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# ST. LOUIS LAW REVIEW

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## THE PERMANENT COURT OF INTERNATIONAL JUSTICE\*

I will try, in the few minutes I will speak to you, to discuss the political and historical phases of this question, as those who have spoken before me have ably discussed the other propositions which this important issue presents. While there has been for over half a century a strong sentiment, not only in this country but throughout the world, in favor of the arbitration of international differences as a substitute for war, the sentiment for an adjudication of such controversies did not find a concrete expression until about twenty-five years ago. The concept of international justice had not, as a practical proposition, advanced until then, beyond the point that differences between countries that might threaten war could be better compromised on a basis of "give and take" than by force. While there was and is no doubt as to the correctness of this position, yet jurists and statesmen of clear vision began to ask why it was that civilized nations could not settle their differences on the basis of fundamental principles of reason, justice and law, just as civilized men have come to settle their controversies. And so in the Second Hague Conference, in 1907, the American delegation proposed the adjudication of justiciable controversies before a permanent court in place of compromise and adjustment by a specially summoned tribunal. Though the plan failed of adoption, the proposition had been brought before the nations of the world, and to it they turned after the wreck and ruin of the Great War as the best means to prevent a repetition of such an awful disaster to civilization.

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\*Address before the League of Women Voters of St. Louis, Friday, October 23, 1925.

In our own country this issue found expression in the political platforms of 1920. The Democratic platform declared in favor of the League of Nations, which provided for the adjustment of international questions and the control and direction of certain international affairs on the basis of political association, and by the exercise of political or official authority. And as ancillary to this association of nations there was to be established a permanent Court of International Justice for the determination of certain justiciable controversies. While I am convinced that, at that time, the majority of the Republicans of the country favored the covenant for the League of Nations with what was known as the Lodge Reservations, the opposition of the "few irreconcilables," who had defeated that covenant in the Senate, was sufficient to exclude from the declaration of the Republican platform any mention of the League of Nations. Therefore that party declaration was confined to a pledge to support the principle of international association to provide for the settlement of international differences before a World Court which would make its decisions on the basis of justice and of law.

The plank upon that proposition was as follows: "The Republican party stands for agreement among the nations to preserve the peace of the world. We believe that an international association must be based upon international justice and must provide methods which shall maintain the rule of public right by the development of law and the decision of impartial courts, and which shall secure instant and general international conference whenever peace shall be threatened by political action." This plank, emphasizing the idea of adjudication, was written by Elihu Root, who had then been selected by the Council of the League of Nations as one of the members of a committee to devise a protocol of the International Court of Justice and, according to the newspapers published at the time, was submitted to and received the approval of Senators Borah, Johnson and the other members of the small band of so-called irreconcilables in the United States Senate.

Senator Borah now contends that for us to join in an adherence to the Court would be unwise but, aside from the question of advisability, it is clear that it is a violation of the solemn pledge of the Republican party to the American people for the government under its control to fail to adopt it. Particularly is this true as, in 1924, there was a specific declaration by the Republican convention in favor of giving our approval to the protocol providing for adherence to this Court, and a declaration in favor of the World Court and the League of Nations is also in the platform adopted by the Democratic National

Convention. So, while a United States Senator may be a Democrat or a Republican and oppose this proposition, he cannot contend that he is thereby standing by the pledges of his party or helping to keep its faith with the American people. If such declarations in our party platforms, agreed to unanimously, favored by all representatives of the divergent thought in party councils, are not followed by official action, then party honor and party responsibility become a farce and a fraud.

So, in addition to the great principle of international adjudication, we have also this national question as to whether the promises in party platforms are to be kept and party honor to be respected.

