Extract from a speech made by Mr. Charles Evans Hughes, former secretary of state, before the American society of international law, April 28, 1927. [New York, 1927].

Memorandum

If you were interested in the Fernandes article sent you some days ago, you will be further interested in the comment made upon it by Ex-Secretary of State Hughes last evening.

M. Fernandes, in addition to the points referred to here by Mr. Hughes emphasizes the need of further conference. The impasse, he says, could not be overcome “if the American Government were to refuse to take part in the subsequent negotiations which the Conference considered necessary for arranging the manner in which the United States should make known its wishes on advisory opinions or questions in which it has or claims an interest.”

THE AMERICAN FOUNDATION

Maintaining The American Peace Award 565 Fifth Avenue New York City

April 29, 1927.

THE AMERICAN FOUNDATION

565 Fifth Avenue New York City

by Mr. Charles Evans Hughes, former Secretary American Society of International Law, April 28,1927

respect to the the Per??? exclu??? in which the Regret??? has been facts. ex??? without for or been accepted, and a counter-proposal has been made by a Conference of Signatories of the Protocol. That Conference deemed the opinion of the Permanent Court in the *Eastern Carelia* case, to the effect that the Court would not deal with a dispute between a Member of the League and a State not belonging to the League, even to the extent of giving an advisory opinion, without the consent of the latter State, as apparently meeting the desire of the United States, so far as disputes to which the United States is a party are concerned. As to disputes to which the United States is not a party, but in which it claims an interest, or questions, other than disputes, in which the United States claims an interest, the Conference proposed that the Court should attribute to the objection of the United States “the same force and effect as attaches to a vote, against asking for the opinion, given by a Member of the League of Nations either in the Assembly or in the Council.” But in connection with this proposal the Conference made a frank comment that the Senate's reservation appeared to rest “upon the presumption that the adoption of a request for an advisory opinion by the Council

or Assembly requires a unanimous vote." It was pointed out that no such presumption had thus far been established and it was "therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient." So that the opportunity of the United States to raise objection on a footing of equality with a Member of the League in the Council and Assembly, respectively, would not assure to the United States, as required by the Senate's reservation, a right to prevent the entertaining by the Court of a request for an advisory opinion touching such disputes or questions in which the United States claims an interest.

The question having thus been raised, the response of the Conference of Signatories that unanimity may not be necessary in requesting advisory opinions has created a new situation, as adherence of the United States on these terms would require an explicit approval on the part of the Senate of an understanding that advisory opinions might be requested over the objection of the United States touching such disputes and questions in which the United States claims an interest. The core of the difficulty has been recently stated, succinctly and candidly, by Mr. Raul Fernandes, formerly Brazilian Ambassador to Belgium, who was a member of the Advisory Committee of Jurists which drafted the Statute of the Permanent Court. Mr. Fernandes says: "It would be useless to deny, however, that certain members of the League of Nations have sufficient prestige to keep at least the Council, if not the Assembly, from taking up and deciding a question, if or when they doubt the expediency of doing so. Even if such a nation were in a minority at first, it is very likely that the other nations would yield to the arguments they bring forth, or would prefer to postpone a decision. As a matter of fact this is the way things are done, and it would be disastrous if they were done differently; the Council is strong only when its members can reconcile their different points of view, and its usefulness consists precisely in facilitating such agreement through the personal contacts and the continued conversations that are possible only at Geneva. This being the case, the situation proposed to the United States, as affording a theoretical equality, would be as follows: the United States government, from a distance, would oppose its futile vetoes on proposals agreed on at Geneva; while certain other nations, on the scene, would retain their means of sidetracking the proposals that seemed troublesome to them."

Mr. Fernandes gives it as his opinion that "the solution of this difficulty is in the hands of the Council and the Assembly at Geneva" and that "the only possible solution is the formal admission that a request for an advisory opinion is one of those questions for which a unanimous vote is necessary."

It would be fortunate, indeed, if such a means could be found of deliverance from the present impasse and if the United States, without sacrificing the interests which are cherished by our people, might be able to give support to the practical application through a permanent tribunal of the

principle of judicial settlement of international disputes, a principle to which this Government has been, and continues to be, firmly attached.

Bulletin Number 1

April 29, 1927

THE AMERICAN FOUNDATION

565 Fifth Avenue New York City

Extract from a speech made by Mr. Charles Evans Hughes, former Secretary of State, before the American Society of International Law, April 28, 1927

THE difficulties that have arisen with respect to the adherence of the United States to the Protocol of Signature of the Statute of the Permanent Court are concerned chiefly, if not exclusively, with the giving of advisory opinions in relation to disputes and questions in which the United States has or claims an interest. Regrettable as it is that an apparent deadlock has been reached, there is no gain in blinking the facts. The Senate adopted a reservation providing explicitly that the Court shall not entertain, without the consent of the United States, any request for an advisory opinion touching such disputes or questions. That reservation has not been accepted, and a counter-proposal has been made by a Conference of Signatories of the Protocol. That Conference deemed the opinion of the Permanent Court in the *Eastern Carelia* case, to the effect that the Court would not deal with a dispute between a Member of the League and a State not belonging to the League, even to the extent of giving an advisory opinion, without the consent of the latter State, as apparently meeting the desire of the United States, so far as disputes to which the United States is a party are concerned. As to disputes to which the United States is not a party, but in which it claims an interest, or questions, other than disputes, in which the United States claims an interest, the Conference proposed that the Court should attribute to the objection of the United States "the same force and effect as attaches to a vote, against asking for the opinion, given by a Member of the League of Nations either in the Assembly or in the Council." But in connection with this proposal the Conference made a frank comment that the Senate's reservation appeared to rest "upon the presumption that the adoption of a request for an advisory opinion by the Council or Assembly requires a unanimous vote." It was pointed out that no such presumption had thus far been established and it was "therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient." So that the opportunity of the United States to raise objection on a footing of equality with a Member of the League in the Council and Assembly,

respectively, would not assure to the United States, as required by the Senate's reservation, a right to prevent the entertaining by the Court of a request for an advisory opinion touching such disputes or questions in which the United States claims an interest.

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Mr. Fernandes gives it as his opinion that “the solution of this difficulty is in the hands of the Council and the Assembly at Geneva” and that “the only possible solution is the formal admission that a request for an advisory opinion is one of those questions for which a unanimous vote is necessary.”

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