opposition developed to prevent the Knox resolution from being pushed to a vote.\textsuperscript{40}

It became increasingly clear during the debates in May and June, when the irreconcilables continued to display more activity than the others, that the Republicans in the Senate were going to make the treaty an issue for party action. The best evidence of this can be found in the growing alarm of the Republicans who favored the League and who knew that partisan consideration would endanger the Treaty.\textsuperscript{41}

Such was the situation when Wilson returned with the Peace Treaty. On July 10, he submitted the Treaty to the Senate and delivered a speech in person. With the Treaty in the hands of the Senate, the powers of the Committee on Foreign Relations were brought into play. That control was the means of keeping the Treaty from the Senate for two months. Delay was essential to their cause, for the state of public opinion was such that prompt action would have been fatal. Time was needed to arouse a hostile opinion. Devices to gain time proved readily available. First, the long treaty of several hundred printed pages was

\textsuperscript{40} Holt, \textit{op. cit.}, p. 279.

\textsuperscript{41} Idem.
read aloud line by line. The reading took two weeks. Then the Committee held public hearings which lasted for six weeks more.

At those hearings various members of the American delegation to the Conference gave testimony, but no one else appeared before the Committee except representatives of national groups that felt that their countries had received less than justice at Paris.42

The majority report of the Committee on Foreign Relations that reached the Senate on September 10, made several things certain. The irreconcilables no longer entertained any hope of persuading the Republicans in the Senate to unite on a policy of complete rejection. Following the advice of Lodge, the Republicans, who had openly desired rejection, proceeded "by way of amendment and reservation," and with Lodge, Harding, and New, recommended four reservations, forty-five amendments, many covering the same point. The purpose of the amendments were as follows: (1) to secure for the United States a vote in the Assembly of the League equal to that of any power including Great Britain, who, with all her possessions, had six votes. (2) to provide that where a member of the League had self-governing dominions and colonies, which were also members

42 Ibid., p. 281.
of the League, the exclusion of disputants under the League rules should cover the aggregate vote of that empire.

The remaining amendments, with the exception of no. 45, had the same purpose, namely, to relieve the United States from having representatives on the commissions established by the League, which dealt with questions in which the United States had not and could not have any interest and in which the United States had evidently been inserted by design. Amendment 45 provided that the United States have a member of the reparation commission, but that such a commissioner of the United States, could not in the case of shipping, where the interests of the United States were directly involved, deal with or vote upon any other questions before that commission except under instructions from the government of the United States.

The four reservations drawn up stated that:

1. The United States reserved to itself the unconditional right to withdraw from the League of Nations upon giving the notice specified in Article I of the Treaty.

2. The United States declined to assume, under any article, any obligation to preserve the territorial integrity or political independence of any country, or to interfere in controversies between other nations, members of the League or not, or to employ the military or naval forces of the United States in such controversies, or to adopt economic measures for the protection of any other country against external aggression or for the purpose of coercing any other country, or for the purpose of intervention in the internal conflicts or other controversies which might arise. No mandate was to be accepted by the United States.

3. The United States reserved to itself the exclusive
right to decide what questions were within its domestic jurisdiction and not under the jurisdiction of the treaty or subject to arbitration or consideration of the Council or Assembly or subject to the decision or recommendation of any other power.

4. The United States declined to submit for arbitration or inquiry any question which, in the judgment of the United States, depended upon or was related to the policy of the Monroe Doctrine.\(^{43}\)

There was no pretence in the report of the majority that these changes would make them want to ratify the Treaty. On the contrary the report showed a bitter hostility toward it.\(^{44}\)

The Report of the Committee further showed that of the ten Republican members, nine were demanding serious changes in the Treaty, while six of the seven Democratic members signed a report urging its acceptance with no changes. The Committee, however, did not accurately represent the Senate. Though the enemies of the League who controlled the Committee did not propose the direct rejection of the Treaty, their report was not one on which the Republicans in the Senate could be held together.

That Republican unity was not attainable on those terms, had been made clear even before the report reached the Senate.\(^{45}\) All during July and August when the Treaty


\(^{44}\) *Holt, op. cit.*, pp. 283-284.

was still in Committee, the debate in the Senate had continued, and for the first time the expression of Republican Senatorial opinion was not left chiefly to the irreconcilables. The speeches of those previously silent Republican Senators proclaimed the defeat of the irreconcilables who had struggled to commit the party to a rejection of the Treaty. Some desired strong reservations, others were satisfied with mild reservations. According to newspaper accounts they expected that about twenty Republicans would join their movement and hoped that the results would be accepted by the Democrats, for they were seeking agreement with the Democrats as much or even more than with Republican leaders. The campaign of the irreconcilables may have driven them to a policy of insisting on reservations to the Treaty, but with some reservations the Republican majority in the Senate was going to vote for the entry of the United States into the League of Nations. 46

Wilson had begun to fight for his Treaty immediately after his return from the Conference with the amended form. He invited many of the Republican senators to the White House for individual conferences. He placed his chief reliance, however, on an appeal to the people. The speaking tour which he began early in September, ended three weeks

46 Idem.
later in his collapse. With his collapse, it was evident that the strongest weapon that could be used in behalf of the Treaty was useless.

The serious consequences of the lack of leadership in the fight for the Treaty became apparent two months after Wilson's collapse. Public opinion, which according to common agreement had been decidedly in favor of joining the League and upon which Wilson had counted for success, had become confused and had drifted away from its earlier position. 47 In the United States, as throughout Europe, there was occurring a shift in opinion which might have been described as a substitution of near-sighted nationalism for international co-operation and the general good. The people of Europe and America showed themselves less willing than during the war to sacrifice any immediate national interest for the sake of future international peace. 48

While the public and the majority in the Senate were groping toward some decision, the debate in the Senate continued with increasing tension. The intellectual level of it gave no cause for national pride. Many of the speeches did not compliment the public mind, for there was much

48 Ibid., pp. 288-289.
demagoguery. Most of this came from the opponents of the Treaty, since the circumstances of the case restricted them to the opportunities to gain favor by playing up to popular and nationalistic prejudices.

The hatred of the Irish in America for Great Britain was exploited. The British Ambassador was informed that in using the Irish question that England would be attacked without mercy but that such an attack was not stimulated because of any real animosity. Lodge was keenly aware of the possibilities in the Irish question and realized the importance of the Irish vote in the United States.

Other groups besides the Irish received attention. One irreconcilable, Sherman, gave a perfect example of a demagogue in a speech devoted to the thesis that the majority of countries in the League would be Catholic, that the Papacy had never abandoned its claim to temporal power, and that the League would be under the dominion of the Pope.⁴⁹

The Democratic irreconcilable, Reed, who generally warned the public that the six votes of the British Empire would mean English domination of the League, devoted one speech to proving for the benefit of the South that the League would be ruled by colored peoples.⁵⁰

⁴⁹ Congressional Record, June 20, 1919. pp. 1435-1438.
Next to the "injustices" of the Irish the most frequent subject for the type of attack were the wrongs done the Chinese in Shantung. The Treaty was vulnerable on this point and probably the speakers were not unaware of the effects of their speeches on anti-Japanese feeling along the Pacific coast. The irony of the situation was that the Treaty was being opposed not because of real or alleged injustices in it, but because of the machinery provided to correct international wrongs.\textsuperscript{51}

When voting began in October, no steps had been taken by the Democrats to reach an understanding with the Republicans wanting mild reservations, and the latter were drifting toward a politically natural alliance with their fellow Republicans on terms more hostile to the Treaty than those they would have preferred. The Republican ranks held firmly together.

As reservation after reservation was added to the Treaty by the unbroken Republican majority, some friends of the League begged with the Democrats to take what could be gotten rather than lose everything. Other sincere advocates of the League, who were not members of the Senate, urged the same course.\textsuperscript{52}

\textsuperscript{51} Holt, \textit{op. cit.}, pp. 291-292.

\textsuperscript{52} Ibid., p. 293.
All the reservations presented during the periods of debate in the Senate may be summarized in the reservations presented to the Senate by Senator Lodge on October 24, 1919:

1. Upon giving notice of its withdrawal from the League, the United States was to be the only judge as to whether it had fulfilled all its international obligations under the Covenant.

2. The United States assumed no obligation to preserve the territorial integrity or political independence of any country by employing the military or naval forces of the United States under the provisions of Article 10 of the Covenant. Such action as the declaration of war was to be taken only by act or joint resolution of Congress.

3. The United States reserved the exclusive right to decide what questions fell within its domestic jurisdiction and declared that internal matters such as immigration, labor and coast wise traffic were solely within the jurisdiction of the United States and were not to be submitted for arbitration or consideration of the Council or Assembly of the League or to any similar agency.

4. The United States refused to submit any question falling under the Monroe Doctrine to arbitration of any kind.

5. No person was to represent the United States or perform any act on its behalf except with the approval of the Senate of the United States.

6. The United States was not to be obligated to pay any contribution to the expenses of the League unless and until such appropriations had been made by the Congress, even though the United States may have agreed to a limitation of armaments.

7. It reserved the right to increase its armaments without the consent of the Council whenever the United States is threatened with invasion or engaged in war.

8. The United States reserved the right to allow
the nationals of belligerent countries residing in the United States to continue their residence and business relations with the nationals of the United States.

9. The United States reserved to itself the exclusive right to decide what questions affected its honor or vital interests and declared that such questions did not come under the treaty to be submitted for arbitration or consideration of any kind by any agency of the League.53

The effect of the reservations was, for all practical purposes, the abrogation, on the part of the United States, of all the important responsibilities which membership in the League would naturally involve and therefore the nullification of the effects of the League. They did, in fact, deprive the League of the very influence and power which it hoped to gain from the membership of the United States. In connection with the reservations it may be noted here that several of them, namely those which dealt with the Monroe Doctrine and matters of domestic jurisdiction, were used as conditions to the adherence of the United States to the World Court. It is perfectly possible that Lodge and the rest of the opponents of the League were looking forward to the creation of the court under the League.

On November 19, 1919, the Senate came to a vote. At that time the Treaty of Versailles was considered with and without the reservations. With the reservations it was rejected by a vote of 39 to 55. Without the reservations it was rejected by a vote of 38 to 55. An analysis of the

vote with reservations showed that four Democrats voted yes and forty-two voted no. In the case of the Republicans, thirty-five voted yes and thirteen voted no. In the vote without reservations, thirty-seven Democrats voted yes and seven voted no, and one Republican voted yes and forty-six voted no. This would indicate a definite influence of party politics on the vote, for with but few exceptions, the Democratic party was in favor of the Treaty without reservations and the Republican party with reservations.\(^{54}\)

The rejection of the Treaty caused great amazement and widespread demands for a bi-partisan conference to draw up a compromise. The conference, however, was unable to draw up such a compromise, because Lodge refused to accept any reduction in his reservations.\(^{55}\)

In spite of the failure of the conference, the Treaty again came before the Senate, and on March 19, 1920, the final vote was taken. The Treaty received a majority of 49-35, but not the required two-thirds majority. The Republicans cast 28 for and 12 against, while the Democrats cast 21 for and 23 against the Treaty.\(^{56}\)

An analysis of this vote shows some significant similarities and contrasts with the vote in November. As before, the Republican senators cast a practically solid party vote for the Lodge reservations. In contrast with the

\(^{54}\) Ibid., p. 297.  
\(^{55}\) Ibid., pp. 298-299.  
\(^{56}\) Ibid., pp. 299-301.
Republican unity, the Democrats split decidedly and many more voted for the Lodge reservations than in the November vote.57

The fate of the Treaty of Versailles was the result, I believe, of three different factors: (1) the constitutional struggle of the Senate against the President, (2) party politics and (3) personal hatred of President Wilson.

The constitutional struggle between the Senate and the President was due to the indifference with which Wilson treated the treaty-making power of the Senate. He completely ignored the traditional policy of consulting with, or even imparting to the Senate any plans which he had in mind to present to the Peace Conference. He made matters even worse when he went as a delegate himself instead of remaining at home to take care of domestic affairs. A powerful resentment naturally arose among the Senators against Wilson. And it was this resentment which was the underlying cause for the many reservations which ultimately spelled the doom of the Treaty.

The pressure of party politics was easily discernable in the struggle in the strong and utmost undivided stand which the Republican party took. Only the Republicans entered the battle in the defense of the Senate's prerogatives, and in the last vote the Democratic Party was decidedly divided on the question and the Republicans practically

57 Ibid., p. 301.
unanimous in its rejection.

The personal hatred of President Wilson, held especially by Senator Lodge, was, I believe, one of the most important if not the most important factor contributing to the failure of ratification. It began by a contempt, on the part of Lodge, for the fickleness of Wilson's dealings with Germany at the time of the sinking of the Lusitania and was increased by Wilson's disregard for the rights of the Senate and by Lodge's supreme loyalty to his party over against the Democratic. This animosity led Lodge to exert his influence at every turn in order to frustrate any move Wilson made. Lodge's motives in creating the reservations, which ultimately killed ratification, were based on party loyalty, dislike for Wilson, and his insistence on the constitutional place of the Senate in the treaty-making procedure. He was able to succeed in his plans mainly because of his superior ability to manage his party and make moves at the most strategic time.

The failure of the Senate to ratify the Versailles Treaty should have made one fact very evident to the people of the United States. That fact is that conflicts between the President and the Senate and could so increase the opportunities for political warfare that the questions of the merits of treaties could be entirely lost.
CHAPTER III

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The Permanent Court of International Justice may be said to be the advanced, if not the final, step in the movement begun hundreds of years before its time in the effort to peacefully settle international disputes. The institutions, beginning with the Court of Arbitral Justice and ending with the Permanent Court of Arbitration, served as the stepping stones to this court of international justice and really paved the way for its establishment.

With the end of the World War came new hopes and aspirations for an organization of the world based on justice and order, in which the weak would not be dominated by the strong, and in which there would be a means to apply all possible guarantees against the recurrence of the horrible devastations of another war. So it was that the period following that war was to see the establishment of a great international organization, in which nations small and large were to have the same influence, and which would act as a collective body for the good of all nations rather than a chosen few.
Establishment of the Court

The unofficial drafts of the Covenant for the League of Nations, drawn up prior to the Peace Conference of 1919, contained references to an international court, but laid very little emphasis on its importance.

With the convening of the Peace Conference in January 1919, several more proposals were made. In January, Lord Robert Cecil of Great Britain circulated a draft sketch of a League of Nations in which he referred to a "judicial body" which he described as the existing Hague organization, with any additions or modifications made by the League, or by the Peace Treaties.\(^1\) In January 1919, also, President Wilson formulated two drafts,\(^2\) which, although they indicated that he did not think a court important, did provide for arbitration and for a possible appeal from an arbitral decision to a "Body of Delegates". His drafts continued to refer to the settlement of disputes by judicial decision or arbitration.

At a plenary session of the Preliminary Peace Conference on January 25, 1919, a resolution was adopted

\(^1\)David H. Miller, *Drafting of the Convneant*, vol. II, p.63.

\(^2\)Ibid., pp. 65, 98.
approving the principle of the League of Nations and creating a commission to work on the details of its organization. With the creation of this commission, began the first step, not only in the creation of the League of Nations, but also in the establishment of a court.3

On January 31, of the same year, it was agreed at a conference of American and British representatives, that definite provisions regarding the method of arbitration were not essential and that just a general provision should be inserted for the creation of a permanent court.4 Shortly afterward, the Hurst-Miller draft was made, and it was this draft which was placed before the Commission by President Wilson.

This Commission of the League, set up under the resolution began its work on February 3, 1919, with the Hurst-Miller draft as the basis of its deliberations. That draft, reported by the Drafting Committee as articles 13 and 14 and adopted by the Commission, read as follows:

"Article 13. The High Contracting Parties agree that whenever any dispute or difficulty shall arise between them, which they recognize to be suitable for submission to arbitration and which

3 Ibid., vol. I, p. 61.
cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration. For this purpose the Court of arbitration to which the case is referred shall be the Court agreed on by the parties or stipulated in any Convention existing between them. The High Contracting Parties agree that they will carry out in full good faith any reward that may be rendered. In the event of any failure to carry out the award, the Executive Council shall propose what steps can best be taken to give effect thereto."

"Article 14. The Executive Council shall formulate plans for the establishment of a Permanent Court of International Justice, and this Court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article."

These articles appeared in this form in the draft Covenant which was reported to the Preliminary Peace Conference in February 1917.5

In March several amendments were added. President Wilson and Lord Cecil agreed upon the addition to Article 14 of the words: "and also any issue referred to it by the Executive Council or Body of Delegates."6 This addition was the forerunner of what was to be classed as an advisory opinion. At a meeting of the Commission on March 24 several minor amendments and additions were proposed to Article 14 by the English and French delegates.

Two days later a drafting committee was set up which made several important changes in the drafts of Articles 13 and 14. Those provisions which finally became the second paragraph of Article 13 and the third sentence of Article 14 were reported by this drafting Committee, adopted by the Commission on April 11 in the following form, were included in the conditions of peace to the German delegation, and later embodied in the Treaty of Versailles:

"Article 13. The members of the League of Nations agree that whenever any dispute shall arise between them which they recognize suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed upon by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award 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, the Council shall propose what steps should be taken to give effect thereto.

"Article 14. 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 disputes of an international character which the parties thereto submit to it. The Court may also give advisory
opinions upon any dispute or question referred to it by the Council or by the Assembly."

According to the mandate in Article 14 of the League Covenant, the Council elected a Committee of Jurists to prepare the plans for the Court. Among the jurists elected by the Council was Elihu Root, who, as Secretary of State of the United States, had been responsible for the policy of the American representatives at the Hague Conference in 1907. All the credit for the contributions which the United States was able to make to the organization and establishment of the Court is due him for the fine work done while he was a member of that Committee.

