PRINCIPLES FOR THE INTERNATIONAL LAW OF THE FUTURE

This statement of Principles is presented as a draft of a declaration concerning the international law of the future, which is suggested for promulgation by the statesmen who will build the future peace. Numerous precedents for such an official declaration might be cited, but it will suffice to refer to a few examples.

In 1815 the Congress of Vienna was not content to confine itself to current problems in the situation which followed the Napoleonic wars. Two important declarations were annexed to the Act of the Congress, one dealing with the free navigation of rivers, and the other dealing with the rank of diplomatic agents; each of these declarations exercised a formative influence on international law for more than a century. The Congress of Vienna also assumed to act in behalf of all Governments in promulgating a declaration with reference to the universal abolition of traffic in African slaves. In 1856, the Conference of Paris which reëstablished peace after the close of the Crimean War promulgated a declaration on maritime law which has since come to be a generally accepted formulation.

At the Paris Peace Conference in 1919, a declaration of "Fundamental Principles of Justice and Rules of Law" was proposed in the American Commission to Negotiate Peace as a preamble to the treaty of peace; and it was in part due to American initiative that the Treaty of Versailles contained a significant declaration concerning "methods and principles for regulating labor conditions," to "guide the policy of the League of Nations."

The 1922 Washington Conference on Naval Armaments adopted a declaration of rules concerning the use of gases in warfare to form "a part of international law binding alike the conscience and practice of nations," and forty-one States accepted the declaration as it was later embodied in a Geneva Protocol of 1925.

An important "Declaration of American Principles" was adopted by the Eighth International Conference of American States at Lima in 1938, and a declaration on "Fundamental Principles of International Law" was recommended by the Inter-American Juridical Committee in 1942. Many unofficial declarations have been formulated in the past, also, a notable example being the "Declaration of the Rights and Duties of States" proposed by the American Institute of International Law in 1916.

The Principles are confined to the legal order of the future. They do not purport to state the preëxisting law, though some of the duties stated may be said to have existed under the international law of the past. The duties of States are described in each case as legal duties. The proposed declaration would invest them with the character of duties under general international law.

A principle of law, promulgated and accepted as such, may serve as a useful guide for conduct, it may furnish a standard for the appraisal of conduct,

even without any attempt to ordain the consequences of its non-observance. A failure by a State to perform a legal duty is a matter of concern to the Community of States, and it may call for interposition to protect the interests of the Community of States. Yet action taken on behalf of the Community of States should be taken for protective and not for punitive purposes, and it should be entrusted to bodies endowed with judgment and discretion. The later Proposals contain suggestions for implementing the Principles, covering the creation of the necessary agencies and the powers with which they should be invested.

PRINCIPLE 1

Each State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty.

COMMENT

Underlying the modern international law is the principle that States must carry out their legal obligations in full good faith. Without it, States could not live together in a Community of States. Good faith is "the great moral ligament which binds together" the States of the world in a system of law.

Each State is free to determine the nature of its own government, and it is free to develop its own institutions in conformity with the genius of its people. The international law of the future must safeguard this freedom which every State should enjoy. The Atlantic Charter therefore proclaims "the right of all peoples to choose the form of government under which they will live." Yet it is a right to be exercised with due regard for the interests of the Community of States, and each State has a duty to organize its institutions in such a way that it will be in a position to perform its obligations under international law.

Failure by a State to perform its obligations can never be justified by invoking limitations which it has imposed upon itself by its own constitution or laws. Some fifty years ago, in correspondence with Mexico relating to the *Cutting Case*, the Government of the United States declared that "if a Government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name and would afford no protection either to States or to individuals. It has been constantly maintained and also admitted by the Government of the United States that a government can not appeal to its municipal regulations as an answer to demands for the fulfillment of international duties." On several occasions, the Permanent Court of International Justice has declared that "a State cannot adduce as against another State its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force"; indeed it has gone further and stated the principle to be "self-evident" that "a State which has contracted

valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken." At the Conference on Codification of International Law held at The Hague in 1930, the principle was generally accepted that "a State cannot avoid international responsibility [for an injury to an alien] by invoking its municipal law."

No particular distribution of power within a State's governmental system is required. In a federal State, no particular division of power between the federal and local governments is prescribed, and in neither a federal nor a unitary State is interference involved with the separation of legislative, executive and judicial powers. Yet it is essential that by some arrangement of its governmental system each State, whatever the structure of its government, should maintain itself in a position to carry out its international obligations, and a failure to place itself in that position will not excuse its non-performance of those obligations.

