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"LAW IN THE SETTLEMENT OF
DISPUTES BETWEEN NATIONS"

ADDRESS

BY

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The time has come when our bar associations must carefully review the place of law in settlement of international disputes. Never in our history has there been greater recognition of the need for the development of a modern law of nations not only capable of preserving freedom, but also alert to the demands of human progress and strong enough to serve the ends of justice.

The danger of thermonuclear and missle warfare, as the alternative to a rule of law on the world scene, forces us to grapple with this problem. The imminence of this threat to civilization was stressed several years ago by the late Albert Einstein. He was asked to predict what weapons would be used in World War III. He tersely replied: "I cannot say what the weapons of World War III will be, but I can forecast the weapons of World War IV. They will be rocks."

There is a wide area of agreement that the world situation calls for an adequate system of international law to curb aggression and lawlessness. Disagreement exists chiefly in deciding what is the best method to attain this objective.

To begin with, let us see to what extent we can draw upon our own experience as a nation.

From our inception, our people recognized that while the ultimate function of law is to eliminate force in the solution of human conflicts, the existence of a law is not enough. There must be a judicial tribunal to define the law, and a police force is required at times to enforce it, if we are to make our lives peaceful and our homes and property safe. Otherwise each of us would be at the mercy of the strongest and most ruthless men in the community. We know most people voluntarily obey the rules and do not need to be policed. For the relatively few who would otherwise defy the law, the mere presence of the enforcing authority, without more, acts as an adequate restraint against violation. When some persons get

completely out of hand as did Capone and Dillinger and others, the force of organized society is invoked to put an end to their criminal conduct. If we failed to do so as to individuals of this character, our laws would soon become a mockery to be flouted at will -- anarchy would take the place of law.

Not only is the individual subject to law, but officials of government as well. As Chief Justice Hughes once said: "The officer of government, the State itself, is subject to the fundamental law that the humblest may invoke."

When the people formed our Federal Union, each of the thirteen states surrendered some of its powers to the National Government. They also agreed to submit to compulsory jurisdiction over controversies with each other, and between a State and the Federal Government, and that the Supreme Court should be the arbiter of these controversies. Among other powers surrendered by the states was the right to make war. It was feared that local interests and prejudices, incited by individuals for selfish purposes would lead to acts of aggression and injustice by one state upon the rights of another, terminating ultimately in violence and force. For peace to prevail among the states, as among individuals, three conditions were deemed to be essential: a binding Constitution adopted by the duly elected representatives of the people, and appropriate laws; judicial authority to act as a common arbiter among the states; and firm authority in the executive branch to bring about compliance with the law.

Boundary disputes between the states proved to be one source of potential trouble between the States. In a few controversies involving boundaries, the disputes became so bitter that they led to the danger of armed conflict between rival claimants. There was one case involving

Missouri and Iowa, and another involving Texas and Oklahoma. But reason prevailed and the law was followed after the Supreme Court adjusted the disputes. In addition to questions of territory, there have been cases involving debt controversies between the states, diversion of drainage in canals and bays causing pollution, deprivation of rights in navigable streams, the discharge of noxious gases, and many other fertile fields of controversy. But all these have been settled under a rule of law.

It is interesting, too, to note that these controversies were not settled overnight. The Supreme Court proceeded with great deliberation and due consideration for the rights of the states. Time was required for adjustments to be made. Some of these cases were before the Supreme Court for more than ten years. In Rhode Island v. Massachusetts, the first case of a boundary dispute to be decided on the merits, the matter was before the Court eight different times during the years 1833 to 1846.

In one case, the State of Virginia sued the State of West Virginia to collect a money judgment. This dispute came before the Court for the first time in 1906. The judgment was entered in favor of Virginia in 1915, but was not paid. In 1918 Virginia sought a mandamus in the Supreme Court to compel the West Virginia legislature to levy taxes to provide the funds to pay the judgment. Sometime later West Virginia paid the debt. It was moral compulsion, respect for law and the opinion of mankind which made her accept the decision of the Court as final.

There have, unhappily, been a few instances which have entailed the use of sanctions to vindicate the paramount authority of the Federal Constitution.

Our experience prior to the adoption of the Constitution demonstrated the need for vesting adequate authority in the Federal Government to put

down defiance of law. In 1786, Daniel Shays and his army of debtors, stirred by debtor laws, started a reign of lawlessness in Massachusetts which ended in the burning of courthouses. For four months, the insurrection raged and spread, gravely affecting also the people of this State, and those of Vermont, New Hampshire and Rhode Island. Deploring the want of power in the Federal Government to halt the wave of anarchy which threatened, Washington declared that "the country had been brought to the brink of a precipice. A step or two more must plunge us into inextricable ruin."

