

EDITORIAL COMMENT

LESTER H. WOOLSEY

1877-1961

To quote his own words, written a few years ago on the death of a colleague, "A pillar of the American Society of International Law has fallen" in the passing away of Lester Woolsey in Providence, Rhode Island, on June 20, 1961. He was one of those pioneer American lawyers who, at the beginning of this century, recognized the validity and necessity of the rule of international law at home and abroad, and became in 1907 a charter member of the Society, whose objective he so ably supported throughout his life.

Lester Woolsey began his career in the law as a claims examiner in the U. S. Land Office, and as an instructor at the Washington College of Law and at George Washington University Law School. He entered the State Department as an attorney in 1909, became Assistant Solicitor in the Office of the Counselor (Chandler P. Anderson) in 1913, and then in the office of Secretary of State Robert Lansing in 1915-1916. He was Law Adviser to the Department from 1916 to 1917, and Solicitor from 1917 to 1920. The period during which Mr. Woolsey was in the State Department was one in which problems of international law and international relations assumed major importance as the United States began to emerge on the international scene as a first-class Power. Boundaries and fisheries disputes with Great Britain, claims arising from the latter, border questions with Mexico involving the Rio Grande and claims arising from Mexican revolutionary movements, the Panama Canal question, and others, occupied the attention of the legal officers of the State Department. At this time there was also a strong peace movement in the United States, as elsewhere in the world, calling for judicial settlement of international disputes, particularly through international arbitral tribunals. The Hague Conventions of 1907 on the laws of war and neutrality were of high importance, as well as the London Declaration of 1909 on Laws of Naval War, in the thinking of international lawyers.

In 1911, Mr. Woolsey was secretary in behalf of the United States at the International Fur Seals Conference, to which Mr. Lansing was U. S. technical delegate. When the European war broke out in 1914, Mr. Woolsey, as Assistant Solicitor of the Department of State, handled the vital questions involved in protecting the neutral rights of the United States against belligerent challenges and violations. When the United States abandoned its neutrality and entered the war in 1917, the problems which Woolsey, then Solicitor, had to face were those of a co-belligerent vis-a-vis the remaining neutral Powers, as well as the enemy Powers. At the end of the war he attended the Paris Peace Conference as a technical

delegate of the United States. In 1920 he served on a commission to draw up a treaty between the United States and Siam, for which services the King of Siam conferred on him the Order of the White Elephant.

In 1920 Mr. Woolsey left the Department of State to go into the private practice of law in partnership with Robert Lansing, with whom he had been so closely associated in the Department. The partnership was dissolved by the death of Mr. Lansing in 1928, and Mr. Woolsey continued the practice as successor to the partnership. During this period, in addition to handling private claims, he was professor of international law at American University, acted as international law expert for the Chinese Government at the Washington Conference on Limitation of Armaments, and was counsel for the Government of Chile in the Tacna-Arica arbitration. In connection with the last two services, respectively, Mr. Woolsey received the Order of Chia-Ho from the Chinese Government, and was made an officer of the Chilean Order of Al Merito. He was legal adviser to the Pan American Union, and in 1934 was United States member of the Commission of Inquiry, U. S.-Spain, under the 1914 Bryan Treaty for the Advancement of Peace. He was also special counsel for the United States before the Mexican-U. S. General Claims Commission in 1936. Mr. Woolsey was a member of the Advisory Committee of the Harvard Research in International Law, which, from 1929 to 1939, prepared and published a series of draft conventions, comments and bibliographies on selected topics of international law. He was also the author of a *Digest of English Prize Law from the War of 1744 through the Crimean War*, prepared while he was Solicitor of the Department of State.

