THE WORLD COURT AS A GOING CONCERN

Profound Ignorance as to Details of Institution to Be Found in the Most Unexpected Quarters—Composition of Court and Mode of Electing judges—League Merely Provides Organization Whereby More Than Fifty States Can Make Their Choice—Function of Court and Law It Applies—Intimate Description of How It Works, Drawn From Recent Experience*

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IT is not my purpose to make a controversial address, but rather to give you an account of the World Court as a going concern. I shall make no apology for dealing with details of organization, as I have discovered that there is profound ignorance on this subject in the most unsuspected quarters. One of the world's famous statesmen, whom I met abroad last summer, asked me how the judges of the Court were elected, and from the sort of questions put to me in this country, even by lawyers, I am persuaded that, while there has been much discussion about the World Court, there is but little knowledge on the part of most people of the facts relating to its constitution and actual working. I trust that you will find the facts with respect to the organization of the Court interesting, and I shall take the liberty of adding a description of its methods in dealing with cases, giving you the impressions I have gained from my connection with it.

What is the World Court, or the Permanent Court of International Justice, as it is formally designated? It is a bench of fifteen judges, eleven ordinary judges and four deputy judges, the latter being called upon to serve in the absence of ordinary judges. Nine judges constitute a quorum, but it is intended that eleven shall sit if possible. Under the revision of the organization of the Court, which is now before the Governments for approval, the position of deputy judges will be abolished and instead there will be fifteen ordinary judges. This will give opportunity for calling the judges to sit in rotation, so long as eleven are available, an arrangement which may be used to facilitate the work of the Court. The judges are elected for nine years and all are elected at the same time except as vacancies arise which are filled by special elections for the unexpired term. The next election will take place in September, 1930, when the entire bench of fifteen judges will be chosen. When a State, or a country, as we say, which is a party to a case before the Court has none of its own nationals among the judges, that State may appoint a judge to sit in that particular case. In this way, there may be more than eleven judges sitting.

How are the judges elected? Manifestly, it is of vital importance to have competent and impartial men, and the method of selection deserves careful consideration. The Court is organized under a constitution which is called the "Statute" of the Court, and this is put into effect by agreement among the nations that support the Court. This agreement is called the "Protocol of the Permanent Court of International Justice," and it has been signed by fifty-four States. The States in the Western Hemisphere that did not sign the original protocol of the Court are the United States, the Argentine Republic, Mexico, Ecuador and Honduras. In Europe, Turkey and Soviet Russia also did not sign.

Before the judges are elected, there must be nominations. For this purpose resort is had to the members of the old Court of Arbitration established under the Hague Convention of 1907, to which the United States is a party. That Court of Arbitration consists of members appointed by the various Governments and is really a panel of arbitrators from which selection can be made for particular arbitration. We have in the United States, for example, four members of the old Court of Arbitration who have been designated by the President: Elihu Root, John Bassett Moore, Newton D. Baker and myself. These national groups, respectively, of members of the old Court of Arbitration make the nominations of judges for the new World Court. The statute of the new Court recommends that each of these national groups should consult the highest court of their country, its legal faculties and associations devoted to the study of law, to the end that impartial and competent jurists should be proposed. After the nominations have been made, the election of judges of the World Court takes place in the Council and Assembly of the League of Nations. Let me say a word as to the reason for this method of selection. If you had fifty or more judges, representing fifty or more States, you might have an assemblage of an interesting character, but it would not be able to function properly as a court. It would resemble a parliamentary assembly with the maximum opportunities for delays, obstruction and the intrusion of politics. It would be practically impossible to maintain continuous, independent and satisfactory judicial work. But if you have a less number of judges, how are you to deal with the rivalries of Governments and obtain a court that will command the confidence of so many countries, both the great Powers and the smaller Powers? The organization of the League of Nations offered a method by which this difficulty could be solved.