The enunciation of the Principle would seem to be particularly important at the present time. Recent challenges to accepted philosophies of government as well as dislocations caused by war may lead to the revision of the constitutions of many States, and extensive shifts of governmental power, both internal and external, are to be anticipated.

PRINCIPLE 2

Each State has a legal duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end it must treat its own population in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind.

COMMENT

International law is principally concerned with relations between States. Generally, it does not deal with relations between a State and its own people. So important are the local considerations which shape those relations, so difficult is the appreciation of them by other peoples, that each State must be permitted to order them without external interference. Yet this precept of State freedom cannot be absolute.

A State cannot be free to permit conditions to prevail within its own territory which menace international peace and order, and it cannot be free to treat any part of its population in such a way as to produce that menace. Living as a good neighbor in a Community of States, it may be called upon to place its own house in order. "The right of self-determination," as the President of the United States of America has declared, "does not carry with it the right of any government to commit wholesale murder or the right to make slaves of its own people."

Not infrequently in the past, conditions prevailing in one part of the world have been so violative of the dictates of humanity and justice and so shock-

ing to the conscience of mankind, that peoples generally have been unwilling to tolerate them. During the course of the nineteenth century, trade in African slaves came to be generally condemned, and Conferences of States at Berlin in 1885, at Brussels in 1890, and at St. Germain in 1919, devoted their efforts to its suppression. Slavery in any part of the world has come to be regarded as inimical to a world standard of humanity. This was evidenced by the enquiries made when Ethiopia was admitted to the League of Nations in 1923; by the Slavery Convention of 1926 in which the parties undertook "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms"; and by the Forced Labor Convention of 1930 in which the parties undertook "to suppress the use of forced or compulsory labor in all its forms within the shortest possible period."

Instances are numerous in which States have assumed international obligations with respect to the treatment of their own nationals. Such obligations have often been included in treaties dealing with the transfer of territory. In a treaty with Spain in 1898, the United States of America undertook to assure to the inhabitants of certain relinquished or ceded territories "the free exercise of their religion." The treaties made in 1919 and 1920 for the protection of racial, linguistic and religious minorities in certain European States are outstanding examples; if these treaties are to be explained as consequences of the creation of new States or of accretions of territory, it is to be noted that similar obligations were also assumed by certain States upon their admission to membership in the League of Nations. The underlying principle has been expressed in a declaration by the Eighth International Conference of American States in 1938 that "any persecution on account of racial or religious motives which makes it impossible for a group of human beings to live decently, is contrary to the political and juridical systems of America."

Nor is the protection of minorities an isolated example. The labor charter in the Treaty of Versailles declared that "the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

The Principle would require of each State a minimum protection of its own population, that is of all inhabitants of its territory. International law has long prescribed standards for a State's protection of aliens within its territory. Nationals too should have the benefit of the standard which the dictates of humanity and justice impose. In some instances in the past, States have withheld their nationality from groups of their population in order to justify a special treatment which fell short of a general standard; hence the Principle is not confined to the treatment of nationals, but extends to the treatment of all elements of a State's population.

The standard of conduct to be required of each State can be defined only in general terms. Modern civilization has proceeded upon the possibility of laying down some criteria which are of universal acceptance. The 1907 Hague Convention on laws and customs of war on land refers to the "laws of

humanity" and the "dictates of the public conscience." In 1937, the Council of the League of Nations adopted a resolution concerning conditions in Spain, in which it noted "that attacks have taken place in violation of the most elementary dictates of humanity underlying the established rules of international law," and declared that such attacks were "repugnant to the conscience of the civilized nations." Precedent is therefore not lacking for including in the Principle the standard of "the dictates of humanity" and "the conscience of mankind."

The enunciation of this Principle seems particularly important at the present time, when shocking efforts are being made in more than one part of the world to exterminate whole groups of human beings. It is important, also, because new situations have arisen which will require attention to be given to the future welfare of certain dependent peoples, and the world must be assured that such atrocities as the decimation of the Herreros in Southwest Africa forty years ago are not to be repeated. The dictates of humanity and justice must serve as a cornerstone of any permanent world order. They should serve to indicate a general standard of conduct to which each State has a duty to conform, and from which any departure is to be judged by the whole Community of States; but they are not to be used as an excuse for intervention by any State, acting on its own authority, in the affairs of another State.

PRINCIPLE 3

Each State has a legal duty to refrain from intervention in the internal affairs of any other State.

COMMENT

It is a corollary of the general precept that each of the States which form the Community of States must be responsible for the conduct of its own household, that in its internal affairs each State must be free from interference by other States acting on their own authority.

