

PROCEEDINGS  
OF THE  
**American Society of International Law**  
AT ITS  
THIRTY-FIFTH ANNUAL MEETING  
HELD AT  
WASHINGTON, D. C.  
APRIL 24-26, 1941

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PUBLISHED BY THE SOCIETY

700 JACKSON PLACE, N. W.

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THE AMERICAN SOCIETY OF INTERNATIONAL LAW

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## 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 officers 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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>1</sup> As amended April 24, 1926, and April 25, 1929.    <sup>2</sup> 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.

## TABLE OF CONTENTS

	PAGE
OFFICERS AND COMMITTEES FOR THE YEAR 1941-1942.....	v
CONSTITUTION OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW.....	vii
Regulations regarding student membership.....	x
Regulations for the <i>American Journal of International Law</i> .....	xi
REPORT OF THE THIRTY-FIFTH ANNUAL MEETING.....	1

### First Session

*Thursday, April 24, 1941, 8:15 o'clock p.m.*

Continental Principles of International Intercourse. HON. RICARDO J. ALFARO.....	1
The United States and the World Situation. HON. CORDELL HULL...	9

### Second Session

*Friday, April 25, 1941, 10 o'clock a.m.*

The International Rights of Individuals. FREDERICK S. DUNN.....	14
Discussion led by ALWYN V. FREEMAN.....	19
Individuals Before International Tribunals. EDWARD I. HAMBRO...	22
Discussion led by EDGAR TURLINGTON.....	27
International Law and Commercial Relations. QUINCY WRIGHT....	30
Discussion led by WILLARD B. COWLES.....	39

### Third Session

*Friday, April 25, 1941, 2:30 o'clock p.m.*

The Moral Bases of International Law. HERBERT WRIGHT.....	52
Discussion led by ELLERY C. STOWELL and JOHN B. WHITTON....	64
Essential Conditions of International Justice. HANS KELSEN.....	70
Discussion led by JOHN H. HERZ.....	86

### Fourth Session

*Friday, April 25, 1941, 8:15 o'clock p.m.*

International Constitutional Law. AMOS J. PEASLEE.....	100
International Reorganization. EGON RANSHOFEN-WERTHEIMER....	106
Discussion led by WILLIAM S. CULBERTSON, SARAH WAMBAUGH, and EDWARD MEAD EARLE.....	120

### Fifth Session

*Saturday, April 26, 1941, 10 o'clock a.m.*

Continuation of discussion of preceding papers.....	131
Business Meeting.....	142

In Memoriam.....	142
Report of Committee on Honorary Members.....	143
Report of Committee on State Department Publications.....	143
Codification of international law.....	146
Report of Committee on Nominations.....	149
Election of Officers.....	151
Election of Committee on Nominations.....	152
Miscellaneous business.....	153

### Annual Banquet

*Saturday, April 26, 1941, 7:30 o'clock p.m.*

Members and Guests in attendance.....	155
Remarks by the Toastmaster.....	157, 167, 173, 177
Letters from the President of the United States and Secretary of State.	157
Addresses by:	
Hon. C. J. HAMBRO.....	161
Sir GERALD CAMPBELL.....	169
Hon. HENRY BRECKINRIDGE.....	173

### Appendices

#### MINUTES OF THE EXECUTIVE COUNCIL:

<i>April 24, 1941</i> .....	179
<i>April 26, 1941</i> .....	186
REPORT OF THE TREASURER.....	189
REPORT OF COMMITTEE ON PUBLICATIONS OF THE DEPARTMENT OF STATE.....	193
LIST OF MEMBERS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW.	202
INDEX.....	219

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

FIRST SESSION

Thursday, April 24, 1941, 8:15 o'clock p.m.

The opening session of the Thirty-Fifth Annual Meeting of the American Society of International Law, held at the Carlton Hotel, Washington, D. C., was called to order at 8:25 o'clock p.m. by the President of the Society, the Honorable Cordell Hull, Secretary of State.

President HULL. The meeting will come to order.

The Chairman has the very special pleasure of presenting to you an old associate and colleague in the diplomatic service. He is a former President of the Republic of Panama, where he made a distinguished and outstanding record of public service. He was long in the foreign service and, as you know, was Minister to this country for some years. I am delighted to join with you in listening to him this evening. We are most fortunate to have him with us, and I am pleased now to present to you Dr. Ricardo J. Alfaro, of the Republic of Panama.

CONTINENTAL PRINCIPLES OF INTERNATIONAL  
INTERCOURSE

BY HONORABLE RICARDO J. ALFARO

*Former President of Panama*

Mr. Chairman, Ladies and Gentlemen: It might be called a futile gesture, but I regard it as a healthy and encouraging sign, that while the Old World is in the midst of a conflagration in which all principles of law and humanity are stifled by the philosophy of brute force, the jurists of the New World should continue to meet for the purpose of discussing the rules that must govern the relations of states. Indeed, the fact is remarkable, but it is not surprising. It is in keeping with the traditions, the ideals and the aspirations of a continent that desires peace, seeks justice, respects rights, loves freedom, believes in democracy and recognizes the supremacy of law in all human relationships.