*Address of Hon. Charles E. Hughes before the Association of the Bar of the City of New York, Thursday evening, Jan. 16, 1930.

In the small body which constitutes the Council of the League the great Powers, Great Britain, France, Italy, Japan, and now Germany, are permanent members. The choice of judges by the Council would thus naturally represent the wishes of the great Powers. In the Assembly of the League all the fifty or more Powers stand on an equal footing, and the small Powers are in a great majority. Hence, election by the Assembly means that the small Powers have had their say. To elect the judges, there must be a majority in each body, and the concurrent elections by both the Council and Assembly mean the concurrence of the Powers, both great and small. If the two bodies do not agree on a choice, a conference committee, like one of the conference committees of our Senate and House of Representatives, is appointed and, if an agreement is not reached in this way, the members of the World Court, already chosen, proceed to elect.

There is much talk in this country as to the election of judges by the League of Nations. It is quite evident, however, that if upwards of fifty States are to elect judges they must meet in some way for this purpose. If there were no League of Nations, and a World Court were set up, the Governments would have to arrange for an organization to elect judges. The League of Nations is frequently spoken of as though it were a unit, or acted as an entity in the election, but it is really composed of all these States, or countries, which have different policies and objectives and, when it comes to the selection of judges, they are not acting with the unity of a league but proceed according to their several conceptions of what the situation requires in the selection of a body of judges, who are not to execute orders but to pass upon the controversies which arise when States are unable to agree. The League of Nations provides an organization by which all these countries can make their choice. If the United States adheres to the protocol of the Court, it will be entitled to participate as a Great Power in the elections in both the Council and Assembly. It would naturally be expected that nationals (that is, citizens) of great States, in view of the magnitude of their interests, would always be found in the membership of an international court and thus that nationals of such countries as Great Britain, France, Italy and Japan would be selected. The same would be true of the United States if it supported the Court, as it has been true of the United States even in the absence of that support. There has always been a citizen of the United States on the World Court. Germany has no national on the Court at present, but it is most probable that she will have after the next election of judges. If all these great Powers had nationals on the Court, this would account for six of the fifteen judges and nine others would be nationals of other and smaller Powers. The conflict in interests, which there is nothing in the organization of the League of Nations even to obscure, much less to destroy, naturally tends to bring about the selection of men who by reason of their age, their experience, their character and attainments enjoy the confidence of the large group of small Powers whose part in the election is essential. For whatever great Powers may do when they fall into controversy, resort to the Permanent Court is recognized as the most important guarantee of justice to the smaller Powers. Their interest in the selection of judges is therefore very keen. As the men proposed by the national groups of great Powers must submit themselves to the election by the smaller Powers, the great Powers naturally put forward men of eminence whose records they think will stand scrutiny; and as the judges proposed by the groups in the smaller Powers are to pass upon the controversies of the great Powers, they are prompted to offer men of the required competence. No institution in this world can escape human limitations. We have had difficulties at times with reference to the choice of men for the Supreme Court of the United States. If you reflect upon the selection of judges for a permanent international court, I am inclined to think that you will find that it would be difficult to suggest a method which in its general features would be more likely to secure a bench of international judges in which confidence could be reposed. If you sought to establish a world court independently of the League of Nations, the fifty or more States which are now members of the League would have to join in electing judges and it would be necessary to provide a practical plan by which you would have an organization of all the States concerned which would measurably correspond to the organization of the Council and Assembly of the League in order to insure the balance of the small and great Powers which is essential to the establishment of an effective tribunal. I think that the real point with some of our friends who oppose the present method of selection is not that the method itself is inherently defective, but that they are opposed to a permanent court altogether. But for many reasons, which I cannot undertake at this time to detail, it has long been the desire and policy of the United States to have a permanent international court.

