

PROCEEDINGS
OF THE
American Society of International Law

AT ITS
THIRTY-SIXTH ANNUAL MEETING

HELD AT
WASHINGTON, D. C.

APRIL 25, 1942

PUBLISHED BY THE SOCIETY
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THE AMERICAN SOCIETY OF INTERNATIONAL LAW

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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 hereinafter 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-SIXTH ANNUAL MEETING
OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW**

THE CARLTON HOTEL, WASHINGTON, D. C.

Saturday, April 25, 1942, 10:15 o'clock, a.m.

The Thirty-Sixth Annual Meeting of the American Society of International Law, held in the Banquet Room, the Carlton Hotel, Washington, D. C., convened at ten-fifteen o'clock a.m., Mr. George A. Finch, Secretary, presiding.

Secretary FINCH. I am sorry that the President of the Society, Secretary of State Cordell Hull, is unable to be here this morning. Mr. Reeves, one of our Vice-Presidents, is also absent because of illness, and Senator Thomas called me a few minutes ago and said he expected to be here, but he is not well enough to be out this morning. Mr. Dennis, the remaining active Vice-President, is present. According to the Constitution of the Society, 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 Council met yesterday afternoon, but has not designated any Vice-President to preside at this meeting, because we were not certain which of the Vice-Presidents would be here. So we shall have to elect a chairman of this meeting, and as Secretary, I shall have to ask somebody to nominate the chairman.

Mr. ARTHUR K. KUHN. I nominate Mr. William C. Dennis to act as chairman.

Mr. FREDERIC R. COUDERT. I second the nomination.

Secretary FINCH. Are there any other nominations? (After a pause) If not, all in favor of Mr. Dennis being asked to preside at this meeting in the absence of the President, say "aye"; opposed, "no."

Mr. Dennis is unanimously elected, and I will ask him to come forward and take this gavel as the emblem of the office.

(Vice-President WILLIAM C. DENNIS took the chair.)

Chairman DENNIS. Ladies and gentlemen, members of the Society: We are met in serious times. Even if I had had an opportunity to prepare a speech, I do not know whether it would have been wise to attempt to make one. I greatly appreciate the honor and pleasure of presiding over this group, and I congratulate the Society that so many of us, in these times and under these circumstances, are here to testify to our allegiance to international law as the guide of all nations.

The order of business calls in the first instance for the report of the Secretary, Mr. Finch.

BUSINESS OF THE SECRETARY

Secretary FINCH. Mr. Chairman and members of the Society: It is always the very sad duty of the Secretary at this meeting to read the names of those of our colleagues who were here last year but have passed away. They are not as many as we have had in former years, but there are some very distinguished names among them. I shall read them in alphabetical order (the audience stood during the reading of the names):

Mr. FRANCIS E. BOUCK, of Denver, Colorado, died November 24, 1941. He joined the Society in 1939.

Mr. PAUL D. CRAVATH, of New York, N. Y., died July 1, 1940. He had been a member since 1929.

Mr. FRANKLIN MOTT GUNTHER, of Washington, D. C., and of the United States Foreign Service, a member since 1909, who died December 22, 1941.

Mr. THEODORE P. ION, of New York, N. Y., a member since 1907, who died in 1940, but the announcement of his death was received too late for report at the annual meeting in April, 1941.

Mr. SIDNEY T. MILLER, of Detroit, Michigan, also a member since 1907, who died May 19, 1940, but his death was not notified until after the annual meeting in 1941.

Mr. CHARLES W. PIPKIN, Dean of the Graduate School of Louisiana State University, a member since 1932, who was a member of the Council at the time of his death on August 4, 1941.

Mr. NICOLAS POLITIS, Ambassador of Greece to France, a member since 1918, who died March 3, 1942.

Mr. JOHN W. RIDDLE, of Farmington, Connecticut, formerly of the diplomatic service of the United States, whose membership goes back so far that he is listed as a preliminary member. He died December 8, 1941.

Mr. GEORGE H. RYDEN, of Newark, Delaware, a member since 1932, who died October 12, 1941.

Mr. FREDERIC M. SACKETT, of Louisville, Kentucky, also a former United States Ambassador. He joined the Society in 1933, and died May 18, 1941.

Mr. JOHN R. SCHINDEL, of Cincinnati, Ohio, a member since 1933, who died October 29, 1941.

Secretary FINCH. I should like to submit to the Society a letter from Mr. Jesse S. Reeves, one of our Vice-Presidents, who has asked that, because of the state of his health, he be not reelected to the offices and committees

with which he has been associated and done such meritorious service over a number of years. I need not read the letter (I read it to the Executive Council yesterday afternoon), but I wish that it be entered in the records as a part of this meeting. The Council has directed that an appropriate letter of regret be sent to Mr. Reeves, with an expression of the desire that he should be retained in some official position and that his health will so improve as to enable him to attend future meetings of the Society.

I present a letter to the President of this Society from the Brazilian Society of International Law, dated Rio de Janeiro, January 3, 1942. It is in Portuguese, and as I do not read that language, I have had it translated into English. (Reading):

[Translation]

RIO DE JANEIRO, *January 3, 1942*

The President of the American Society of International Law:

The Brazilian Society of International Law, of which I have the honor to be President, unanimously adopted at its last meeting a vote of solidarity with the United States because of the aggression which it had just suffered by a Power from another continent.

It is with great pleasure that I communicate this resolution to Your Excellency, with the request that you kindly bring it to the attention of all the members of the American Society of International Law.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest esteem and distinguished consideration.

