August 2015

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INTERNATIONAL LAW: THE BRIDGE TO INTERNATIONAL JUSTICE†

by Wayne L. Morse*

The United States Senate, on July 28, 1945, by a vote of eighty-nine to two, passed the Resolution of Ratification of the Charter of the United Nations with the Statute of the International Court of Justice annexed thereto. The treaty had been formulated at the United Nations Conference on International Organization, in San Francisco, and signed on June 26, 1945. President Truman, speaking in San Francisco at the signing session, said in part:

The Charter of the United Nations which you are now signing is a solid structure upon which we can build for a better world. History will honor you for it. Between the victory in Europe and the final victory in Japan, in this most destructive of all wars, you have won a victory against war itself.

If we had had this charter a few years ago—and, above all, the will to use it—millions now dead would be alive. If we should falter in the future in our will to use it, millions now living will surely die.

By their own example the strong nations of the world should lead the way to international justice. That principle of justice is the foundation stone of this charter. That principle is the guiding spirit by which it must be carried out—not by words alone but by continued concrete acts of good will.

The time for action is here and now. Let us, therefore, each in his own nation and according to its own way, seek immediate approval of this charter—and make it a living thing.1

The United Nations Charter, with its Statute of the International Court of Justice, offers mankind’s best hope of attaining a world order of permanent peace through the substitution of the peaceful policies and procedures of International Justice for the jungle law of military might. The preamble to the Charter reads:

† Based on an address by the Honorable Wayne L. Morse on April 30, 1970, in the observance of Law Day at The University of Akron School of Law.

* Former United States Senator from the State of Oregon.

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.²

The fifty nations constituting the San Francisco World Parliament of Nations pledged in the Charter's statement of purposes and principles:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law adjustment or settlement of international disputes or situations which might lead to a breach of the peace; . . .³

In fact, throughout the Charter, the signatories bound themselves to maintain international peace and security through pacific settlement of disputes or, if necessary to enforce the peace, by joint action against a wrongdoer nation, or group of nations, in accordance with the rules and procedures proscribed under the Charter articles.

² 91 Cong. Rec. 7119 (1945).
³ Id.
It is the major thesis of these remarks that the United Nations Charter, with its Statute of the International Court of Justice, if implemented by its member nations, in keeping with the objectives of its preamble and statement of purposes and principles, can become a bridge to international justice leading mankind from the barbarism of recurrent wars to a just and permanent world order of enforceable peace. As President Truman stated (supra), “By their own example, the strong nations of the world should lead the way to international justice. That principle of justice is the foundation stone of this Charter.”

The Charter is not a self-executing legal instrument. Its workability for promoting international justice and world peace will always depend upon the good-faith compliance by each of the signatory nations to their individual and joint commitments under the Charter. The delegates of the fifty signatory nations knew that it would have to be tested in history’s crucible of trial and error and subjected to evolutionary changes in procedures and policies as conflicts and controversies would arise before the Security Council, the General Assembly, and the International Court of Justice. They also recognized that it was the product of many conscionable compromises of differing views among the delegates.

Nevertheless, the fifty delegations unanimously signed the Charter, thereby pledging to abide by their commitments under it and to work to improve it. They recognized its potentials for maintaining world peace through its procedures and policies of international justice and for substituting the rule of law for war. They knew that civilization would never survive a Third World War which would surely be a nuclear war.

Great public interest in the Charter had developed throughout our country by the time of its signing. Much credit is due the press, television, radio, schools, and churches for their educational programs. Business, labor, farm, professional and civic groups in great numbers built up a nationwide public interest in the United Nations issue. Members of Congress came to know very well that public opinion strongly supported the ratification of the Charter.

On June 28, 1945, Senator Connally of Texas, the Chairman of the Senate Foreign Relations Committee and a Democratic member of the United States Delegation to the San Francisco Conference, reported to the Senate on the signing of the United Nations Charter:
From the dawn of modern civilization eminent men have in vain advanced plans to eliminate the scourge of war. Great thinkers like Dante, Grotius, William Penn, Rousseau, Bentham, and Kant have risen to magnificent heights to formulate charters, which, in their own times, might have been effective designs for world peace. But these plans came to naught, because men lacked the imagination and the daring necessary to put them into practical effect.

In 1919 the Covenant of the League of Nations was submitted to the United States Senate. It did not receive the sanction of this body. The noble conception of that towering leader, President Woodrow Wilson, was, however, rejected. His exalted vision, his heroic efforts toward world peace and his eloquent speeches in its behalf will remain indelibly inscribed on the annals of the centuries.

Now we are confronted with another great opportunity. This time, however, the charter was not struck off by the brain of a single individual. This time the charter was conceived in the best tradition of American democracy. It has been discussed for many months throughout the length and breadth of the land. Now, finally, it has emerged in its completed form from the deliberative efforts of the representatives of 50 nations met in solemn conclave.

The Atlantic Charter, the United Nations declaration, the Moscow declaration, and the Conferences at Cairo, Tehran, and the Crimea, together constitute a magnificent background for the calling of the Conference at Dumbarton Oaks and the Conference at San Francisco. These documents and the results of these Conferences express the hopes and expectations of the United Nations. They reflect the noble purposes and high objectives which we have in mind.