Similar considerations apply to the fixing and payment of the salaries of the judges and the expenses of the Court. The League provides the organization for this purpose, but it should be remembered that it is upwards of fifty countries composing the League and supporting the Court that fix the salaries and that these countries pay them together with the expenses of the Court according to their quotas. If there were no League, the salaries and expenses of a world court would have to be contributed by the supporting governments, and there would have to be machinery for making the budget apportionment and payment. What is really of importance is the fact that when judges have been elected, neither they nor their decisions are subject to the control of the League. A judge can be dismissed only when in the unanimous opinion of the other judges he has ceased to fulfill the required conditions. I should add that the ordinary judges, as distinguished from the deputy judges, are not permitted to exercise any political or administrative function during their term of office. The revision of the statute of the Court, which is now awaiting approval, not only contains this prohibition but also provides that the members of the Court may not engage in any other occupation of a professional nature.

What is the function of the World Court? It is to pass upon questions which arise between

States. It does not take cognizance of controversies between individuals, or controversies between individuals and a State. A State may make the cause of its nationals its own, and thus present a controversy with another State, of which the Court has jurisdiction. This was illustrated in the cases decided at the last term of the Court between France and Brazil and France and Yugo-Slavia, in each of which the French Government has espoused the cause of the holders of bonds issued by the other Government.

Unless the States which support the Court have otherwise agreed, resort to the Court is not compulsory; they retain the right to refuse to submit their cases to the Court. In the proposal that the United States should adhere to the protocol of the Court, it has not been suggested that the United States should accept a compulsory jurisdiction. If the United States adheres, it can still refuse to submit to the Court any particular controversy. The Court will not decide a dispute between States unless the parties to the dispute have consented to its submission to the Court.

Now there is a class of controversies which Governments ought always to be willing to submit to judicial settlement. These are controversies over what are essentially questions of law as distinguished from questions of mere policy. They are disputes concerning questions of international law, as to the interpretation of treaties, as to the existence of facts out of which international obligations arises, or as to the reparation that should be made when there has been a breach of an international obligation. Questions of this sort in all civilized countries are normally disposed of by judicial tribunals. It has been the declared policy of the United States that such questions should be submitted to arbitration, which is a form of judicial settlement. We have not taken the unreasonable position before the world that we would take the law into our own hands and that where we had a legal dispute with another country we should insist on deciding it for ourselves. The Pact of Paris, or the Kellogg pact, would be but a ridiculous form of words if the attitude of those who signed it were otherwise, for this agreement says not only that war is renounced as a national policy but that the settlement of disputes shall be had only by pacific means. Pacific means for the settlement of a legal controversy, if the parties cannot come to an agreement, is judicial settlement. In the class of questions I have just described, the statute of the Court provides that the States supporting it may, if they choose, sign what is called an optional clause accepting compulsory jurisdiction. A considerable number of States—I believe about forty-two—including Great Britain, France, Italy and Germany —have signed this clause. A large number of these have not as yet ratified. Aside from this optional clause, there are a great number of special treaties between countries which provide for the submission of controversies to the World Court if the parties find themselves unable to agree.

What law does the Court apply in the disposition of the controversies? It applies international law. What is international law? It is the body of principles and rules which civilized States consider as binding upon them in their mutual relations. It rests upon the consent of sovereign States. There are many questions which are discussed by international jurists with respect to principles which are not yet embodied in international law as there is no satisfactory evidence of the consent of States to be bound by them. There are also particular principles and rules that are binding upon particular States because they are established by treaties between such States. These rules are not, properly speaking, international law, but they govern the States that have agreed to them. If there is a dispute as to a question of international law and the Court finds that there is no international law on the subject, it says so. It is not its function to create rules of international law. It explores, hears arguments and determines whether there is a rule of international law applicable to a given case. Its decisions on such questions expound and clarify international law. The law thus develops in a normal way by the unfolding of its accepted principles in their application to particular disputes. But the Court does not assume the function of a legislature. The Court is naturally very cautious in this part of its work; an international court would not long survive that took to itself the legislative function or the making of law for States. In the ascertainment of international law, the Court examines international custom as evidence of a general practice accepted as law, the general principles of law recognized by civilized nations, and also judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.