The states of the Western Hemisphere are the last refuge of reason and democracy. America is today exactly what Henry Clay, that man of faith and vision, thought she could be, when more than a century ago, advocating

the recognition of the independence of the Spanish colonies, he said: "We should become the center of a system which would constitute the rallying point of human wisdom against all the despotism of the Old World." That system is here. It is a magnificent system maintained by twenty-one sovereign republics which recognize above them the sovereignty of law. A system founded upon national independence and continental interdependence. A system aiming at peace and prosperity, relying on solidarity for the promotion of common interests and the defense of common rights. A system which calls itself merely a "moral union," which does not rest upon pacts of confederation or treaties of alliance, and yet has been able to create a smoothly-functioning machinery of international coöperation, such as is not found anywhere else in any epoch of history. A system born of historical, geographical and economic factors which call for and lead to fruitful joint action. A system, finally, which can only exist and work through faithful adherence to a common rule of mutual intercourse between its components.

This is why the American continent has been particularly propitious to the development of international law and has shown a characteristic ability to take the lead in the formulation, adoption and establishment of those doctrines and institutions which promote the ends of justice and peace among nations. The first bilateral treaty to stipulate arbitration of important international questions was the Jay Treaty of 1794. The first multilateral pact establishing a collective system of conciliation and mediation and obligatory submission of controversies to pacific methods was the one signed at Panama in 1826. The first constructive step for the constitution of a League of Nations aiming at peace, collective security and organized international justice was taken that same year by the American Congress convened by Bolívar. The basic principles regulating the conduct of war at sea and maritime neutrality were embodied in the Treaty of Commerce signed at the Lima Congress of 1847, eight years before European nations proclaimed them in the Declaration of Paris. The first bilateral treaties marking the passage from isolated and optional arbitration to obligatory, ample and permanent arbitration were negotiated by Colombia in 1880. The first multilateral act of condemnation of the so-called right of conquest was a resolution passed by the Pan American Conference at Washington in 1890. The first Permanent Court of International Justice was established by the Central American Republics in Cartago, Costa Rica, in 1907. The first multilateral pronouncement to outlaw war, anticipating by several months the Briand-Kellogg Pact, was a resolution signed by the American nations at Havana in 1928. Several far-reaching doctrines of international intercourse were conceived and born in America. And finally, the first concerted effort for the codification of international law, undertaken with success and still under way, is the effort of the Governments of the Western Hemisphere.

As we can see, the Republics of the New World may be justly proud of their traditions and their achievements in the field of international law. So, at the precise time when in Europe and Asia treaties are violated, the independence of free countries is destroyed, war is resorted to by aggressor states as their only instrument of national policy, and the law of nations is brazenly and systematically trampled over, it is quite in harmony with the spirit of America, that statesmen, jurists, professors, diplomats and free citizens should gather for the purpose of proclaiming once more the sanctity of public compacts, the human aspiration for peace founded upon justice, and the necessity for all civilized peoples to submit to the rule of international law.

Such an attitude is especially fitting in this Society, being, as it is, presided over by a champion of law and right, an ardent lover of peace, a statesman who has won the respect and the confidence of the whole continent, and who, for the same reason, has succeeded in welding our hemisphere into the admirable unit of sentiment and action which it is today: the Secretary of State of the United States, Honorable Cordell Hull.

The program calls for me to speak on the "Continental Principles of International Intercourse." This subject is temptingly interesting. It seems desirable to take stock, as it were, of the basic principles by which the American nations adjust their mutual relations and their joint action. And it seems useful to record how each one of those principles has been originated, declared, developed, interpreted and applied. In this manner we could have for ready reference a sort of annotated catalog of the precepts, maxims, axioms, dogmas, doctrines, norms and standards which by most general accord and usage may be rightly classified as continental. But this is something that cannot be done in the short space of twenty minutes, and that perhaps furnishes enough material for a volume. I have listed thirty-eight principles which by virtue of their more or less general acceptance and application may be held to constitute the international credo of America. Given the impossibility of any comments, however short, on each of them, I shall restrict myself to enumerate them and to state the different categories into which I have divided them, according to their nature.

We have in the first place the *principles inherent in the sovereign personality of the American States*. Three fundamental tenets have been proclaimed which are included in this category, to wit:

1. The right of the American nations to their existence, their development and their independence.
2. The juridical equality of the States.
3. Non-intervention by one State in the internal or external affairs of other States.