Senator Connally stressed the role of the International Court of Justice under the Charter in the settlement of disputes in accordance with the principles of law and justice:

The International Court of Justice constitutes the fifth great arm or agency of the new organization. Whereas the Security Council is primarily designed to handle political disputes, the Court will be called upon to adjust differences of a legal or justiciable nature. The new Court is patterned closely after the old Permanent Court of International Justice which functioned so satisfactorily during the two decades prior to the outbreak of World War II. Jurisdiction will be optional on the part of any party to a dispute. On the other hand, where disputes are referred to the Court or

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4 91 Cong. Rec. 6874 (1945).
where a state accepts the compulsory jurisdiction of the Court in certain categories of cases, its decisions are, of course, binding upon the parties. I may say here that a nation may file a consent to accept the compulsory jurisdiction of the Court in a case, as in all cases, or it may reserve that right, and only file its consent in particular cases, or not accept the jurisdiction at all, unless it so desires.

The American people have traditionally stood for the great ideal involved in the settlement of disputes according to the principles of law and justice. They will, I am sure, wholeheartedly approve the new Court as a vital and essential part of the world organization. The statute of the Court has already received wide approval among the members of the American Bar.\footnote{Id. at 6876.}

In closing, Senator Connally stated:

The United States will not reject the clear and challenging call to this high duty. Let us rise to our lofty destiny. Let us be among the architects of a structure more marvelous than one built of steel and stone. Let us create a temple of law and reason and justice and peace to serve the peoples of the world.

The world charter for peace is knocking at the doors of the Senate. We shall not turn it away.

There come ringing down through a century and a half the inspired words of Washington as he stood before the Constitutional Convention of 1787 and blessed the new Republic that was being launched upon the earth. Washington said:

"Let us raise a standard to which the wise and the honest can repair; the event is in the hands of God."\footnote{Id. at 6878.}

Senator Arthur Vandenberg of Michigan, then the ranking Republican on the Senate Foreign Relations Committee and a member of the United States Delegation, made an eloquent speech to the Senate on June 29, 1945, setting forth his report on the United Nations Charter. In the course of the speech, which received national acclaim, he said:

Mr. President, I have signed the San Francisco Charter. I believe it represents a great, forward step toward the international understanding and cooperation and fellowship which are indispensable to peace, progress, and security. If the spirit of its authors can become the spirit of its evolution I believe it will bless the earth. I believe it serves the intelligent self-interest of our own United States which knows, by bitter experience in the Valley of the Shadow of two...
wars in a quarter century, that we cannot live entirely unto ourselves alone. I believe it is our only chance to keep faith with those who have borne the heat of battle. I have signed the charter with no illusions regarding its imperfections and with no pretensions that it guarantees its own benign aims; but with no doubts that it proposes an experiment which must be bravely undertaken in behalf of peace with justice in a better, happier, and safer world.

I shall support the ratification of this charter with all the resources at my command. I shall do this in the deep conviction that the alternative is physical and moral chaos in many weary places of the earth. I shall do it because there must be no default in our oft-pledged purpose to outlaw aggression so far as lies within our human power. I shall do it because this plan, regardless of infirmities, holds great promise that the United Nations may collaborate for peace as effectively as they have made common cause for war. I shall do it because peace must not be cheated out of its only collective chance.

... . . .

Within the framework of the charter, through its refinement in the light of experience, the future can overtake our errors. But there will be no future for it unless we make this start. I doubt if there could ever be another or a better start. I commend this over-all consideration to all of my colleagues who have any interest in collective security as an instrument of collective peace. I commend it to all who are listening to the prayers for peace which rise from the hearthstones of our land.7

Senator Vandenberg agreed that the United Nations should maintain adequate military strength for use, if necessary, to enforce the peace, but he was firm in his convictions that using pacific procedures for settling international disputes before they ever reach the fighting stage offers the best hope for peace among nations. Thus, he argued:

Certainly I do not disagree that the United Nations must possess the potential power to fight to keep the peace which they have won by kindred means. I agree that we must "keep our powder dry" and be prepared to "pass the ammunition." But I would not agree that force is the real genius of this new institution. On the contrary, it is my conviction that the great hope which is here held out to humankind stems largely from the solemn formula which the San Francisco Charter creates for the pacific settlement of disputes before they ever reach a fighting stage. It is my profound belief that the pacific contacts and consultations which will

7 91 Cong. Rec. 6981-82 (1945).
constantly be maintained by the powers—and particularly by the great powers—plus the pacific routines which every dispute must hereafter exhaust before it is subject to any sort of sanctions, can and will resolve most, if not all, of the controversies which otherwise might lead once more to war.

. . . What are these pacific routines to which resort must be made by the large as well as by the small powers before there can be any consideration, thought, or suggestion of resort to force? First, solution by negotiation; second, solution by inquiry; third, solution by mediation; fourth, solution by conciliation; fifth, solution by arbitration; sixth, solution by judicial settlement; seventh, solution by resort to regional arrangements; eighth, other peaceful means chosen by the disputants themselves; ninth, appropriate procedures or methods of adjustment recommended by the Security Council.

As a result of the San Francisco Conference, Dumbarton Oaks has been given a new soul. As originally drawn, it avoided any reference to justice—without which there can be no stable peace. San Francisco's Charter fills that void. The charter names justice as the prime criterion of peace.

. . . Never forget, furthermore, my thesis that the use of force is wholly secondary to the use of the pacific tools which this charter primarily provides. That is the vital point at which all the United Nations stand at par. Force is only the last resort. If needed, it obviously must be found where it exists.

Concluding this historic speech, Senator Vandenberg said,

. . . None of its authors will certify to its perfection. But all of its authors will certify to its preponderant advantages. It is the only plan available for international cooperation in the pursuit of peace and justice. It is laden with promise and with hope. It deserves a faithful trial. America has everything to gain and nothing to lose by giving it support; everything to lose, and nothing to gain by declining this continued fraternity with the United Nations in behalf of the dearest dream of humankind. I recommend the San Francisco Charter to Congress and the country.