It is often said that before an international court can properly function there should be law to apply. Of course, there is an existing body of international law. No intelligent person would deny that. What is meant is, that it is a limited body, and that it should be extended so as to provide adequately for the government of the relations of States to each other. That process is involved in what is called the codification of international law, a phrase used ambiguously, but generally taken to describe both a definite statement of existing law and also desirable modifications in order to add to and improve the law. That progress should be made in the codification of international law is the earnest desire of jurists and all who seek to hasten and make secure the reign of law in place of force. The intelligent efforts now being made in this direction are among the most gratifying signs of our times and worthy of all praise and support. But it must be recognized that the process is an extremely slow one, for it depends not only upon the acquiescence of jurists in definitions and proposed changes, which is about as difficult to secure as a consensus of theologians, but also the final approval of governments, which is almost impossible to obtain when the questions involved are of serious practical importance and the objectives of governments differ. Such statements and amendments of the law require the same acquiescence of the States composing the family of nations as that which underlies existing international law. It should also be observed that even where there is an accepted principle of law, it fares much better in the application of it to particular states of fact in controversies as they arise than in an attempted formulation of it in the endeavor to enact a rigid statute. That has been the experience in efforts at codification of domestic or municipal law and obviously the difficulty is far greater when you come to

a rigid formulation of international concepts. When a court applies a principle, you may readily recognize it and appreciate its application although not entirely content with the linguistic expression of it in the judicial opinion.

Neither the desirability nor the difficulty of codifying international law furnishes any reason for delay in establishing or supporting a permanent international court. You would still have to arrange for the pacific settlement of international disputes. You could not decide them for yourselves. If you gave the decision to arbitrators in sporadic arbitrations, you would have the same difficulty, and, in my judgment, a much less satisfactory judicial tribunal than a permanent court such as the World Court. If you were to wait for an international court until you could get a satisfactory body of international law, the only time that such a court could function would be in the millennium and most people may doubt whether at such a time it would be necessary.

This discussion, as to the importance of a body of law for the Court to apply, generally takes too little account of the actual conditions with which we are confronted. There are many hundreds of treaties in force. They are multiplying all the time. Most States are now enmeshed in treaties. And the great volume of work occupying the World Court lies in the interpretation of treaties. All languages are more or less imperfect as the vehicle of intention. Some ambiguities are premeditated, others are disclosed in the unexpected circumstances which always arise. New contingencies suggest shades of meaning. Thus treaties must have their judicial interpreters if nations cannot agree as to their meaning or application, and are not going to fight about them. The science of interpretation is a familiar one in all civilized countries and there is general agreement on the cardinal principles of interpretation. And this is peculiarly a judicial function. It will keep the World Court busy.

Some have said that the World Court applies what they call "League Law." It goes without saying that as the Covenant of the League is a treaty between those who have signed it, it is to be applied like any other treaty to their disputes. But it is binding only upon those who have accepted it. The United States has not. No international court would apply to a State the provisions of a treaty to which it was not a party and to which it had not acceded or adhered. What is called League Law is law for the members of the League in the sense that their agreement is obligatory among themselves. The fact that the United States is not a member of the League does not alter this in the slightest particular, and whether or not we support the World Court makes no difference in this respect. The Court must interpret the agreement between the members of the League fairly, as it must interpret our agreements fairly, if it has occasion to do so. The United States and every other country outside the League is bound only by what it has accepted and the others are bound by what they have accepted.

