cannot make this tender until the Senate has spoken its approval. Therefore, I most earnestly urge your favorable advice and consent. I would rejoice if some action could be taken, even in the short period which remains of the present session.

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 advanced 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 anew that we are ready for our proper part in furthering peace and adding to stability in world affairs.

WARREN G. HARDING.

LETTER OF THE SECRETARY OF STATE TO THE PRESIDENT OF THE UNITED STATES RECOMMENDING THE PARTICIPATION OF THE UNITED STATES IN THE PERMANENT COURT OF INTERNATIONAL JUSTICE AT THE HAGUE [1]

February 17, 1923

My Dear Mr. President: Referring to our interviews with respect to the advisability of action by this Government in order to give its adhesion, upon appropriate conditions, to the protocol establishing the Permanent Court of International Justice, I beg leave to submit the following considerations:

From its foundation, this Government has taken a leading part in promoting the judicial settlement of international disputes. Prior to the first peace conference at The Hague in 1899, the United States had participated in fifty-seven arbitrations, twenty of which were with Great Britain. The President of the United States had acted as arbitrator between other nations in five cases and ministers of the United States, or other persons designated by this Government, had acted as arbitrator or umpire in seven cases. In 1890 the Congress adopted a concurrent resolution providing:

> That the President be, and is hereby, requested to invite, from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which can not be adjusted by diplomatic agency may be referred to arbitration and be peaceably adjusted by such means.[2]

In his instructions to the delegates of this Government to the first peace conference at The Hague, Secretary Hay said:

[1] *Congressional Record*, 67th Cong., 4th sess., Vol. 64, No. 74, p. 4508.
[2] *Ibid.*, 51st Cong., 1st sess., pt. 3, Vol. 21, p. 2986.

> Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent States, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation.

A plan for a permanent international tribunal accompanied these instructions.

At that conference there was adopted a Convention for the Pacific Settlement of International Disputes, which provided for a Permanent Court of Arbitration. This organization, however, while called a Permanent Court, really consists of an eligible list of persons designated by the contracting parties, respectively, from whom tribunals may be constituted for the determination of such controversies as the parties concerned may agree to submit to them.

In 1908 and 1909 the United States concluded nineteen general conventions of arbitration which, in accordance with The Hague conventions, provided for arbitration by special agreement of differences which are of a legal nature or which relate to the interpretation of treaties, and which it may not have been possible to settle by diplomacy, provided that the differences do not affect the vital interest, the independence or the honor of the two contracting states and do not concern the interests of third parties. Moreover, since the first peace conference at The Hague a number of conventions have been concluded by this Government submitting to arbitration questions of great importance.

It is believed that the preponderant opinion in this country has not only favored the policy of judicial settlement of justiciable international disputes through arbitral tribunals specially established, but it has also strongly desired that a Permanent Court of International Justice should be established and maintained. In his instructions to the delegates of the United States to the second peace conference held at The Hague in 1907 Secretary Root emphasized the importance of the establishment of such a tribunal in conformity with accepted judicial standards. He said:

> It should be your effort to bring about in the second conference a development of The Hague tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be of such dignity, consideration and rank that the best and ablest jurists will accept appointment to it, and that the whole world will have absolute confidence in its judgments.

The second peace conference discussed a plan looking to the attainment of this object, but the project failed because an agreement could not be reached

with respect to the method of selecting judges. The conference adopted the following recommendation:

> The conference recommends to the signatory Powers the adoption of the project, hereto annexed, of a convention for the establishment of a court of arbitral justice and its putting into effect as soon as an accord shall be reached upon the choice of the judges and the constitution of the court.

The Covenant of the League of Nations provided, in Article 14, that the Council of the League should formulate and submit to the members of the League plans for the establishment of a Permanent Court of International Justice, which should be competent to hear and determine any dispute of an international character which the parties thereto should submit to it, and which also might give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly of the League. This provision of the Covenant, it may be said, did not enter into the subsequent controversy with respect to participation by this Government in the League of Nations; on the contrary, it is believed that this controversy reflected but little, if any, divergence of view in this country with respect to the advisability of establishing a Permanent International Court.