8 Id. at 6982.
9 Id. at 6983.
10 Id.
11 Id. at 6984.
12 Id. at 6985 (Prolonged applause, Senators rising).
On July 2, 1945, President Truman, in person, presented the United Nations Treaty to the Senate and, as reported in the Congressional Record, urged its prompt ratification:

I have just brought down from the White House and have delivered to your Presiding Officer the Charter of the United Nations. It was signed in San Francisco on June 26, 1945,—six days ago—by the representatives of 50 nations. The statute of the International Court of Justice is annexed to the Charter.

I am appearing to ask for the ratification of the Charter and the statute annexed thereto, in accordance with the Constitution.

The Charter which I bring you has been written in the name of 'We, the peoples of the United Nations' (Applause) Those peoples—stretching all over the face of the earth—will watch our action here with great concern and high hope. For they look to this body of elected representatives of the people of the United States to take the lead in approving the Charter and statute and pointing the way for the rest of the world.

Truman continued:

The objectives of the Charter are clear. It seeks to prevent future wars. It seeks to settle international disputes by peaceful means in conformity with principles of justice. It seeks to promote world-wide progress and better standards of living. It seeks to achieve universal respect for, and observance of, human rights and fundamental freedoms for all men and women—without distinction as to race, language, or religion. It seeks to remove the economic and social causes of international conflict and unrest. It is the product of many hands and many influences. It comes from the reality of experience in a world where one generation has failed twice to keep the peace. The lessons of that experience have been written into the document.

The choice before the Senate is now clear. The choice is not between this Charter and something else. It is between this Charter and no charter at all. This Charter points down the only road to enduring peace. There is no other. Let us not hesitate to join hands with the peace-loving peoples of the earth and start down that road—with firm resolve that we can and will reach our goal.

I urge ratification. I urge prompt ratification.13

The legislative history of the Charter in the Senate runs from June 28 and 29, 1945, when Senator Connally and Senator Vandenberg made their reports. It continues through the formal presentation of the Charter to the Senate by President Truman on July 2, through the days of public hearings conducted by the Foreign Relations Committee, the subsequent Senate ratification debate starting on July 23, ending July 28, 1945, when it was ratified by the Senate with only two votes against it.

Students of Constitutional and International law know that the legislative history of a treaty, submitted under the advice and consent clause of the Constitution, requires careful study to attain an accurate understanding of the intent, the full meaning, and the national commitments flowing from the language of a treaty. The high quality of the Senate hearings and subsequent debate on the United Nations treaty reinforces my thesis that the Charter should become a bridge to international justice, girded by the implementation of rules and procedures of international law.

Throughout the debate there was practically unanimous support for the treaty, with only two speeches against its ratification; nevertheless, many of its articles were subjected to critical analysis as to their alleged shortcomings as potential causes of disagreements in respect to implementing and enforcing some of the provisions of the Charter. Even those who criticized some sections of the Charter, however, joined the eighty-nine who voted for ratification in recognizing that it offered the nations of the world their best, possibly their last, chance to settle threats to peace through a world parliament of nations applying and enforcing rules of International Law. Recall the words of Senator Vandenberg,

... Only those who have engaged in such a universal Congress—veritably the parliament of man—can wholly understand the complications and the difficulties. But they must be obvious to any thinking mind. It is no wonder we had many a troublesome day and many a critical night. It is no wonder that none of us can say that he wholly approves the net result. The wonder is that we can all approve so much.14

Several Senators, during the course of the ratification debate, discussed the desirability of adopting a resolution accepting the compulsory jurisdiction of the World Court in accordance with the relevant provisions of Article 36 of the Statute of the

14 91 Cong. Rec. 6982 (1945).
International Court of Justice which was made a part of the United Nations Charter. Sections 1 and 2 of Article 36 of the Court Statute read,

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

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all 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;
   
   d. the nature or extent of the reparation to be made for the breach of an international obligation.

Paragraph 6 of Article 36 reads,

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Senator Vandenberg explained the reasons for not including in the Charter a binding requirement that all nations accept the compulsory jurisdiction of the Court. He said,

. . . [A] very large number of nations have accepted the compulsory jurisdiction of the existing court. I am trying to think of the number. I think it was somewhere in the neighborhood of 40.

There was a very substantial opinion at San Francisco among all delegations, very generally, favoring compulsory jurisdiction. It was the attitude of the American delegation that inasmuch as each time this question has heretofore been submitted to the United States Senate the question of compulsory jurisdiction has always been a stumbling block, and there has always been a lack of willingness on the part of the Senate to go that far as yet, it would be unfortunate to write the court statute itself on a compulsory basis at the present time, but that rather we should leave its development to evolution, inasmuch as the whole process of world peace itself is finally dependent upon evolution in the spirit and attitude of the peoples of the earth. So we joined at San Francisco in maintaining the optional clause in order to be
perfectly sure that at least this one needless hurdle would be
removed from Senate consideration of the charter.\textsuperscript{15}

Those of us who believed that the United States should ac-
cept the compulsory jurisdiction of the World Court understood
and appreciated the explanation given by Senator Vandenberg
supporting the optional clause in the Charter. At the same time,
we felt that a record should be made in the debate by way of
serving notice that, after the ratification of the Charter, we would
seek adoption of a Senate Resolution providing for United States
acceptance of the compulsory jurisdiction of the Court in accord-
ance with the option clause of paragraph 2 of Article 36 of the
Statute of the Court of International Justice. Therefore, on the
last day of the debate, July 28, 1945, I introduced Senate Reso-
lution 160 calling for the United States to accept the compulsory
jurisdiction of the Court.