Some say that the United States is a country so powerful, so rich, and that there are so many who look at us askance, that it would be unsafe to entrust a decision even of legal questions to a permanent court. If that reasoning were accepted, it might lead to the conclusion that it would not be safe to entrust the decision to anyone but ourselves, and we should have the frankness to acknowledge that we intend to maintain our own views at any cost, even if we have to fight for them. To my mind, there would be a far greater degree of insecurity in the long run in such a highly objectionable and intransigent attitude even on the part of a great and powerful nation. Particularly is this so when the great and powerful nation would be weakened in the effort to maintain such a policy by the large number of its citizens who desire peaceful settlements and by the fact that ultimate action must depend upon a Congress affected by this body of opinion. This is apart from the international obligation we have deliberately assumed to resort solely to pacific measures. As we have thus given our pledge to have legal controversies settled in a peaceful way, we should candidly admit that we need an international judicial tribunal to determine them.

How does the World Court work? I shall try to give you an intimate description of its procedure, my participation in which during the past year has been one of the most interesting experiences of my life. When the disputant States agree to submit their controversy to the Court, each party prepares what is called a Case, or Memoire, which sets forth its contentions, the facts which support them, the documents concerned, its arguments and authorities. Time is fixed for the presentation of these Cases and also for a Counter Case, or Counter Memoire, by each party in answer to the case of its opponent. Then, if desired, further time is allowed for a Reply on each side after the counter cases have been filed. It is, of course, possible that there will be some question of fact and the Court may, if it desires, take evidence or arrange for the taking of evidence. But ordinarily, on the full presentation of all the circumstances and documents, such disputes of fact as there may be are likely to turn out to be of an inconsequental character or to be sufficiently resolved by the documents submitted. The pleadings, evidence and arguments thus being in order, the controversy is called for hearing. The President of the Court, who is elected for three years and must reside at The Hague, presides. The first President of the Court was Judge Loder, the eminent Dutch jurist who had much to do with the foundation of the statute of the Court. The next President was Judge Huber, of Switzerland, far-famed as an international jurist. The present President is Judge Anzilotti, of Italy, a distinguished professor of law and possessing one of the most acute and fairest minds with which it has been my privilege to come into close contact. The judges sit in the order of their election and those elected at the same time in the order of their age. Adjoining them are such deputy judges as may have been called for the case and the national judges who may have been appointed where a party to the dispute has no national as a regular judge.

The practice at the hearing is largely after the tradition of arbitration. You will recall that, in the case of arbitrations, when the parties were ready and it suited the convenience of the arbitrators, the counsel and the arbitrators proceeded to some chosen place and there arguments were heard *ad libitum*. The Permanent Court is a paradise for advocates. It is the only permanent tribunal in

the world, in the work of which I have had the pleasure of participating either as counsel or judge, where counsel can talk as long as they please and without interruption. How I have envied them! Whatever impatience I may have felt at the length of the arguments, and the repetition which sometimes characterizes the discourses even of the best advocates, has been offset by my realization of the supreme satisfaction of the contesting counsel. It should be said, however, that, as Governments are parties, they are generally represented by men of recognized ability, who have made the most careful preparation. It is, of course, impossible for courts with crowded calendars such as those of our domestic tribunals to give a large amount of time to oral arguments, and, while they seek to be fair, and even generous, in their allowance of time in particular cases of importance, the pressure of cases of little importance shortens the opportunity. But when a court is so situated, as is the World Court, that it can hear very full arguments, it is of the greatest convenience to the judges, for when the argument is over they know all about the case. Every important document has been read, the material evidence has been painstakingly reviewed, every point thoroughly discussed and every weighty authority presented. As the arguments proceed, every judge has a stenographic report. There are long sittings, from about ten-thirty to one o'clock, and after a recess for luncheon from about a quarter past three to six or even seven. In the evening the report of the morning arguments is circulated, and late at night or early the next morning the report of the afternoon arguments. Each judge can each day check up on every point. If, after the principal argument on one side, opposing counsel suggest that they would like a day before starting their arguments, the request is likely to be granted. A similar course may be taken before the arguments in reply. In the case of the so-called Free zones about the Lake of Geneva, a controversy of long standing between France and Switzerland, as to which both countries felt deeply and which involved the consideration of the effect of treaties of 1815 and 1816, and the facts of a long intermediate history, counsel for France took about two days in opening the case. The Swiss counsel took three days for their answer. The French counsel took about two days for their reply and the Swiss counsel closed the case in another two days.