At the first regular meeting of the jurists, Mr. Root proposed that the Committee adopt "as the basis for consideration the subjects referred to it in the Acts and Resolutions of the Second Hague Conference at the Hague in 1907." The members of the Committee, however, preferred not to be bound by the Draft Convention of 1907, but favored proceeding more independently. They did not overlook the value of the work of the First and Second Hague Conferences, but wanted to enlarge the scope of its work

9 Ibid., p. 107.
beyond the point suggested by Mr. Root.\textsuperscript{11}

After the Committee came to an agreement concerning the rules of procedure for the conduct of business, the delegates, led by Mr. Adatci of Japan, came forward with their plans for the establishment of the Court.\textsuperscript{12} With the presentation of the various plans, it became very clear that the big obstacle in the way of the establishment of the Permanent Court of International Justice was the very same obstacle which had prevented the realization of a court at the time of the Second Hague Conference in 1907. That obstacle was the claim of the so-called great powers to permanent representation in the court regardless of the principle of "equality of nations" and the claim of the "small" states that the principle of equality should be observed in the formation of the court. A deadlock seemed inevitable in the Committee of Jurists, unless some method could be found which would satisfy these claims.\textsuperscript{13}

That method so necessary as a compromise between the great and small powers was proposed by Mr. Elihu Root. In making his proposal, he took advantage of the agencies

\textsuperscript{11} Ibid., p. 15.
\textsuperscript{12} Ibid., p. 16.
\textsuperscript{13} Ibid., p. 29.
of the League of Nations and also of the experiences of his
own country in bringing into peaceful harmony the interests
of the larger states and those of the smaller states in
drafting the Constitution of the United States of America.
He showed that the American problem in 1787 was solved by
the creation of two chambers, one in which the states were
represented on a basis of equality, and the second in which
representation was based on size and population. Mr. Root
did not intend that that method be accepted as such, but
merely mentioned it to show how divergent interests could
be reconciled. He pointed out that the Paris Peace Con-
ference, composed of representatives of large and small
states which, without satisfying the views of the other,
had created the League of Nations consisting of two chambers,
one the Assembly in which all powers big or small were equal
and the second chamber the Council in which the great powers
outweighed the small. With such an ideal arrangement he
asked why the judges could not be elected by a concurring
vote of the Assembly and Council. He pointed out that the
necessity of a concurring vote of both the bodies would
make it impossible for either body to violate the special
interests of the other. Quoting Mr. Root’s own words:

"The effect of the practical working would be, that in the Assembly, where the smaller powers

14 Ibid., pp. 29-30.
are in the majority, they would protect the interests of the smaller states, and that in the Council the larger powers having the preponderance would protect such practical interests of their greater trade, and their greater production and their greater interests as would be submitted to the Court.15

Should a difference arise between the two bodies, the Assembly and the Council, Mr. Root suggested that a smaller joint committee of the two houses could be appointed and this committee, similar to the joint committees of the Senate and House in the United States, would serve as a practical method to reconcile the differences between the Assembly and Council.

Lord Phillimore, of Great Britain, was very much impressed by Mr. Root's plan for the election of the judges to the Court and so organized it into the following five articles:

"1. The judges of the High Court are appointed by the joint authority of the Council and of the Assembly of the League of Nations."

"2. The Council votes a list which is transmitted to the Assembly."

"3. The Assembly considers the list voted by the Council and any names brought before it as candidates by any state which is a member of the Assembly and then votes its list."

"4. The names which are found on both lists are to be elected."

"5. As to the residue the Council votes afresh and the Assembly votes afresh and so they continue until a final agreement is reached."

16 Ibid., p. 32. 15 Ibid., pp. 31-32.
Mr. Root's plan thus reduced to the form of articles by Lord Phillimore became known as the Root-Phillimore Plan.\(^1^7\)

After being organized by Lord Phillimore, the plan was placed before the committee, and the fundamental idea was approved by seven out of the nine jurists. But several amendments had to be made before it was accepted. Justice Loder of Holland, in discussing Mr. Root's plan, said the basic idea of collaboration between the Council and the Assembly was an excellent suggestion but that the method used to work out the plan was open to criticism. He said it was very unlikely that both the Assembly and the Council would draw up lists containing the same names, since each body represented a different group of states. In order to preserve the good of the Root-Phillimore project and to eliminate what he considered defects in it, Justice Loder advocated the addition to it of part of the plan of Baron Descamps of France.\(^1^8\) The Baron had advocated a close bond between the Permanent Court of Arbitral Justice of 1907 and the P.C.I.J. by having it elect the judges. This plan, however, was seriously criticized because it made the Permanent Court dependent upon the Court of Arbitration.

\(^{17}\) *Ibid.*, p. 36.

Mr. Loder then suggested that instead of having the Arbitration Court elect the judges it should prepare a list of nominees for the Council and the Assembly of the League to vote on. This list, however, was to be the one and only list from which to take names for the election of judges. Mr. Loder's plan, of thus combining the best parts of both plans, served to set up a bond between the work of the Second Hague Conference and the Permanent Court draft committee and solved the problem of the equality of the States.

The question of compulsory jurisdiction and advisory opinions was next discussed by the committee. Mr. Root said he believed that the limits of compulsory jurisdiction ought to be clearly laid down, since states would not accept a court which had a right to settle disputes in accordance with rules established by itself. The draft finally adopted by the committee provided for obligatory arbitration of disputes which could not be settled by diplomacy. In the matter of advisory opinions the proposal of Messrs. Phillimore and Root restricted the giving of advisory opinions to any subject or question submitted

19 Ibid., p. 39.
20 Idem.
by the Council or Assembly. Mr. Root explained that he was opposed to the Court's giving an advisory opinion "with reference to an existing dispute". Later on he abandoned this position. 22

With the foregoing changes made in the Root-Phillimore plan, the draft was sent to the Council with just a little over a month's time having elapsed from the time of the selection of the Committee to the drawing up of the final draft. 23 Upon its arrival in the Council, the draft statute was amended by the Council and Assembly of the League and was adopted by the Assembly on December 13, 1920. 24 On December 16, 1920, three days after the Assembly's adoption of the Statute, the Protocol containing it was ready for signature. 25 In that Protocol of Signature it was provided that as soon as it had been ratified by a majority of the Members of the League, it would come into force. Since the required majority ratified the Protocol by September 1, 1921, 26 the Statute may

22 Ibid., p. 179.
23 De Bustamante, op. cit., p. 98.
25 De Bustamante, op. cit., pp. 110-111.
26 Hudson, The P.C.I.J. -- Treatise, p. 120.
be said to have gone into effect then. The election of judges took place that same month and the first meeting of the Court was held on January 30, 1922.

The official inauguration of the Court took place February 15, 1922, at which time it was installed in the Palace of Peace, the building made possible by the gift of Andrew Carnegie. With its inauguration, the long-looked-for Court was established with the hope that it might prove to be the faithful guardian of international peace and goodwill.27

Organization of the Court

Proceeding from the brief account of the process of establishing the Permanent Court of International Justice, we come to the actual organization of the Court itself. A study of the Court may be divided for the sake of convenience into three separate sections, namely composition, jurisdiction, and procedure.

First of all the Statute of the Court provides for the qualifications, election, terms, and duties of the judges of Court.28 The judges are independent and elected regardless of nationality from "persons of highest moral

27 De Bustamante, op. cit., pp. 110-111.
character", who possess the qualifications necessary for appointment to the highest judicial offices in their respective countries. The Court consists of eleven judges and four deputy-judges. Provision is also made, however, whereby the number of judges and deputy-judges may be increased by the Assembly upon the proposal of the Council to fifteen, nine judges and six deputy-judges.

The Statute also provides for the selection of a judge for parties not represented in the Court. In case only one of the contending parties is represented among the judges, the other party may choose from among the deputy-judges, a judge of its nationality to take part. In case, however, there is no deputy-judge of its nationality, it may choose a judge, preferably from those nominated in the manner that the regular ones are chosen. Should it happen, however, that neither of the contending countries are represented among the judges, each may select a judge in the same way. The judges so chosen must conform to all the qualifications of the regular judges and may take part in the decision on the basis of complete equality with the other judges.

The system for the election of judges is necessarily very complex and long for it has to take care of the old dispute concerning the equality of the large and small states in the matter of representation. The members of
the court are elected by the Assembly and Council from a list drawn up by the national groups in the Court of Arbitration with the provision that in case of Members of the League of Nations which are not represented in the Court of Arbitration, the lists should be drawn up by national groups appointed by their governments for that purpose.

The same conditions prevail as for the nomination of members by the Court of Arbitration. The candidates who obtain an absolute majority of votes in both the Assembly and Council are considered elected. In the event that more than one national of the same member of the League is elected by the votes of both the Council and the Assembly, the eldest only is to be considered elected. If, after the first meeting for the election, there are one or more seats still to be filled, the Statute provides that a second and even a third meeting be held. If, after the third election meeting, there are still seats vacant, the Statute contains a provision for the creation at the request of either Assembly or Council of a joint conference of six members, three appointed by the Council and three by the Assembly, for the purpose of choosing one name for each seat to be filled. These names are then submitted to the Council and Assembly for acceptance. If the Conference agrees unanimously upon any person who fulfills the required conditions, then his name may be included in its lists even though it has not
been included either in the list of nominations prepared by the nationals in the Court of Arbitration or in the list prepared by the national groups which are not members of the Court of Arbitration. If, after this process of nomination, the joint conference is not sure of securing an election, there is a provision whereby the members of the Court who have already been appointed may, within a time limit set by the Council, fill the seats by selecting candidates from those who obtained votes either in the Council or in the Assembly. In case of a tie, the eldest judge is given the deciding vote.

The terms of the judges are, for the purpose of continuity of action, long. They are elected to serve for a period of nine years and may be re-elected and may continue to perform their duties until their places are filled by a new election. Any vacancies which occur are filled according to the provisions for the first election. The deputy-judges are called upon to sit in the order laid down in the list prepared by the Court. The names on this list are considered first according to priority of election and secondly, according to age.

In order to maintain absolute impartiality in the court, there are certain restrictions concerning the cases which the judges may hear and also concerning the dismissal of judges for malfeasance while in office. No member of the
court may take part in the deciding of any case in which at some time previous he has actively taken part as agent or counsel for one of the contending parties, or has taken part as a member of a national or international court or Commission of Inquiry. A member of the court may be dismissed if it is the unanimous opinion of the other members that he has ceased to fulfill his duties as a judge.

Provisions are made in the Statute concerning the duties of the judges when sitting in full court or when sitting in a special court created to take care of special duties or speed up the work. The Statute provides that the Court meet on June 15th of every year. The full Court meets except where there is an express provision drawn up by the court to do otherwise. If eleven judges cannot be present the needed number of deputy-judges are called in. In case, however, eleven judges or deputy-judges are not available nine judges may constitute a quorum. Provision is also made for the appointment of special chambers of judges to hear cases concerning questions of labor, transit, and communications. These special chambers may, with the consent of the parties to the dispute, sit elsewhere than at the Hague. In all cases heard by these special chambers, the judges will be assisted by four technical advisors, who, however, have no vote. Annually, the Court may also form a chamber composed of three judges, who may at the request
of the contending parties hear and determine cases by summary procedure. This special chamber is created to speed up the work of the Court in general. Judges of the same nationalities as the parties to the dispute have the right to sit in on the case.

The salary of the judges is determined by the Assembly of the League, acting upon the proposal of the Council. This salary cannot be decreased during the period of the judge's appointment. The Assembly also draws up the regulations governing pensions for the personnel of the Court.

It is interesting to observe that ever since the creation of the Court, there had been an American judge taking part in its activities, elected, not by the United States, but by the European countries in the Council and Assembly of the League of Nations. Those Americans who have served as judges are: John Bassett Moore, who was elected for the first period and who served until 1928; Charles Evans Hughes, who served from 1928 until his appointment as Chief Justice of the Supreme Court of the United States in 1930; Frank Billings Kellogg, late secretary of State who was elected for the second period and served until 1935, and Manley O. Hudson, the principal American expert on the court and professor of law at Harvard, who was elected in 1936 to succeed Judge
Kellogg.\textsuperscript{29}

Preceding from the section on the composition of the Court we come to the portion of the Statute devoted to the jurisdiction of the Court. In regard to states which may be parties to disputes before the Court, it is provided that states not members of the Court may use the Court on a basis of equality with the member states, provided that they make a declaration to accept the jurisdiction of the Court in accordance with the Statute and the rules drawn up by the Court. Also, they must make a pledge to the effect that they will carry out in full faith the decisions of the Court, and that they will not resort to war against any state complying with these rules. Non-members may accept the jurisdiction as compulsory "ipso facto" in all or any disputes concerning questions of treaty interpretation, international law or breaches in international obligation. These qualifications are drawn up by the Council and are subject to the special provisions of the treaties which may be in force at the time.

Concerning the Court's jurisdiction over cases brought before it, this section on jurisdiction of the Statute provides that the Court may hear all cases which the aforementioned parties may refer to it, especially questions mentioned in treaties and conventions already

\textsuperscript{29} Ibid., pp. 12-13.
in force. In addition to its right to give decisions on cases brought by qualified states, the Court may give advisory opinions. These advisory opinions are given after the deliberation of the full Court. The request for an advisory opinion must be written and signed either by the President of the Assembly or Council of the League or by the Secretary-General according to instructions from the Assembly or Council. The request must contain an exact statement of the question on which the opinion is desired and must be accompanied by all documents which would be of assistance in settling the question. Any advisory opinion given by the Court and the request for the opinion are printed and published in a special collection.30 In case of a disagreement, the Court itself decides whether or not it may assume jurisdiction over a certain dispute. The Court bases its decisions as far as possible upon international convention recognized by the disputing states, upon international customs and lastly upon the general principles of law as recognized by the nations of the world. If the nations agree, however, an exception may be made to the effect that the court may use its own judgment as to what is good and just in rendering its decision.31

The third section of the Statute deals with the procedure of the Court in regard to the languages to be used, the methods of bringing disputes before the Court, the actual hearing of the disputes and finally the binding power of the decision itself.

The official languages of the Court are French and English. In the case, however, that no agreement can be made concerning which language is to be used, each party may use the language it wishes and the decision is given in both languages. Also the Court may at the request of the disputing parties, authorize that a language other than the two mentioned be used.

Cases may be brought before the Court either by notification of a special agreement of the disputing parties to refer their dispute to the court or by written application sent by the parties to the Registrar of the Court. The notification or application must include the subject of the dispute and the name of the parties involved. The application is then made known to all those parties concerned and to the members of the League.

Court proceedings are divided into two parts, oral and written. The written proceedings consist of the notifications to the judges and parties, and the papers and documents used in support of the cases. A certified copy of every document is given to all the parties concerned. The oral proceedings consist of the actual hearing of the
case by the judges and also includes the speeches of the witnesses, agents, experts, and counsel. The public may attend the hearings unless the Court or parties decide otherwise.

The Court may, at any time, permit organizations, commissions, or individuals to carry on special investigations or give expert opinions. A period of time is agreed upon for the presentation of evidence and after that time is up, the Court may refuse to accept any more evidence, unless both sides consent to it. The judgment must be given by a majority of the judges present at the hearing and, in the case of a tie vote, the presiding officer has the deciding vote. The judgment must contain the reasoning upon which it is based and the names of the judges who took part in the decision. If one of the parties does not appear in Court to defend its case, the other party may demand that the Court render the decision in its favor. Upon the completion of the presentation of the case by both parties, the presiding judge may declare the hearing closed and the Court withdraws into private quarters to consider the judgment.

Perhaps the most important rule of procedure is that concerning the binding power of the Court's judgment. The decision of the court is binding only on the parties concerned and only in respect to that particular case. The
judgment is final and without appeal, except upon the application for revision by one party based upon the discovery of a decisive factor which was unknown to the court when the decision was rendered. The application, however, must be made within six months of the discovery of the new fact and the omission cannot have been due to negligence. A State which considers that it has a legal interest in the decision rendered, may make a request to the Court that it be permitted to intervene as a third party. If the Court grants the request, that State has a right to intervene in the proceedings, but if it uses this right, the judgment of the Court is equally binding on it.32

The final provision in the Statute concerns the cost of the Court and provides that, unless the Court decides to the contrary, each party shall bear its own costs.33

32 Ibid., pp. 163-165.
33 Idem.
CHAPTER IV

THE UNITED STATES AND THE COURT 1921-1930

The long campaign for adherence began on August 15, 1921, when Secretary of State Charles Hughes received a certified copy of the Protocol of the Permanent Court of International Justice from the Secretary-General of the League of Nations. ¹ On February 17, 1923, formal action began, for on that date, Secretary Hughes sent a letter to President Warren Harding requesting him to ask the Senate to take action in favor of the adherence of the United States to the Protocol of December 16, 1920. He advocated the acceptance of the adjoined Statute of the Court, but not the optional clause for compulsory jurisdiction. Adherence, however, was to be based on four reservations which he drew up and which were to be made part of the instrument of adherence. Those reservations stated that, (1) adherence was not to be taken to involve any legal relation on the part of the United States to the League of Nations; (2) the United States was to be permitted to participate, through representatives designated for the

¹ Hudson, The World Court, 1921-1934, pp. 8;218-224.
purpose, upon a basis of equality with the members of the League in the election of judges and in the filling of vacancies; (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 for the Court was not to be amended without the consent of the United States.²

One week after receiving the letter of Secretary Hughes, President Harding honored the request by sending to the Senate a message of his own concerning the Court and adherence. President Harding stated that the Permanent Court of International Justice had been established at the Hague and was, at that time, functioning. He informed the Senate that, although the United States was not a member of the Court, it could, through provision of the Statute creating it, legally bring suits before it with the same rights and privileges as enjoyed by the regular members of the Court. Expressing his own opinion, he said that the position held by the United States was not sufficient for a nation which had so long been committed to the peaceful settlement of international disputes.³ He pointed out that the United States had been conspicuous in its efforts to

² Ibid., p. 224.
³ Ibid., pp. 224-225.
create a tribunal which would be instrumental in the settlement of disputes between the nations of the world, and that deliberate public opinion was now overwhelmingly in favor of the full participation of the United States in such a tribunal. The following passage, which I will quote from his message, seems to me to sum up clearly his attitude toward the World Court. He said:

"It is not a new problem in international relationship. It is wholly a question of accepting an established institution of high character, and making effective all the fine things which have been said by us in favor of such an agency of advance civilization. It would be well worth the while of the Senate to make such special effort as is becoming to record its approval. Such action would add to our own consciousness of participation in the fortunate advancement of international relationship, and remind the world that we are ready to take our proper part in furthering peace and adding to stability in world affairs."  