The Resolution was supported by the American Bar Asso-
ciation, and many public groups and organizations interested in
a greater use of international law, through the procedures of the
World Court, for the pacific settlement of the peace-threatening
disputes among nations. Among these groups were the interna-
tional law committees of the Catholic Council of Churches, the
American Council of Christian Churches, the Association of Uni-
versity Women, and a large number of academic groups. Also
many international law authorities, such as Dr. Phillip Jessup,
Judge Manley O. Hudson, and Dr. Quincy Wright, supported the
objective of Senate Resolution* 160. When I introduced S. Res.
160, I said,

Mr. President, the issue as between voluntary and com-
pulsory jurisdiction is the difference between shadow and
substance. Nothing whatever is gained by merely stating
that law must replace force as the governing factor of inter-
national relations. So long as states have the option of with-
holding their legal disputes from adjudication, this remains
an empty phrase, of which we have had too many in the
past...\textsuperscript{16}

Law and order, based upon rules of reason, are the in-
struments of peace. The San Francisco Charter, in the form
of the treaty which it is our privilege as representatives of
a free people to ratify today, points the way to civilization.
Through the processes of its General Assembly, Security

\begin{footnotes}
\item * Senate Resolution hereafter referred to as S. Res.
\item \textsuperscript{15} 91 Cong. Rec. 8108 (1945).
\item \textsuperscript{16} 91 Cong. Rec. 8163 (1945).
\end{footnotes}
Council, Economic and Social Council, Trusteeship Council, and World Court, rules of reason and just decisions can be made to prevail over the primitive weapons of economic exploitation, suppression of weaker peoples, military might, and periodic resort to war. The hour is historic, the obligation sacred, the challenge great.

In keeping faith with the hour, the obligation, and the challenge, I offer to the Senate of the United States for early consideration and action following ratification of the treaty now pending before the Senate the following resolution...17

In the August and September 1945 issues of the American Bar Journal, Judge Manley O. Hudson, distinguished international law scholar and a World Court Judge, wrote at some length in support of Senate Resolution 160:

On the last day of the debate, it remained for Senator Morse to make the one speech dealing at length with the Court, and to take the only initiative in the direction of compulsory jurisdiction. He had declared on July 27 that “if we really mean to keep faith with the Charter, if we really mean to carry out what so many have said on the Senate floor during the past few days, we must agree to the compulsory jurisdiction of the World Court.” On July 28 he offered the following resolution “for early consideration and action,” S. Res. 160.18

Judge Hudson then offered some suggestions for improving the text. On November 28, 1945, with fourteen bipartisan cosponsors, I introduced a revision of S. Res. 160, perfecting in nature, incorporating some of the suggestions we had received from Judge Hudson, Dr. Phillip C. Jessup, and other international law authorities.

It was not possible to obtain Senate action on S. Res. 160 before the sine die adjournment of Congress in December, 1945. As late as November 28, Senator Vandenberg argued against taking up the issue of accepting the compulsory jurisdiction of the Court:

... The viewpoint of the American delegation at San Francisco, and particularly that of the commission, was that we did not want to jeopardize the acceptance of the basic Charter by any needless controversy which could be avoided or postponed. I personally had a very deep feeling about the compulsory jurisdiction issue, because I so well remembered the contest which took place here in 1936 when even on an

17 Id. at 8164.
optional jurisdiction basis I was one of only six Republicans who were willing to vote to adhere to it. So I felt, of course, that it was prudent to avoid that issue in connection with the inauguration of the United Nations Organization. That is still my point of view. The chief difference which I have with my able friend from Oregon at the moment is that I do not think we have yet reached the point where it is prudent to raise that issue, because I still think that we need to get this organization under way effectively, and to demonstrate to the American people that it can dependably function before we undertake to expand its functions.\textsuperscript{19}

In reply to Senator Vandenberg, I said, in part,

I think I should add that I do not see how the United Nations Organization can make effective demonstration of its force for the pacific settlement of international disputes unless all the members of that organization have expressed a willingness to abide by the decisions of the judicial department of the United Nations Organization. I find it difficult to reconcile myself to the view that the United Nations Organization can be an effective and efficient organization with some nations standing on the sidelines, including two great and powerful nations, Russia and the United States, and saying, 'Well, we will consider accepting the compulsory jurisdiction of the judicial branch of this Organization, after the Organization demonstrates to us that it is an effective organization.'\textsuperscript{19}

\ldots

I think it is most unfortunate, Mr. President, for us to classify ourselves in the same category with Russia as being one of the two great nations not willing to accept the jurisdiction of the World Court in all cases which are justiciable under international law. That does not promote international justice nor the cause of peace.

\ldots

I think the failure of this Government here and now to accept the compulsory jurisdiction of the World Court jeopardizes the effective functioning of that Court in connection with issues which may arise between this Government and Russia. I think the sooner we draw the issue as to whether or not Russia will join with the United States in submitting disputes between the United States and Russia to the compulsory jurisdiction of the World Court, the better it will be, in the interest of permanent world peace.\textsuperscript{20}

\textsuperscript{19} 91 Cong. Rec. 11106 (1945).

\textsuperscript{20} Id.
When the Congress reconvened in January, 1946, a subcommittee of the Senate Foreign Relations Committee, under the chairmanship of Senator Thomas of Utah, was assigned the responsibility of conducting public hearings on S. Res. 196 which, in the previous session of Congress, had been S. Res. 160. The hearings were held the second week of July, 1946. Not one dissenting voice was raised against S. Res. 196 which called for immediate acceptance by the United States of the compulsory jurisdiction of the World Court in terms of the provisions of the resolution. Witnesses included the President of the American Bar Association, distinguished lawyers, officials of the State Department, and international law authorities. On July 25, Senator Thomas filed the Foreign Relations Committee Report on S. Res. 196 with the Senate.