Instances have not been rare in the past in which a powerful State has sought to impose its will on a less powerful State in the latter's disposition of its own economy, and the fear engendered by such action has been a disturbing factor in relations between many States. Such interference became so frequent that efforts were made to justify it by tentatives of law permitting intervention, and these tentatives even derived a semblance of authority from an award of a tribunal of the Permanent Court of Arbitration in the *Venezuela Preferential Claims Case.*

Some of the American States which had been the victims of such interference have long urged its emphatic condemnation, and their efforts led to the inclusion in the Convention on Rights and Duties of States, adopted at Montevideo in 1933, of a provision that "no State has a right to intervene in the internal or external affairs of another State." That Convention, ratified

by sixteen American States, has been supplemented by a Protocol adopted at Buenos Aires in 1936, and by the Declaration of American Principles adopted at Lima in 1938, both of which reaffirmed the principle. To the extent that such provisions apply to intervention in external affairs, they are to be understood to forbid any attempt by one State, acting on its own authority, to control relations between other States. They do not seek to prevent a State's asserting an interest in a matter which other States may have under discussion. Nor do they prevent an effort by the Community of States to protect a community interest in relations between two States, such as the interest in peace which nineteen American States sought to protect by the declaration of August 3, 1932, with reference to the Chaco dispute between Bolivia and Paraguay.

Escape from the dangers of intervention has also been sought by States in other parts of the world. In declarations attached to the Conventions defining Aggression, of July 3 and 4, 1933, the Soviet Union and its neighbors declared that no act of aggression as defined could be justified on the ground of "the internal condition of a State, for example: its political, economic or social structure; alleged defects in its administration; disturbances due to strikes, revolutions, counter-revolutions, or civil war." In 1933 the United States of America and the Soviet Union entered into an agreement by which each undertook "to refrain from interfering in any manner in the internal affairs" of the other. The 1937 Brussels Conference declared that "there exists no warrant in law for the use of armed force by any country for the purpose of intervening in the internal regime of another country." Quite recently, also, in the 1942 Treaty of Mutual Assistance, Great Britain and the Soviet Union pledged themselves to act in accordance with the principle of "non-interference in the internal affairs of other States."

The Principle would reaffirm a precept of the existing law. It would condemn any State's acting on its own authority to intervene in the internal affairs of another State. It would not preclude action taken on behalf of the Community of States and with the mandate of a competent agency of the Community of States, in the event that conditions prevailing in a State's territory should be found to menace international peace and order.

Enunciation of the Principle at the present time would not only be in accordance with the trend of world opinion. It would furnish a needed guarantee to smaller States that the world of the future will be a world in which they can live according to their own aspirations and remain unmolested. It would generalize the declaration made by the Ministers of Foreign Affairs of the American Republics, at their meeting at Rio de Janeiro in 1942, that "the principle that international conduct must be inspired by the policy of the good neighbor is a norm of international law of the American Continent."

PRINCIPLE 4

Each State has a legal duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State.

COMMENT

If States are to live together as good neighbors in the Community of States, it is not enough that they be obligated to refrain from official intervention in the internal affairs of other States. It is necessary, also, that each State be assured of its internal security, free from subversive influence due to non-official activities in other States. Governments themselves must refrain from participation in the internal political contests to which other Governments are subjected. But they should do more. They should see that activities are not organized within their territory which are calculated to foment civil strife in the territory of other States.

The foundations of this Principle may be traced to the action taken by States throughout the nineteenth century to prevent the organization in their territory of filibustering expeditions designed to operate in the territory of other States. In some States national legislation was enacted to prevent armed preparations or enlistment for waging civil strife in the territory of other States; in the United States of America, for example, such legislation has existed since 1794, and it was framed to carry out what was conceived to be an obligation of international law.

Recent international legislation has given precision to the obligation. An agreement concluded in 1911 between five South American States—Bolivia, Colombia, Ecuador, Peru, and Venezuela—required the parties to "take suitable steps to prevent at all times, in the territory under their jurisdiction, the promotion of revolutions, attempts to raise levies or preparations for the despatch of expeditions, and the execution of any of these acts to the prejudice" of any other party. Thirteen American States became parties to the 1928 Habana Convention on Civil Strife, by which they obligated themselves "to use all means at their disposal to prevent the inhabitants of their territory, national or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife." A similar obligation was proclaimed by Central American States in treaties of 1907, 1923 and 1934, by States of the Near East in the Saadabad Pact of 1937, and by the Ministers of Foreign Affairs of the American Republics in the Final Act of the Habana Conference in 1940.