In spite of the recommendation of Secretary Hughes and the request of President Harding, the Senate was not disposed to take any action whatever on the matter. Meanwhile the Secretary of State renewed the arbitration conventions drawn up with France, England, Norway, Sweden, Portugal and Japan in 1908, and renewed for five year periods in 1913, and 1918. In the negotiations Secretary Hughes concluded agreements which provided for the modification of each convention so that, in the event that the

4 Ibid., p. 224.
Senate ratified adherence, all disputes, provided for in the conventions, would be taken to the newly created permanent Court of International Justice instead of the older Court of Arbitration. Each country was informed that the use of the new court by the United States was in complete agreement with the foreign policy which the United States had always pursued.  

At the next meeting of the Senate, President Coolidge revived the question of adherence to the Court. In the message to the Senate, President Coolidge made an appeal for favorable action concerning adherence. He, like Hughes and Harding, mentioned the fact that, since its efforts to establish the Court of Arbitration in 1899, the United States had hoped and worked for the creation of a permanent world court of justice. As for his own opinion, he went on record as being in full accord with the policy of adherence, and as favoring the establishment of a court which would include the whole world.

Senator Lenroot of Wisconsin, then introduced a resolution for adherence which contained, with only three

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5 Foreign Relations of the United States, v. 2 1923, pp. 16-17; 316-317; 511-512; 630-631; 752-754; v. 2 1924, pp. 698-699.

exceptions, the same reservations as those included in
the proposal of Secretary Hughes. Those additions were
as follows:

1. All independent states which had diplomatic
representatives accredited to the Hague and which
had not adhered to the Protocol of December 16,
1920, but which accepted the Statute of the Court
were to be permitted to adhere.

2. The judges were to be elected, not by the
Council and Assembly of the League, but by the
diplomatic representatives of the states adhering
to the Protocol and accredited to the Hague. Those
representatives were to be divided into two groups,
A and B. Group A, consisting of Great Britain,
France, The United States, Brazil, Germany and
Italy, was to perform the election duties of the
council, and group B, consisting of the remaining
states, was to perform the election duties of the
Assembly.

3. The expenses of the Court were to be paid by
the adhering states, rather than by the League of
Nations.

The resolution of Senator Lenroot marked the be-
ginning of a series of proposals which were introduced
into the Senate in the next few weeks. These new reso-
lutions contained various conditions and reservations,
too numerous and unimportant to mention here. The signifi-
cant thing, however, in connection with these proposals
was the fact that in spite of their number, the Senate
Committee on Foreign Relations was too busy to conduct a
hearing until compelled to by public demand. The committee

consisted of Senator Lodge as chairman and Senators Borah, Brandegee, Johnson of California, Moses, McCormick, Wadsworth, Lenroot, Willis, Pepper, Shipstead, Swanson, Pittman, Shields, Robinson, Underwood, Walsh of Montana, and Owen. Of this group, Senators Lodge, Borah, and Johnson were the outstanding opponents of adherence. Not until April 30, 1924, was a hearing given, at which time Senator Claude Swanson introduced the proposal that the United States adhere to the Court according to the Hughes - Harding terms.8

From the discussion which followed the presentation of the Swanson proposal, it was soon evident that the factor which was to prove the obstacle in securing the committee's acceptance of a plan was not the difficulty of coming to an agreement concerning which terms should be set as the basis of adherence, but in the basic construction of the Court as an instrument of the League of Nations. As long as that problem of the relationship of the Court to the League was unsolved it was obvious that there could be little hope for any agreement on a plan for the adherence of the United States.9 Furthermore, it

8 Ibid., p. 7904.
was the election of the judges by the Assembly and Council of the League which tied up the Court with the League. Therefore, it was obvious that the election of judges was really the source of the trouble.

Senator Pepper of Pennsylvania, himself a member of the Senate Committee on Foreign Relations, came forward on May 22, 1924, with a plan for the election of the judges of the Court which he believed would separate sufficiently the Court and the League of Nations. His plan permitted the Council and the Assembly to continue as the electoral bodies, provided that they were called to order, not by the League but by an official of the Court.¹⁰

Senator Pepper's plan, like all the rest received a very cool reception by the Foreign Relations Committee. The committee was not satisfied that the League-Court relationship had been cleared up and saw a new danger to the prestige of the United States. That danger lay in the provision of the Article 14 of the League Covenant which empowered the Court to give advisory opinions at the request of the Council and Assembly on any question of international law. According to that arrangement, the committee believed that it was possible that the Council might ask the Court's opinion as to whether the World War debts should be paid according to the terms agreed upon.

¹⁰ Congressional Record, 68th Congress, 1st Session, p. 9157.
It was also possible that Japan might ask, through the Assembly or Council, for an opinion concerning the action of the United States which excluded all Japanese immigrants from its borders.\(^{11}\)

That danger as envisaged by the committee was, in reality, without a firm foundation for three reasons. In the first place, advisory opinions were binding on no one. Secondly, a protective precedent had been set up by the Court in the Eastern Carelia Case between Finland and Russia, in which case the Court had refused to give an advisory opinion because one of the parties, Russia, had denied that the Court had jurisdiction to give such an opinion. Thirdly, it was a well established precedent in international law that no state could, without its consent, be compelled to submit its disputes to mediation, arbitration or any other method of pacific settlement.\(^{12}\)

In spite of the three above-mentioned reasons, the committee said that it could not exclude the possibility that the Court might be compelled to give an advisory opinion harmful to the United States, a non-member, if it should be necessary to do so in order to fulfill its functions in the interests of peace under the Covenant of


\(^{12}\) *Idem.*
the League of Nations. Thus in the face of possible humiliation at the hands of the League, it was argued that the only way that the United States could defend itself was by taking its place in the Council and Assembly, where both as a member of the League and a signatory to the Statute of the Court, it could defend itself by both vote and voice.\footnote{13}

As early as May 23, 1924, it was decided by the Committee on Foreign Relations that a reservation on advisory opinions must be added. They believed that the lawyers in the Senate could easily be persuaded that nothing should be left to the good sense of the judges of the Court and that everything should be made safe for all time by another added clause or two. Therefore, on May 24, the committee finally let the Court proposal go to the Senate for discussion of an amendment.\footnote{14}

A year's time elapsed between the time that the proposal was presented to the Senate and the time when any action was begun. During that period Senator Lodge had died and Borah had taken over the chairmanship of the Foreign Relations Committee. Borah, still strongly antagonistic toward the Court, used the period of Senate

\footnote{13}{Hudson, \textit{The P.C.I.J. -- Treatise}, p. 458.}

\footnote{14}{Fleming, D.F., \textit{The United States and World Organization}, 1920-1923, p. 245.}
inaction to campaign throughout the country against the
Court, branding it as a "League Court". His campaign met
with little success, however, for with few exceptions, the
great national organizations, both lay and religious, were
in favor of the Court. Numbered among these organizations
were the American Bar Association, the American Federation
of Labor, the Federal Council of Churches of Christ in
America, and the National League of Women Voters.15

It was the House of Representatives and not the
Senate which took the first real action. On March 3, 1925,
it passed by a vote of 303-28 a resolution recording its
desire to have the United States adhere to the Court. The
resolution was divided into two parts, the first of which
recommended early adherence in accordance with the reser-
vations proposed by Secretary Hughes and approved by
Presidents Harding and Coolidge. The second section con-
tained a statement of its willingness, following the
approval of the Senate, to participate in the enactment of
such legislation as would necessarily follow such approval.
"Such legislation" referred to a bill appropriating the
funds necessary to enable the United States to pay its
share of the expenses of the Court.16

15 Ibid., p. 246.

Even after the gesture of approval of the House, the Senate still did not make any move to consider the question for nine months. Then on December 17, 1925, Senator Swanson introduced the long-awaited fifth amendment to the Hughes Reservations, which it was hoped would solve the problem of the advisory opinion jurisdiction of the Court. His reservation stated that:

1. The United States should in no way be bound by an advisory opinion of the Court which was not given pursuant to a request in which the United States had had a part.

2. The signature of the United States should not be affixed to the Protocol of the Statute until the states signatory to the Protocol had indicated through an exchange of notes their acceptance of the five reservations as the basis of the adherence of the United States.

The reservation drawn up by the court proponents led by Senators Swanson, Lenroot and Robinson, was considered worthless by their opponents. The opponents were led by Senators, Borah, Reed, Johnson, Shepard and LaFollette. The reservation was not rigid enough because there was in it no provision which would create any opposition to adherence either in the United States or in Europe among the members of the Court. Therefore, their

17 Ibid., p.974.

18 It may be noted here that with the exception of Senator Shipstead, the same Senators, Borah, La Follette, Johnson and Reed opposed the United States' entry into the League of Nations.
immediate plan of action became that of making the conditions of adherence so stiff that the signatory powers would be very unlikely to be in a position to accept them.

While Borah and other opponents of the Court thundered on in the Senate about the Court's connection with the League and the resulting peril to the Monroe Doctrine, Senator Pepper drew up a new reservation. In it he demanded first, that all the members of the Court pledge themselves to make forever binding the principle laid down in the Eastern Carelia Case, to the effect that no advisory opinion be given when one of the parties did not accept the jurisdiction of the Court, and secondly that no advisory opinion be given on any matter affecting the United States unless the Court was given the consent of the United States to do so.

The anti-Court men believed that those demands accomplished the desired end, namely the proclaiming abroad that the members of the League and Court were not to be trusted, and were likely at any time to take back their word. These demands also had the effect in the Senate of making it appear that the proponents of the Court were really seeking to put the United States at the mercy of a bunch of cut-throats in the persons of the League Council and Assembly.19

In order to make their strategy secure, the anti-Leagueers procured the assistance of the American judge, John Basset Moore, who had served on the Court since 1922. Judge Moore had never been friendly toward the League, for he had not approved at the very beginning of the giving of advisory opinions to the Council or to the Assembly of the League. He had later supported the establishment of the same full and open procedure for the consideration of advisory opinions as for the consideration of cases in which a judgment was to be given. In 1923, he had ably and effectively opposed a proposal for a secret procedure in the giving of advisory opinions.  

With such an attitude toward the League Judge Moore was just the man to assist in the remaking the fifth reservation. Therefore, with his assistance Senator Swanson's reservation was expanded and reintroduced into the Senate on January 23, 1926. It contained the following provisions:

1. The Court was not to render any advisory opinion until due notice had been given publicly to all states adhering to the Court and to all states interested in the question, and until public hearing or an opportunity for a public hearing had been given.

2. The Court was not to entertain a request for an advisory opinion touching any dispute or

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20 Ibid., pp. 247-251.
21 Congressional Record, 69th Cong., 1st Sess., p. 2657.
question in which the United States had or claimed an interest.

3. The signature of the United States was not to be affixed until the powers signatory to the Protocol had indicated, through an exchange of notes, their acceptance of the foregoing conditions and reservations as the only conditions under which the United States would consider adherence to the Court.

4. Recourse to the Court for the purpose of settling disputes between the United States and any other state was to be had only by agreement through general or special treaties concluded with the parties.

5. Adherence to the Court was not to require the United States to abandon its traditional policy of not intruding upon, interfering with or entangling itself in the political questions of policy or the internal administration of any foreign state.

The resolution as amended by Judge Moore was passed by the Senate on January 27, 1926, by a vote of 76-17, with the same anti-Leaguers Borah, Johnson, La Follette and Shipstead holding out against it, and with Senators Pepper, Lenroot, Robinson, Swanson and Pittman as the influential proponents voting in favor. 22 Such a vote would seem to indicate two things. In the first place, it showed that the opposition to the Court in the Senate was slowly dwindling. Secondly, it indicated, I believe, that the opponents were not sincere in their creation of the resolution and had to vote against it because they realized that they were going to be forced to take a definite stand

22 Ibid., p. 2825.
against the Court in the final vote. This second conclusion which I have drawn seems to me the only possible answer to the question as to why the opposition should have voted against a resolution of their own creation.

With the passage of the reservations by the Senate, Secretary of State Kellogg proceeded according to the instructions in the fifth reservation, to communicate the proposal to the signatory powers and to the Secretary-General of the League of Nations. The Secretary-General in turn sent copies of Secretary Kellogg’s letter to the members of the League and after the meeting of the states, wrote back to, and informed Secretary Kellogg of the decision of the League to hold a meeting on September 1, 1926, to which the United States was invited to send a delegate to meet with the signatory powers. The meeting was to be held for the purpose of discussing the problem of adherence of the United States and for the purpose of framing any new agreement which might be necessary in order to put into effect the special conditions drawn up by the United States as the basis of its adherence.  

In response to the letter and invitation of the Secretary-General, Secretary Kellogg sent a rather brusque letter stating that he could see no useful purpose could

23 Hudson, The World Court, 1921-1934, pp. 228-229.
be served by designating a delegate from the United States government to attend the conference. The United States, he said, had given its consent to adherence to the Statute of the Permanent Court of International Justice with certain specific conditions and reservations set forth in the resolution. These conditions he believed to be clear and concise and declared that they had to be accepted by exchange of notes between the United States and each of the forty-eight signatory states before the United States could become a party to and sign the Protocol. As the Secretary of State, he informed him that he had no authority to modify any of the conditions or reservations as stated in the resolution.  

In spite of the seeming lack of cooperation on the part of the United States in assisting in making some agreement possible between the United States and the signatory powers, the conference was held as planned. At the meeting the signatories accepted the first four reservations completely, but the fifth they accepted in part only. According to the directions included in the resolution passed by the Senate, they were to communicate individually their acceptance or rejection of the terms.

24 Ibid., pp. 231-232.
It was, however, as a group that they drew up the answer. 25

The answer of the signatories, therefore, was concerned mainly with a discussion of the fifth amendment since the first four were acceptable as they stood. Concerning the first part of that amendment they pointed out in the articles 73 and 74 as revised, there was definite provision for a public hearing before the delivery of an advisory opinion. 26 As to the second part which dealt with the question of the giving of an advisory opinion in cases in which the United States was not a party, but in which it had or claimed an interest, the signatories agreed that the United States should possess the same right to prevent the adoption of a proposal for such an advisory opinion as any other state which was represented either in the Council or the Assembly of the League. Since, however, a unanimous vote was not necessary for the adoption of a request, the United States could not have the deciding vote. 27

Upon receiving the reports of the decision of the signatories which were sent in accordance with the specifications laid down in the resolution of the United States Senate, Secretary of State Kellogg passed the report on to the Secretary General of the League of Nations on February

26 Idem.
19, 1929. With the report he enclosed a message of his own in which he stated that the United States would have liked to avoid any proposal which might interfere with the work of the League of Nations. He said there was no choice in this case, because the security of the United States was still uncertain under the arrangement presented by the signatories. The one and only answer that he could give, since the fifth amendment of the signatories was not acceptable to the United States, was that the United States could not consider adherence under the aforementioned conditions.28

In spite of the failure of the United States to accept the decision of the signatories, the Council of the League was still determined to find a solution which might prove favorable to the United States. Therefore, on March 9, 1929, it held a meeting to work out such a plan. As a result of that meeting, a resolution was passed in which the Committee of Jurists, appointed by the Council in December, 1929, was requested to consider a revision of the Statute of the Permanent Court of International Justice. That committee was instructed to "make any suggestions which it felt able to offer with a view to facilitating the adherence of the United States on

28 Ibid., pp. 240-241.
conditions satisfactory to all concerned."  

In order to further persuade the United States that it was desirous of formulating a plan in which the interests of the United States would be fully protected, the Council invited Elihu Root from the United States to serve on this second Committee of Jurists. It may be recalled that it was Mr. Root who was chiefly responsible for the success of that first committee which framed the original draft of the Statute of the Court.

The invitation extended by the Council was graciously accepted by Mr. Root, who immediately consulted with Secretary of State Kellogg and members of the Senate in order to draw a general plan which he might present to the jurists at their meeting. Although his plan was not in written form before he left the United States, by the time of the meeting on March 11, 1929, Mr. Root had it in final form and ready for presentation.

It was Mr. Root's plan which became the basis of the discussion of the committee, and also the basis of the revised protocol drawn up by it.  

In its revised form


30 World Peace Foundation Pamphlets, Jessup, P.C., The "United States and the World Court", pp. 646-647.
the protocol contained the following provisions:\textsuperscript{31}

1. The United States was to be permitted to participate, through representatives designed for the purpose, upon a basis of complete equality with the signatory members of the League in any and all proceedings of either the Council or the Assembly in the election of judges. The vote of the United States was to be counted in determining the absolute majority of the vote required by the Statute.

2. The Statute was not to be amended without the consent of all of the contracting states.

3. The Court was to render advisory opinions in public session after notice and opportunity for hearings had been given, as provided in the revised Rules of Court.

