

PROCEEDINGS
OF THE
American Society of International Law
AT ITS
THIRTY-FOURTH ANNUAL MEETING
HELD AT
WASHINGTON, D. C.
MAY 13-15, 1940

PUBLISHED BY THE SOCIETY

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CONSTITUTION
OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW ¹

(Revision adopted May 15, 1940)

ARTICLE I

Name

This Society shall be known as the American Society of International Law.

ARTICLE II

Object or Purpose

The object of this Society is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. For this purpose it will coöperate with similar societies in this and other countries.

ARTICLE III

Membership

Annual Members. On the nomination of two members in regular standing new members may be elected by the Executive Council acting under such rules and regulations as it may prescribe. Annual members shall pay dues of five dollars and shall thereupon become entitled to all privileges of the Society including copies of the *American Journal of International Law* issued during the year. Upon failure to pay dues for one year a member may in the discretion of the Executive Council be suspended or dropped from membership.

Student Members. Student memberships may be established by the Council upon such terms and with such dues as it shall determine.²

Life Members. Upon payment of one hundred dollars any person eligible for annual membership may be elected by the Executive Council a life member and shall be entitled to all the privileges of annual members.

Honorary Members. Persons not citizens of the United States, who shall have rendered distinguished service to the cause which this Society is formed to promote may upon nomination of the Executive Council be elected to honorary membership by the Society. Only one honorary member may be elected in any one year. Such members have the full privileges of life membership but pay no dues.

¹ The history of the origin and organization of the American Society of International Law can be found in the Proceedings of the First Annual Meeting at p. 23. The original Constitution was adopted January 12, 1906.

² See Regulations adopted April 27, 1939, *post*, p. x.

ARTICLE IV

Officers

The officers of the Society shall consist of an Honorary President, a President, such number of Honorary Vice-Presidents as may be fixed from time to time by the Executive Council, three Vice-Presidents, a Secretary and a Treasurer, all of whom shall be elected annually, but the President shall not be eligible for more than three consecutive annual terms.

The Secretary and the Treasurer shall be elected by the Executive Council. All other officers shall be elected by the Society except as herein-after provided for the filling of vacancies occurring between elections.

At every annual election candidates for all offices to be filled by the Society at such election shall be placed in nomination by a Nominating Committee which shall consist of the five members receiving the highest number of ballots at the last session of the preceding annual meeting of the Society. Nominations for membership on the Committee may be made by the Executive Council or from the floor.

All officers shall be elected by a majority vote of the members present and voting.

All officers shall serve until their successors are chosen.

ARTICLE V

Duties of Officers

The President shall preside at all meetings of the Society and shall perform such other duties as the Executive Council may assign to him. In the absence of the President his duties shall devolve upon one of the Vice-Presidents to be designated by the Executive Council, by the Society, or by the President.

The Secretary shall keep the records and conduct the correspondence of the Society and shall perform such other duties as may be assigned to him by the Society or by the Executive Council.

The Treasurer shall receive and have the custody of the funds of the Society and shall invest and disburse them subject to the rules and under the direction of the Executive Council. The fiscal year shall begin on the first day of January.

The officers shall perform the duties prescribed in Article VI or elsewhere in this Constitution.

ARTICLE VI

The Executive Council

There shall be an Executive Council herein termed the Council. The Council shall have charge of the general interests of the Society and shall possess the governing power except as otherwise specifically provided in this Constitution. The Council shall call regular and special meetings and ar-

range programs therefor, shall appropriate money, shall appoint from among its members committees and their chairmen with appropriate powers, and shall have power to arrange for the issue of a periodical or other publications.

The Council shall consist of the officers of the Society and twenty-four elected members whose terms of office shall be three years. Eight members shall be elected by the Society each year and the service of Council members shall begin at the meeting of the Council immediately following the meeting of the Society at which they were elected. The terms of office and the Council members already elected for those terms at the time this Constitution is revised shall continue unchanged. No elective member of the Council shall be eligible for reelection until at least one year after the expiration of his term. The Council shall have power to fill vacancies in its membership occasioned by death, resignation, failure to elect or for other causes. Such appointees shall hold office until the next annual election.