I am constantly asked to what extent the difference in language creates a difficulty. I should say, very little. There are two official languages, French and English. The parties may select either in presenting their documents. Generally, they select French. These can be translated, if any judge so desires. I should say, however, that I do not think that a judge could do his work satisfactorily if he did not read French easily. The revision of the statute of the Court, now before the countries for approval, provides that a judge shall be able to read both of the official languages and speak at least one of them.

The oral arguments may be presented in either English or French at the will of the parties. Another language may be chosen if the Court permits. Translators are always present and, whatever language is used, there is at frequent intervals a translation into the other official language. This occurs generally about every twenty minutes or so. There are three translators who are busy taking notes of the oral argument and have extraordinary aptitude in immediately translating. When a document is read, it is handed to the translators, who translate the text. The stenographer's minutes, to which I have referred, distributed each day, are in both French and English. It is an advantage to a judge to understand spoken French, even if he does not speak it fluently. The present judges, with two or three exceptions, both read and speak English. The translators are also present in the consultation rooms and are ready, if desired, to translate from one language into the other. In the consultations most of the judges speak in French, some speak in English. As English is as much an official language as French, all the formal official work of the Court is in both languages, that is, the reports of the arguments are found in both languages and so are the judgments of the Court.

Immediately at the close of the oral argument, the Court goes into conference for the purpose of determining whatever preliminary questions are involved, that is, in relation to the jurisdiction of the Court, or with respect to the interpretation of the special agreement submitting the case to the Court, where question has been raised as to what is really before the Court for decision. This conference is entirely preliminary and as soon as the Court has decided, and this does not generally take very long, as to what questions are before it, a day is fixed for the submission of preliminary or tentative opinions. Thereupon each judge, before any consultation among the members of the Court as to the merits, proceeds to write a preliminary opinion, or note, on the facts and the law. This is rather a thrilling experience. It is a practice that could be had only in a court with abundant time at its disposal. But I confess that I sometimes wish that every member of our courts were required after an argument to write out an opinion as a basis for the consultation. No judge cares to appear at a disadvantage, although the opinion, or note, as it is called, is only tentative. He does not care to disclose a failure to study the case or to apprehend its points, or to appreciate the weight of the respective arguments. His mentality is somewhat at stake as well as the controversy. The result is that he is likely to pay close attention to the oral arguments, to examine with care every document, to consult each important authority; he may even analyze the oral arguments as he has them day by day; he keeps thinking about crucial points, awaiting with deep interest the development of the argument. The case absorbs all his waking thought and when the arguments is over he is likely to have a fairly clear idea of the case and to have shaped his views regarding it. Of course, judges in all courts differ. Some jump very quickly, perhaps took quickly, to conclusions, others find it difficult to jump at all. Some go directly to the point at issue and are disposed to brush aside philosophical inquiries that are not essential to the determination. Others may be more inclined to consider questions from the standpoint of eternal postulates and to work their way gradually from these to the particular dispute. It is the meeting of such minds, particularly in an international court, which gives to litigating governments ground for confidence

and keeps before the world the ideal of international justice.