4. The Court was not to entertain without the consent of the United States any request for an advisory opinion which concerned any dispute in which the United States had or claimed an interest.\textsuperscript{32}

The above provisions were unanimously adopted by the signatories at their conference on September 14, 1929. Following the adoption, the Secretary-General sent a formal communication to Secretary of State Stimson enclosing the texts of the meeting of the Committee of Jurists and the adopted protocol.

In answer to the communication of the Secretary-General, the official confirmation of the Department of State was given by Hugh R. Wilson, American Minister to

\textsuperscript{31} League of Nations Pamphlets V Legal, 1929, v. 5. pp. 132-133.

\textsuperscript{32} For complete details of the Protocol see Appendix pp. 1-3.
Switzerland. He, according to instructions from Washington, delivered an aide-memoire acknowledging the receipt of the documents and containing a personal message from Secretary Stimson. In his message Secretary Stimson said that after a careful examination of the draft protocol, he considered it an effective medium for meeting the objections of the United States and would constitute a satisfactory basis for the adherence of the United States to the Protocol and Statute of the Court. He further promised that he would ask the President for the necessary authority to sign the protocol and recommend that it be submitted to the Senate for its consent and ratification.\(^33\)

Accordingly Secretary Stimson sent to the President, on November 16, 1929, the report of the work of the committee of Jurists and the report of the adoption of the protocol by the signatory states and asked him to authorize the American Minister in Bern, Switzerland to attach the signature of the United States to the three protocols.\(^34\)

The willingness of President Hoover to further the cause of adherence was shown when he allowed only a little over a week's time to elapse before he authorized Secretary


Stimson to make the necessary arrangements for the signing, on the behalf of the United States, of the Protocol of the Statute of the Permanent Court of International Justice, the Protocol of Accession of the United States, and the Protocol of Revision of the Statute of the Permanent Court of International Justice.\textsuperscript{35}

\textsuperscript{35} Ibid., p. 259.
CHAPTER V

THE UNITED STATES AND THE COURT 1930-1935

The real proof of President Hoover's interest in the campaign for the adherence of the United States to the World Court came on December 10, 1930, when he formally presented the three aforementioned protocols to the Senate and asked for immediate action on them. In his message, he informed the Senate that the protocols not only freed the United States from any entanglement in the diplomacy of other nations, but also made it impossible for the United States to be summoned before the Court without its own consent. On the other hand, they permitted the United States, with the agreement of the other member nations, to seek the services of the Court at any time. He also pointed out that the protocols permitted the withdrawal of the United States whenever it so desired. Such withdrawal was not to reflect any ill will or reproach. He concluded his remarks by saying: "Our great nation, so devoted to peace and justice, should lend its co-operation in this effort of nations to establish a great agency for such pacific settlements." ¹

¹ Congressional Record, 71st Congress, 3rd Session, p. 504
On January 21, 1931, the Senate took the first real steps in the consideration of the revised protocol as presented by President Hoover. On that day, it requested Mr. Root to appear before the Senate Committee on Foreign Relations to explain in detail the protocol as revised by him and the Committee of Jurists. At that meeting, Mr. Root emphasized, as the essential step in preparing for adherence, the thorough study of the five reservations which constituted the backbone of the draft.

The discussion of Mr. Root was confined to the controversial fifth amendment, since the first four had already been accepted by the signatories. According to him, that reservation, as embodied in the draft protocol of 1929, provided ample protection for the United States against the action of the Council. Under the fifth reservation, the Council would still have the legal right to request an opinion and the United States would still have the legal right to interpose before the Court an objection based on the claim of interest and refusal to consent. But in an agreement terminable at will, the exercise of these powers, he said, had to be free from subterfuge and concealment of motives or the agreement would surely come to a speedy end.

The procedural provisions which followed the statement that the Court would not, without the consent of the United States, entertain any request for an advisory opinion
concerning a question in which the United States had or claimed an interest, did not in the slightest modify the provisions of the reservation. On the otherhand, they merely provided a means of protection for the signatory powers against the misuse of the reservation by the United States. He believed that it was only fair that they be afforded the same protection as the United States.

Under such circumstances, Mr. Root said that he was sure that the United States would want to come to an early agreement because, although the signatory powers were very desirous that the United States adhere to the Court, the United States itself had much to gain from the successful working of the Court. The Court, if backed by all of the powerful nations, especially the United States, could help to preserve peace in Europe, peace which was so necessary to the material interests of the United States.²

From the time that Mr. Root appeared before the Committee on Foreign Relations to discuss the protocol, until late in March of 1932, efforts on the part of the proponents of the Court were sporadic. This was probably due to the fact that the peace organizations had begun to devote themselves with great fervor to the support of the disarmament

² Hudson, op. cit., pp. 266-270.
program. It might also have been due to the fact that the leaders in the Foreign Relations Committee were the anti-Court Senators, Borah, Johnson, and Reed. Their presence would indicate that the committee was hostile as before to any more in favor of adherence.

On March 22, 1932, however, Secretary of State Stimson, at the request of the Foreign Relations Committee, sent a message setting forth his views concerning the revised or Root protocol. The following is an excerpt from his message:

"The protection which is given us by this Protocol as to advisory opinions is a special protection given upon our request and given to no other nation. The fifty odd other nations who are members of the World Court have joined that institution without requesting or apparently feeling the need of such a precaution, although nearly all of them are weaker and smaller than we and thus presumptively are more in need of such protection against being overreached by their members. It is a protection which goes to the very jurisdiction of the Court, and if we join, cannot be annulled or amended without our consent; ... by joining we incur absolutely no liabilities (except the insignificant liability to pay our share of the Court's expenses) while on the contrary we gain a power to exercise our

5 The committee was made of largely the same men as in 1926 with the exception of Senators Lenroot and Pepper and a few new men who were not particularly important.
influence not only in the choice of the judges of the Court but in its methods of procedure as well, which we do not now have. Never before was the world in greater need of orderly development of international rules of conduct by the wise method of judicial decision, which we Americans are so well acquainted with in the development of common law in this country. We have delayed long in availing ourselves of that opportunity. I sincerely hope that we will now assume the privileges and the responsibilities of taking part in that growth in the future." 6

The Foreign Relations Committee made a report to the Senate on June 1, 1932.7 It recommended adherence with reservations which were substantially the same as those already approved by the League, and so contributed little to the progress of adherence. The reservations provided that:

1. The United States advise and consent to the adherence to the three protocols (not including the optional clause for arbitrary jurisdiction) with the understanding that the Court would not entertain any request for an advisory opinion concerning any dispute in which the United States had or claimed an interest.

2. The signatory powers indicate their acceptance of the reservations as the condition of the adherence of the United States before the signature of the United States be affixed.

3. The United States approve the Protocol and Statute with the understanding that cases might be brought before the Court through general or special treaties concluded between the parties to the dispute.

7 Ibid., pp. 277-289.
4. The adherence of the United States was not to be taken to require the United States to depart from its traditional policy of not interfering with or intruding upon the political questions of any foreign nation, or imply the giving up of its traditional attitude toward purely American questions.

After presenting the reservations, the committee gave a history of the campaign for adherence from the time of President Harding to that date. It concluded its report with the following statement:

"Whether the question be viewed selfishly or altruistically, our government ought to give the Court the moral support that would follow from association in maintaining it."

The passage of the Foreign Relations Committee report seems to me to be in complete discord with the spirit of the reservations preceding it. The reservations seemed to have as their purpose the obstruction of any move which might be made to facilitate the plans for adherence of the United States to the Court. The final statement on the other hand seemed to convey the idea that the committee was ready to recommend adherence.

The work of the Foreign Relations Committee was therefore, very confusing. To the casual observer it would seem as though the committee had been trying by means of its various resolutions and reservations to facilitate adherence, whereas in reality their plans were

\[\text{Idem}\]
only a means of blocking or delaying any attempts on the part of the proponents to secure adherence. A further delay was caused by the closing of the Seventy-Second Congress before any action had been taken by the full session of the Senate. Because of that the protocols had to be referred back to the Committee on Foreign Relations until the next session of Congress convened.9

Late in 1932, after the matter had been dropped temporarily by the Senate, the House of Representatives took the question. At that time it voted to appropriate the money necessary to pay the share of the United States in the expenses of the Court. By voting such an appropriation, it is my belief that the House hoped to convey to the Senate the fact that it was in favor of adherence and thereby perhaps to stimulate it to real action on the question. If that were its purpose, it failed because there is no record of the action in the record of the Senate meetings.

At the time of the appropriation voted by the House, hearings were held for the purpose of securing public opinion concerning it. At these hearings were many men prominent in the field of law. To mention only a few, they were Dr. Manley O. Hudson of the Harvard Law School,

9 Hudson, op. cit., p. 289.
Charles H. Strong, secretary of the Bar Association of New York City, Professor Edwin Dickinson, professor of law at the University of Michigan, and the Hon. Irving Lehman of the Court of Appeals of New York City.

All present at the hearings seemed to be in accord in approving of the appropriation as a way to make easier the entrance of the United States into the Court. Both Mr. Hudson and Mr. Dickinson believed that the money should be available since the United States was free to use the Court whether or not it adhered to its Statute or Protocols, and since the United States could not feel free to use the Court unless it paid its share of the expenses. Mr. Strong said that his association urged strongly the adherence of the United States to the Court and so would endorse the appropriation. Mr. Lehman said that the appropriation could lead the United States into no harm and might help to show that the United States was really interested in establishing a means for preserving peace among the nations of the world.

Again, however, the proponents of the Court met with defeat, and no action was taken because agreement could not be reached as to the wisdom of such a move in

10 Hearings before the committee of Foreign Affairs--House of Representatives, 72nd Cong. 1st Sess. on H.J.Res. 378 on the P.C.I.J. pp. 2-12; 26-29.
the face of such strong opposition in the Senate.\textsuperscript{11}

It would seem as though the House had gone to a great deal of work knowing that the opposition was still strong in the Senate. It was, I believe, an example of an attempt on the part of the House to do something worthwhile, even though the odds were against them, with the hope that it might again help to break down the opposition in the Senate.

After the failure of the House resolution to appropriate a sum equal to the share of the United States in the expenses of the Court, action on the question the World Court was dropped until the Spring of 1934. At that time hearings were again held before the Foreign Relations Committee. Separate hearings were granted to the proponents and the opponents. On March 23 the proponents were heard and on May 16 the opponents were heard.

Present on March 23 at the hearing were over forty speakers representing the Republican and Democratic parties, the various bar associations, state legislatures, chambers of commerce, and committees on international peace which were in favor of adherence. A review of the representative speeches of the more important organizations will give a clear indication of what part of the American public favored adherence.

\textsuperscript{11} Jessup, \textit{op. cit.}, pp. 28-29.
The position of the American Bar Association was presented by Clarence E. Martin, Past President. He stated that the association with its 30,000 members had repeatedly endorsed adherence as a necessity for national honor and welfare. He added the hope and recommendation that the Senate would consent to the ratification of the three protocols.

The endorsement of the Republican party was presented by Miss Margaret Buttenheim, who represented the National Committee of Republican Women for the World Court and the Women's National Republican Club. She presented the World Court plank adopted by the Republican party in June 1932, in which it had advocated membership in the World Court in order that it might offer to the United States a "safer, more judicial and expeditious instrument for the constantly recurring questions between us and other nations..." She added that the Republican party still advocated adherence according to the plank of 1932.

The stand of the Democratic party concerning adherence was presented by Mrs. Carroll Miller, National Democratic Committeeewoman for Pennsylvania. The 1932 plank of her party advocated adherence as had that of the

12 Hearings before the Committee of Foreign Relations of the United States Senate, 73 Congress, 2nd. Session relative to the Protocols concerning the adherence of the United States to the P.C.I.J. Friday, March 23, 1934. pp. 17-19.
13 Ibid., pp. 37-38.
Republican party and like the Republican party was still in favor of adherence.  

Mr. Forrest C. Donnell, Chairman of the St. Louis World Court Committee and a member of the Missouri Bar Association, presented at the hearing the report of the action of 65 state and local bar associations. He revealed that the 25 state associations and the 40 local associations had given the question serious consideration through debates and special committee investigations and as a result of those debates and investigations had passed resolutions favoring adherence. The virtual absence of any expression of opposition by any state or local organization was, he said, a significant indication of the bar.

President Henry I. Harriman of the Chamber of Commerce of the United States appeared in behalf of the approximate one million businessmen in the United States with the message that the Chamber of Commerce since its organization had urged the participation of the United States in the World Court along beside the other nations. He said he believed that the Court provided a mechanism for settling many international disputes, some of which might otherwise end up in war. The interest of the

14 Ibid., pp. 39-40.
15 Ibid., pp. 21-23.
businessman was, he stated, in the orderly conduct of international affairs. Membership on the part of the United States would not only help to stabilize and increase commerce, but would also help to establish good international relations, he said. 16

Theodore F. Greene, Governor of Rhode Island, presented resolutions passed in 1933 and 1934 by sixteen state legislatures all urging the Senate to consent to and ratify the three pending protocols. 17 The resolutions of those states represented some of the industrial and agricultural interests of the country. The resolution of the Rhode Island legislature is typical of all the rest and so will serve as a good example. It read as follows: 18

"Prompt ratification - the reaffirmation of our faith in the judicial process as the primary substitute for war - would be of instant and immeasurable encouragement to a world striving, in the face of threats of wars which would ruin it, to emerge from the worst depression in history."

The eleven women's national organizations in the National Conference on the Cause and Cure of War were

16 Ibid., pp. 24-26.

17 Resolutions in Rhode Island, N. J., Ark., Del., Iowa, Tenn., Oregon, Vt., Md., Ohio, were passed by both houses, while those in Conn., Fla., Nev., and Miss. were passed by the Senate only and those in No. Carolina, and So. Carolina were passed by the House only.

represented by Mrs. Carrie Chapman Catt, Honorary Chairman of the conference. At the meetings of the conference were from 10,000 to 12,000 women. The organizations which she represented included the American Association of University Women, The Council of Women for Home Missions, The Federation of Women's Boards of Foreign Missions of North America, The General Federation of Women's Clubs, The National Women's Christian Temperance Union, and The National Women's Trade Union League. Mrs. Catt said that according to polls recently taken, it was shown that the number of senators approving of adherence had increased to the necessary two-thirds, that the two political parties had endorsed adherence and finally that President Roosevelt had given the plan his approval.

With such an almost ideal situation she said that she could not see why the Senate had delayed so long.

Quoting from her speech, she said:

"There is nothing more sickening, discouraging, and disheartening than the hopeless, helpless drifting of the world at this moment towards war. The world needs now a few gestures towards peace instead of so many in the direction of war."

She said that the Court might not prevent war, but that it was still the necessary part of the machinery of peace. She believed that unless the United States became a part of the Court, it would not work perfectly. Therefore, she and the organizations which she represented begged the
Senate to take such action upon the World Court as would make the entrance of the United States as easy and quick as possible.\textsuperscript{19}

The stand of the daily newspapers concerning adherence was presented by Mr. W. W. Waymack, associate editor of the Des Moines Register, Des Moines, Iowa. He reported that in response to a poll taken of 2,306 papers concerning ratification by the United States of the three protocols, 1,357 or 67 per cent replied that they were in favor of ratification while 265 or 13 per cent replied that they were opposed to ratification. Fifty-eight of the papers took no stand at all, fourteen sent replies too ambiguous to make a fair classification possible, and 342 papers sent no answers at all.

A further analysis of the newspaper poll showed the following statements to be true. The 342 papers which sent no replies represented, so far as their combined circulation was concerned, only 6 per cent of the combined circulation of all of the daily papers in the country. The 1,357 daily papers that favored ratification included most of the leading papers of the country, from the New York Times and Herald Tribune in the East, to the San Francisco Chronicle, The Seattle Star, the Los Angeles Time, the

\textsuperscript{19} Ibid., pp. 31-34.
Portland Oregonian in the West.

In New England, the papers advocating adherence in their editorials included the Boston Transcript, the Boston Herald, the Boston Post, the Christian Science Monitor, the Springfield Republican, and the Hartford Courant.

In the South the papers favoring adherence were the Atlanta Constitution, the Birmingham Age Herald, the New Orleans Times-Picayune, the Chattanooga News, the Memphis Commercial Appeal and the Richmond Times.

The Mid-West papers advocating adherence were the Des Moines Register, the Cleveland Plain Dealer, the Indianapolis Star, the St. Paul Pioneer Express, the Omaha World Herald and the St. Louis Post-Dispatch, Times-Star, and Globe-Democrat. 20

As a result of the poll Mr. Waymack said that there could be found no grounds for the contention that the newspaper support of the Court was sectional. The most clearly affirmative states represented all sections of the country. Connecticut, with 32 papers, registered 25 favorable, none opposed, and 7 which did not reply. In the case of Pennsylvania, out of 158 daily papers, 106 registered favorable and only 24 were opposed. Twenty-four of

20 Ibid., pp. 34-36.
the 29 Kentucky papers replied as favorable. In the state of Iowa, 34 of the 45 papers were favorable. In Colorado twenty-two of its twenty-nine were favorable, as were the nineteen of the twenty-five in Oregon.