The President of the Society shall be the Chairman of the Council. In case of his absence the Council may elect a temporary chairman.

The Secretary of the Society shall be the Secretary of the Council. He shall keep the records and conduct the correspondence of the Council and shall perform such other duties as may be assigned to him by the Council.

Seven members shall constitute a quorum and a majority vote of those present shall be necessary for decisions.

Meetings of the Council shall be called by the Secretary on instructions of the President, or of a Vice-President acting for the President, or upon the written request of seven members of the Council.

ARTICLE VII

Meetings

Annual meetings of the Society shall be held at a time and place to be determined by the Executive Council. The chief purpose of the meetings is the presentation of papers, and discussions. The Society shall also elect officers and transact such other business as may be necessary.

Special meetings may be held at any time and place on the call of the Executive Council, or of the Secretary upon written request of thirty members. At least ten days' notice of a special meeting shall be given to each member of the Society by mail, such notice to specify the object of the meeting. No other business shall be transacted at such meetings unless admitted by a two-thirds vote of those present and voting.

Twenty-five members shall constitute a quorum at all meetings and a majority of those present and voting shall be necessary for decisions.

ARTICLE VIII

Resolutions

All resolutions relating to the principles of international law or to international relations which shall be offered at any meeting of the Society shall,

in the discretion of the presiding officer, or on the demand of three members, be referred to the appropriate committee or the Council, and no vote shall be taken until a report shall have been made thereon.

ARTICLE IX

Amendments

This Constitution may be amended at any annual meeting of the Society by a two-thirds vote of the members present and voting. Amendments may be proposed by the Executive Council. They may also be proposed through a communication in writing signed by at least five members of the Society and deposited with the Secretary within ten months after the previous annual meeting. Amendments so deposited shall be reported upon by the Council at the next annual meeting.

All proposed amendments shall be submitted in writing to the members of the Society at least ten days before the meeting at which they are to be voted upon. No amendment shall be voted upon until the Council shall have made a report thereon to the Society.

REGULATIONS REGARDING STUDENT MEMBERSHIP IN THE AMERICAN SOCIETY OF INTERNATIONAL LAW

Adopted by the Executive Council, April 27, 1939

1. Student membership shall be open to any properly qualified graduate or undergraduate student who shall file with the Secretary of the Society a certificate signed by the head of the department or by the registration officer or other appropriate officer of a college, university, or institution of higher learning, indicating that such student is enrolled in the regular manner as a student of such college, university or institution at the date of filing such certificate.

2. Student membership is valid for one year after the conferring of such membership. But this membership may be renewed from time to time, at the discretion of the Secretary, on receiving satisfactory evidence that the person is still regularly enrolled as a student in a college, university or institution.

3. The annual dues for student membership shall be three dollars per year.

4. Student members are entitled to receive the regular issues of the *American Journal of International Law*, and to participate in the meetings of the American Society of International Law, but are not entitled to vote or be eligible to hold office.

5. Any student member may become a regular member of the Society upon paying the regular dues, and shall thereafter have all the privileges attaching to regular membership.

REGULATIONS REGARDING THE EDITING AND PUBLICATION OF THE AMERICAN
JOURNAL OF INTERNATIONAL LAW

Adopted by the Executive Council, May 22, 1924

1. There shall be a Board of Editors charged with the general supervision of editing the *American Journal of International Law* and determining general matters of policy in relation thereto.

2. The Board shall be elected annually by the Executive Council.¹

3. Membership upon the Board of Editors shall involve, in addition to the duties otherwise prescribed herein, obtaining articles and other material for publication, the preparation of contributions, especially editorial comments and book reviews, and the examination of and giving advice upon the suitability for publication of articles prepared by non-members of the Board. The minimum number of contributions which each Editor shall be called upon to contribute or obtain for publication in the *Journal* is to be determined by the Board.²

4. There may be an Honorary Editor-in-Chief elected by the Council; and there shall be an Editor-in-Chief and a Managing Editor to be elected annually from among the members of the Board by the Executive Council, and to serve until their successors assume office.