As I have said, each judge in his own sanctum works on his own opinion knowing that it will be analyzed and eviscerated by equally if not more able men who have studied the case with the same attention. Generally five or six days, or perhaps a week, are given for the preparation of these preliminary opinions. They are filed with the Registrar of the Court and circulated in confidence to the members of the Court; a day or two is given for their consideration and then the Court meets in consultation. The President of the Court prepares the agenda for the consultation, listing every point of fact or law that is involved in what he believes to be a satisfactory order. This is circulated. The judges meet and first decide whether they will accept or amend the agenda. Each point is then taken up and discussed. It is discussed, even as counsel have discussed the case, without limit of time until, with all the courtesy that is due to brethren who differ, it appears that a vote should be had. Then a vote is taken on the particular question and the conference proceeds to the next point on the agenda. In this way, day after day, with long hours from morning to evening, the Court sits in the most intimate and candid discussion until finally the last question is reached and the vote is taken which decides the controversy. Thereupon, immediately and without either oral discussion or nominations, two members of the Court are selected by secret ballot to join the President of the Court in drafting the judgment of the Court in accordance with the majority vote. This committee immediately goes to work. It decides its plan of action according to the convenience of its members. By uninterrupted activity it prepares a draft judgment that suits the committee. The judgment recites the proceedings leading up to the hearing of the case, the points of fact, the various points of law; it discusses the questions, sets forth the determinations of the Court on each question, and then finally gives its award. The committee circulates its draft of the judgment and a couple of days are given to the other members of the Court to file in writing any amendments they propose. The committee considers these amendments, decides what it will accept or reject and circulates its revised draft. A conference of the full Court is then called for discussion of the draft. It is read like a legislative bill. Any point of objection is discussed and voted upon until finally the form of judgment has received the approval of the majority of the Court. A day is then fixed for a second reading on which dissenting opinions are required to be filed and, in the light of these opinions, the second reading is had and the final vote taken. Counsel for the respective parties are informed, the Court meets, hands down its judgment and calls the next case. The judgment of the Court, I should remind you, has no binding force except between the parties which have submitted the controversy to the Court and in respect of that particular case.

This, you will see, is extremely deliberate procedure, but nothing could be more important than deliberateness and thoroughness in the disposition of international controversies, where not the fortune of individual litigants are at stake but the future course of governments which have been unable to reach an accord as to their mutual obligations.

In all this work a judge, who has been appointed in a particular case by a government because it has no national among the regular judges, takes his place as a fully accredited member of the Court. He hears the arguments, gives his tentative opinion, participates in the consultations and votes with the rest of the judges. At first sight, it might be thought that this plan which carries forward the traditions of arbitral procedure would intrude a partisan element into the Court. It is to be borne in mind, however, that there is a national of the other party to the dispute already on the Court or similarly appointed. It must also be remembered that there are at least nine, and may be eleven, judges sitting, aside from judges thus temporarily designated. The Governments thus appointing a judge naturally desire to have a distinguished appointee and hence a jurist of high repute is generally designated. For example, in the case between France and Switzerland as to the Free Zones, Eugene Dreyfus, President of the Court of Appeals at Paris, was appointed judge *ad hoc*, that is, for that case, as the French judge who had been elected as a member of the Court had died and there was no French judge upon the bench. It must not be assumed that a judge who is appointed as a national of a particular country to sit in its case will decide in favor of that country. Lord Finlay showed the independence of a judge when he decided against Great Britain. He was a regularly elected judge. But quite apart from any tendency there may be in the case of national judges appointed for a particular case to look favorably upon the contentions of his country, the appointment of such a judge is, I found, of the greatest value in the work of an international tribunal. It greatly aids in disposing of any notion that a case has not been thoroughly considered or has been been decided in any way than upon its merits as the majority sees them. The judge reads all the tentative opinions of his colleagues. He thus sees how the case has impressed each one of the judges from their individual preliminary statements. He meets with them in consultation and hears every position vigorously and thoroughly presented and discussed. He has the opportunity to present his own views. In his original opinion, in consultations, in criticisms of the draft judgment, at every point, he is heard. If the Court is against him, he knows why, and it is most probable that he will go back to his country with the message that whatever may be thought of the judgment there was not the slightest question of the sincerity, the independence and the thoroughness of the consideration of the case. If he was not there, if no national of a State which is a party to the dispute were on the Court, it would be far easier to give currency to notions of the intrusion of political and partisan considerations.