The opposition, Mr. Waymack said was concentrated in the papers owned by Hearst. Thirty-two of the 265 papers opposed to the Court made up three fourths of the total circulation of the opposition. Of the thirty-two papers, twenty-four of them belonged to the Hearst chain. Mr. Waymack concluded his report by saying that when two thirds of the American press favored adherence it was safe to say that it was also the voice of a majority of the American people.20

The National Grange was also represented at the hearing. Its position concerning adherence was presented by Frederick Brenckham, Washington representative of the National Grange. Mr. Brenckham said that since 1924, at each annual convention the Grange had unanimously recorded its conviction that the United States should adhere to the Court. The plea of the Grange was, he said, based on the conviction that only in an international order, depending upon the application of the principles of law for the settlement of disputes, could there be security of life or

20 Idem.
livelihood for any of its citizens.\textsuperscript{21}

The recommendations of the 108 World Court committees throughout the United States was presented by Tom Wallace, editor of the Louisville Times and member of the Louisville World Court committee. He reported the committee, which he represented, had waited patiently since 1925 for the United States to do its part in maintaining the World Court. The only explanation which it could find was "delay". In explaining why his and other committees believed that delay was the cause of the failure of the plan for adherence, he made the surprising statement that opponents of adherence claimed to have within their ranks officers of the army, navy, and American Legion, distinguished lawyers in both the Republican and Democratic parties, all members of World Court committees and some of them even chairmen of their respective committees! In spite of the possibility of such a situation he asked that the protocols be reported quickly so that the Senate could take immediate action on them.\textsuperscript{22}

The last organization to be heard by the Foreign Relations Committee of the Senate was the Federal Council of Churches of Christ in America. Its representative was

\textsuperscript{21} Ibid., pp. 36-39.
\textsuperscript{22} Ibid., pp. 42-44.
Dr. S. Parkes Cadman, former president of the Council. He said he believed that the World Court could prove a source of social and political cohesion as well as judicial among the nations of the world as had the Supreme Court of the United States among the forty-eight states of the Union. He went on to say that the Senate was not to be criticized for its delay in ratifying the protocols, for he believed that it was much better "to make haste slowly in controverted issues" in order that the public might be completely educated concerning the question. He did consider, however, that the moment had come, when affairs in both the United States and abroad were so confused, for the United States to ratify the protocols and so bring to a successful completion its active service in the World Court.  

In addition to the individuals who spoke in behalf of their respective organizations were two men prominent in public affairs, Alfred E. Smith and Admiral William S. Sims. Mr. Smith favored very strongly the adherence of the United States to the World Court. He said that in times when the peace of the world was threatened by war, the United States should certainly do its part to persuade the nations of the world to settle their differences by

\[23 \text{ Ibid., pp. 46-47.}\]
reason and law rather than by force.\textsuperscript{24}

Admiral Sims spoke very briefly, but said that the
rights of the United States were amply protected by the
protocols already signed and that the Court would be of
great influence in promoting confidence in the relations
among the countries of the world.\textsuperscript{25}

On May 16, of the same year a similar hearing was
held for the opponents of the Court. As at the other
hearing, there were present prominent citizens and repre-
sentatives of numerous interested organizations. Among
the individuals who spoke were former Senators Reed of
Missouri, and Pepper of Pennsylvania, Judge Daniel F.
Cohalan, former Justice of the Supreme Court of the state
of New York, and Edward A. Hayes, National Commander of
the American Legion.

Former Senator James A. Reed of Missouri began by
saying that the controversy over adherence to the Court
was the most important question before the Congress, was
in fact so important that if a mistake was made there
would be no mind capable of prophesying the results of
the mistake. He said that the proponents of the Court
were proponents of the League of Nations and were seek-
ing by means of the Court to gain a back door entry into

\textsuperscript{24} \textit{Ibid.}, p. 24.

\textsuperscript{25} \textit{Idem.}
the League. Their propaganda, he said, was financed entirely by large contributions from the Carnegie Foundation and Mr. Curtis Bok of Philadelphia and carried on through the efforts of agents hired for that purpose. With such funds at their disposal it was no wonder to him that such a system of propaganda was possible. He brought in, in connection with the financing of proponent propaganda, the fact, perhaps unknown to the general public at the time, that the officers of the Carnegie Foundation were none other than Elihu Root, James Brown Scott, Joseph H. Choate, the foremost advocates of adherence.

Leaving the matter of proponent propaganda, Senator Reed proceeded to a discussion of the Court and the proposed protocols. In answer to the statement made by Admiral Sims to the effect that the rights of the United States were amply protected by the protocols, he asked why, if the five amended reservations had the same protective power as the original five, the amended reservations were any more acceptable to the signatory powers than the original ones. His answer to the question was that the five amended reservations did not guarantee sufficient protection for the citizens of the United States.

26 Ibid., pp. 105-107.
Next Mr. Reed proceeded to take the Court apart and prove that it was not a court at all. In the first place, he said that the Court was made up of men, who even if they so desired, could not be impartial because love of country would, in any dispute, always come first in their actions. In the second place, he said the important essential of a court was that it should act under a code of laws drawn up by the people to be governed. Since the United States had had no part of the League of Nations it seemed to Mr. Reed very queer that it should want to be governed by a court created by the League. He not only though it queer but very dangerous for the United States to adhere to a court whose rules and regulations had been drawn up by foreign powers. Government by the governed, he said was the basis of liberty. In the third place, the Court lacked the power inherent in a true court, namely, the power to enforce its own decisions. The only way that the World Court could enforce its decisions was by combining by force all the nations possible against the offender. Lastly, Mr. Reed said that the World Court was not a true court because it had the power to give advisory opinions at the request of the League of Nations, and not necessarily at the request of the litigants. 27

He concluded his speech by asking the Committee on Foreign Relations why the United States should be swayed by paid propagandists when, by following the advice of such great statesmen as Washington and Lincoln, the United States had prospered without meddling in foreign affairs.²⁸

Former Senator George Pepper, of Pennsylvania, was the next to speak. Incidentally, he was the same Senator Pepper who supported the Court in 1926. He began by saying that the World Court was a tribunal with a dual character, one of a judicial character and the other of an advisory or non-judicial character. In its twelve years of functioning, the Court delivered twenty-two judicial decisions and twenty-five advisory opinions. He claimed that a judicial body which had spent more time and effort during the twelve years of its life in giving advice to a political body than it spent on cases submitted to it for judicial decision was not entitled to be regarded exclusively as a judicial body. Such a situation, he said, only helped to strengthen his argument that the Court was merely a tool of the League of Nations. As long as there was such a tie between the Court and the League, Senator Pepper said that the Court could never measure up to the

²⁸ Ibid., pp. 113-114.
American ideal, and was, therefore, worthy only of uncompromising opposition on the part of the citizens of the United States.  

With his analysis of the Court as judicial body, Senator Pepper continued the attack on the Court as a non-judicial body. In doing that, he tried to show that the Court had been greatly overrated as a factor in international life. He believed that the proposition of adherence had been seized upon by League propagandists merely because the Court was an organ of the League.  

In conclusion, he said that he believed that there had been a deliberate attempt on the part of advocates of adherence to force the hand of the Senate in compelling it to accept whatever a group of signatories might choose as a substitute for its better judgment. He again urged the Senators to realize the trust which they had in their hands and not to be stampeded by strong proponent propaganda.  

Judge Daniel Cohalan followed Senator Pepper in presenting his views on the subject of adherence. He

29 Ibid., pp. 115-116.
30 Ibid., p. 122.
31 Ibid., p. 124.
said that the arguments used by the proponents just preceding the Senate Resolution of January 27, 1926, had been destroyed by the action of the Court in the meantime. He cited as an example the statement made by the Court advocates to the effect that the Court was a body whose decisions were not affected by political trends or national bias.

It was in September 1931, that the action came which Mr. Cohalan presented as evidence that the statement of the proponents was false. At that time, a matter concerning the Austro-German Trade Union was submitted to the Court. According to the comment at the time, the case was decided entirely on political grounds by a vote of seven to eight against the validity of the Austro-German customs pact. That, in his estimation, was an example of the nature and character of that legal body which the United States was being asked to join. He said that under such conditions the United States was not going to submit its problems to the Court composed of foreign and biased judges. The United States, he said, had always had and would have enough internal problems of its own to keep its government busy. It would have no time to go abroad to try to settle disputes and incidentally take
the chance of involving itself in a European war.\footnote{Ibid., p. 198.}

Mr. Cohalan then rapped the proponents by saying that not one of them had given any sound reason why the United States should join the Court. Their arguments were just other examples of the passion of a small minority of the people of the United States trying to regulate the lives, habits and interests of the rest of the people. He concluded by saying that the only way to maintain peace and sanity among the peoples of the world was to mind our own business and to leave the Old World to do likewise.\footnote{Ibid., p. 199.}

Mr. Edward A. Hayes, National Commander of the American Legion, spoke in behalf of his fellow comrades all over the United States. He said that he realized that resolutions in great numbers could be passed with little or no actual consideration of the subject concerned. He came to impress upon the Senate the fact that the American Legion had considered the question for over two years before coming to their decision. When their decision was made, it was made by men and women who had already given their country a sample of their patriotism. Their final decision had been that America's interests
came first and that those interests could be best served by staying out of the Court. Their resolution, he said, was worded simply and clearly. It read as follows:

"Be it resolved by the American Legion, That It is opposed to the entry of the United States into the League of Nations or to the adherence to the World Court, either with or without reservation."

That resolution, according to Mr. Hayes, was the unanimous expression of 10,879 posts of the American Legion and nearly 8,000 units of the American Legion Auxiliary.\(^3^4\)

The International Seamen's Union of America was represented at the hearing by Mr. Andrew Furuseth, its president. He said that he came before the committee representing a class of people who were "utterly opposed to the United States entering the League of Nations either by the front door or indirectly through the World Court". They were opposed to it because it was destructive of the fundamental ideas and principles adopted by the colonists and won through the War of Independence. He explained the fundamental difference in sovereignty and freedom in America and Europe. In America, it was placed by the Declaration of Independence and the Constitution in the hands of the voter, whereas in Europe it was in the power of the King or those who exercised the kingly power. It

\(^3^4\) Ibid., pp. 203-204.
would be impossible, he said, to join in conferences, treaties or courts in which those fundamental questions might be at issue without jeopardizing the American way of life. 35

Mr. Charles Francis Adams, director of First National Stores, presented to the committee a statement of Governor Joseph B. Ely of Massachusetts and also his own opinion. The governor wanted to go on record as opposing the adherence to the Court on the basis that the United States had enough problems to solve at home without getting caught in the complicated disputes in Europe.

As for himself, Mr. Adams said that it was his belief that any participation, interference with, or even advice to nations in such a state of mind was bound to antagonize or displease either that or some other nation and might destroy what good will the United States had or any pleasant or profitable relationship which we might have in the future. He used as proof of his belief examples in the past where the United States loaned money to foreign friends and allies, and helped them to fight wars of their own making only to find as a result little else but death, debt, disappointment, strained relations and misunderstandings.

He concluded by reminding the committee of the opinion of time-honored Americans who warned their country to stay out of any foreign entanglements. If those warnings were not respected, he said the country could well fear for the future.36

No survey of public opinion directed against the adherence to the Court would be complete without some mention of the Hearst newspaper chain. Mr. E. D. Gobletz, editor of the New York American, and supervising editor of the Hearst newspapers, represented those newspapers and presented their petition protesting against adherence to or participation in the World Court. This petition was gathered under the auspices of that newspaper chain and represented a cross-section of the entire nation and was signed by 1,334,347 citizens. It read as follows:

"We protest against the United States participating in the League of Nations or in the World Court of the League of Nations, with or without 'reservations'.

We petition our Federal Government to keep our United States 'free from foreign entanglements' as the Father of our Country wisely enjoined.

We urge our Congress at Washington to keep our Government from meddling in foreign affairs, and to keep foreign nations from meddling in our American affairs."

36 Ibid., pp. 215-217.
"As loyal American citizens, we ask our loyal representatives to keep our country out of foreign conflicts and complications, and to keep foreign conflicts and complications out of our country."

The statistical report of this League of Nations protest included twenty-two Hearst papers from Los Angeles, California, to Boston, Massachusetts. 37

In studying the reports of the two hearings an interesting observation may be made. The largest number of the speakers in favor of adherence were representatives of some organization, whereas in the case of the opposition, the largest number of speakers were people, distinguished not because they held an office in some powerful organization, but because they had been prominent in national affairs.

In regard to the arguments presented at those hearings, I believe that the opponents presented the best arguments. Each speaker had a definite point against adherence, and presented it very forcefully and clearly. As for the proponents, very few convincing arguments were given. The importance of their hearing, therefore, lay not in the presentation of reasons for adherence, but rather in the indication of what groups were in favor of adherence. For that reason I consider that the opponents hearing contributed more to the debate on the question

37 Ibid., pp.205-207.
of adherence.

The impetus gained by these two hearings before the Foreign Relations Committee of the Senate in the spring of 1934 was not lost, because the Committee announced that the protocols would be brought up for consideration by the Senate early in the next session.

The new Congress met on January 3, 1935. At that time, Mr. Roosevelt, like every President since the World War, indicated that he approved of adherence. On January 5, he called a conference of the Senate leaders and representatives of the Department of State including Secretary of State Hull, Democratic leader Senator Robinson, Chairman of the Senate Foreign Relations Committee, Senator Pittman, and Assistant Secretary of State Francis B. Sayre. The purpose of the meeting was the consideration of immediate action on the protocols.

Four days later the Senate Foreign Relations Committee, by a vote of fourteen to seven, submitted a report recommending ratification. That committee, headed by Democratic Senator Pittman, was overwhelmingly Democratic. In fact only four of the nineteen members were Republicans. The opposition was held, as usual, by

Senators Borah, La Follette and Lewis. The recommendation, however, was accompanied by an "understanding". The conditions of the "understanding" were based on the promise "that the Permanent Court of International Justice shall not entertain, over an objection by the United States, any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

This reservation was really only a re-statement of the fifth reservation which the Senate had included in its consent to ratification in 1926. At that time, the members of the World Court had taken exception to it. Since that time, however, the Department of State had made inquiries which indicated that the leading members of the Court, in view of the provisions of the Root protocol, no longer objected to the provision. Also it was believed by friends of the Court that such an additional phrase would go far to cut down the opposition in the Senate.

Two days after the recommendation was presented, a correspondent of the New York Times reported that the opposition in the Senate had dwindled down to a

41 Shepardson and Scroggs, op. cit., pp. 222-223.
handful of "bitterenders", of which six were known to be, the Republican minority leaders Borah and Johnson, Senators Nye and Cutting, the Progressive Senator La Follette, and the Farmer-Laborite Senator Shipstead.\textsuperscript{42}

The resolution of adherence was debated intermittently from January 15, until January 29. President Roosevelt, contrary to his frequent custom, did not send his message to the Senate until it had considered the question. On January 16, after the opposition had begun to crystallize, he sent the following note:\textsuperscript{43}

"The movement to make international justice practicable and serviceable is not a subject to partisan considerations. For years Republican and Democratic administrations and platforms alike have advocated a court of justice to which nations might voluntarily bring their disputes for judicial decisions.

To give concrete realization to this obviously sound and thoroughly American policy, I hope that at an early date the Senate will advise and consent to the adherence by the United States to the Protocol of Signature of The Permanent Court of International Justice, dated December 16, 1920, the Protocol of Revision of the Statute of the Permanent Court of International Justice, dated September 14, 1929, all which were submitted to the Senate on December 10, 1930.

I urge that the Senate's consent be given in such form as not to defeat or delay the objective of adherence.

The sovereignty of the United States will be in no way diminished or jeopardized by such action. At this period in international relationships,

\textsuperscript{42} Ibid., p. 223.

\textsuperscript{43} Congressional Record, 74th Cong. 1st Sess., p. 468.
when every act is of moment to the future of world peace, the United States has an opportunity once more to throw its weight into the scale in favor of peace."

Debate in the Senate was opened on January 15, by Senator Robinson of Arkansas. He said he saw no basis for the fear that the entry of the United States into the Court would involve it in the League of Nations just because it had access to the Council and Assembly of the League and could not understand why the Senate had delayed so long. He argued, that since the kinds of cases which could be brought before the Court were limited to the four enumerated in the section on the jurisdiction of the Court, he could see no reason why the United States, in bringing cases before the Court, would in any way be compromising its sovereignty or sacrificing its independence. He pointed out that by reservations, the Court could not recognize any dispute in which the United States had or claimed an interest except as it had the consent of the United States. Senator Robinson concluded by saying that the right of the United States to bring disputes to the Court was made possible not by "natural right", but by the organized efforts of other nations. He said that if the United States would rather be a "sponger" than an equal participant in the backing of the great work of the Court, then the responsibility for the failure of the
other nations to take part would weigh on the shoulders of the United States. This responsibility he considered hardly worthy of a nation which had taken so much interest and had put so much effort into the creation of the Court.\footnote{Ibid., pp. 432-437.}

On the next day Senator Johnson of California continued the debate by presenting a defense of the Senate's delay in ratifying the protocols. As for the belief that the Senate was to blame for the delay, he said that it was not the fault of the Senate, but of the scheming European diplomats and conservative Americans. Those persons, he said, by means of their reservations, had reduced the protection of the United States to a point where adherence could not be safely attempted.

He next developed a series of arguments why the United States should not join the Court. He said that it was foolish to think that the United States could help to maintain peace in Europe by joining the Court. The fact that there were countries, Bolivia and Paraguay, which had been at war for years and which had made no effort to bring their dispute to the Court, proved that the Court was useless unless the nations would bring their disputes to it. If the European nations would not make use of the Court to solve their disputes, he could see no reason why the adherence
of the United States could possibly bring peace to Europe. It could only lead to the entry of the United States into quarrels and wars in which it would be expected to play the part of the savior.

His second argument was based on the fact that the United States had been able to maintain peace for over one hundred years by means of arbitral courts and arbitration treaties. To say, then, that adherence to the Court was the only way to maintain peace was, according to him, counting as nothing the great record of the United States government in its relations with the other countries of the world.