Efforts to extend the principle have been proceeding in recent years. Some of them have taken the form of bipartite agreements between States. For example, in 1933 the United States of America and the Soviet Union entered into an agreement by which each undertook "not to permit the forma-

tion or residence on its territory of any organization or group . . . which has as its aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in the political or social order" of the other. Similar agreements were made by the Soviet Union with other States.

Newer means of communication call for attention in this connection. The advent of the radio has brought in new possibilities of disturbances in the political life of peoples, and as recent experience has shown propaganda broadcast from the territory of one State to people living in the territory of another State may be as effective in fomenting political strife as the despatch of armed ships and armed forces. Two significant efforts have been made to cope with this problem by international legislation. The 1936 Geneva Convention on the Use of Broadcasting in the Cause of Peace, to which twenty-one States became parties, obligates these States to prohibit "the broadcasting within their respective territories of any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory" of another State which is also a party to the Convention. In the 1937 Geneva Convention on the Prevention of Terrorism, it was reaffirmed as a principle of international law that "it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape."

It will be understood that the Principle is not to be applied in such a way as to obligate any State to curb the activities of individuals in the exercise of personal liberties accorded by law. Freedom of speech is one of man's most prized possessions, and it can be protected only if individuals remain free to criticize the Government of their own or of any other country. Nor should the Principle be applied in such a way as to prevent a State from giving asylum and hospitality to individual apostles of freedom who may be fleeing from tyranny in other lands. It is the organization of activities which should be prevented, and the Principle has no application unless the organized activities are of such a character that they must be said to be, objectively as well as subjectively, calculated to foment civil strife in other countries.

The enunciation of this Principle at this time would serve as an assurance to States of the security of their own institutions, social as well as political, especially to those States which by recent events have been placed in special need of that assurance. It seems significant in this connection that when it declared, on the occasion of the murder of King Alexander and M. Barthou at Marseilles in 1934, that "it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose," the Council of the League of Nations linked its action with the obligation of Members of the League of Nations "to respect the territorial integrity and the existing political independence of the other Members."

PRINCIPLE 5

Each State has a legal duty to coöperate with other States in establishing and maintaining agencies of the Community of States for dealing with matters of concern to the Community, and to collaborate in the work of such agencies.

COMMENT

Matters which are of concern to the Community of States must be dealt with by agencies empowered to deliberate and act on behalf of the Community. As the creation and maintenance of such agencies must be effected by the States which form the Community of States, a failure of any State to coöperate in creating or maintaining them, or in collaborating in their work, would mean a crippling of the Community itself. Progress in building a world order on secure legal foundations is conditioned upon such cooperation and collaboration. For this reason, the Inter-American Juridical Committee has recently declared that "no nation is privileged to remain aloof from the organization of the international community"; and the Ministers of Foreign Affairs of the American Republics, meeting at Habana in 1940, pledged their Governments to "coördinate their own interests with the duties of universal coöperation."

The imposition of a legal duty on States to meet this necessity is more than a pious aspiration. While it is not possible to state in advance precisely the steps which any State ought to take, it can be affirmed as a principle of law that States may not ignore the agencies of the Community of States, and that they have a positive legal duty to take part in the common effort which will enable the agencies to function toward the ends for which they were created. Precedents are not lacking for a statement of a legal duty in these terms. For example, the abortive Geneva Protocol on Pacific Settlement of International Disputes of 1924 referred to the obligations of certain States as requiring them "to coöperate loyally and effectively in support of the Covenant of the League of Nations and in resistance to any act of aggression."

A useful analogy may be found—here as so often in dealing with inter-State relations—in national efforts to regulate relations between employers and workers. Certain States have not hesitated to impose on employers and workers a duty to negotiate and to engage in collective bargaining; a law of the United States of America, for example, imposes a legal duty on various public carriers and their employees "to exert every reasonable effort to make and maintain agreements" on certain matters. Such duties are rigorously enforced by national courts. Under such laws, the persons on whom reciprocal duties are imposed are not constrained to reach an agreement, and they are not compelled to accede to demands made; yet they cannot lawfully decline to negotiate and their own proposals must be in the spirit of an effort to arrive at an understanding.

Similarly, a State may have a duty to take part in the common effort, to coöperate in maintaining the necessary agencies and to collaborate in their work. It would not be obliged to support any specific proposal which may be advanced, nor to enter into any agreement which in its judgment fails to take account of its special interests. Yet it would not be living up to its duty if it sought to remain entirely aloof and to ignore the common effort.