The report did not recommend that the Resolution should be amended so as to authorize the United States to deny the World Court jurisdiction over any dispute concerning which the United States decided that the domestic jurisdiction of the United States was involved. Such an amendment, which later became the Connally amendment, was added to the Resolution by the Senate during the floor debate, even though paragraph 6 of Article 36 of the Statute of the Court provides that in the event of a dispute over the Court's jurisdiction, the matter shall be settled by the decision of the Court. The amendment had been discussed in the executive sessions of the Foreign Relations Committee following the public hearings, but Senator Thomas had succeeded in persuading the committee not to add it to S. Res. 196. Of course, Senator Connally, or any other Senator, would be free to offer the amendment to the resolution on the floor of the Senate during the ratification debate.

It was not the intention of the leadership of the Senate, at the time the Committee report was filed, to call up S. Res. 196 for Senate action during the remainder of the Second Session of the 79th Congress if it could be avoided. This parliamentary strategy was the result of views held by Senators Connally, Vandenberg, Austin, Barkley, and others, which they expressed in private conversations with other Senators. They felt that the time was not ripe to press this issue in the Senate while Russia was still adamantly opposed to binding herself to the compulsory jurisdiction of the Court, and while the United Nations itself was in the early stages of demonstrating that it could effectively and dependably function in respect to the powers and duties already
assigned to it by the Charter, as Vandenberg had pointed out. They believed that more time should elapse, and hoped that S. Res. 196 would not be called up before the next session of Congress.

When Senator Thomas told me of the strategy of the Senate leadership in respect to S. Res. 196, I decided, with the full approval of Senator Thomas, to watch for the first opportunity to move to make S. Res. 196 the pending business of the Senate. The chance came late in the afternoon of July 31, 1946.

After the Senate recessed that evening, Senators Vandenberg, Barkley, and Austin suggested to me that I withdraw my motion the next day. They expressed concern that a debate in the Senate on S. Res. 196 might create difficulties for Secretary of State Byrnes who was then in Paris conducting negotiations at the Foreign Ministers’ Peace talks. The next morning, I received a radiogram from Secretary Byrnes commending my motion and urging its early passage. I immediately showed Secretary Byrnes's radiogram to Senator Vandenberg and Senator Barkley; they in turn talked to other Senate leaders about it. By the time the Senate convened for the session of August first, there was full agreement that Senator Thomas, as chairman of the Foreign Relations Subcommittee that had conducted the hearings on S. Res. 196, should open the debate in behalf of the committee.

Senator Thomas argued a brilliant case in support of accepting the compulsory jurisdiction of the Court. In part, he said,

The question is, Mr. President, why should any nation with a clear conscience, be afraid to take its case before the bar of international justice? Why should any nation which believes in government by law hesitate to accept the impartial judgment of the Court? Why should any nation, great or small, which wants to be fair in its dealings with others, avoid the settlement of legitimate grievances which other nations may have? 21

... To be sure, the United States has been a member of the Court ever since the United Nations Charter went into effect. But membership itself is only a halfhearted beginning. If the member states can flout the Court and can refuse to submit their differences to it, a regime of law in the international community can never be realized.

Compulsory jurisdiction is thus the real test of our loyalty, if we want the Court to succeed, for it is axiomatic that no court can possibly function with full effectiveness unless

it has jurisdiction over the parties to a dispute, as well as over the subject matter.\textsuperscript{22}

... The declaration would not confer upon the Court jurisdiction over matters which are essentially within the domestic jurisdiction of the United States. This limitation is in conformity with the principle expressed in article 2 of the Charter: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter."\textsuperscript{23}

Throughout the debate, Senator Thomas and other Senators stressed that paragraph 6 of article 36 of the Court Statute vested sole authority in the Court to settle any dispute over the jurisdiction of the Court by a decision of the Court. It was the inherent jurisdictional authority of the Court that the Connally amendment to S. Res. 196 proposed to deny to the Court. S. Res. 196 contained a section which read, "Provided, that such declaration shall not apply to

\begin{itemize}
  \item a. disputes the solution of which the parties shall intrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or
  \item b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.
\end{itemize}

The Connally amendment added the words "as determined by the United States" to item b, above, thereby giving to the United States the right to refuse to submit to the compulsory jurisdiction of the Court in any case which the United States deemed that its domestic jurisdiction was involved.

It was a crippling amendment which went counter to all of the advice, testimony, and writings of international law authorities who urged the adoption of S. Res. 196 by the Senate. For example, Judge Manley O. Hudson, who for years was a World Court Judge, had written in his book, "The Permanent Court of International Justice" at page 471, about the suggestion that a reservation on domestic issues be made a condition to accepting obligatory jurisdiction of the Court, "It is difficult to see what is accomplished by this exclusion; if a dispute relates to questions which fall within exclusively national jurisdiction, it does not fall within one of the classes enumerated in paragraph 2 of article

\textsuperscript{22} Id. at 10614.

\textsuperscript{23} Id. at 10615.
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36. . . . No State can set itself up as the final judge of what international law leaves to its own jurisdiction."