Pursuant to the direction contained in the article above quoted, the Council of the League appointed an Advisory Committee of Jurists which sat at The Hague in the summer of 1920 and formulated a plan for the establishment of such a court. Hon. Elihu Root was a member of that committee. It recommended a plan which was subsequently examined by the Council and Assembly of the League, and after certain amendments had been made, the statute constituting the Permanent Court of International Justice was adopted by the Assembly of the League on December 13, 1920.

While these steps were taken under the auspices of the League, the statute constituting the Permanent Court of International Justice did not become effective upon its adoption by the Assembly of the League. On the contrary, it became effective by virtue of the signature and ratification by the signatory Powers, of a special protocol. The reason for this procedure was that, although the plan of the Court was prepared under Article 14 of the Covenant, the statute went beyond the terms of the Covenant, especially in making the Court available to states which were not members of the League of Nations. Accordingly a protocol of signature was prepared by which the signatory Powers declared their acceptance of the adjoined statute of the Permanent Court of International Justice. The Permanent Court thus established by the signatory Powers under the protocol, with the statute annexed, is now completely organized and at work.

The statute of the Court provides for the selection of the judges; defines their qualifications; and prescribes the jurisdiction of the Court and the procedure to be followed in litigation before it.

The Court consists of fifteen members—eleven judges, called "ordinary

judges," and four deputy judges. The eleven judges constitute the full Court. In case they can not all be present, deputies are to sit as judges in place of the absentees; but if eleven judges are not available nine may constitute a quorum. It is provided that the judges shall be elected regardless of their nationality from amongst persons of high moral character, possessing the qualifications required in their respective countries for appointments to the highest judicial offices, or are jurisconsults of recognized competence in international law. The judges are elected by the Council and Assembly of the League, each body proceeding independently. The successful candidate must obtain an absolute majority of votes in each body. The judges are elected for nine years and are eligible for reelection. The ordinary judges are forbidden to exercise any political or administrative function. This provision does not apply to the deputy judges, except when performing their duties on the Court.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.

Provision has also been made so that any signatory Power, if it desires, may in signing the protocol accept as compulsory "*ipso facto* and without special convention" the jurisdiction of the Court in all or any of the classes of legal disputes concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation.

This is an entirely optional clause and unless it is signed the jurisdiction of the Court is not obligatory.

The first election of judges of the Court took place in September, 1921. The eleven ordinary judges are the following:

Viscount Robert Bannatyne Finlay, Great Britain;
B. C. J. Loder, Holland;
Ruy Barbosa, Brazil;
D. J. Nyholm, Denmark;
Charles Andre Weiss, France;
John Bassett Moore, United States;
Antonio Sanchez de Bustamante, Cuba;
Rafael Altamira, Spain;
Yorozu Oda, Japan;
Dionisio Anzilotti, Italy;
Max Huber, Switzerland.

The four deputies are:

Michailo Yovanovitch, Serb-Croat-Slovene State;
F. V. N. Beichmann, Norway;
Demetre Negulesco, Rumania;
Chung-Hui Wang, China.

It will be noted that one of the most distinguished American jurists has been elected a member of the Court, Hon. John Bassett Moore.

In considering the question of participation of the United States in the support of the Permanent Court, it may be observed that the United States is already a competent suitor in the Court. The statute expressly provides that the Court shall be open not only to members of the League, but to states mentioned in the Annex to the Covenant.

But it is not enough that the United States should have the privileges of a suitor. In view of the vast importance of provision for the peaceful settlement of international controversies, of the time-honored policy of this government in promoting such settlements, and of the fact that it has at last been found feasible to establish upon a sound basis a Permanent International Court of the highest distinction and to invest it with a jurisdiction which conforms to American principles and practice, I am profoundly convinced that this Government, under appropriate conditions, should become a party to the convention establishing the Court and should contribute its fair share of the expense of maintenance.

I find no insuperable obstacle in the fact that the United States is not a member of the League of Nations. The statute of the Court has various procedural provisions relating to the League. But none of these provisions save those for the election of judges, to which I shall presently refer, are of a character which would create any difficulty in the support of the Court by the United States despite its nonmembership in the League. None of these provisions impair the independence of the Court. It is an establishment separate from the League, having a distinct legal status resting upon the protocol and statute. It is organized and acts in accordance with judicial standards, and its decisions are not controlled or subject to review by the League of Nations.