It is an historical fact that in some fields international coöperation has been well-nigh universal. Of the seventy-three States existing in 1937, seventy-two States have collaborated in the work of the Universal Postal Union; sixty-eight States are parties to the 1932 Telecommunication Convention, and to one or other of the various conventions dealing with the traffic in opium and drugs. Moreover, most of the States of the world—Nepal and Yemen being the chief exceptions—took part in some of the activities of the League of Nations. In 1939, the Secretary of State of the United States of America stated to the Secretary-General of the League of Nations that "the United States Government looks forward to the development and expansion of the League's machinery for dealing with the problems" in the social, economic and financial fields, "and to the participation by all nations in active efforts to solve them."

The Principle does not deal with the method of conducting the coöperation, nor with the specific agencies which must be established. Future developments which cannot be forecast will be controlling, but some specific suggestions are advanced in the later Proposals.

Nor is it possible to enumerate the matters which may be dealt with as matters of concern to the Community of States. Some matters which fall very closely into that category are referred to in these Postulates, Principles, and Proposals. No list of them can be exhaustive. From time to time matters previously left to the exclusive competence of States may, as a result of the development of inter-State relations, become matters of concern to the Community of States. In general, all matters which concern two or more States, which have to do with inter-State relations, must be regarded as potentially matters of concern to the Community of States.

The enunciation of the Principle is needed as a foundation for the better organization of the Community of States. If it involves an extension of international law, the extension is based upon historical development, and it is in line with the necessities of a legal order.

PRINCIPLE 6

Each State has a legal duty to employ pacific means and none but pacific means in seeking to settle its disputes with other States, and failing settlement by other pacific means to accept the settlement of its disputes by the competent agency of the Community of States.

COMMENT

In the past, war was not forbidden as one of the possible means of seeking the settlement of a dispute. A change in the general attitude on this point began to stir in the last century, and it has been formulated and widely accepted in this century.

The principle that only pacific means may be employed for the settlement of disputes has recently been enunciated in two great international instruments, and practically all of the States of the world have become parties to one or the other, or to both, of these instruments. By the Treaty of Paris of August 27, 1928, sixty-three States agreed "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means." By the Treaty of Rio de Janeiro of October 10, 1933, twenty American and eight European States agreed "that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law."

The Principle requires that pacific means be employed if the settlement of a dispute is sought, but it does not require that a settlement be sought. It happens not infrequently that all of the States engaged in a dispute prefer no settlement to any which appears to be attainable. It is notorious that some international disputes—usually territorial disputes—have been allowed to simmer for generations. From the point of view of the Community of States, it may be more desirable that a settlement should be effected, and this will certainly be true where the dispute is a menace to peace or to the good understanding between States upon which their coöperation depends. The 1933 Montevideo Convention on Rights and Duties of States, to which sixteen American States are parties, provides that "differences of any nature which arise between them should be settled by recognized pacific methods." Yet the primary duty of each State relates not to settling its disputes with other States, but to the means and methods which it may employ in seeking a settlement.

The pacific means available to States for seeking the settlement of disputes are numerous and various. The chief means is direct diplomatic negotiation between the parties, and in fact most disputes are settled by this means. Since 1856, a formal basis has existed for recourse by a disputant State to the good offices of a third State. The law relating to good offices and mediation was codified in the 1899 and 1907 Hague Conventions on the

Pacific Settlement of Disputes, and these conventions are supplemented by an Inter-American Treaty of 1936 to which fifteen States are parties. Numerous States have joined with others in formulating procedures for enquiry and investigation and in establishing permanent commissions of conciliation, and the procedure of arbitration has been elaborated in scores of recent treaties, both multipartite and bipartite. With the creation of the Permanent Court of International Justice, the adjudication of disputes by impartial judges has been placed upon a firm basis. Pacific means are not lacking, therefore, to States which are willing to employ them.

The duty to seek settlement of disputes only by pacific means does not meet the need entirely, however. If one party to a dispute insists upon a settlement, if it is to be bound to refrain from employing non-pacific means to that end, and if the other party does not agree upon a method of dealing with the dispute, an agency of the Community of States must be available to it as a forum, and such agency should be invested with the necessary competence; or if the interests of the Community of States demand that the dispute be settled, an authority should be at hand and competent for that purpose. Hence, the duty to employ only pacific means in seeking settlement of a dispute must be complemented by a duty to accept settlement by a competent authority of the Community of States. The Principle would establish both duties, and Proposals are later made for implementing it.

The parties to a dispute would always remain free to agree upon any method of pacific settlement. It is only when they fail to agree, or when the method upon which they have agreed breaks down without a settlement, that the duty to accept a settlement by the competent authority of the Community of States would be operative.