Opponents of the Connally amendment pointed out that its adoption would provide each country subsequently involved in a dispute with the United States with the same escape from a decision by the Court on the issue of jurisdiction by alleging that the case brought against it by the United States involved that country's domestic jurisdiction. Senator Thomas covered this,

A second major limitation on the jurisdiction conferred arises from the condition of reciprocity. This is again specified in the resolution in the language of the statute, the pertinent phrase being as follows: "recognizing . . . in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice." Jurisdiction is thus conferred only as among states filing declarations. In addition, the similar phrase in the statute of the Permanent Court of International Justice was interpreted by the Court as meaning that any limitation imposed by a state in its grant of jurisdiction thereby also became available to any other state with which it might become involved in proceedings, even though the second state had not specifically imposed the limitation.24

In opposing the Connally amendment I pointed out that

It must be kept in mind that the thing we are really aiming at is the long-range problem of bringing the entire world under the rule of law. It seems clear that if this rule is to be achieved, the participation of the United States is essential. We have no assurances as to what the consequences of this achievement might be but we entertain the hope, as the Under-Secretary of State said during the committee hearing, that this may prove to be a long, and even a decisive step, toward crossing that line which separates world disorder from a world at peace. We are, therefore, attempting by this method to achieve a very high goal, and it is necessary to consider the aspects of the problem from this point of view. If the United States reserves to itself the power to decide an important jurisdictional question, we must act on the assumption that the other states in the world will do likewise.25

Senator Connally, in support of his amendment, contended,

. . . I think we have the right to adhere 100 percent, if we choose, and we have the right not to adhere at all. Therefore, as between those two extremes, we have a perfect right to adopt an amendment of this character, because the Char-

24 Id. at 10691.
ter provides that domestic questions may not be considered. The Charter provides that the United Nations have no jurisdiction over domestic questions. But under the Charter the Court might decide that immigration was an international question. It might decide that tariffs were an international question. It might decide that the navigation of the Panama Canal was an international question. It is pretty close to it. It might decide that the regulation of tolls through the Canal was an international question. So I submit the amendment and ask that it be printed and lie on the table.\textsuperscript{26}

Mr. President, at San Francisco, when we adopted the Charter, our delegation opposed compulsory jurisdiction at that time, and favored the provisions which remitted the matter to the will of each nation, so that each nation could accept or could reject compulsory jurisdiction.

Under the present Charter, the United States has the option of accepting compulsory jurisdiction or the option of not accepting it and simply relying on special provisions regarding each case which might be accepted by the Court.

So within those extremes we have a perfect right to stipulate the extent of our agreement as to compulsory jurisdiction.

My amendment is tantamount to saying to the International Court and to the members of the United Nations that we will accept jurisdiction on all questions set forth in the Charter and in the treaty, except that we will not accept jurisdiction on questions which we deem to be purely domestic issues.\textsuperscript{27}

Several Senators have argued that by this amendment the United States would put itself in the position of corruptly and improperly claiming that a question is domestic in nature when it is not, thereby taking advantage of an international dispute and saying that since the question is domestic, we will not abide by the decision of the Court. Mr. President, I have more faith in my Government than that. I do not believe the United States would adopt a subterfuge, a pretext, or a pretense in order to block the judgment of the Court on any such grounds.\textsuperscript{28}

Mr. President, I am in favor of the International Court of Justice. I am in favor of the United Nations, but I am also for the United States of America. I do not want to surrender the sovereignty or the prestige of the United States with respect to any question which may be merely domestic in character, and contained within the boundaries of the Republic.

So, Mr. President, I hope the Senate will agree to the

\textsuperscript{26} 92 Cong. Rec. 10624 (1946).

\textsuperscript{27} 92 Cong. Rec. 10694-95 (1946).

\textsuperscript{28} Id. at 10695.
amendment, and then it will be in position to act affirmatively on the resolution.  

At no time in the debate did Senator Connally and the other supporters of his amendment attack the provision of the Court Statute that any dispute over the Court’s jurisdiction is to be settled by a decision of the Court. In essence the Connally amendment was a political veto by the United States, applicable to any case involving the United States, upon the right of the World Court, as granted by the Charter, to settle any dispute involving its jurisdiction by a decision of the Court. Nevertheless, in the face of an overwhelming body of expert opinion, the Senate adopted the Connally amendment by a vote of 51 to 12. Then, on August 2, 1946, it adopted S. Res. 196 amended, providing for limited acceptance by the United States of the Compulsory Jurisdiction of the World Court. The vote was 60 to 2.

Until all nations, including the United States and Russia, are willing to accept the binding jurisdiction of the World Court over disputes between nations in accordance with the jurisdictional procedures and prerogatives vested in the Court by the United Nations Charter, international law as a bridge to international justice will continue to fail in its peace-keeping potentials. Time has proved that the United States, through the Connally amendment, has weakened the effectiveness of the World Court as a bridge to international justice. Its repeal by the United States Senate is long overdue.

It is a grim historic reality that the United Nations Charter as a bridge to international justice leading to world peace has been weakened in many other respects since its signatories pledged to abide by its purposes, principles and procedures. We Americans are a proud people; indeed, I would have it no other way for there is much in which to take pride. Nevertheless, we cannot be proud of our non-compliance with the peace-keeping objectives and procedures of the United Nations Charter particularly in respect to our war-making in Southeast Asia. It is no excuse for our international outlawry in Southeast Asia to argue that Russia and China have also breached the Charter. So they have, but we should have kept ourselves in a position to lead the way in bringing all nations before the bar of international justice by using the procedures of the United Nations

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29 Id. at 10696.
Charter. Instead we, too, have violated the peace-keeping provisions of the Charter, and we are continuing to do so.

