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LAW AND JUSTICE IN THE POST-WAR WORLD

ADDRESS

BY

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PREPARED FOR DELIVERY

BEFORE THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

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LAW AND JUSTICE IN THE POST-WAR WORLD

The course of world events today makes it abundantly clear that the relationship between this Society and the Department of Justice should be closer than ever before. As the lawyer for the people of the United States, I can tell you that the Government's legal problems are no longer limited for the most part to domestic matters. Important international questions arise with increasing frequency. The problems arising out of the conduct of the war and the establishment of peace call not only for the patriotic services of every American citizen, but also for the professional techniques of international lawyers-- those who are in the government and those who constitute the membership of your Society.

Continuously, since earliest times, great segments of the peoples of the earth have experienced what it meant to live in a world in which the rule of law had been extinguished, where only force, terror and destruction prevailed. In the years of conflict through which we have lately passed, world chaos was produced by the actions of despotic and dictatorial governments. Those governments operated on the principle that anything which was physically possible and which they wished to do they would do, regardless of the rights of others. We and the other United Nations have solemnly undertaken to prevent the future operation of that principle of lawlessness.

The task of this Government, and of the United Nations, in the post-war world will not be accomplished until justice and law are

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firmly established in the actual behavior of nations. Custom and agreement, the two basic sources of international law, must give expression to the needs of the peoples of the world for justice and order in the conduct of dealings between nations.

You have dedicated your Society to this great goal--to promoting the establishment and maintenance of international relations on the basis of law and justice. Your work is fully in accord with the view of Secretary of State Marshall that among the great "musts" is the development in the hearts of Americans generally of a sense of responsibility for world order and security. We must acquire a sense of the importance of this country's acts, and failures to act, in relation to world order and security. The recent vote of the Senate on the Truman Doctrine is a great step in the right direction.

All told, we may be grateful for the progress that has already been made. Foremost was the establishment of the United Nations itself, to which the President recently referred as "the edifice of lasting peace which, after so long a time, is at last being built."

Another tremendous step forward was the proposals embodied in by this Government for the international control of atomic energy. In my view, one of the most important movements in the field of international law today is the effort now being made toward this goal.

There are two reasons why that is so. In the first place, this effort is directed toward the maintenance of peace--which is the highest object of international law. And, in the second place, this effort,

if successful, will extend international law to a far wider area than it has ever occupied before. It will set up--for the administration of international law in that area--institutions of a new and vital kind.

On the first point--the importance of international control of atomic energy as a cornerstone of peace--nothing more need be said. All of us here know that world destruction may well result from any failure of mankind to harness and restrain this new and overwhelming force.

On the second point--the new area of law and the institutions proposed to operate in that area--I wish to emphasize the significance of what this Government has in mind.

We have proposed the creation of international institutions having far-reaching authority to deal with all activities in the field of atomic energy holding potentialities for war. Our proposals represent a tremendous contribution toward the goal under law of a world at peace.

Lawyers took a major part in shaping those proposals. I think it is fair to say that members of our profession have actively participated in every major step forward which has been taken in recent years in the field of international relations.

The President in his message to you tonight referred to certain tasks which your Society can profitably undertake. I think that one of the most important of these is the project of codifying the rules of international law.

I want to speak, first, of those rules applicable to persons guilty of crimes against humanity and of planning and waging aggressive war.

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An aroused world conscience made imperative the punishment of those who were responsible for the revolting crimes and atrocities committed by the enemy during World War II. It was obvious that if those responsible were not punished, it would be well-nigh impossible to make progress in strengthening the international law of the future.

All of the crimes for which punishment was asked and administered at Nürnberg are defined in the Nürnberg Charter establishing the International Military Tribunal.