The Principle goes beyond the obligations embodied in the Covenant of the League of Nations. Under the system of the Covenant, sixty-three States agreed that they would submit to arbitration or judicial settlement disputes which they recognized to be suitable for such submission; that if the dispute was "likely to lead to a rupture," they would "submit the matter either to arbitration or judicial settlement or to enquiry by the Council," and that if the dispute was not submitted to arbitration or judicial settlement and if it was "likely to lead to a rupture," either party might submit it to the Council. If the dispute was submitted to arbitration or judicial settlement, the parties were bound to "carry out in full good faith any award or decision" rendered; if the dispute was submitted to the Council and if a report was unanimously adopted by the Council, though the parties had no obligation to accept the recommendation of the report, all Members of the League covenanted "not to go to war with any party" which complied with the recommendation.

Such remarkable progress has been made during the past quarter-century, both in creating agencies for the pacific settlement of disputes and in building a law relating to pacific settlement, that the time now seems to be ripe

for the enunciation of a clear principle of law that if settlement is not reached by other pacific means, each State must accept the settlement of its disputes by the competent agency of the Community of States.

PRINCIPLE 7

Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the Community of States; but subject to immediate reference to and approval by the competent agency of the Community of States, a State may oppose by force an unauthorized use of force made against it by another State.

COMMENT

The maintenance of a peaceful legal order cannot be sufficiently assured by provision for the peaceful settlement of disputes between States. Recent experience has shown that conflicts are possible even when situations have not been formalized as disputes. It seems essential to lay down a broad principle as to the use of force, and to move as far as possible toward the elimination of force as a means to be employed for the attainment of States' objectives. Whatever the situation, no State should be permitted to resort to force to impose its will upon another State. It should be proclaimed as a legal duty of States to refrain from using force, as well as from threats to use it.

The Principle deals with the use of force rather than with war, because of the many artificial distinctions which have grown out of attempts to define war. The force referred to is physical force; this limitation is necessary to the clarity and definiteness with which the duty must be stated. Other forms of pressure, such as discriminations in trade relations, raise complications which cannot easily be encompassed by a simple statement of legal duty, and they may require adjustments which only continuing legislative processes can supply.

It is the use of force by a State in its relations with other States which must be forbidden; the employment of force by a State to suppress an insurrection among its own people, or to quell a riot, or to prevent individuals from resorting to violence, does not ordinarily impinge upon interests of other States, and it does not call into play the authority of the Community of States.

The general principle must be stated with the exception of any use of or threat to use force authorized by the competent agency of the Community of States. Situations may arise in which a use of force will be thought to be necessary for the protection of the interests of the Community of States, and in which it may be entrusted to a State or a group of States by a mandate given by a competent agency of the Community of States. Moreover, in developing the international law which will be applicable, the Community

of States may lay down conditions under which a State's use of force without a special mandate would be authorized.

The statement of the Principle recognizes, also, the necessity of admitting the possibility of a State's using force to oppose an unauthorized use of force against it by another State. When the Treaty of Paris was being negotiated in 1928, reference was made to a "natural right of self-defense," and the renunciation of war "as an instrument of national policy" was made with the understanding that this "right" was not to be affected. The existence of such a "right" has been proclaimed so repeatedly that in the minds of many people it has achieved the status of a legal axiom. Yet the plea of self-defense has been greatly overworked, and in many cases it has been merely specious. In modern times, the psychology of peoples has been such that every war has seemed to all the peoples engaged to be a war in self-defense. Any conception which lends itself to such general misuse must be employed with sparing and discrimination. A blanket exception of self-defense would rob a formulation of the duty to refrain from a use of force of much of its utility. What is necessary is to admit that a State may use force to oppose an unauthorized use of force by another State; but the interests of the Community of States clearly require that any such use of force should be permitted only subject to immediate reference to and approval by the competent agency of the Community of States. If the situation in which a State finds itself called upon to oppose an unauthorized use of force is clear and unmistakable, that State can count upon such approval to legitimate its action; in any other situation, it should refrain from using force, except as authorization may be or may have been given by the competent agency of the Community of States.

A precedent for this provision exists in the 1921 Convention neutralizing the Aaland Islands. This instrument provided that in the event of a sudden attack upon the Aaland Islands Finland should take the necessary measures for checking and repelling the aggressor until the other parties to the Convention could intervene; but in such a case Finland was required to "refer the matter immediately to the Council" of the League of Nations.