The Editor-in-Chief shall call and preside at all meetings of the Board of Editors, and when the Board is not in session he shall determine matters of policy regarding the contents of the *Journal*.

The Managing Editor shall have charge of the publication of the *Journal*, shall receive contributions and other material for publication, including books for review, and conduct the correspondence regarding the same.

In the event of the temporary inability of the Editor-in-Chief to serve, his duties shall be performed by the Managing Editor, unless the Editor-in-Chief shall designate an acting Editor-in-Chief.

5. The *Journal* shall be made up of leading articles, editorial comments, a chronicle of international events, a list of public documents relating to international law, judicial decisions involving questions of international law, book reviews and notes, a list of periodical literature relating to international law, and a supplement.

(a) Before publication all articles shall receive the approval of two members of the Board. In case an article is rejected by one editor, the question of its submission to another editor shall be decided by the Editor-in-Chief. Articles by members of the Board of Editors shall be submitted to the Editor-in-Chief, who shall decide as to their publication.

(b) Editorial comments must be written and signed by the members of the Board of Editors, and shall be published without submission to any other editor, except that they shall be governed by the provisions of Paragraph 6 hereof. Current notes of international events, containing no comment, may

¹ As amended April 24, 1926, and April 25, 1929.

² As amended April 25, 1929.

be printed over the signatures of non-members of the Board of Editors in the discretion of the Managing Editor.

(c) In the department of judicial decisions, preference in publication shall be given to the texts of decisions of international courts and arbitral awards which are not printed in a regular series of publications available for public distribution. This department may also contain the texts of decisions of the Supreme Court of the United States and the highest courts of other nations involving important questions of international law. Comments upon court decisions, either those printed in the *Journal*, or those not of sufficient importance to print textually, may be supplied by members of the Board of Editors, and shall be printed as editorial comments or current notes.

(d) The chronicle of international events, and the lists of public documents relating to international law and periodical literature of international law, shall be prepared under the direction of the Managing Editor.

(e) The supplement shall be made up of the texts of important treaties and other official documents. Material for it shall be supplied by the Managing Editor, taking into consideration such suggestions from the members of the Board as they may have to offer from time to time.

6. The final make-up of each number of the *Journal* shall be submitted by the Managing Editor to the Editor-in-Chief, who shall have the power to veto the publication of any contribution or other material. In the absence of such a veto, the Managing Editor shall be authorized to publish the *Journal*, using approved material so far as approval is prescribed herein.

7. The *Journal* shall be published upon the 15th days of January, April, July and October, or as near to those dates as possible, and the Managing Editor shall have power to proceed with the publication of the *Journal* from the materials in his hand upon the first day of the month preceding the month of publication.

8. The Managing Editor shall receive such compensation for his services, and such allowance for clerical assistance, as may be fixed by the Executive Council.

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THIRTY-FOURTH ANNUAL MEETING
OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW
THE CARLTON HOTEL, WASHINGTON, D. C.

FIRST SESSION

Monday, May 13, 1940, 8:15 o'clock p.m.

The opening session of the Thirty-Fourth Annual Meeting of the American Society of International Law, held in the Carlton Room of the Carlton Hotel, Washington, D. C., convened at 8:15 o'clock p.m., the Honorable Cordell Hull, President of the Society, presiding.

President HULL. The Thirty-Fourth Annual Meeting of this organization will come to order. The Chair recognizes the Secretary, Mr. Finch, for the purpose of making a statement.

Secretary GEORGE A. FINCH. Mr. President and members of the Society: Owing to the importance of the occasion, it has been thought advisable to have the presidential address broadcast over a national hook-up, and in order to do that it is necessary that he speak at nine o'clock. We ask your indulgence to vary the program so that the speaker who was to follow our President will speak first.