Mr. Woolsey took an active part in the Society's work almost from its very beginning. He was elected a member of the Executive Council in 1918 and served two terms on it, when he was elected Treasurer of the Society in 1925. For over twenty years Mr. Woolsey conscientiously performed the duties of Treasurer, including the task of looking after the Society's then comparatively small but valued investments. Upon relinquishing the office of Treasurer in 1946, Mr. Woolsey was elected a Vice President of the Society for the years 1946-1949. From 1950 to 1956 he was an Honorary Vice President, and in 1956 was elected President of the Society. Following his term as President, Mr. Woolsey was elected an Honorary Vice President, which position he held at the time of his death. During all these years Mr. Woolsey served on a number of committees. He was particularly concerned with improving the financial position of the Society, and long advocated the setting up of an endowment fund to assure for it permanent financial security. Mr. Woolsey, when President of the Society, also proposed that means be found to make the Society more effective in upholding the principles of international law, particularly with respect to current events. He urged the setting up of a scholarship fund to be given by the Society in honor of James Brown Scott. When illness caused him to leave his Washington home for Providence, he donated to the Society his set of the *Journals* and *Proceedings* with directions that the proceeds of their sale be placed in a fund to

provide a scholarship in honor of James Brown Scott. After his death his daughters very generously gave to the Society Mr. Woolsey's valuable collection of international law books which have been placed in the Society's Library.

Mr. Woolsey's first speech before the Society was in 1917, when, as Solicitor of the Department of State, he delivered an address on the subject of "Some Economic Considerations of International Organization," which he opened with a characteristically humorous remark: "On account of my connection with the Department of State, it is appropriate that I should have assigned to me a colorless topic relating to the economics of international relations, for in discussing this subject, I shall not be expected to throw any light, even if I could, upon the intricacies of the relations of the United States with the belligerent Powers during the last thirty months."¹ His subsequent words, spoken over forty years ago, have a familiar sound. Pointing out that "the differences in the geographical positions of States inevitably have their effect on international law," Mr. Woolsey went on to say that:

It is difficult to formulate rules of international law for nations so differently situated, or when formulated to apply those rules so as to work out justice and equity in the relations of states.²

In his last appearance before the Society, on April 26, 1957, Mr. Woolsey in his presidential address devoted his remarks to "Peace with Justice."³ Analyzing the conditions of peace, he referred to the relations of Canada and the United States as a model, stating:

To attain such a condition of peace, it is necessary that there should be trust and confidence on both sides of the border and machinery for the settlement of disputes which are sure to arise. . . . These attributes are attained only through years of freedom, of honorable and fair dealing without acrimonious and spiteful propaganda and attempts to overreach each other. This is not an overnight solution, a solution of immediacy. Nor, of course, can it be obtained by force or be purchased by grants of financial or material aid.⁴

Stating that peace and justice "are faces of the same coin," he declared that "Peace cannot be attained without justice. . . . Neither can there be justice without peace. Justice does not thrive in the temper of strife." Referring to the International Court of Justice as an instrument for settling disputes, Mr. Woolsey stated that the numerous limitations placed by the great Powers on the Court's jurisdiction "leave the Court with comparatively little to do." However, he pointed out that "Courts . . . are not infallible instruments of justice," and suggested that "The judicial process should be so formulated as to get to the merits of a case regardless of technicalities and special rules of law or procedure."⁵

On the nature of the disputes which should be submitted to the International Court, Mr. Woolsey, recognizing that the better practice and

¹ 1917 Proceedings, American Society of International Law 37.

² *Ibid.* 38.

³ 1957 Proceedings, American Society of International Law 57.

⁴ *Ibid.* 58-59.

⁵ *Ibid.* 60-61.

opinion are that courts of justice should not pass upon political questions, stated that "the United Nations and the regional organizations, like the Organization of American States and others, are the organs or courts for the settlement of *political* controversies between states." He pointed out that "The United Nations Assembly, though a purely political body, is prone to decide or defer legal questions on a political basis."⁶

Other addresses by Mr. Woolsey before the Society concerned problems of American neutrality, neutral persons and property on the high seas in time of war, and the munitions trade, with respect to which he had played an important part in establishing United States policy and practice as Solicitor of the State Department.