The two divergent attitudes towards the proposition of the World Court, as they find expression in recent utterances, are something as follows: We find, on the one hand, among the minor objections of its opponents, some complaining that its authority is not sufficiently compelling or mandatory and others that it is too complete and controlling. Some object to the fact that it was initiated by a committee appointed by the League of Nations, though its existence is independent of that organization. Others seem to be troubled over the fact that the names of the judges are unfamiliar and that they have difficulty in pronouncing them. But if the judges of the Court bore such customary names as Smith, Jones and Cohen, I have no doubt but that some would object to the Court because the judges did not bear names of sufficient distinction. In short, these minor objections, in most cases, come from those who glorify the eighteenth century conception of statesmanship announced by Voltaire in the cynical observation that "one should be interested in nothing beyond the limits of his own cabbage patch." And so we find these eighteenth-century minded statesmen setting up their judgment in favor of a policy of national isolation that has been denounced by both parties and by almost every religious, civic and commercial organization in the United States. If this is so, one may well ask why it is that this proposition has not before secured the necessary two-thirds approval of the United States Senate. The answer is to be found in the fact that the United States Senate is today apparently the most unresponsive to public opinion of any legislative body in any self-governing country. And that is largely due to the fact that the rules of that body make it possible for a few Senators, particularly if they are able and aggressive, to exercise an influence and authority that could not obtain in any other legislative body in this or any other land.

The right of practically unlimited debate has created of the Sen-

ate something of a ruling oligarchy in American life that is contrary to the genius and the spirit of our institutions. This is true because it is in the power of a few members both to delay and to defeat measures that are favored not only by a majority of the people but by a majority of its own members.

Notwithstanding the clear manifestation of public opinion in favor of the World Court for the last three years; notwithstanding the adoption of a resolution in the House of Representatives almost three to one in its favor, the Senate has declined heretofore even to enter upon its discussion. Over two and a half years after the proposition was formally submitted to the Senate by President Harding it has announced that it will begin the debate. When that debate will end is, under the present rules of the Senate, a mere matter of speculation. Though it may seem foreign to the purpose of this discussion, I wish to say that in my opinion Vice President Charles G. Dawes is advocating a most necessary and important measure of reform by insisting that the rules of the Senate shall be changed so as to make it impossible for a few men in that body to defeat the will of a majority and to set up their judgment against the preponderant opinion of the American people. No statesman, in my opinion, has advocated a more important principle of reform since Theodore Roosevelt, twenty-five years ago, aroused the slumbering conscience of the people to a realization of the violation of the principles of common honesty and a square deal by existing abuses in commercial and official life.

What, then, is the fundamental conception of world peace that this proposition presents? Agreements between nations to respect each other's frontiers and not to engage in war, have time and time again proven futile because when controversies have arisen no established method for their settlement has existed. World peace must be based on international confidence that justice will be done between all nations, and that alone can come from the creation of, and respect for, a system of just law administered by a tribunal that will have behind its decisions the public opinion of the world.

And why should there not exist among nations a rule of law; an awarding of justice according to settled rules of conduct, as now prevails among men? We must face this problem with the full realization that the only substitute for the rule of force and war is a rule of law and justice. And why should not law and justice be international in their scope and operation? The nations of the world have become next-door neighbors through the achievements of science, which have all but wiped out time and distance. Trade, industry, finance, litera-

ture, science, art, education, exchange of information; almost every activity and interest of life are international in their scope and operation. Why should not the world set up rules of conduct and standards of right and justice among nations, when within nations such rules and standards constitute the very foundations of government and society.

What can be a better safeguard for our civilization than to have a rule of law substituted for a rule of force? For law, in its highest and broadest sense, is the instrument of justice, the handmaid of order; the guarantor of individual right, the arbiter of dispute and the reconciler of differences. It is the cement which binds together the structure of human institutions. It is the best hope of the world today for saving humanity from the awful destruction and horrors of war. If in this great movement to establish a rule of international law as a substitute for war our nation is not found among those participating in this effort to safeguard the civilization of the future, will not the muse of history, in that distant future when the acts of men and nations can be judged free from the prejudices and the confusion of the present, say to us, as Henry of Navarre said to Crillon of the siege of Arques, "Hang yourself, brave Crillon. We fought at Arques and you were not there." No nation and no generation has ever had such an opportunity for inestimable service to humanity as is ours today, and we will stand condemned or commended at the judgment seat of history as we join or fail to join in promoting, through a rule of law, peace, prosperity and justice throughout the world.

HERBERT S. HADLEY.