Unable to refer to the various official pronouncements relative to these principles, beginning with the Congress of Bolívar and ending with the latest



Pan American Conferences, I cannot refrain from quoting as undoubtedly the most elegant and most scientific embodiment of those principles, Articles 1, 2 and 3 of the "Declaration of the Rights and Duties of Nations," adopted by the American Institute of International Law twenty-five years ago, and whose author was our illustrious Honorary President, recognized apostle of right and luminary of the science of law, Dr. James Brown Scott. These are his words:

I. Every nation has the right to exist and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness, and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim, and according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

My second category is formed by those we might call *principles of a continental scope*, that is to say, those which do not refer to each nation individually as a member of the *magna civitas*, but which affect the continent as a whole. These are the following:

4. The non-existence of *res nullius* territories in America.
5. The doctrine that the American nations are not susceptible to colonization, nor to any form of domination or interposition by non-American Powers.
6. The solidarity by which the American nations are united for the purpose of maintaining their sovereign existence, for the preservation of peace in the continent, for the promotion and defence of their common rights, interests, institutions, aspirations and ideals, and for the harmonious development of their political, economic, social and cultural life.
7. Every act susceptible of disturbing the peace of any of the nations of America affects each and every one of them.

Among the international tenets of America there are four which proclaim the outlawry of war and force, regarding which unanimity of sentiment and consistency of expression are remarkable. These principles, forming a third category, are the following:

8. The condemnation of territorial acquisitions by force; and (as a corollary)
9. The non-recognition of territorial acquisitions effected by the actual or threatened use of force.

10. The proscription of war as an instrument of national or international policy.
11. The proscription of forcible collection of pecuniary debts.

After the principles condemning war and all forms of force, it seems natural to group in another category those which consecrate the reign of peace, which are the following:

12. International controversies must be settled by pacific methods; the process of conciliation is obligatory in all controversies and arbitration in those of juridical nature.
13. Specifically, pecuniary claims must be arbitrated.
14. *Uti possidetis juris*, as the basis for the settlement of boundary disputes.

Closely related to the standards upholding the reign of peace are those consecrating the reign of law, to wit:

15. Relationships between the American nations must be based on international law.
16. The rule *pacta sunt servanda*, that is to say, that public treaties must be respected and faithfully observed, with qualified admission of the clause *rebus sic stantibus*.

Finally, I have a sixth category, where I have grouped all those principles of general intercourse not included in the other five which are adhered to or have been proclaimed by at least a majority of the American Republics. These are the following:

17. Respect for the personality, sovereignty and independence of each and all of the States of the continent.
18. Recognition of new States and new governments based on the fact of their existence.
19. *Lex domicilii* as the general basis of relations regulated by private international law.
20. Equality of civil rights and individual guarantees between nationals and aliens.
21. Responsibility of States for damages sustained by aliens to be the subject of redress sought before the local courts; and diplomatic interposition only in case of denial of justice.
22. *Jus soli* as a source of nationality; and no distinction with regard to nationality by reason of sex.
23. Naturalization implies loss of original nationality.
24. Extradition of fugitive criminals subject to refusal to deliver persons accused of political crimes or nationals of the State to whom the request is made.
25. Asylum of political refugees respected out of humanitarian tolerance, and not subject to reciprocity, in accordance with the treaties, usages and laws of the country where refuge is sought.

26. Free navigation of international rivers.
27. Full and exclusive sovereignty of each nation over its air space, subject to the obligation of granting innocent passage to the private airships of other States.
28. The sovereign right of each nation to the use of every radio channel, under condition of not interfering with the services of other countries, and upon recognition of the necessity of interdependence and coöperation in the use of the ether.
29. Maritime neutrality regulated by the universally accepted rules and by the inter-American conventions, agreements and declarations on the subject, including the Declaration of Panama relative to the establishment of a maritime zone around the continent for the preservation of its neutrality and its security.
30. Duty of States, in case of civil war in other States, to prevent within their territory all acts liable to help or favor rebellions and to prohibit traffic in arms unless belligerency of the rebels shall have been recognized.
31. Inviolability of diplomatic agents, limitations of their immunities, elimination of the fiction of extraterritoriality and the dogma that diplomatic officials do not represent the Head of the State but their Governments and States.
32. Consular representation subject to the consent of the government where it is established.
33. Recognition of woman's right to political and civil equality, to equal opportunity for work and to special protection by reason of motherhood.
34. Maintenance of international law in accordance with Christian morality and condemnation of persecution for religious or racial motives.
35. Recognition of economic reconstruction as a means of fostering national and international welfare, as well as universal peace.
36. Liberalization of trade and equality of treatment in international trade.
37. Peaceful collaboration and international coöperation as a necessary element of inter-American relationships.
38. Democracy recognized as a continental bond of union and as the basis of political, social and economic institutions.

Many other principles might be quoted which are not included in the preceding enumeration, but it has been my endeavor to deal here only with those that may be rightly classified as major principles, or that have been the subject of express declarations or commitments by the American governments. At any rate, the list is susceptible of modification and it is open to the constructive and enlightened criticism of those colleagues who might be interested in the subject.

These principles vary as to their origin and their nature. A number of