When the states combined to become a nation upon adoption of the Constitution, the Shays' Rebellion was still vivid in the minds of our statesmen. It proved to be a strong argument by those who saw the need for endowing the national government with the means for sustaining itself. Authority was vested in Congress under the Constitution to provide for calling up the militia to execute the laws of the United States, suppress insurrections, and repel invasions. The Constitution also specified that the President "shall take care that the laws be faithfully executed". As early as 1792, Congress enacted a law which empowered the President, upon notification of a federal judge, to put down unlawful obstruction against the authority of the United States. This law was utilized two years later by President George Washington in his determined action to suppress the Whiskey Rebellion in Pennsylvania. This was the case in which Federal officers attempting to collect the excise tax were met with open insurrection. Washington's prompt measures were effective in preventing this incident from becoming another Shays' Rebellion.

There have been other occasions where various Presidents acted in order to maintain the supremacy of the Constitution. Thus for example, in

Aaron Burr's conspiracy of 1806, in the resistance to the Arms Embargo in 1808, in South Carolina's "nullification" of the Tariff Act of 1832, in the Mormon Rebellion of 1851, and in the more recent Little Rock School difficulty, firm measures had to be taken to dispel defiance of the federal law.

No President was probably more vehement in his determination to preserve the Constitutional supremacy of the Federal Government than Andrew Jackson. In the nullification crisis he gave this advice to a South Carolina Congressman departing for home:

> "Tell them from me that they can talk and write resolutions and print threats to their hearts' content. But if one drop of blood be shed there in defiance of the laws of the United States, I will hang the first man of them I can get my hands on to the first tree I can find."

In each case, the Supreme Court was called on to settle the dispute in such a way as to establish justice between them. In each controversy the judgment of the Court was obeyed however much a state disagreed with it. Through successive disputes settled in this peaceful way, the Court built up what may be described as a common law concerning the states -- a system of law that has won the pride of our people, and the esteem of the world.

This then was the orderly procedure by which internal war and anarchy have been averted in this country -- this is the sturdy foundation upon which our country's stability, success, and freedom have long rested.

We have attempted to follow the same procedures in our external relationships with neighboring countries. Consider for a moment the role of law in the consistent pattern of peace and friendship that has existed between Canada and the United States. From this unique relationship also we may discover and project the ideal and secret for global peace as well.

Here, too, there have been many areas for potential conflict, but the United States and Canada have repeatedly resorted to arbitration, negotiation and other peaceful means for joint solutions.

The problem of proper boundaries has been a source of intense difference of opinion between our countries. But this vexing problem has been resolved peacefully by the International Joint Commission established in 1909 by the Boundary Waters Treaty. As neighboring nations we also have faced difficult issues raised respecting the use, flow and pollution of trans-boundary waters. These have been settled amicably by the Joint United States-Canadian Commission. This relationship, in which techniques of persuasion and compromise are supreme, is evidence that international law can succeed without sacrifice of freedom or honor. This must be the international pattern and process by which other mature nations may resolve their differences without left-over rancor and hostility.

Now what must we do now to link together the world on the basis of reason and law so that it will no longer be divided by force and war?

In the Charter of the United Nations, important initial steps have been taken in the legal regulation of war and use of force in international relations. All members are directed to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, contrary to the purposes of the United Nations.

For a long time prior thereto, a nation relying on the doctrine of absolute sovereignty, could be the final judge of its own cause, and resort to war in order to redress alleged wrongs. Under the United Nations Charter, Members have now obligated themselves to settle their disputes by peaceful means so as not to endanger international peace, security and

justice. Upon failure to do so, the international community of states may marshal "police" action in the common interest to preserve peace against aggressive warmakers. In other words, the UN Charter proclaims a dual principle -- that security is a collective task, and that force should not be used, save in the common interest. At the heart of the UN Charter lies the concept, that when a course of action proposed by any nation is contrary to principles of international law, resort in the first instance should be to the force of world opinion, then to the force of economic and other sanctions, and only as a last alternative should there be resort to the collective force of arms.

United Nation's influence has thus been applied and felt without the use of collective force. France and England were prevailed on to withdraw from Egypt after the Suez crisis. Mighty efforts have been asserted by the United Nations in finding a peaceful resolution of conflict between Israel and its Arab neighbors. The results in Kashmir and Indonesia are other examples where nations, with UN assistance, have tried to solve their disputes in the framework of international laws.

It is my firm conviction, based upon our experience as a nation that the International Court of Justice must play an increasingly larger role in the pacific settlement of international disputes. Thirty-one states have accepted the obligatory jurisdiction of this World Court. At present, however, the Court's functions are severely limited. It can act only if the parties to a dispute give their consent either specifically to the particular dispute at hand, or in advance for all disputes, or for one or more classes of disputes. In addition, the nations have attached various reservations to their acceptances which greatly impair the Court's jurisdiction. Moreover, the Court has no contempt authority to enforce its decisions.

Upon failure of a party to obey the Court's judgment, the successful party may appeal to the Security Council which may decide what measures may be taken to give effect to the judgment. But here again, there is no assurance that the Security Council will take action or that its action will be effective.