It is said that it no longer makes any difference what mistakes the United States may have made in becoming involved in the war in Vietnam in the first place, because the fact is we are in it, and now we must see it through. This rationalization for our many violations of the United Nations Charter and other tenets of international law, as well as our own Constitution, will never be accepted by other nations who have disapproved of our military intervention in Vietnam from the beginning.

The basis for that intervention was laid down in 1953, at the advent of the Eisenhower Administration, when the Eisenhower-Nixon-Dulles military containment policy for Asia and other underdeveloped areas of the world was initiated. This military containment policy was based on the assumption that the United States had the unilateral right and duty to stop the spread of Communism. It was the foreign-policy incubator that hatched the Vietnam War. Secretary of State Dulles, speaking for the Eisenhower Administration, threatened massive retaliation against any Communist country that sought to spread its sphere of influence in Asia; or, for that matter, in other underdeveloped areas of the world.

One of the major foreign policy programs of Secretary Dulles was that the United States Government commit itself to a large number of security pacts under which we pledged military support to nations that became involved in military difficulties with their neighbors. History undoubtedly will charge Secretary Dulles with a major responsibility for our forty-two security pacts spread over the far-flung regions of the globe. Nehru called it, “Pactomania.” Some say it was an attempt of our Government to supplant the shattered British military lifeline around the world with a United States global military lifeline. It forms the basis for criticisms of the United States as a nation that is bent on a policy of military imperialism which is an attempt to exercise a dominating influence over weaker nations.

This policy has taken the United States outside the family of nations, as represented by the United Nations, because it relies on the unilateral military power of the United States as the controlling instrument for enforcing the peace of the world. It does not rely upon the multilateral obligations of the signatories to the United Nations to use the peace-keeping procedures set
The foregoing statements are broad brush strokes which paint a picture of our illegal military intervention into Southeast Asia. Criticisms of our government's war-making policies in Vietnam have been increasing throughout the world and at home. Our government is charged with many violations of the articles of warfare supposedly binding upon civilized nations.

President Franklin Roosevelt recognized the inevitable results of any attempt on the part of powerful military nations to maintain military strongholds in Asia. He proposed at the historic Teheran Conference that all the western powers and all the Asian powers, including China, should join in establishing an international trusteeship for all of Indochina, designed to bring about a multi-nation cooperative program that would seek to raise the economic standard of living of the people of Indochina and bring to them the concomitant benefits of literacy and the opportunity to develop their own self-determined policies in respect to their way of life, economic and political.

Unfortunately, his proposal was opposed by Churchill who pointed out that the result would be that England would have to give up India. Roosevelt agreed, but he suggested that it would be better for England to give up India voluntarily rather than involuntarily. France opposed Roosevelt's Indochina trusteeship proposal because she, too, would have to sacrifice her valuable possessions in Indochina. Here, too, Roosevelt agreed that would be one of the results, but he predicted that if France did not withdraw from Indochina, she would eventually be defeated in a war in that area of the world. Although Roosevelt's dream of multi-nation peace-keeping procedures for Indochina did not materialize, his dream of a United Nations—a multi-nation peace-keeping organization worldwide in scope—did become a reality shortly after his death when the United Nations Charter was signed at San Francisco.

In these times of international crises, we cannot escape the major foreign policy question that confronts the leaders of every nation signatory to the United Nations Charter: Can the nations of the world, in the interest of their own security and survival in this nuclear age, permit any great military power, or any combination of military powers, to engage in military interventions which threaten the peace anywhere in the world? Of course the answer is, "No, they cannot," if mankind is to look forward to
the century ahead with any hope of avoiding a nuclear war. Russia, China, the United States, as well as any alliance of military powers, must be called to a world accounting whenever they engage in military interventions in violation of their obligations under the United Nations Charter.

Therefore, it is important that we re-examine the meanings of the United Nations Charter and its peace-keeping procedures to which each of the signatories is solemnly pledged to support. Any re-examination must show how important it is for the United States to make amends without further delay for our illegal conduct, in relation to our international law obligations, that has characterized our interventions in Southeast Asia since 1953.

An examination of the Charter shows that our country has failed to submit to the Security Council of the United Nations a resolution calling upon the United Nations to assume complete jurisdiction over the settlement of the Indochina War with a pledge that the United States would abide by the results of the United Nations adjudication.

People say, “Isn't the United Nations too divided, too weak to settle a big war such as the Vietnam War?” I answered this argument many times over the years on the floor of the Senate as I urged our country to get back inside the framework of the United Nations Charter. My answer is that the job of the United Nations is to keep peace.

Instead of supporting that precept, the United States set out to keep peace alone. Instead of bringing peace to Vietnam, we have contributed to the escalation of the war with its resulting increase in death and destruction. We cannot keep peace acting alone, as the course of this war amply demonstrates. We cannot keep peace as policeman to the world because other nations do not accept one country’s idea of peaceful solutions, any more than they accepted Britain’s idea of world order, or Germany’s or Napoleon’s. The United States went into this war without exhausting all of the avenues of peaceful settlement open to it by membership in the United Nations. We by-passed the United Nations.

Just as I am unimpressed by our self-flattering theory about serving as policeman to the world, so I am unimpressed by the timid ones at the United Nations who prefer to shun their responsibilities under the Charter because it is the United States that is involved in the war. We are at the present time the
world's most powerful nation, and by far its wealthiest. Apparently, no one wants to reprimand, or chastise, or bring under international control the goose that lays the golden egg.