President HULL. I now have the satisfaction of introducing to you an old-time personal friend of mine, an outstanding citizen, an outstanding lawyer, and an outstanding civil and political leader, the Honorable Huston Thompson.

Hon. HUSTON THOMPSON. Mr. President, ladies and gentlemen: I welcome the honor of being on this program with our distinguished Secretary of State. Today he is universally described as the most selfless person in American politics. Had it not been for his victory with the reciprocal trade agreements, accomplished by his matchless courage and supreme patience, one might hesitate to broach anything of a constructive nature in this destructive hour, but he has instilled in us the confidence to go on.

AN INTERNATIONAL TRADE TRIBUNAL

BY HUSTON THOMPSON

Former Chairman, Federal Trade Commission

Amid the encircling gloom that envelops the world it is more than a privilege to meet in peace with guests from the only other continent that is not ablaze with war or destruction. It is noteworthy, too, that we gather not for the purpose of planning for destruction, but to seek again some prac-

tical machinery for lessening the possibility of still another ride of the Four Horsemen.

Since changes in human nature are so slow as to be almost imperceptible, it is safe to say that most of the nations where the struggle is on, will come forth from this debacle as they did from the last one, with treasuries so depleted that self-preservation will drive them again in the wrong direction unless there is a purposeful and helpful plan at hand. There is reason to believe that nations singly, together, and individuals in groups, will again turn toward dangerous nationalism, will demand increased tariffs, will put forth quotas, and do all of the things that block the channels of trade.

The key to all modern, if not ancient, wars has been greed in one form or other. To eradicate greed is an effort of the ages, not generations. It is for this reason that while we approach our problem hopefully we must expect to move gradually, ploddingly, and realistically. To be realistic we must recognize that strategy dictates an approach to the business relations of peoples rather than the politics of nations. Therein has lain the supreme mistake in the efforts of mankind to correct the past.

From Carthage down to the present, the one universal medium for the exchange of ideas has been through the commerce of the world. It is the only common denominator. Even the flag follows trade rather than trade following the flag. To focus properly, then, on peace we must throw the searchlight on international commerce, so that the masses of the world even more than governments and classes, can see, understand and become articulate as to what transpires.

Despite the fact that international business groups, often encouraged by their governments, have choked the channels of commerce through the use of cartels, combinations, tariffs, quotas, division of territory, price fixing and a free-for-all fight for the other fellow's market, there has been practically no representation on behalf of the common man. In fact, he has had no more consideration, as the ultimate consumer, than is given to Mr. Caspar Milquetoast of comic strip fame. I do not mean to say that there has not been much thought and effort put forth by high-minded groups of men on movements that would lead to raising the international welfare of the common citizen in the respective countries, but it has rarely gone beyond the fringe of the problem and seldom beyond the resolution stage, and the common man has not been among those present.

More than fifty years ago, at a conference in Paris in 1883, the United States became a party to a Convention for the Protection of Industrial Property, to protect patent and trade-mark rights and prevent the misbranding of goods; this convention has been several times revised, but is still in effect. In 1902 certain European countries joined in a convention for the suppression of bounties on the production and exportation of sugar, and formed an international bureau which was in operation until the World War. In more recent years, there have been numerous economic conferences in

Europe, as well as Pan American conferences, where plans were considered and measures drawn up for the elimination of trade barriers and the promotion of good will in international trade relations. Out of all of these experiences has come a realization of the need for something more, which I believe to be not a temporary conference or a convention limited in scope to one problem or one set of circumstances, but a permanent organization with broader and more flexible functions, designed to cover all forms of unfair trade practices in international commerce, and to meet trade conditions as they may arise in the future. This I have termed a World Trade Tribunal.