The Principle is clearly in line with current thinking about international relations. Two generations ago, a Peace Conference at The Hague deemed it "important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning," and more than forty States became parties to a convention providing that hostilities between them should not "commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." If this provision marked some advance at the time, it was not destined to serve a large rôle in ensuring peace even if the requirement had been complied with; and with the passing of less than two decades effort came to be directed into a different channel. In the Covenant of the League of Nations, "any war or threat of war, whether

immediately affecting any of the Members of the League or not," was "declared a matter of concern to the whole League," that is, to the organized Community of States; and the Members of the League undertook "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." However, the Covenant also provided that in the event that a dispute "likely to lead to a rupture" had been submitted to arbitration or judicial settlement or enquiry by the Council, the Members of the League should not "resort to war until three months after the award of the arbitrator or the judicial decision or the report by the Council"; and after a submission to the Council and its failure to arrive at a unanimous report, the Members of the League reserved to themselves "the right to take such action as they shall consider necessary for the maintenance of right and justice."

Nor were these "gaps in the Covenant" repaired by the Paris Treaty for the Renunciation of War of 1928, in which most of the States of the world joined in a renunciation of war as an instrument of national policy. That step was to a large extent vitiated by a qualification, which had not appeared in the Covenant, that each State had a "right of self-defense," and it was even asserted in the course of the negotiations that each State remained the sole judge of the occasion on which the "right" should be exercised.

The abortive Geneva Protocol on the Pacific Settlement of Disputes of 1924 provided for agreement by the parties not to go to war "except in case of resistance to acts of aggression or when acting in agreement with the Council or the Assembly of the League of Nations."

No substantial progress was made in the Rio de Janeiro Anti-War Treaty of 1933, in which a number of States declared "that they condemn wars of aggression in their mutual relations or in those with other States." A Declaration of American Principles, adopted at Lima in 1938, confined itself to the simple formulation that "the use of force as an instrument of national or international policy is proscribed."

The enunciation of this Principle at the present time would serve as a means of giving effect to the declaration in the Atlantic Charter that "all nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force."

PRINCIPLE 8

Each State has a legal duty to take, in coöperation with other States, such measures as may be prescribed by the competent agency of the Community of States for preventing or suppressing a use of force by any State in its relations with another State.

COMMENT

If States are to give up the freedom which they have exercised in the past to rely upon their own will in the use of force against other States, if they are to refrain from any use of force or any threat to use force in their relations with other States except as authorized by the competent agency of the Community of States, they will need to be assured of protection by the Community. It is obviously impossible to foresee the precise situations in which that protection may be needed, and the assurance would be illusory if a competent agency of the Community of States could not seek to prevent or suppress the unauthorized use of force by a State in its relations with another State. Nor would it serve much purpose to postulate that any use of force or any threat to use force by a State in its relations with another State is a matter of concern to the Community of States, if the Community were powerless to move once the situation had presented itself.

The Principle does not indicate the nature of the action which an agency of the Community of States might be competent to take to that end, nor does it specify the measures which States might be asked to take. Those questions can best be decided as occasions arise, or perhaps in accordance with guides which might be drawn up from time to time. A State might be asked to sever diplomatic relations with a State using or threatening to use force; or it might be asked to discontinue exchanges of goods; or it might be asked to withhold any kind of assistance; or it might be asked to supply military forces, or to permit the passage of such forces across its territory; or it might be asked to take other measures. Nor is it to be assumed that all States would be in the same position with respect to an actual or threatened use of force; measures might be prescribed for a certain State which other States would not be in a position to take. Such matters are not susceptible of a uniform and universal treatment. Yet the duty would rest upon all States, and no State would be free to frustrate the efforts of the Community of States by relying upon the nineteenth-century law of neutrality.

In any case in which measures are prescribed, it would seem desirable that they should be prescribed for more than one State. Action by a single State might be too onerous; or it might prove so tempting that it would get out of hand, with the result that the State would come to be serving its own interests. For these reasons, the Principle is limited to a State's duty to take measures in coöperation with other States.

The Principle represents a departure from the Covenant of the League of Nations. In the event of a resort to war by any Member of the League in disregard of certain obligations, the Covenant provided that it should "*ipso facto* be deemed to have committed an act of war against all other Members of the League," and the Members undertook "immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the national of any other State, whether a Member of the League or not." Moreover, the Council was empowered "in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League," and the Members agreed to "take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are coöperating to protect the covenants of the League." These provisions were weakened by the failure of the Covenant to provide, or by its failure to provide sufficiently clearly, for a common decision that a resort to war in violation of its provisions had taken place, and an amendment formulated in 1921 for clarifying the matter did not become effective. In no case did the Council recommend a use of armed forces "to protect the covenants of the League." The "sanctions" applied against Italy in 1935 were inadequate and for the most part ineffective.