[Signed] AFRANIO DE MELLO FRANCO
President

His Excellency Mr. CORDELL HULL,
President, American Society of International Law.

Mr. Hull acknowledged that letter under date of February 4, 1942, as follows:

AMERICAN SOCIETY OF INTERNATIONAL LAW
700 JACKSON PLACE, N.W., WASHINGTON, D. C.

February 4, 1942

My dear Mr. President,

I have received with the greatest pleasure your letter of January 3, 1942, conveying to me in your capacity as President of the Brazilian Society of International Law the unanimous vote of solidarity with the United States which your distinguished Society has adopted in view of the aggression which the United States has so unjustly suffered by the action of a non-American Power.

In accordance with your request, I shall communicate the contents of this resolution to the members of the American Society of International Law, and I can assure you in advance that all the officers and members of the Society deeply appreciate this prompt and sincere expression of solidarity on the part of the members of your Society, to whom I shall ask you to convey our deepest appreciation.

Please allow me also, my dear Dr. de Mello Franco, personally to thank you, as well as on behalf of the members of the American Society of International Law, for this generous action.

With renewed assurances of my most distinguished consideration, I am,
Sincerely yours,

CORDELL HULL
President

The Honorable

Dr. AFRANIO DE MELLO FRANCO,
1424 Avenida Copacabana,
Rio de Janeiro, Brazil.

Secretary FINCH. In addition to reading the letters here, if it meets with the approval of the members, I shall print the correspondence in the JOURNAL so that it will go to all the members of the Society who are not able to come to the Annual Meeting.

Mr. PHILIP C. JESSUP. Mr. Chairman, may I inquire whether it would not be appropriate for the meeting to adopt a resolution concerning the sentiments expressed by the President of the Brazilian Society of International Law, in order that the Society as such may be on record as showing its appreciation, and requesting the Secretary to convey this Society's resolution to the Brazilian Society of International Law?

Chairman DENNIS. Certainly there could be no possible objection to that course. Do you make that motion?

Mr. JESSUP. Yes.

(The motion was regularly seconded, put to a vote, and unanimously carried.)

Secretary FINCH. The Executive Council met yesterday afternoon and discussed a number of things, some of which I think should be brought to the attention of the Society for the information of all the members.

There has been a decrease in our membership in the last year, and also a decrease in the number of subscriptions to the JOURNAL. It is not a serious decrease, and is I think naturally to be expected at this time. I would therefore like to suggest that the members who are able to do so, make an effort to induce some of their friends who might be interested to join the Society now and in that way try to make up for our losses of membership due to war conditions in other countries.

The Council also discussed yesterday afternoon a matter in which the Society at large, I think, is very much interested, and that is the question of the Society's meetings during the war. The question was raised last December, after the United States became an active belligerent following the events of December 7-8, and in view of the fact that the Society had postponed its public meetings during the last war, I was asked to call a meeting of the Executive Council of the Society, which is its governing body during the interval between the Annual Meetings, to discuss that question. There were nine members of the Council present at the meeting and some 22 letters were received, so that about three-fourths of the membership of the Executive Council was represented at the meeting either personally or by letters.

The overwhelming majority of the members of the Council were in favor

of having a meeting this year. The Council, therefore, decided to have the meeting and suggested that certain curtailments might take place which would be more in keeping with the times, and delegated the Committee on Annual Meeting with authority to proceed along those lines. Later on, the Committee on Annual Meeting found it necessary to get the advice of the Council again, which I did by letter, and the result is the form of meeting which we have here now. I shall leave to the Chairman of the Committee on Annual Meeting the duty of explaining the situation more in detail. I merely want to give the Society the Secretary's connection with that matter.

If we have time this morning, I think it would be advisable if the members present would now express their views on this subject, because the Council will meet again this afternoon after luncheon and probably will have to consider what directions to give to the Committee on Annual Meeting for next year. I am sure the Council would appreciate having the benefit of the suggestions of the members of the Society while we are here assembled in our Annual Meeting. There is no disposition, so far as I can judge, on the part of the Committee or the Council to approach the subject with any predetermined idea. They simply want to do the right thing in the right way and in accordance with the wishes of the members of the Society who have views on the subject to express.

The Executive Council also resolved to approve the submission of a resolution to the Society this morning (which will be presented by Mr. Murdock later on) that a committee be appointed on coöperation with similar organizations. I am merely reporting this now not for discussion but so as to give you the order of business. The Constitution of the Society specifically says that it will coöperate with similar organizations in this and other countries, and the question was raised whether we should not take the initiative and a more active interest in such coöperation. In order that the Society may discuss it, the Council authorized Mr. Murdock to present such a resolution so that there would be no possibility of parliamentary questions being raised when it is brought up for discussion.

Chairman DENNIS. The next order of business is the report of the Committee on Annual Meeting. Mr. Murdock!

REPORTS OF COMMITTEES

COMMITTEE ON ANNUAL MEETING

Mr. JAMES O. MURDOCK. The Committee on Annual Meeting was confronted with a rather difficult task this year. The thought of holding a meeting in this period of transition was questioned early in the year, and in order to obtain the sense of the Council on the matter, the special meeting of the Executive Council which the Secretary, Mr. Finch, has referred to, was called. At that time the Council gave the Committee on Annual Meeting considerable leeway.

On the basis of the action of the Council, the Committee used its best efforts to organize a somewhat contracted meeting along the lines of the