If, after the last war we could have had time, before creating the League of Nations, to arrange a system that could have checked those acts which blocked commerce and led to nationalism, it is quite possible that the League would have had a much greater chance of success. If we could have had a working system for bilateral or multilateral agreements for the gradual reduction of tariffs; if nations could have agreed with each other that instead of encouraging the raising of prices to their respective ultimate consumers they would let the law of supply and demand function; if there could have been an arrangement whereby money values between nations were fixed on a reasonable and logical basis; if there could have been an understanding that each nation should have its proportionate quota of raw materials, what a different world we would have had in the last twenty years. But it was not possible under the circumstances to formulate such a world at that time, for nations and peoples were drifting. International politicians were busy with their own ambitions, with the boundaries of countries, with the punishment of enemies that perhaps deserved some penalties but not too many or too severe. Political action was demanded in order to stave off chaos. In such an atmosphere the real causes of war and plans for peace were almost lost sight of.

I have said "almost lost sight of." But tucked away in Article 23 of the Covenant of the League of Nations is an unused, simple statement of eleven words which contains great potentialities for the future of the peace of the world, had it been permitted to function among normal human beings. These eleven words declare for an "equitable treatment for the commerce of all members of the League." To make these words live, would have required, as we have pointed out, thought, preparation, and action, but there was no time for any of these.

Behind these eleven words is the following incident. On May 5, 1919, as a member of the Federal Trade Commission, I wrote President Wilson at Paris, a letter setting forth in detail reasons for believing it necessary to incorporate in the League a provision for a World Trade Tribunal. In the letter I cited instances of unfair methods in international commerce that would cause serious friction and that could not be successfully reached by nations individually. On May 23, 1919, President Wilson replied, expressing the hope that such a tribunal might eventuate, and that the plan sug-

gested become a reality, at least in part. On Mr. Wilson's return to Washington he called my attention to the phrase heretofore quoted from the Covenant of the League, and stated that he thought that this language was a sufficient foundation upon which to build a World Trade Tribunal.

It may be asked why we need a Trade Tribunal when we already have the League of Nations and the World Court. Experience has apparently determined that aside from non-controversial matters the League will remain essentially political. Trade disputes or conflicts cannot be settled in a political atmosphere. To understand this we need but compare the handling of a controversial subject by Congress and by a tribunal created by Congress but divorced from its direct control. An example in point is the investigation made several years ago of the power interests of the United States, which was begun by our Senate but finished by the Federal Trade Commission. On the floor of the Senate there was political attack, maneuver and recrimination. When the same subject was transferred to the Commission, that body, without ostentation or irritation, revealed a picture of conditions that created a public opinion which suggested legislation and action with salutary effect.

The League may initiate economic investigation, but it cannot well decide economic conflicts. In 1927 it called a World Economic Conference which met, resolved and adjourned. The defect in such a conference is that the delegates are usually instructed in advance and are so rigidly controlled by such instructions that they are not free to act, or when they desire to do so, they have not the machinery. On the other hand, a permanent World Trade Tribunal, having its membership selected non-politically much as the members of the World Court, being withdrawn from a political atmosphere and functioning in a quasi-judicial manner on controversial matters, and in a spirit as impartial as the members of the World Court, can act with comparative independence.

The World Court does not handle matters such as would come before this tribunal, for its jurisdiction is over political matters arising between nations rather than economic matters arising between individuals of nations.

If there was excuse for postponing the consideration of international economic problems twenty years ago, it does not exist today in the western hemisphere. We are now in an extraordinarily advantageous position for future economic planning. We now have time in which to devise a concrete plan that can be subjected to criticism, amendment and improvement before it is put into action. Already there has been set in motion the system of bilateral treaties introduced so successfully over the world by Secretary Hull. Thus one objective is now in the making. As for machinery to handle reciprocal credits, exchange control, stabilization of currencies and other money problems, the report of former Premier Paul van Zeeland of Belgium, as of March, 1938, on *International Economic Reconstruction*, points the way. This is in line with resolutions at Pan American conferences for establish-