So that we do not expect more from the Court than it has authority to give, some other limitations may be noted. The Court itself cannot prevent aggression. It is not the proper place for the disposition of political questions, these being matters for the Security Council and the General Assembly. In this respect the practice is similar to that prevailing in our Supreme Court which has laid down the doctrine in numerous cases that it will refrain from deciding political questions. Nor has the Court the direct responsibility for maintaining peace. Nor for that matter is it able to deal directly with fundamental causes of major international tensions. Its primary role is to declare the law on the specific problem before it. But in this respect, like our own judicial bodies, the Court may exert great power in bringing the principles of law and its application into harmony with present-day needs.

In reaching a decision, the Court has a vast reservoir of existing precedents to draw upon. It may apply international conventions establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; and judicial decisions and teachings of the various nations, as subsidiary means for determination of rules of law. And if the parties agree, the Court may also decide a case on equitable principles.

Thus far, some of the cases decided by the Court have been of great importance. For example, the Corfu Channel case involved the British Government, a major power, and Albania a smaller nation. The British

Government undertook an independent mine sweeping operation in Albanian territorial waters, claiming it was necessary to obtain proof of certain acts or omissions to act for use in further judicial proceedings. This was held by the Court "as a manifestation of a policy of force * * * such as cannot find a place in international law."

The Fisheries Case involved Norway and the United Kingdom. The case arose out of the arrest of British trawlers by Norwegian patrol vessels. Norway claimed the English vessels were in its four mile territorial waters, while the British urged that Norway had only a three mile limit, and therefore its vessels were on the high seas. Some years before, in 1911, the British Foreign Minister had taken the position that the principle involved was one on which "we might be prepared to go to war with the strongest Power in the world." Yet despite this ominous history, the British Government brought the case before the International Court of Justice to have it settled on the basis of international law.

The Court had had before it cases involving the United States. The interesting Morocco case between France and the United States was one. This dispute arose out of a law enacted for the French zone of Morocco. It put into effect a system of controls prohibiting the importation of goods into Morocco by United States nationals except upon the issuance of a license by the protectorate authorities. This case was decided by the Court in favor of the United States on almost all points.

And only this month, the Swiss Government brought suit against the United States in the World Court for return of the General Aniline and Film Corporation to its former owners. In this suit the Swiss Government is also seeking as a provisional remedy, a stay which would prevent the Department of Justice from selling the valuable General Aniline shares of stock that the Government seized as German-owned in 1942.

These cases are merely illustrative of how the Court is fulfilling its role of hearing disputes in accordance with international law.

Slowly, the Court is building up a hard core of substantive and procedural international law -- rules to be relied on not only in legal disputes, but in diplomatic debate as well. And the states are beginning to realize that this forum of law which has been found to be adequate for dealing with minor issues can measure up to meeting major issues as well.

There are other developments to report. In its Tenth Session, a resolution was adopted by the General Assembly giving the International Court authority to review judgments of the UN Administrative Tribunal. By this new procedure, the gradual establishment of a unified jurisprudence in international administrative law may be established. In addition, the International Law Commission of the UN is making headway on matters involving the progressive development of international law and its codification. In a turbulent world, these are notable contributions to preventing a war, but we still have far to go.

What remains to be done in the future? These are some of the major objectives, it seems to me, which Bar Associations should consider in their studies:

First, we must join together in searching for acceptable standards which will permit and encourage the nations of the world to refer disputes more readily to the jurisdiction of the International Court of Justice.

For example, should not nations agree to eliminate many of the reservations to compulsory jurisdiction which stand in the way of fuller utilization of the Court's authority to world disputes? In this way, the World Court would have jurisdiction in advance just as our Supreme Court has, and no nation whose case is "built on sand" or who has no case at all, can refuse to be a party because it knows the decision will be adverse.

Moreover, study should be given to the problem whether we recognize the authority of the Court (rather than the member Nation itself) to determine that a matter is or is not of a "domestic" character, and to what extent a decision of the Court is binding on the parties.

Second, in establishing new techniques and procedures by which law will control disputes between nations, except where they are political, we will go a long way towards avoiding resort to force, whether countries are large or small.

Third, we must unite in shifting the emphasis in international life from torts to contracts so that disputes are settled by negotiation, arbitration and resort to law, and grievances are no longer permitted to fester to a point where parties seek relief through violence.

Fourth, we must continue to extend the frontiers of international law so that at all times, it may be master, not lackey, either to diplomacy or political, military or scientific might.

These goals cannot be gained in a day or year. We must never stop trying to attain them. We must insist that the rule of law -- which means justice between nations -- shall be the controlling element in all disputes and their resolution.

It is in this vital area of the law that lawyers today are faced with a challenge and opportunity for achievement which may well be unmatched in history. Just as our profession has contributed so much in establishing ordered liberty at home, from the time of the founding of our country, so does it now need to train its sights and lend its great talents to world unrest.