In order to avoid any question that adhesion to the protocol and acceptance of the statute of the Court would involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Covenant of the League of Nations, it would be appropriate, if so desired, to have the point distinctly reserved as a part of the terms of the adhesion on the part of this Government.

Again, as already noted, the signature of the protocol and the consequent acceptance of the statute, in the absence of assent to the optional compulsory clause, does not require the acceptance by the signatory Powers of the jurisdiction of the Court except in such cases as may thereafter be voluntarily submitted to the Court. Hence, in adhering to the protocol, the United States would not be required to depart from the position which it has thus far taken, that there should be a special agreement for the submission of a particular controversy to arbitral decision.

There is, however, one fundamental objection to adhesion on the part of

the United States to the protocol and the acceptance of the statute of the Court in its present form. That is, that under the provisions of the statute only members of the League of Nations are entitled to a voice in the election of judges. The objection is not met by the fact that this Government is represented by its own national group in The Hague Court of Arbitration and that this group may nominate candidates for election as judges of the Permanent Court of International Justice. This provision relates simply to the nomination of candidates; the election of judges rests with the Council and Assembly of the League of Nations. It is no disparagement of the distinguished abilities of the judges who have already been chosen to say that the United States could not be expected to give its formal support to a Permanent International Tribunal in the election of the members of which it had no right to take part.

I believe that the validity of this objection is recognized and that it will be feasible to provide for the suitable participation by the United States in the election of judges, both ordinary and deputy judges, and in the filling of vacancies. The practical advantage of the present system of electing judges, by the majority votes of the Council and Assembly of the League acting separately, is quite manifest. It was this arrangement which solved the difficulty, theretofore appearing almost insuperable, of providing an electoral system conserving the interests of the Powers both great and small. It would be impracticable, in my judgment, to disturb the essential features of this system. It may also be observed that the members of the Council and Assembly of the League in electing the judges of the Court do not act under the Covenant of the League of Nations, but under the statute of the Court and in the capacity of electors performing duties defined by the statute. It would seem to be reasonable and practicable that in adhering to the protocol and accepting the statute, this Government should prescribe as a condition that the United States, through representatives designated for the purpose, should be permitted to participate, upon an equality with other states members of the League of Nations, in all proceedings, both of the Council and of the Assembly of the League for the election of judges or deputy judges of the Court, or for the filling of vacancies in these offices.

As the statute of the Court prescribes its organization, competence and procedure, it would also be appropriate to provide, as a condition of the adhesion of the United States, that the statute should not be amended without the consent of the United States.

The expenses of the Court are not burdensome. Under the statute of the Court, these expenses are borne by the League of Nations; the League determines the budget and apportions the amount among its members. I understand that the largest contribution by any state is but little more than $35,000 a year. In this matter also, the members of the Council and Assembly of the League do not act under the Covenant of the League but

under the statute of the Court. The United States, if it adhered to the protocol, would, of course, desire to pay its fair share of the expense of maintaining the Court. The amount of this contribution would, however, be subject to determination by Congress and to the making of appropriations for the purpose. Reference to this matter also might properly be made in the instrument of adhesion.

Accordingly I beg leave to recommend that, if this course meets with your approval, you request the Senate to take suitable action advising and consenting to the adhesion on the part of the United States to the protocol of December 16, 1920, accepting the adjoined statute of the Permanent Court of International Justice, but not the optional clause for compulsory jurisdiction; provided, however, that such adhesion shall be upon the following conditions and understandings to be made a part of the instrument of adhesion:

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

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

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

IV. That the statute for the Permanent Court of International Justice adjoined to the protocol shall not be amended without the consent of the United States.

If the Senate gives its assent upon this basis, steps can then be taken for the adhesion of the United States to the protocol in the manner authorized. The attitude of this Government will thus be defined and communicated to the other signatory Powers whose acquiescence in the stated conditions will be necessary.

Copies of the resolution of the assembly of the League of Nations of December 13, 1920, the protocol of December 16, 1920, and the statute of the Court are inclosed herewith.[3]

I am, my dear Mr. President, faithfully yours,

CHARLES E. HUGHES.

[3] Printed in the SUPPLEMENT to this JOURNAL, p. 55.