In retrospect, it may be possible to say that the provisions of the Covenant might have been more efficacious if they had been less sweeping. It seems preferable to leave to a competent agency of the Community of States more freedom to consider the differences in resources and geographical position of various States, and more power to determine the quantum and character of the measures to be taken by particular States in situations in which it may determine them to be necessary.

PRINCIPLE 9

Each State has a legal duty to conform to the limitations prescribed by the competent agency of the Community of States and to submit to the supervision and control of such an agency, with respect to the size and type of its armaments.

COMMENT

It would be idle to attempt to eliminate the use of force by States in their relations with other States if at the same time States were left a complete freedom to determine the size and type of the armaments which they will maintain. Nor is it possible to look forward to "a just and enduring peace ensuring order under law to all nations" if any State is to be permitted to

pile up implements with which it may seek to impose its will on other States. Apart from the temptation to make an unauthorized use of such implements, the State which amasses them would come to possess an undue amount of power, and a disturbance of the good understanding necessary for an effective organization of the Community of States would be inevitable.

Efforts to limit armaments by the agreement of the heavily armed States have been proceeding almost continuously since 1899. The failure of the two Peace Conferences at The Hague to make any progress in this direction is notorious. The solemn recognition embodied in the Covenant of the League of Nations that "the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations," remained a dead letter, though it was reinforced by provisions for "plans" and for a permanent commission to advise upon their observance when adopted. Nor have any of the recent conferences on limitation of armaments achieved results of lasting significance. Experience of the past has demonstrated that the disarmament of a defeated State, effected while the victors keep their armaments, can operate as an encouragement to clandestine arming.

A departure must be made if any substantial progress is really desired. It cannot be merely an agreement to scrap certain ships, or to restrict the caliber of guns, or to limit the size of an army corps. It must be more than a ban upon a particular weapon, and more than a community monopoly of a certain raw material. The task of arriving at the limitations to which States should have a duty to conform ought to be facilitated by the recent mechanization of war and by the fact that the newer kind of warfare requires open preparations on a vast scale. It must be realized, however, that an effective limitation of armaments presupposes an adequate system of international organization under which States can feel that their security is assured.

Extensive supervision and control may be required if limitations are to be established and if their observance is to be assured. Of course States will suspect that others are not performing their obligations. The dissemination of complete information concerning the military establishments of States will be essential. In the Covenant of the League of Nations, sixty-three States undertook "to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes, and the condition of such of their industries as are adaptable to warlike purposes." This led to the publication of an "armaments yearbook" which appeared in fifteen volumes from 1924 to 1939, but the information contained was "drawn solely from official and public documents," and no attempt was made to verify the indications of such documents. The 1925 Geneva Convention on Trade in Arms, which failed to enter into force though it was

ratified by seventeen States, contained provisions on "supervision and publicity," but they were limited to a system of licenses and reports.

The need for supervision and control has been appreciated in a striking declaration by an Under-Secretary of State of the United States of America that "the abolition of offensive armaments and the limitation and reduction of defensive armaments and of the tools which make the construction of such armaments possible, can only be undertaken through some rigid form of international supervision and control," and that "without such practical and essential control no real disarmament can ever be achieved."

PRINCIPLE 10

Each State has a legal duty to refrain from entering into any agreement with another State, the performance of which would be inconsistent with the discharge of its duties under general international law.

COMMENT

States have a wide freedom to enter into agreements for meeting their common problems, and it is a freedom which must be safeguarded. Yet all agreements between States depend for their binding force on international law, and the interests of the whole Community of States require that the general international law take precedence over agreements between pairs or small groups of States. The legal duties imposed upon a State by general international law must be performed in any event, and it would seem to follow as a corollary that no State should enter into any agreement by which it would assume obligations the performance of which would be inconsistent with the general law.

A precedent is to be found in the Covenant of the League of Nations, designed to be general law for the sixty-three States which became Members of the League. The Covenant was accepted as "abrogating all obligations or understandings" inconsistent with its terms, and the Members agreed that they would not thereafter "enter into any engagements inconsistent with the terms thereof."

Enunciation of this Principle would serve not only to assure the better observance of the duties imposed by the international law of the future, but also to bolster the numerous multipartite conventions which constitute the body of the world's statute law. Too frequently in the past such conventions have been restricted in their operation by inconsistent agreements between some of the parties.