Of particular interest at the present time when the question of submission of all justiciable disputes to the compulsory jurisdiction of the International Court of Justice is under widespread discussion, are the remarks of Mr. Woolsey at the meeting of the Society in 1944, when he led a discussion of the subject, "Borderlines of National and International Jurisdiction." These remarks show the judicial temper which permeated Woolsey's expression of views. He said:

It seems to me very evident that international law, by more or less common agreement, does not cover so-called domestic questions, and I wonder if it is due to the fact that we are overworking international law or whether international law has not as yet developed along broad enough lines to cover these domestic questions.⁷

Referring to treaties submitting to arbitration various definite classes of disputes, he called attention to the treaties of general arbitration, providing for decision *ex aequo et bono* of disputes for which there are no applicable principles of international law. Few countries, he said, have been willing to go this far because of their unwillingness to submit to adjudication certain questions deemed by them to involve national honor, security and independence.

What would an arbitration court do when it was free to decide a case and there were no established principles which it knew of or could apply? . . . Nations like to have some basis for a guess, at least, as to what the outcome of an arbitration is going to be before they undertake it.⁸

Moreover, he said, there is no appeal from an international court decision, and the court is not bound to follow preceding decisions. He continued:

I think generalizations on jurisdiction and abstract formulae are dangerous. I believe in the method by which the common law of England was built up. The decision of a case on one side of the line and the decision of a case on the other side gradually developed principles that have stood the test of time.⁹

He concluded:

. . . if nations were willing to make general treaties of arbitration to submit all questions, it might result into a development of inter-

⁶ *Ibid.* 64-65.

⁷ 1944 Proceedings, American Society of International Law 48.

⁸ *Ibid.* 49.

⁹ *Ibid.* 51.

national law, a development of rules for the settlement of even questions of vital interest, independence, honor, territorial integrity, and matters of that sort. In that way a system of law might be built up case by case and I am not sure but that that is the way to extend law to this fertile field of disputes. . . .¹⁰

Although Mr. Woolsey was not formally elected a member of the Board of Editors of the *AMERICAN JOURNAL OF INTERNATIONAL LAW* until 1925, a position he held until 1944, when he became an honorary editor, he contributed editorials and articles from 1909 to 1957. He reviewed numerous publications for the *JOURNAL*, the last review in 1958 being an appraisal of a volume on the Allied blockade of Germany, 1914–1916, a subject on which he was an expert. His contributions to the *JOURNAL* reflected the careful research of authorities, scholarship and judicial approach so characteristic of his work. The subjects he discussed so thoroughly ranged over the field of international claims, such as the Black Tom case, the Panama and Mexican claims, in which he was of counsel for some of the principal claimants, the Mexican oil expropriations, international boundary disputes, such as those between Ecuador and Peru, the Chaco dispute, the Leticia dispute, the Tacna-Arica settlement, United States relations with Latin America, particularly with Panama, and the Panama Canal problem. He contributed numerous editorials and articles on the subject of neutrality and the munitions trade, the first, written in 1910, being entitled “Early Cases on the Doctrine of Continuous Voyages.”¹¹ In that article Mr. Woolsey set forth the results of painstaking research on a subject which was to become of vital interest within a few years. In later years he discussed problems raised by the Sino-Japanese hostilities, the second World War and the United Nations.

Lester Woolsey was a thorough, meticulous lawyer, with a keen insight into the international legal problems with which he dealt, both as counsel for a government and as counsel for a private client. He was in the first rank of American international lawyers. He not only possessed the highest qualifications of a lawyer but he also had an artist’s appreciation of beauty. He spent many summers in New England where he put on canvas many seaside and rural scenes he visited. He was a man of kindness and integrity, which, together with his keen perception and dry humor, made his friendship a cherished one by those who knew him. As Dr. James Brown Scott wrote of Robert Lansing when he was appointed Counselor of the Department of State in 1914, Mr. Woolsey was “in fact as well as in theory . . . a high-minded and Christian gentleman.”¹² His services to the American Society of International Law were so numerous they could not possibly all be recounted. His contributions to the legal profession both as a practicing international lawyer and as exponent of the rule of law are of enduring value. The Society and the profession have indeed lost a pillar.

ELEANOR H. FINCH

¹⁰ *Ibid.*

¹² 8 *ibid.* 338 (1914).

¹¹ 4 *A.J.I.L.* 823 (1910).