

**THE PROJECT OF A PERMANENT
COURT OF INTERNATIONAL
JUSTICE AND RESOLUTIONS OF
THE ADVISORY COMMITTEE OF
JURISTS**

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The project of a permanent court of international justice and resolutions of the Advisory committee of jurists by James Brown Scott

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JAMES BROWN SCOTT

**THE PROJECT OF A PERMANENT
COURT OF INTERNATIONAL
JUSTICE AND RESOLUTIONS OF
THE ADVISORY COMMITTEE OF
JURISTS**

Pamphlet Series of the
Carnegie Endowment for International Peace
Division of International Law
No. 35

International A. B. Scott

The Project of a Permanent Court of International Justice and Resolutions of the Advisory Committee of Jurists

REPORT AND COMMENTARY

BY

JAMES BROWN SCOTT

Secretary of the Carnegie Endowment for International Peace
Technical Delegate of the United States to the Second Hague Conference, 1907
Technical Delegate of the United States to the Conference at Paris, 1919

The usual remedies between nations, war and diplomacy, being precluded by the federal union [of the United States], it is necessary that a judicial remedy should supply their place. The Supreme Court of the Federation dispenses international law, and is the first great example of what is now one of the most prominent wants of civilized society, a real International Tribunal.—John Stuart Mill, *Considerations on Representative Government* (1861), pages 505-6.

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CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
WASHINGTON, D. C.

September 17, 1920.

TO THE BOARD OF TRUSTEES OF THE
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE:

GENTLEMEN:

On the 19th day of April, 1917, the Board of Trustees, at its annual meeting, pledged the Endowment to take such steps as lay in its power to aid in removing the obstacles still standing in the way of the establishment of a truly Permanent Court of International Justice. The resolution in this behalf was worded as follows:

Resolved, That the Carnegie Endowment for International Peace shall make a special effort to overcome the remaining obstacles to the establishment of an International Court of Justice, and to this end the Executive Committee is authorized and directed to take such action and at such time as it may deem proper.

This resolution had, upon the motion of Mr. Andrew J. Montague, already been adopted by the Executive Committee at its meeting of January 4, 1917, and referred to the Board of Trustees for its approval.

At the annual meeting of the Board of Trustees on May 5, 1920, Mr. Elihu Root, President of the Endowment and Chairman of its Board of Trustees, stated that he had accepted membership in an Advisory Committee of Jurists invited by the Council of the League of Nations to prepare a plan for a Permanent Court of International Justice. Mr. Root requested that the undersigned be given a leave of absence to accompany him in an advisory capacity. This request met with the unanimous approval of the Trustees. The undersigned therefore accompanied Mr. Root, attended the meetings and, on occasion, participated in its proceedings.

In accordance with the practice of the Endowment, he presents the following report.

Respectfully submitted,

JAMES BROWN SCOTT,
*Secretary and Director of the
Division of International Law.*

REPORT ON THE PROJECT OF A PERMANENT COURT OF INTERNATIONAL JUSTICE AND RESOLUTIONS OF THE ADVISORY COMMITTEE OF JURISTS

INTRODUCTION

The Treaty of Versailles, signed June 28, 1919, whose ratifications were deposited at Paris on January 10, 1920, opens with the Covenant of the League of Nations, the Preamble of which reads as follows:

THE HIGH CONTRACTING PARTIES,

In order to promote international coöperation and to achieve international peace and security

- by the acceptance of obligations not to resort to war,
- by the prescription of open, just and honorable relations between nations,
- by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and
- by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another.

Agree to this Covenant of the League of Nations.

One way of achieving international peace and security is declared to be "by the firm establishment of the understandings of international law as the actual rule of conduct among governments." To ascertain the "understandings of international law" and to make of them "the actual rule of conduct among governments," Article 14 of the Covenant provides that the Council of the League of Nations shall "formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice." By the same article the court is declared to "be competent to hear and determine any dispute of an international character which the parties thereto submit to it." In addition, the court may also give "an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

The court has therefore a double purpose and a two-fold jurisdiction: it is the judicial organ of the League of Nations competent "to hear and determine any dispute of an international character" which states may submit to it; it is also an adviser to the Council and the Assembly in the performance of their respective duties "upon any dispute or question" which either one or the other may refer to it.

To formulate plans for the establishment of this Permanent Court of International Justice, the Council, on February 13, 1920, invited the following jurists:

- Mr. Satsuo Akidzuki, Former Ambassador of His Majesty the Emperor of Japan.
- Mr. Rafael Altamira, Senator, Professor of the Faculty of Law of the University of Madrid.
- Mr. Clovis Bevilaqua, Professor of the Faculty of Law of Pernambuco and Legal Adviser to the Ministry of Foreign Affairs of Brazil.
- Baron Descamps, Belgian Minister of State.
- Señor Luis Maria Drago, Former Minister for Foreign Affairs of the Argentine Republic.
- Professor Carlo Fadda, Professor of Law at the University of Naples.
- Mr. Henri Fromageot, Legal Adviser to the Ministry of Foreign Affairs at Paris.
- Mr. G. W. W. Gram, Former Member of the Supreme Court of Norway.
- Dr. B. C. J. Loder, Member of the Court of Cassation of the Netherlands.
- Lord Phillimore, Member of the Privy Council of His Majesty the King of England.
- Mr. Elihu Root, Former Secretary of State of the United States of America.
- Mr. Milenko R. Vesnitch, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Serbs, Croats and Slovenes in Paris.

In the letter of invitation it was stated that "the duties which will fall to the court will cover a wide sphere, and will be of the very highest importance. The Council in no way underrates the sacrifice which it asks you to make in devoting a period of what will no doubt be arduous labor to helping to plan and create it; nor does it fail to realize that the work it is asking you to interrupt is itself of very great importance. But the court is a most essential part of the organization of the League of Nations. If it is established on sound and statesmanlike principles, it can contribute perhaps more than any other single institution to maintain the peace of the world and the supremacy of right amongst the nations."¹

Mr. Akidzuki declined appointment and was replaced by Mr. Mineichiro Adatei, Japanese Minister to Belgium. The Brazilian Government was unable to spare Mr. Bevilaqua, who either hoped to attend the later sessions of the Committee, or wished a Brazilian to be on the Committee, inasmuch as he asked Mr. Raoul Fernandes, Brazilian member of the Reparations Commission established under the Treaty

¹ League of Nations, *Official Journal*, March, 1920, pp. 37-38.