Another of Mr. Johnson's reasons for opposing adherence to the Court was based on the very sensible idea that charity began at home. Therefore, he believed that the United States government could well afford to deal with its own problems, such as unemployment, and let Europe take care of her own.

His concluding argument was based on the fact that the Court was an instrument of the League of Nations. He said that since the United States had chosen to stay out of the League, joining the Court would amount to a blundering into the very thing which it had chosen years earlier to avoid. He had opposed the Court in 1926. He summarized his whole speech by saying that there was enough in the United States to take the time and efforts of the government
and that therefore the people should be satisfied to remain just plain "Americans".

Senator Huey Long of Louisiana, also an opponent of the World Court, presented his opinion during the debate in the Senate. He said that the title of the campaign for the adherence of the United States should be "America for Sale", since, according to him, the adherence of the United States to the Court would mean the outright sale of this country to Europe.

Senator Long also based his arguments against the adherence of the United States to the Court on the fact that the United States had maintained peaceful relations with foreign countries for over one hundred years by means of an agent which was purely American. That agent was the Monroe Doctrine. In spite of such an unusual record the United States was ready, he said, to scrap that doctrine which had been used to keep Europe out of the Americas and to plunge itself right into the middle of European troubles and conflicts. This he said was a drastic and sudden change from the policy followed by the government, which not only kept the United States out of European affairs, but also kept Europe out of the affairs of the Americas.

\[44^1\text{Ibid.},\ pp.\ 479-490.\]
Concerning the argument that the United States could withdraw from the Court at any time after it had joined if it were dissatisfied with the running of it, Mr. Long said that it would be just as hard for the United States to do that as it was for the Southern States to secede in 1861, and even more disgraceful. The only way he could see for the United States to get out of the Court was by having an army big enough to stand up against the Court and all its members.

Senator Long concluded by saying that the United States might think that it was doing a good thing for all concerned by joining the Court, but it also thought the same thing back when it fought Europe's war in order to make the world safe for democracy, and came out of the war with the name "Uncle Shylock" and with almost all of its war loans repudiated. With such an experience any move to join the Court would not be only dangerous but foolish. 45

During the address of Senator Long, Senator Robinson interposed several opinions concerning adherence. He said that he could see no reason why a condition of war in Europe was any excuse for the United States to refrain from doing what it could reasonably do to encourage the peaceful disposition of those disputes. In answer to Senator Robinson's remark, Senator Long asked him what possible

chance there was for the United States to avoid war, if it joined the Court, which was composed almost entirely of representatives of nations which had defaulted in their debt obligations to the United States.

Senator Robinson answered the question of Senator Long by saying that the threat of possible conflict was no excuse why the United States should allow the destruction of millions of lives and billions of dollars worth of property. He pointed out that there were only two ways to settle disputes. One was by force and the other was by arbitration. He believed that it was both proper and right that the United States should contribute in every instance that it could, to the settlement of those disputes by peaceful means. 46

After the speeches in the Senate against the adherence of the United States, Senator Vandenberg came forward and presented to the Senate his amendment to the protocols of adherence which read as follows: 47

"Resolved further, That adherence to the said protocols and statute hereby approved shall not be 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 question of policy or internal administration of any foreign state; nor shall adherence to the said protocols and statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions."

Senator Vandenberg declared that he did not present the amendment with the idea of defeating the fundamental issue itself as had the opponents of adherence. On the contrary, he believed that the protocols without such an amendment were ample protection for the interests and territorial integrity of the United States. For the benefit, however, of those who did not share his opinion, he presented the amendment as a means to ensure what he believed was already provided for in the protocols.

He admitted that he did not want the United States to join the League of Nations, but still maintained that it was possible to create an effective discrimination and distinction between the League and the Court and that the protocols secured that distinction. 48

In the discussion which ensued during the period of Senator Vandenberg's speech, Senator Logan of Kentucky came forward to refute the statement of the opponents that the World Court was a League Court. He said that it would be just as sensible to say that the Constitution of the United States was a Magna Charta constitution as that the World Court is a League Court.

Senator Logan next considered the attitude of the United States in refusing to be bound by any rule of inter-

48 Ibid., p. 637-638.
national law. He said that there were only two alternatives, namely, complete co-operation with the other nations in the Court, or complete withdrawal and isolation from international affairs. If the United States accepted the second alternative, he said, it would be necessary for it to have the largest army and navy in order to defend itself from all others.

In answer to the arguments of Senator Johnson and Senator Long that the United States had maintained peace over a period of one hundred years by means of arbitration, he declared that adherence to the Court on the part of the United States would not prevent the use of the Court of Arbitration at the Hague. He also stated that the United States had made use of arbitration partly because there was no court that could be used.

Senator Logan further attacked the arguments of the opponents by trying to prove how foolish was their argument that the decisions of the Court would be rendered by foreign and biased judges. He declared that that very thing could be said about the courts all over the United States. Somebody, he said, is always saying that courts are not fair. He said that no American would ever attack the scruples of the American judges, Hughes, Kellogg, and Moore who had served on the World Court and that, therefore, what right had they to do that very thing to any judge just because
he was not from the United States. Courts, he said, might make mistakes, but they were almost always fair.

Senator Logan concluded by saying that peace among the members of the human race had been brought to its present state by the process of education and growth and through a better understanding of each other. To say that law could not be substituted for war, denied that society was capable of further progress and advance. He declared that it was up to the United States to show that international law could be substituted for war. Even though its entry into the court might not stop wars, Senator Logan insisted that it was at least a step in the right direction and a step which should be taken immediately. 49

On January 21, Senator Borah entered the debate on the proposed World Court protocols. He based all his opposition to the court on its power to give advisory opinions. If the power of the court to give advisory opinions had not been included in the protocol, he said that he would have had no objection to the Court at all. He went on to explain that the proposed Court was not a judicial body but an advisory tribunal and no matter how many reservations were added, it would always remain an advisory body.

He objected not only to the power of the court to

49 Ibid., pp. 641-648.
give advisory opinions but also to the method by which
those opinions could be secured, namely, the action of the
League of Nations. That jurisdiction, therefore, was not
in the Court itself but in the League. With that arrange-
ment Borah could see no way of preventing politics from
entering the opinions. To back up his argument he cited
the example of the Austro-German customs decision, which
case, he was certain, was decided on a purely political basis.

Senator Borah explained the attitude of the opponents
in connection with the argument that they were opposing a
movement which had been advocated in the United States for
years. He did that by saying that the United States had
always advocated judicial tribunals for the settlement of
international disputes, but that this court was not a
judicial one in the true and accepted sense of the word.
Furthermore, he said that no leading American, prior to
the time of the advisory jurisdiction, created in the
World Court, had ever advocated such a Court, or that any
advisory power be attached to it. The World Court was,
therefore, not an American product, and did not come as
the result of any American proposal.50

Senator Thomas of Utah followed Senator Borah in
an attempt to discredit the term "League Court" as applied

50 Ibid., pp. 695-702.
to the World Court. He said that the only connection that the League had with the Court was in Article 14 of the Covenant, which created the Court. There the relationship stopped. After the Court was established the power of Article 14 was spent. Furthermore, he said that the Court was created by a multi-lateral treaty drawn up by a conference of representatives of many states, in which members and non-members of the League took part.

As for the opposition to the Court because of its power to give advisory opinions, he declared that the United States would be safer as a member of the Court. It would be safer because as a member, the Court could not, over the objection of the United States render opinions touching any disputes in which the United States had an interest. He, therefore, believed that the United States was completely protected by the 1929 Protocol of Accession.51

Senator Reynolds of North Carolina recorded his opposition to adherence on January 24. He said that our ancestors left Europe and faced starvation and cold to come to America to realize freedom of government. Since their settlement, this country made the greatest progress of any nation of the world. That progress he said was due to the fact that the people minded their own business

51 Ibid., pp. 765-768.
and kept out of the affairs of other nations. He believed that just so long as the people continued to mind their own business would they remain great. He continued with the statement that the people did not want their country to enter the Court because doing so only meant an entry into the League of Nations. The experience of the World War and the resulting taxes, he said, had taught the people that another entry into foreign affairs would only result in added hardships and misery.

Continuing his speech, Senator Reynolds asked the question, "What had the United States to gain from adherence to the Court"? His answer was nothing. We had no boundary questions or international problems of immigration or tariff. He said that the people of the United States were busy enough minding their own business and taking care of themselves. Until some one could give him a sensible reason why they should join the Court, he was definitely of the opinion that they should stay out.52

On January 25, Senator Norris of Nebraska presented an amendment to be added to the end of the amendment presented earlier by Senator Vandenberg. It read as follows:

"Resolved further, that the adherence of the Government of the United States to said protocols

52 Ibid., pp. 836-838.
and statute is upon the express condition and understanding that no dispute or question in which the United States Government is a party shall be submitted to said Permanent Court of International Justice unless such submission has been approved by the United States Senate by a two-thirds vote." 53

According to his amendment, Senator Norris provided that any dispute or controversy in which the United States was a party, had to have a two-thirds vote of approval by the Senate before it could be brought before the Court for a decision. He demanded the two-thirds vote because such action was in the nature of a treaty. He said that he had always been opposed to the League and would oppose adherence to the Court without some reservation amounting in substance to the one he proposed. He insisted upon that because he realized that, if the United States did join the Court, someday an important question would come up which demanded the uttermost precaution. He said he did not want his country to become involved in European questions, not because he did not trust the Europeans, but because he did not want his country to enter a court made up of judges whose environments and ways of living were so different from those of his own country. He admitted that they would probably act very conscientiously and still be biased toward the European type of civilization and so do great harm to the United States. Therefore, he

53 Congressional Record, 74th Congress, 1st Sess., p. 964.
was not willing that the United States submit any dispute to the Court unless the matter had the same consideration by the Senate as a treaty would have. He looked ahead to the possibility of the rejection of adherence because of his amendment by the members of the Court. That very rejection, he said, would be the very best reason why the United States should stay out of the Court.  

While debates on the resolution were being held in the Senate, public opinion was voiced. On January 13, the National World Court Committee sent a message to the Senate commending the action of the Foreign Relations Committee taken on January 10, when it reported the three protocols favorably to the Senate. The message also contained a plea that the Senate delay no longer but take the immediate action which was so important to the foreign relations of the United States. That plea was signed by such prominent members as Newton D. Baker, former Secretary of State, Professor Felix Frankfurter of Harvard University, Professor Manley O. Hudson also of Harvard University, Mr. Scott M. Loftin, President of the American Bar Association, and Professor Phillip C. Jessup of Columbia University.

On the same day that the World Court Committee message was sent to the Senate, the ministers of 150

54 Ibid., pp. 964-966.
Brooklyn protestant churches urged their congregations to send telegrams to their congressmen urging them to vote in favor of adherence.

Taking the side of the opponents in an article appearing in the January 13 issue of the *New York Times*, Senator Johnson assailed the so-called "World Court Plan". He said that adherence under the three protocols would mean the abrogation of the policy of the United States of non-interference in the political questions of foreign countries. He saw no reason why the Court would afford the United States any greater avenue to judicial settlement, but could see clearly how it could be a certain way into a European war. The article ended with the statement that the Court could not settle any difficulties for the United States because the United States had none which it would want to have settled by a group of foreigners.¹

The propaganda of the opposition was reinforced on January 20 by Father Charles E. Coughlin, who delivered a fiery speech denouncing the Court. In that speech he said that "joining the World Court to maintain peace strongly stinks of diplomatic conceit". He was old enough, he said, to prefer Washington and his logic and principles to Wilson and those who followed him with their crude internationalism and their unsound love of minorities.²

He said that it was neither the farmer nor the laborite who was anxious that the United States go international. They believed, on the other hand, that the American struggle should be to preserve the American standard of living rather than to "enmesh ourselves with the debasement of the standardized poverty of Europe".

According to Father Coughlin, the World Court was a "brotherhood of men founded not upon love, not upon the right of the majority to rule, but upon the right of the minority to disrupt". He concluded by saying that the Court was nothing more than an "artificial creation of those who wish to exempt themselves from all national law, of those who wish to profit by the injustice of the Treaty of Versailles".  

On January 28, the day before the Senate vote was to be taken, the proponents and opponents had their last chance to try to bring the Senate to their respective sides. Dr. Nicholas Murray Butler gave a heated speech in which he "chided the World Court foes" and said that their attitude was inexplicable save on the ground that they had "neither ideas, principles, nor courage, nor any concern for the highest interests of the American people".

In the evening of the same day, Father Coughlin

renewed his battle against the Court, urging his listeners to wire their Senators as a last chance to block adherence. He appealed to every stolid American who loved democracy, the United States, who loved the truth, to stand back of the tired and true Senators in their hopeless but honest fight to keep "America safe for Americans and not the hunting ground of international plutocrats." 57

The objections offered in the Senate, over the radio, and through the Hearst and other newspapers, bore little relation to the proposed protocols. In the Senate, it finally became necessary to set a limit to the length of the Senators' speeches because the effort on their part to delay action by filibuster. 58

In that final attack, the Court was denounced as a creature of the League. The administration was accused of attempting to sneak into the League by the back door, and the Court itself was criticized as a political body. The country was told that membership in the Court would result in the cancellation of the Allied war debts, the lowering of the bars of immigration, and the end of tariff protection for the working class, and the complete disappearance of the Monroe Doctrine. In fact, it was finally

said that the United States, if it joined the Court, would find itself embroiled in European quarrels and wars.

The arguments of the proponents, especially in the speeches of Senators Vandenberg, Logan and Robinson, were to the effect that the Court was not bound to the League any more than the Constitution of the United States was bound to the Magna Charta; that the protocols, along with the Vandenberg amendment, gave adequate protection to the United States; that the Court was not a "foreign" one just because the judges were Europeans; that the mere fact that there were wars going on in Europe, was no excuse why the United States should not expend some effort to try to bring them to a peaceful settlement; and, finally, that adherence to the Court would in no way hinder the United States in its use of the Court of Arbitration, if it so desired. In other words, the proponents believed that adherence could help to establish international peace, and yet not force the United States to do anything that was foreign to its traditional policy of the Monroe Doctrine.

Finally, on January 29, the question of adherence came to a vote in the Senate. It was the opinion of Washington observers that the fate of the measure had been decided during the preceding few days when the well organized opposition had delivered its powerful mass attack.
Evidence of the strength of the attack was found in the fact that on a single day 40,000 telegrams were delivered to the Senate.\textsuperscript{59}

Before the vote was taken, President Roosevelt was informed that four votes would mean the success or failure of the measure. He, therefore, called to the White House Senators Cutting, Gerry, Walsh and Donhahey for a conference in the hope that he might persuade them to lend their vote to the cause of the World Court. Senator Cutting, however, was the only one who stood by the President.\textsuperscript{60}

The final poll showed fifty-two Senators in favor of adherence and thirty-six opposed -- just seven votes short of the two-thirds vote necessary for ratification. An analysis of the vote shows that of the fifty-two votes cast for adherence, forty-three were Democratic and nine were Republican. Of the thirty-six votes cast against adherence, twenty were Democratic and fourteen were Republican, one Progressive and one Farmer-Laborite. This analysis would seem to show that neither the Republican nor the Democratic parties solidly were for or against adherence.\textsuperscript{61}

\textsuperscript{59} Shepardson and Scroggs, \textit{op. cit.}, p. 226.
\textsuperscript{61} \textit{Congressional Record}, 74th Cong. 1st Sess. p. 1147.
The geographical significance of the vote may be clearly seen by means of the accompanying map. Two centers of the country were definitely in favor of adherence, the Southwest and the Mississippi Valley. The one center of the opposition to adherence was in the states of the Northwest.

The map also shows that the senators in thirteen of the states split the votes of their states. In four of those cases only was the split along party lines. In seven cases, however, the split was within the party itself. Such an observation serves to prove all the more strongly that the Court question was not a party question.

The failure of the Senate to ratify the protocols, revealed a change in attitude toward the Court since the vote taken in 1926. At that time, it had approved the Moore amendments to the resolution of adherence by a vote of 76-17. During the intervening time, the opposition had increased by nineteen votes, and those nineteen votes spelled the defeat of ratification.

A comparison of the two votes in tabulated form reveals the following facts in regard to the source of the increase of opposition:

1. Of the thirty-six senators who voted against adherence in 1935, twenty-one of them were men who had been elected since the 1926 vote.

2. Of the eight senators who had been opposed to adherence in 1926, and who voted in 1935, only one, Senator Robinson, left the ranks of the opposition and voted for adherence in 1935.
3. Of the fifty-two senators who voted for adherence in 1935, thirty-eight were new since the 1926 vote.

4. Of the fifty-two senators who voted in favor of adherence in 1935, thirteen had voted the same way in 1926.

5. Of the senators who had favored adherence in 1926, and who also voted in 1935, eight switched to the side of the opposition in 1935. 62

The data gained from this comparison shows that the increase of opposition came primarily from the votes of the new senators, and only secondarily from a change of position from 1926 to 1935. 63 There is no evidence, however, either in the Senate debates or hearings, which can be used to pick out any one group which can be held responsible for the killing of ratification. The eight senators who switched their position towards adherence were not outstanding as either proponents or opponents and so there is no record in the Senate proceedings of any statement on their part as to why they made the change. The new senators who voted against adherence were also inconspicuous in the debates in the Senate and so made no statement which would indicate why they voted

62 The eight senators who changed their position were: Senators Gerry, Metcalf Norbeck, Norris, Smith, Trammell, Walsh, and Wheeler.

63 For the tabulated votes see Appendices V and VI.
as they did. The answers to these questions will have to wait until the biographies or private letters of those senators are published and their personal opinions are brought to light.