In the comprehensive discussions in the consultation room, there is, of course, opportunity for vigor and effectiveness in debate. Judges are not only human in their limitations, but in their aspirations. They desire the respect of their colleagues. They hope for the esteem of the world. There is only one way that they can get either or both, and that is by using all the ability that God has

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Named Chief Justice of the United States to succeed Chief Justice Taft.

given them, by unremitting industry, by candid expressions. That I have found to be characteristic of the international Court. Whatever defects it has are those which inhere in all our imperfect human undertakings. They are found in our domestic courts, even in the highest. The one thing that has impressed my mind is this. After sitting alone, with one's own task, endeavoring to reach a conclusion as to the merits of a stubbornly contested dispute, wondering what one's colleagues think of the different points that have been laboriously argued, one cannot but have a feeling of exaltation in reading the preliminary opinions as they come in, and in realizing to what extent the minds of men drawn from many countries move along the same lines of careful reasoning. Whether one agreed or not with this or that opinion, one's respect was heightened by the exhibition of intelligent and conscientious application, of learning and mastery, of the power of analysis and cogent statement, which are the marks of judicial work of superior excellence. There has always been danger in all tribunals, both domestic and international, whether constituted by arbitral arrangements or otherwise, of the alloy of policy, even of intrigue, of attitudes taken in deference to power rather than to justice. I am inclined to think that this sort of influence is much more to be dreaded in international arbitrations, such as it is in most cases practically possible to set up, then in such an organization as the World Court. The way to meet such intrusions is by the earnestness and ability of judges who are not respecters of persons of particular governments, but of the law and of justice, by winning the victories of reason in intimate debates, by well considered deliverances which satisfy intelligent opinion. In this way the Supreme Court of the United States, despite all the difficulties that surrounded its early days, has come to be more firmly established in the respect and confidence of our people than any of the other institutions of government.

I have not discussed the terms of the protocol which has been signed on behalf of the United States for its adherence to the World Court. I referred to them in an address before the American Society of International Law. They will be the subject of abundant discussion by others and I have preferred to devote my time on this occasion to the effort to give you a picture of the Court at work. I may say, however, that in my opinion the conditions of this protocol fully protect the interests of our country.

The judicial settlement of international disputes cannot be adequately secured by mere sporadic, occasional efforts. There should be continuity, permanency, the opportunity for the growth of confidence and for the firm establishment of the tradition both of competency and judicial independence. As a nation devoted to the interests of peace, we have the utmost concern in this development. To hold aloof is to belie our aspirations and to fail to do our part in forming the habit of mind upon which all hopes of permanent peace depend. In supporting the World Court in the manner proposed, we lose nothing that we could otherwise preserve; we take no serious risks that we could otherwise avoid; we enhance rather than impair our ultimate security; and we heighten the mutual confidence which rests on demonstrated respect for the essential institutions of international justice.

Compiled Indian Laws Passed Since 1913 Published

ALL laws relating to Indian affairs enacted by Congress between December, 1913, and March, 1927, have been collected in Volume IV of the Compilation of Indian Laws and Treaties, compiled by Charles J. Kappler, and published by the Government Printing Office, pursuant to resolution of Congress.

There is also included a list of all treaties made with the Indians from 1778 to 1868 which have been before the United States Supreme Court for adjudication, with citations to opinions. The famous Northwest Ordinance of 1787 on the rights of the Indians, a historical statement of the Fort Laramie Treaty of 1851, an article entitled "Power of Congress to Abrogate Indian Treaties," a memorandum on Federal Jurisdiction over Indian Lands, Allotments, Alienation, and the Determination of Heirs of Deceased Indians, and an article on the "Doctrine of Indian Right of Occupancy and Possession of Land," are also included, as papers which will prove valuable references for Senators and Representatives.

Citations are also given to all cases in which laws passed since 1913 relating to Indians have been before the courts or departments for adjudication. Title 25 of the United States Code Annotated, on the subject of "Indians," is also included.