We are pouring out billions of dollars in foreign aid, over $142 billion since 1946 into some 93 nations, exclusive of war costs in Vietnam. Therefore, I think it is unrealistic to assume that the United Nations will take jurisdiction over our war-making in Vietnam unless the United States is willing to pledge that it will abide by United Nations jurisdiction. We should offer a resolution calling for a cease-fire order by the United Nations and asking the United Nations to enforce the peace, based upon our pledge that we will abide by its determinations. Unless we do this, there is not much hope for re-establishing the United Nations as an effective force for peace through justice and international law.

We would have our share in helping to frame the determinations, but whatever they are, we ought to make clear, before the fact, that we will abide by a peace settlement as determined by the United Nations. If the United States is found to be in violation of the United Nations Charter because of the war in Vietnam, so is every signatory that has done nothing to institute United Nations action to take jurisdiction over the war.

There are many forms that jurisdiction could take. The Security Council could call for reconvening the Geneva Conference. It could suggest the same membership, or the addition of whatever countries it thinks appropriate. Or the Security Council could refer the matter to the General Assembly, if it is stymied by a veto. It could refer many international law issues involved in the war to the World Court for advisory opinions. The United States, however, should insist that the General Assembly act if the Security Council fails to do so.

It should be remembered that on September 24, 1960, after the Security Council had ceased to deal with the Congo problem, the General Assembly, by a vote of 70-0, strongly supported by the United States, authorized United Nations peace-keeping intervention in the Congo. This was in accordance with Articles 10, 11, and 12 of the Charter. In the unlikely event that the Security Council should not accept a request to exercise binding jurisdiction over settling the war in Vietnam in accordance with its authority under the Charter, then the General Assembly, as it did in the Congo case, could exercise jurisdiction over bringing to an end this serious threat to world peace.
As far back as September 23, 1965, I inserted in the Congressional Record a memorandum of law prepared by a distinguished Lawyers' Committee on American Policy Toward Vietnam. I am presently Honorary Chairman of this Lawyers' Committee, which since the preparation of its first memorandum opposing on legal grounds our country's military intervention in Vietnam, has become a permanent organization devoted to continued analysis of legal violations of international, as well as constitutional law, within our government's foreign policies. In a second legal memorandum, submitted to President Johnson on February 25, 1966, this Lawyers' Committee on American Policy Toward Vietnam documented its answer to a memorandum by the United States State Department, which sought to rationalize an alleged legal basis for United States action against North Vietnam.

The answer of the Lawyers' Committee to the State Department was endorsed by many recognized international law authorities, including Quincy Wright, of the University of Virginia; Wolfgang Friedmann, of Columbia University; Thomas I. Emerson, of Yale; Richard A. Falk, of Princeton; Norman Malcolm, of Cornell; D. F. Fleming, of Vanderbilt; David Haber, of Rutgers; Roy M. Mersky, of the University of Texas; William G. Rice, of the University of Wisconsin; Chancellor Robert M. MacIver, of the New School for Social Research; Robert C. Stevenson, of Idaho State University; Alexander W. Rudzinsky, of Columbia; Darrell Randell, of the American University in Washington, D.C.; Wallace McClure and William W. VanAlstyne, both from Duke University and the World Rule of Law Center.

For the reasons documented in the memorandum, the Lawyers' Committee stated that it had reached the regrettable but inescapable conclusion that "the actions of the United States in Vietnam contravene the essential provisions of the United Nations Charter, to which we are bound by treaty; violate the Geneva Accords, which we pledged to observe; are not sanctioned by the treaty creating the Southeast Asia Treaty Organization; and violate our own Constitution and the system of checks and balances which is the heart of it, by the prosecution of the war in Vietnam without a Congressional Declaration of War." 30

The Lawyers' Committee called attention to the fact that the Charter of the United Nations is a presently effective treaty binding upon the Government of the United States because it is the "supreme law of the land."

The Committee said:

... Indeed, the Charter constitutes the cornerstone of a world system of nations which recognizes that peaceful relations, devoid of any use of force or threats of force, are the fundamental legal relations between nations. The following provisions of the Charter are relevant:

a. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations.

b. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations or shall decide what measures shall be taken to maintain or restore international peace and security.

It is thus plain that signatory members of the United Nations Charter are barred from resorting to force unilaterally and that only the Security Council is authorized to determine the measures to be taken to maintain or restore international peace.\(^{31}\)

The memorandum then proceeds in great detail to discuss the violations by the United States of the United Nations Charter and the Geneva Accords; it also discusses the inapplicability of the SEATO treaty as far as providing the United States with any justification for following a unilateral war-making policy in Southeast Asia. The memorandum calls attention to the fact that both President Eisenhower and Secretary Dulles pledged to the world that our country, although it did not sign the Geneva Accords, would respect the tenets of the Geneva Treaty as tenets of international law. Unfortunately, as the memorandum points out, our Government has, time and time again, violated all of the major articles of the Geneva Treaty.

It may be, although I doubt it, that a silent majority in our country today supports our war policies in South Vietnam, but who would contend that a mistaken silent majority can make an illegal course of action legal. The responsibilities of citizen-

\(^{31}\) 111 Cong. Rec. 24904 (1965).
statesmanship call upon us to seek to change a mistaken public viewpoint of the silent majority into a viewpoint based upon fact and legality.

Carl Schurz, in a speech in the United States Senate in 1872, stated the responsibility of citizen-statesmanship very clearly for each one of us when he uttered those now historical words, “Our country right or wrong: when right, to be kept right; when wrong, to be put right.” To be put right in respect to our wrongdoing in Vietnam, our country should return to the peace-keeping procedures within the Charter of the United Nations, to which our country pledged itself when, in keeping with our Constitutional processes, we ratified the United Nations Charter. The task of each of us is to help build the bridge to international justice by strengthening International Law through the United Nations.