In connection with the question of why the senators voted as they did, comes the question of the sincerity of their beliefs and arguments. There is no evidence that either the proponents or the opponents were insincere in their belief that the United States should or should not join the Court, as there had been in the case of the opponents of the League of Nations, where a personal animosity entered into the question. Also in the case of the proponents of the Court, there is no evidence to show that they were insincere in the presentation of their arguments and amendments. On the contrary, in the case of the opponents, there is evidence that they were not sincere in their presentation of amendments as a means to make adherence safe for the United States. That evidence is found in the account of the amendment process of the famous "fifth reservation". At that time the opponents openly admitted that the reason for their refusal to accept the amendments to that reservation was based on the fact that they were not rigid enough to be unacceptable to the members of the Court. Their purpose in presenting amendments was then, I believe, either to
make the conditions to adherence so harsh that they could not be accepted, or to hold off the vote long enough to muster more opposition to their side.

With the failure of the Court to ratify adherence, the United States was prevented, for the second time in fifteen years, from taking its place with the other nations of the world in an association for the maintenance of international peace. To the proponents the failure was an overwhelming disappointment, and to the opponents it was a wonderful victory.

In the following chapter, I will attempt, through a summary of the whole story of the struggle for adherence to the World Court, to come to some conclusion as to why the campaign for adherence failed. Suffice it to say here, that the question, as to whether the right side won in 1935, is still a matter of personal opinion. What the future holds for the United States and the World Court only time can tell. The best that we can hope for, is that our United States may be able to continue to maintain peaceful relations with all the countries of the world.
CHAPTER VI

Summary and Conclusions

The idea of the association of nations or peoples for the preservation of peace and liberty originated in Europe in the fourteenth century. This fact is very likely to be quite new to most people of this day whose belief it probably is that such moves began with the Hague Conferences and not much earlier than that. Those early statesmen and philosophers, originators of the idea, had the same basic proposition underlying their plans, namely, the united efforts of nations to establish peaceful and just methods of settling disputes, although the actual plans had several variations. The plan of one of the first men, Pierre Dubois, for example, had as its prime purpose the uniting of the Christian World against the infidels. Dante in his project came nearer to our idea of a World Court in his proposal for a "world state" with a central court of justice. King Podiebrad of Bohemia presented a project very similar to that of Pierre Dubois and Dante in his plan for the uniting of the nations of the Christian world into a Federal State held together by a permanent congress of ministers.

None of these early proponents, however, formulated any system of international law which was so necessary in
the fulfillment of their projects. It was not until the time of Hugo Grotius, during the period of the break down of feudalism, that such a system of law was produced. His was then the first authoritative treatise on the law of nations.

Other plans, preceding the Hague Tribunals, were those of Henry IV, Emeric Cruce, William Penn, the Abbe St-Pierre, Emmanuel Kant and Jeremy Bertham. These schemes like the earlier ones had the same methods but slight variations in the ends to be secured. Henry IV, for example, wanted to establish a system whereby Europe was to be divided up evenly among fifteen powers which were to be represented in a Council where all disputes among them could be settled. The purpose of it all was the avoiding of any possibility of jealousy over or a fear of a balance of power in Europe. Emeric Cruce, on the other hand, proposed a union of the states of the whole world for the peaceful settlement of disputes. His was perhaps the most famous of all the plans of the period. The rest of the projects were more or less enlargements of the proposals of the foregoing men and were valuable in that they continued the idea up until the time when practical means for carrying out the ideas were developed.

In 1899, the calling of the First Hague Conference by the young Czar of Russia marked a practical attempt to bring about the realization of what, up until that time, had been only plans and projects on paper. The convening
of the Conference also marked the entrance of the United States into the problem of European peace and stability.

The American delegates, Messrs. White, Mahan, Crozier, Low and Holls were instructed to strive for the establishment of an international court and to propose a plan for a tribunal to which the nations might bring their disputes. The value of the American suggestions and the influence which they had upon the work of the Third Committee of the Conference was evidenced by the fact that there was but one point which was flatly rejected and the rest were accepted either without change or at least with very little change into the final draft for the Court of Arbitration. In the case of Mr. Holls' special mediation, it was accepted as a separate article under the section of Good Offices and Mediations.

The convention drawn up and accepted by the members of the Conference made the use of the Court purely voluntary. In order to make its position clear, the American delegation made a declaration in full session to the effect that in signing the Convention it understood that nothing in it was to make the United States depart from its traditional policy of not intruding upon or interfering with the political questions of any foreign state. This statement was accepted by the Conference without any protest and was the first appearance of the reservation which was to
be used time and again by the opponents of the World Court as an argument against the adherence of the United States to the World Court. In 1904, five years after the establishment of the Court of Arbitration, the delegates to the Interparliamentary Union Conference at St. Louis asked President Roosevelt to take the leadership in inviting the nations to send delegates to a second conference at the Hague. That conference they proposed for the purpose of considering questions left unfinished by the first one in 1899 and also to consider the advisability of establishing an international congress which would convene periodically for the discussion of international questions.

The President accepted the charge and sent out the invitations, but the conference was not convened until 1907, after the conclusion of the Russo-Japanese War. Seven men, including Joseph H. Choate, Horace Porter, Uriah M. Rose, David J. Hill, George B. Davis, Charles S. Sperry and William I. Buchanan, were sent by the United States as delegates with instructions from Secretary of State Root to work for the development of the Hague Tribunal into a permanent one composed of judges who were judges and were paid adequate salaries for their services and who would use judicial methods in deciding cases.

The American delegates showed the same enthusiasm as had their predecessors at the first conference. They
presented to their committee a detailed plan for the organization of the court according to the instructions given to them by Secretary Root. Their plan was accepted and supported in principle, that is with a few minor modifications, by German, British, and French delegations and adopted by the conference. The only point at which agreement could not be reached was the question of the method of the election of the judges. Therefore although the court was not actually established within the period of the Conference, the American delegation succeeded at least in laying its foundation.

The Americans were not as successful, however, in their efforts to make arbitration obligatory. The convention as finally concluded merely provided for general or private treaties which made arbitration obligatory only for those who entered upon them and even then entering upon such treaties was purely voluntary. Because this arrangement fell short of their hopes and expectations the United States delegation refrained from voting on the matter at all.

A second project taken up at this Second Hague Conference was the matter of establishing an International Court of Appeal in Prize Cases. In working out the convention the American delegation was instrumental in working out a compromise between the projects of Great Britain and Germany and by so doing facilitating its acceptance by the Confer-
ence. Although the plan for the Court failed to be ratified because of a disagreement as to what law the Court would apply, it still served as a step toward the realization of international co-operation.

The interest of the United States in a Court for the settlement of disputes between states was not confined to the Hague Tribunal, for in 1907, it engineered the establishment of the Central American Court of Justice as a means of maintaining peace among the Republics of Central America. Although the Court was in existence for only ten years and was ironically ignored by the Republics after the ten year period because of a disagreement with the United States, it was still a monument to the American desire for the establishment of judicial means for securing peaceful relations among nations.

The post war era ushered into the United States a period of intense interest with the presentation of the problem of the ratification of the Versailles Treaty and the League of Nations. Although the idea of a league of nations had been in circulation before the war ended, the conclusion of the war and President Wilson's determination to see the idea put into effect, brought the question to the attention of the people and the Senate of the United States.

Up until 1916, both political parties had been in
accord in their approval of a league. A break did come between them, when Senator Lodge, Republican leader, came to a disagreement with Wilson over his foreign policy toward Germany and the sinking of the "Lusitania". To this break, I believe, can be attributed at least part of the cause of the failure of the League of Nations in the United States.

In January 1917, President Wilson stated his conditions necessary to a permanent peace, the most important of which were disarmament and a league of nations. Just about one month later Senator Lodge stated his position concerning the peace settlement by pointing out the dangerous implications in the principles laid down by the President and then parted company with the League forever. He gave as his reason the desire not to involve the United States in a scheme which might create a worse situation than already existed. He stated, however, several measures which he believed were as practical and more commendable than the League. Those measures contained provisions for (1) an adequate national preparedness, (2) the rehabilitation of international law, (3) the extension of voluntary arbitration, (4) the general reduction of armaments and finally (5) the strict observance of the doctrines of foreign policy of both Washington and Monroe.

The signing of the Armistice brought the announcement from the President that he would attend the peace confer-
ence in person as a representative of the United States. That announcement of his proved to be a source of much bitter feeling on the part of government leaders, especially the members of the Senate, who believed that it was the President's duty to stay home and manage the business of the government. They argued that he had no authority to represent the American people at that time.

Wilson incurred still more criticism when he failed to even mention his plans for presentation at the conference in his farewell speech to the Senate prior to his departure for France. Senator Lodge did succeed, however, in making known to the delegation through his friend Henry White what he believed were the sentiments of his party on the matter of peace terms and a league of nations. He did this by presenting to Mr. White a memorandum calling for heavy indemnities from Germany and the exclusion of any provisions for a league of nations in the treaty of peace.

On December 6, two days after the departure of the American delegation, the attack on the League of Nations was begun. At that time Senator Albert Beveridge declared that instead of avoiding future wars, it would be more likely to become the very source of them.

The speech of Senator Lodge in the Senate on December 21, marked the beginning of the determined battle on the part of the Senate to defeat any plan which Wilson might
propose for the organization of a league of nations. In
that opening speech Lodge made it clear that since the
negotiators (referring to Wilson) had not sought the ad-
vice of the Senate, the Senate would not in the future
respond to any such requests, but would influence negotia-
tions contrary to the desires of Wilson as fully as speeches
in the open Senate could do so.

With the decision of Senator Lodge to fight the
proposals for a league of nations necessarily came a rever-
sal of the former policy of the Republican party concerning
international relations. Up until that time it had been
the conservative Democrats who had been the isolationists.
The Democrats, on the other hand were believers in the
strict construction of the powers and duties of government
to be able to see eye to eye with President Wilson. Many
followed him unquestioningly, however, because he was their
leader, others reluctantly, and still others not at all.
Consequently, there were numerous Democrats who, as debate
proceeded, made up their minds wholly aside from party con-
siderations that the new step was too dangerous, and count-
less Republicans who ignored every appeal to partisanship
and stood throughout for the League of Nations because
they believed that it was right. This latter group was
large in the country but small in the Senate. On the
Democratic side the one or two senators who opposed the
League in any shape or form probably held a kind of personal
animosity toward Wilson.¹

The speech of Senator McCumber was an example of the opinion held by a Republican who favored the idea of a league of nations and, therefore, is of interest in a summary of the opinion concerning the League. The speech was a sentimental plea for the countries of Europe which had been torn to pieces by the war. He told the Senate that, if, after peace was secured no means for making it perpetual were instituted, then all sacrifices had been made in vain, and pretended civilization was but foolish mockery. As for the overused argument that a league would interfere with the internal affairs of the members, he maintained that no intelligent commission would ever create such powers for the League. In case such powers were granted, however, he was sure that none of the great nations would ratify the treaty. In regard to the Monroe Doctrine, he said that no league, founded to guarantee the territorial integrity and independence of its members, would be a menace to a similar doctrine applicable to the Western World.

Further arguments against the League, before Wilson's return with the first draft of the Covenant, were voiced by Borah and Colonel Roosevelt. Roosevelt believed that Europe and Asia should do their own policing and that the

¹ Fleming, op. cit., p. 84.
United States should maintain strict adherence to the Monroe Doctrine and take no position as an "international Meddlesome Matty". Borah said that nationalism would be murdered by the League and therefore was against any form of internationalism.

The inevitable attack on the draft Covenant began in the Senate with the return of Wilson from the conference. Charges were made against it to the effect that, (1) under it the United States surrendered the power of disarmament, (2) it called for compulsory arbitration of all questions without exception, (3) it would compel the United States to participate in the wars and controversies of other nations, (4) it would force the United States to surrender to other nations the power to regulate commerce with foreign nations in arms and ammunition, (5) England would control it in accordance with her own interests, and (6) under it the powers of the League were unlimited.

A White House conference between Wilson and the Senate Committee on Foreign Relations followed upon the outburst of Senatorial criticism. At that meeting Wilson had to answer many questions put to him by his opponents. In spite of his explanations, the Republican members remained unchanged in their views, and were all the more determined to continue their campaign against it.

Senator Lodge began the new assault in a speech in which he made a plea for caution in the consideration of
the Covenant by all the people in the country. He stressed the fact that it was no small thing to abandon entirely a doctrine laid down by America's great statesmen Washington and Monroe. He asked if it were not possible to draft a better, more explicit, and less dangerous one than already drafted. He then drew up his four amendments which stated that the Covenant should, (1) contain a section which would preserve the Monroe Doctrine, (2) exclude from the jurisdiction of the League such questions as immigration, (3) provide for the peaceful withdrawal of any nation from the League, and (4) state whether the League was to have an international force of its own or the power to summon the armed forces of the different members.

Wilson then returned to the Conference to try to come to an agreement with the other powers in regard to Lodge's four amendments. He secured the acceptance of all the amendments with little opposition except for the one concerning the Monroe Doctrine. Finally, however, after much explaining and assuring that the change would not affect the protection of European countries under the League, he secured the acceptance of the fourth amendment.

The success of Wilson in securing the changes demanded by Lodge, made necessary a different plan of attack on the part of the opponents. With the Covenant amended to meet the principal American objections, and with the
masses of people still strongly behind the League, the anti-Leaguers decided that if the nation would not think anti-League that it must be made to feel so by a persistent repetition of the cries already raised against it and others which could be counted on to appeal to the emotions. Also they believed that the nation could be wearied of the idea of the League if the action on it could be delayed long enough.

Fate seemed to have played into the hands of the Republican opponents of the League because in the election of the November previous to the change in plans, they had received a majority in the Senate. Thus the machinery needed for the success of the plan was theirs. During the Senate debates in May and June, when the irreconcilables continued to display more activity than the others, it became more evident that the Republicans were making the Treaty and League an issue for party action.

Such was the situation when Wilson returned from Paris with the amended Treaty. With the Treaty in the hands of the Senate, the powers of the Committee on Foreign Relations were brought into play. Devices instrumental in the plan for delay were right at hand. First the long treaty of several hundred printed pages was read aloud line by line. That reading took two weeks. Next, the Committee held public hearings which lasted for six weeks. At
those hearings, members of the American delegation gave testimony. No one else appeared except representatives of national groups that felt that their countries had received less than justice at Paris. Because of the lack of important speeches, the hearings were of little actual value except as they wasted time.

The majority report of the Committee on Foreign Relations, which came out in September of that year, made several things certain. In the first place, it showed that the irreconcilables in the Senate no longer had any hopes of persuading the Republicans to unite on a policy of complete rejection, for the report recommended forty-five amendments, many covering the same point. Those amendments were obviously in accord with Lodge's plan of proceeding "by way of amendment and reservation". There was no pretence in the report that those changes would make them want to ratify the Treaty. On the contrary, it showed a bitter hostility toward it.

For the first time, during the debate in the Senate during July and August, the expression of the Republican senatorial opinion was not left to the irreconcilables. At that time the speeches of those previously silent Republicans proclaimed the defeat of the irreconcilables who had struggled to commit the party to a rejection of the Treaty. Some desired strong reservations, others were satisfied
with mild reservations. It seemed then as though the Republican majority in the Senate was going to vote for the entry of the United States into the League with reservations.

In September, Wilson began his speaking tour, for he had placed his chief reliance on an appeal to the people. The tour, however, ended in his collapse and the loss of the most important leadership that the League had. With the breakdown of President Wilson, public opinion, which had according to former reports been overwhelmingly in favor of the League, began to drift away. In the United States, as in Europe, there seemed to be occurring a shift in opinion which has been described by Mr. Holt as a substitution of near-sighted nationalism for international co-operation and the general good. That shift in feeling was just what Lodge hoped to gain in his program of procrastination.

While the public and the majority in the Senate were thus groping about for some decision, debate in the Senate continued on. The arguments used were the ones referred to by Senator Lodge as those which would appeal to the emotions. They were of very low calibre and consisted of such statements as, "The League would be under the power of the Pope because most of the countries in the League would be Catholic," or "The League would be ruled by colored people." Each argument was aimed to sway one section of
the country against the League and if viewed intelligently were utter nonsense. The Irish question was also cleverly used by Lodge in an effort to win over the large Irish vote in the country.

No steps had been taken by the Democrats to come to an understanding with the Republicans, wanting mild reservations, when voting began in October, and the latter were drifting toward a natural political alliance with their fellow Republicans on terms more hostile to the Treaty than those they would have preferred. The Republican ranks then were for the first time firm.

The final vote in the Senate took place on March 19, 1920. The resolution of ratification received a majority of votes cast but not the required two-thirds majority, and with that vote Senator Lodge succeeded in his efforts to block the entrance of the United States into the League of Nations.

As for a conclusion as to the reason for the failure of the Senate to ratify the Covenant, I an inclined to agree with Mr. Holt that it was the intense dislike of Mr. Lodge for the way that President Wilson disregarded the right of the United States Senate in the negotiation of treaties with foreign countries, and his superior ability in handling the affairs of his party in the Senate. This opinion is justifiable, I believe, because of the fact that
Senator Lodge actually made a statement to the effect that he would not make any response to the suggestions of the American negotiators at the conference, but would do everything to oppose any move that they made. That statement he made in his speech to the Senate on December 21, 1918. Also, the fact that he changed his tactics several times in order to win over the desired groups to his side, showed that he did not want the League at any price. And his animosity toward Wilson is the only evidence that I can find for his being so opposed to the League.

The ratification of the Covenant by the nations of Europe not only brought into existence the League of Nations, but also through Articles 13 and 14 of the Covenant, provided for the creation of the World Court. It may be said that the United States was partly responsible for the suggestion of the idea of the Court because President Wilson in his drafts for the League of Nations had a provision for such a court. Most of the credit for the actual drawing up of the Convention creating the Court goes to Elihu Root, who as the Secretary of State of the United States, had also been responsible for the policy of the American delegates at the Hague Peace Conference in 1907.

A Committee of Jurists was elected by the Council of the League according to the mandate in Article 14 of the Covenant of the League. Among the jurists elected was
Mr. Elihu Root. As a jurist he was responsible for solving the problem of the election of judges and together with Lord Phillemore drew up the draft, which with but few amendments by the Council and Assembly of the League, became the Statute which established the Court. The Statute was opened for ratification on December 16, 1920 and was ratified by the required majority by September 1, 1921, and went into effect on that day.

The long campaign for the adherence of the United States to the Court officially began with the receipt of the copy of the Protocol by Secretary of State Charles Evans Hughes. Formal action, however, did not begin until February 17, 1923, when Secretary Hughes sent a message to President Harding requesting him to ask the Senate to take action favorable to the adherence of the United States to the Protocol of December 16, 1920, subject to four reservations which he had drawn up and enclosed.

One week after receiving the message of Secretary Hughes, President Harding delivered a message to the Senate in which he passed on the request of Secretary Hughes and recorded his approval of adherence to the Court. The Senate, however, made no move to consider the question, and the whole matter was dropped until President Coolidge made an appeal to the Senate for favorable action. Like Hughes and Harding, he was completely in favor of the establish-
ment of a court which would include the nations of the world.

Senator Lenroot followed up the message of Coolidge with a resolution containing reservations concerning the election of judges, the countries which should be allowed to adhere to the Court, and the method of paying the expenses of the Court. His resolution was just the beginning of a series which were presented in the Senate. No hearings were held in the Foreign Relations Committee until April 30, 1924. At that time it became obvious that the question of the election of judges was going to cause trouble.

Senator Pepper of Pennsylvania, a member of the Foreign Relations Committee, made an attempt to solve the problem of the election of judges in a plan which he presented to his fellow committeemen. This proposal was treated very coolly by Chairman Lodge and the rest of the Committee, who proceeded to find another point to argue over. That point was the relationship of the League to the Court, especially in the power of the League to request advisory opinions of the Court. The Committee believed that with that authority, the League could injure the prestige of the United States. Even after evidence had been given to disprove the fears of the Committee, it still stood fast in its convictions.

The pressure brought to bear on the Foreign Relations Committee by proposals finally brought on an admission on its part that an amendment to the advisory power of the Court
must be added. In May, therefore, the Committee allowed the proposal to go to the Senate. During the time that the matter was before the Senate, Senator Lodge had died and Borah had taken over the chairmanship of the Foreign Relations Committee, and had used the period to campaign over the country against the Court, branding it a "League Court". He met with little success because the great national organizations were in favor of the Court.

The Senate was just as slow in taking any action as its committee had been, and it was the House which finally came forward to record its approval of the Court by a vote of 303-28. Nine months later the long-awaited move on the part of the Senate came in the form of a resolution drawn up by Senator Swanson, one of the ardent proponents of the Court. In his resolution he offered what he believed was a solution to the problem of advisory opinions. His plan, however, met with the same fate as the former ones. The Committee still did not believe that the rights of the United States were securely protected. To most observers the reason for its failure was the fact that it was not rigid enough to make sure that it would not be accepted by the signatories or the proponents of adherence in the United States. With the rejection of Senator Swanson's proposal, it was becoming more and more evident that the opponents in the Committee were not working for a plan which would protect the rights of the United States, but were seeking
to impede the proponents. With Senator Borah as chairman of the Committee, such a program was easily explained, since he was just as antagonistic toward the Court as he had been toward the League.

In order to make their position more secure, the anti-Leaguers secured the aid of Judge Moore in drawing up an amendment to the Statute of the Court. That amendment was introduced into the Senate in January 1926, and was passed by a vote of 76-17, with the same opponents Borah, Johnson, LaFollette, and Shipstead holding out against it and the proponents Pepper, Lenroot, Swanson and Pittman voting in favor of it.

The notice of the Senate's approval of adherence according to the amended reservation was sent to the League and in turn to the signatory states. At a meeting of the signatories it was decided to hold a meeting to discuss with the delegate from the United States the possibilities of adherence according to the reservation. The United States refused, however, to attend the conference and so it was held without it. At the conference the signatories accepted the four reservations based on the first four of Secretary Hughes, but could not accept completely the rigid terms of the advisory amendment. The signatories said that the United States could not have the desired deciding vote in the adoption of a request for an advisory opinion because a unanimous vote was not necessary.
The failure of the United States to come to an agreement with the signatories did not discourage the League, for it was determined to find a solution favorable to both sides. It, therefore, held a meeting and passed a resolution appointing another Committee of Jurists to consider a revision of the Statute of the Court. Again Elihu Root was invited and accepted the invitation to serve on that committee. He drew up a plan covering the question of advisory opinions which, with a few minor revisions, was accepted by the Committee and served as the basis of the revised protocol drawn up by it. The provisions were adopted unanimously by the signatories and sent to the Secretary of State Stimson who believed that the revised protocol would meet the objections of the United States and would constitute a satisfactory basis for adherence. He promised to ask the President for the necessary authority to sign the protocol and recommend that it be submitted to the Senate for consent and ratification.

The willingness of President Hoover to further the cause of adherence was shown when, in a little over a week's time, he gave the necessary authorization for the signing of the Protocol and in less than a month he presented the protocols to the Senate and recommended immediate action in favor of adherence.

Senate action took the form of an invitation to
Mr. Root to appear before the Foreign Relations Committee to explain the revised protocol. At the meeting Mr. Root discussed the Protocol in detail and tried to show the members that the United States was duly protected by it and that therefore adherence was perfectly safe.

Additional evidence of the policy of the Foreign Relations Committee to stand in the way of adherence came as a result of its report after the meeting with Mr. Root. In the report it presented reservations, which if adopted, would have pushed proceedings back to the stage following the vote taken in the Senate in January 1926. The closing of the Seventy-Second Congress before any action could be taken was another delay which seemed to play right into the hands of the Committee.

Late in 1932, the House took up the question which had been temporarily dropped by the Senate, and drew up a resolution appropriating the money necessary to pay the share of the United States in the expenses of the Court. Although no final action was taken because of the strong opposition in the Senate, the move was an indication that the House did want adherence.

Action on the World Court was dropped, after the gesture of the House, until the spring of 1934. At that time hearings were held before the Foreign Relations Committee, one for the proponents and one for the opponents of
the Court.

At the hearing for the proponents, the following went on record as approving of the adherence of the United States: The American Bar Association with its 30,000 members; The Republican and Democratic Parties; 65 state and local bar associations; The Chamber of Commerce of America; the legislatures of sixteen states; eleven national women's organizations, including the American Association of University Women, The General Federation of Women's Clubs, The National Women's Christian Temperance Union and The National Women's Trade Union League; The Federal Council of Churches of Christ in America; Alfred E. Smith; and Admiral William S. Sims.

The following registered their opposition to adherence at the hearing for the opponents: Senator Reed; Senator Pepper, Judge Daniel Cohalan; The American Legion; The International Seamen's Union; Governor Joseph B. Ely; Charles Francis Adams, director of First National Stores; and The Hearst Newspapers.

The two hearings marked the only action which was taken until the new Congress met on January 3, 1935. At that time President Roosevelt, in his opening speech indicated his approval of adherence and two days later called a conference of the Senate leaders and representatives of the Department of State including Secretary of State Hull, Democratic leader Senator Robinson, Chairman of the Foreign
Relations Committee, Senator Pittman, and Assistant Secretary of State Francis B. Sayre. The purpose of the meeting was the consideration of immediate action on the protocols.

Four days later, the Senate Foreign Relations Committee, by a vote of 14-7, submitted a report recommending ratification. That recommendation, however, was accompanied by an understanding which amounted to a restatement of the battle-scarred fifth amendment. Two days after the report of the Committee of the Senate was presented, the New York Times reported that the opposition in the Senate had dwindled down to a handful of "bitterenders" of which six were the Republican minority leaders Borah and Johnson, Senators Nye and Cutting, the Progressive Senator La Follette and the Farmer-Laborite Senator Shipstead.

The final debates began in the Senate on January 15, and continued until January 20. Senator Robinson, of Arkansas opened them with a speech in defense of the Court. He argued that the United States had nothing to fear in joining the Court because the Court could not recognize any dispute in which the United States had or claimed an interest without its consent.

Senator Johnson followed with a new argument against the Court. He said that he wanted peace just as much as anyone else but was quite sure that it was not to be found in the World Court. He backed up his argument with the
example of Bolivia and Paraguay, both members of the League and Court, who had been fighting for over three years without seeking any assistance from either the League or the Court. He also showed the ineffectiveness of the Court in the taking over of Manchuria and China by Japan and the blowing up of Corfu and the invasion of Abyssinia by Italy.

According to Huey Long, the campaign for adherence should have been called "America for Sale", for he believed that the entry of the United States into the Court would amount to the outright sale of it to the countries of Europe. He said that the experience gained in the World War should have taught the United States that it was useless to think that it would gain anything but debts and hard feelings from adherence to the Court.

Senator Vandenberg continued the debate by presenting his amendment which provided that the adherence of the United States should not make it depart from its traditional policy of non-interference in European disputes. He said that as far as he was concerned, the amendment was not necessary, but was presented for the benefit of those who still believed that the rights of the United States were not sufficiently protected. He admitted that he had opposed the entry of the United States into the League, but was certain now that the Court was sufficiently separated from the League under the proposed protocols and that it was safe for the United States to join the Court.
Senator Logan followed Senator Vandenberg with a refutation of the arguments of Senators Long and Johnson. He declared that the mere fact that the United States had maintained peaceful relations for the hundred years by means of arbitration was no argument against the Court. In the first place, it was no proof that the same peace could not be maintained by the use of the World Court. In the second place, the arbitration Court was the only means for settling disputes at the time. He next attacked the argument that the Court was made up of foreign judges. That argument he saw was ridiculous because, the fact that they were not Americans did not make the judge unscrupulous foreigners. He said that the Americans would resent the same belittlement of its judges by the Europeans and so had no right to do the same to the European ones.

Senator Borah's opposition, aired in the Senate, was based entirely on the advisory power of the Court. He said that that power made the Court nothing but an advisory tribunal and no number of amendments would ever change that status in his opinion. Therefore, he was going to oppose adherence to the Court as long as that provision was in the protocol.

Senator Thomas followed Senator Borah in an attempt to disprove the name "League Court" as applied to the World Court. He claimed that the relationship of the Court
and League ended with the establishment of the Court, according to Article 14 of the Covenant. Furthermore, he said that the Court was created by a conference of representatives of many countries, not all of which were members of the League and was, therefore, not a pure creation of the League. He concluded with the statement that he believed the rights of the United States were completely protected by the 1929 protocol.

Senator Reynolds recorded his opposition to adherence by saying that isolation had made the United States great and isolation only would keep it so. He backed up this opinion by citing the results of the World War in the United States in the form of unbearable taxation forced on the people for generations to come. Until some one could give him a good reason why the United States should join the Court, he was determined to oppose adherence.

Senator Norris entered the debate with an amendment to the effect that any dispute in which the United States was a party had to have a two-thirds vote of approval of the Senate before it could be brought to the Court for a decision. The acceptance of that amendment by the members of the Court was necessary before he would vote for adherence. Its rejection by the Court members, he said was the most reasonable excuse possible why the United States should stay out of the Court. Without its protection, he believed
that ruin might be brought on his government.

During the period of debate in the Senate, public opinion really came forward and asserted itself. World Court Committees sent messages to the Senate begging it not to delay any longer but to take immediate action. The ministers of 150 Protestant churches urged their congregations to send telegrams to their congressmen to vote in favor of adherence.

The propaganda of the opponents was re-enforced by Father Charles E. Coughlin, who delivered a fiery speech denouncing the Court. He said that "joining the World Court to maintain peace strongly stinks of diplomatic conceit." The Court, he said, was based not on the right of the majority to rule, but on the right of the minority to disrupt, and was nothing but an "artificial creation of those who wished to exempt themselves from all national law and to profit by the injustice of the Versailles Treaty.

The evening before the final vote was to be taken, the proponents and opponents had their last chance to try to win the Senate over to their respective sides. Dr. Nicholas Murray Butler delivered a very heated speech against the opponents and said that their attitude was inexplicable save on the ground that they had "neither ideas, principles, courage, nor any concern for the highest interests of the American people". That same evening, Father Coughlin
urged his listeners over the radio to wire their senators as a last chance to block adherence. He appealed to every "stolid" American, who loved democracy, to stand back of the Senators in their honest fight to keep America safe for Americans.

So strong was the final attack of the opponents, that on one day only, 40,000 telegrams were delivered to the Senate. It was the opinion of observers in Washington that the onslaught of fire and criticism against the Court had taken its toll in the ranks of the proponents, and would be the deciding factor in the struggle. In any case the vote on the following day was 52-36, just seven votes short of the two-thirds vote necessary for ratification.

In the attempt to come to a conclusion as to why the Senate failed to ratify adherence to the World Court after it had been favored for so many years by successive presidents, secretaries of state, and even by public opinion, I have picked out three factors which I believe were contributory. They are: (1) The failure of the Senate to ratify the Covenant of the League of Nations, (2) The carry-over of leadership of the opponents in the Committee on Foreign Relations of the Senate from the time of the League to that of the Court, and (3) The failure of the senators to carry out the wishes of their constituents in their votes.
The failure of the Senate to ratify the Covenant of the League provided the necessary background and setting for the action on adherence to the Court. It not only built up the prestige of the Senate's constitutional right to give advice and consent to treaties with foreign countries, but also showed that a handful of senators with unusual powers of leadership and strategy could sway the vote of the Senate to their side in spite of the wishes of the administration. This factor, then, I believe was the first cause for the failure of the Senate to ratify adherence.

The second cause for the defeat of adherence followed naturally and opportunely upon the heels of the first. The presence on the Senate Committee on Foreign Relations of the two anti-League leaders, Lodge and Borah, and their followers Senators Johnson and Reed, was a powerful aid to the foes of adherence in the Senate. Although Lodge died and his place as chairman of the Foreign Relations Committee was taken by Senator Borah, his successors were able to apply his tactics with apparently the same success. As in the case of the Covenant, the plan of the Committee in dealing with the protocols seemed to have been the addition of reservation after reservation for the specific purpose of making the provisions unacceptable to the
members of the Court or of stalling off a final vote until the strategic time came. In any case, the campaign of the opposition against adherence to the Court so nearly paralleled that of the anti-League that I am of the opinion that the practical identity of leadership and principles among the opponents was one of the most important factors in the defeat of adherence to the Court.

Evidence to back up the statement that the public was quite generally in favor of adherence was found in the reports of the hearing held by the Senate Foreign Relations Committee. There is no evidence, however, which would indicate why the opinion of the public was not expressed in the vote of the Senate. Therefore, the only conclusion which can be arrived at is that the senators followed their own opinions in the matter and ignored those of their constituents.

These conclusions are those which seem most reasonable in the face of the available evidence. Whether they are the real ones or not, only time and the publication of more evidence will tell.

The failure of the Senate to ratify adherence to the World Court in the face of the consistent and wholehearted desire and approval of successive administrations, beginning with the administration of President Harding and ending
with that of Franklin D. Roosevelt, is one of the many examples of the ascendancy of the Senate in its constitutional power in the treaty-making machinery of the United States Government. It serves to indicate the important position which the Senate can and may hold in future negotiations of treaties with foreign nations.
APPENDIX I

PROTOCOL FOR THE ACCESSION OF THE UNITED STATES TO THE PROTOCOL OF SIGNATURE OF DECEMBER 16, 1920. OPENED FOR SIGNATURE AT GENEVA, SEPTEMBER 14, 1929.

The States, signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16, 1920, and the United States of America, through the undersigned duly authorized representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27, 1926.

Article I

The States, signatories to the said Protocol, accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following articles.

Article II

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article III

No amendment of the Statute of the Court may be made without the consent of all the contracting States.
Article IV

The Court shall render advisory opinions in public session after notice and opportunity for hearing, substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article V

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

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

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion by a member of the League of Nations in the Council or in the Assembly.

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

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article VII

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16, 1920, and also the United States, have deposited their ratifications.

Article VIII

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16, 1920. The Secretary shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year of the date of receipt of the said notification, not less than two-thirds of the contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Done at Geneva, the fourteenth day of September, nineteen hundred and twenty-nine, in a single copy, of which the French and English texts shall be both authorized.
**APPENDIX II**

**VOTE IN THE SENATE ON THE RATIFICATION OF THE COVENANT OF THE LEAGUE OF NATIONS, INCLUDING THE FOURTEEN LODGE RESERVATIONS AND THE IRISH SELF-DETERMINATION RESERVATION,**

**MARCH 19, 1920.**

**YEAS 49**

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VOTE IN THE SENATE ON THE PROTOCOLS TO THE STATUTE OF
ADHERENCE OF THE WORLD COURT JANUARY 27, 1926.

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APPENDIX IV


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| Copeland   | McA
doo | Steiwer |         |
| Gibson     | Overt	on | Tyd
ing |         |
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2. Newspapers

To Dr. Cary, Professor Mackimmie, Dr. Rohr, and Dr. Helming, members of my thesis committee, whose suggestions and criticism have been very helpful, I express my gratitude. I am indebted particularly to Dr. Cary for his guidance and assistance in the writing of this thesis.
Approved by:

Thomas J. Rohn
Harold W. Cary
Vernon P. Helming

Graduate Committee

June 2, 1941.