As you know, the defendants who were convicted at Nürnberg were charged with crimes in violation of the laws and customs of war and crimes against humanity. The men who are now on trial in Tokyo have been charged with like crimes. The basis for these charges rests upon principles well established in international law. They are incorporated in binding international conventions, codified in military manuals, and affirmed by the immemorial practices of states. The judgment of Nürnberg was fully in accord with these well-established principles. I cannot for one moment agree with those who would argue that these defendants should have gone scot-free because the crimes with which they were charged were not embodied in a single code prior to the time they committed the acts of which they were guilty. International law, like the common law, is not a rigid or static thing. It has capacity for growth and development.

Yet the desirability of embodying in a clear and definite code the principles enunciated in the Nurnberg Charter and in the judgment of the assize is equally plain. That was pointed out by Francis Biddle, my predecessor as Attorney General, when he returned from his service as American Judge at Nurnberg. It was reaffirmed by President Truman, as he has reminded you in his message this evening.

What has developed as a result of this initiative is well known to the members of this Society. In December 1946, the General Assembly created a Committee on the Codification of International Law consisting of 17 members selected from the United Nations. The Committee was directed to discuss plans concerning the methods of codifying international law, the methods to secure cooperation of other organs of the United Nations, and methods to enlist the assistance of national and international bodies interested in codification. In addition, there was assigned to the Committee the consideration of plans for the formulation of the principles recognized in the Nuremberg Charter and Judgment, either in the context of a general codification of offenses against the peace and security of mankind, or in an International Criminal Code.

This project, of course, is in full accord with the views of the framers of the United Nations Charter. They had provided in Article 13 that "the General Assembly shall initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification."

Codification through the project I have just described - and similar projects - will greatly simplify the task of the International Court of Justice in deciding questions of law. The problem of what constitutes the body of law to be applied in the settlement of disputes between nations has

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been and continues to be a difficult one. This is obviously so under the Statute of the Court, when in addition to applying international conventions in disputes between contesting states, the Court may apply international custom, the general principles of law recognized by civilized nations, and the reachings of the most highly qualified publicists of various nations.

The General Assembly of the United Nations also assigned to its Committee on Codification of International Law the duty of reporting upon the Panamanian Draft of the "Declaration of the Rights and Duties of States." This leads me to observe that in the western hemisphere we have a strong background of efforts to codify international law, which may stand us in good stead. The initial efforts date back to the First Congress of American States held in Panama in 1826. As a matter of fact, the idea itself may be traced even further back, to Bolivar's lifetime. In a letter which he wrote in 1815, the Great Liberator conceived of an America composed of "independent nations all bound by one common law which should fix their foreign relations," and envisioned the day when "the relations of political societies would receive a code of public law as a rule of universal conduct."

In addition to the Panamanian Draft, which was referred to the United Nation's Committee, there has also been prepared as a result of the Mexico City Inter-American Conference on Problems of War and Peace, held in 1945, a draft "Declaration of the Rights and Duties of American States." The latter draft was approved by the Governing Board of the Pan American Union in July 1946 and communicated to the Governments of the American republics for their observations. It is anticipated that the draft will be considered at the Ninth International Conference of American States at Bogota, Columbia, in January 1948. Also growing out of the Mexico City Conference, and to be considered, possibly, at Bogota, is the draft Declaration of the International Rights and

Duties of Man, prepared by the Inter-American Juridical Committee of Rio de Janeiro. This draft will, of course, receive the attention of the United Nations' Commission on Human Rights, which is now going forward with the drafting of a suggested international bill of human rights and fundamental freedom. The problems raised in this connection are, as the President stated in his message to you this evening, numerous and challenging. There is much that this Society can do in helping to reach their solution.

We must constantly bear in mind the fact that forms and formalism must be accompanied by substance and reality. Declarations are not enough. There must be effective implementation and enforcement. The aspirations of the people of the world will be satisfied only by the reality of justice. We must be practical as well as imaginative in our approach to the problems of the future.

It is my belief that the innate desire for justice and fair dealing is a universal characteristic. I think we have every reason to hope that as a result of the facilities for intercommunication which modern science has put at our disposal, the diversities that characterize different parts of the world will not be disastrous in their effect. I think they will be recognized and respected as individualized formulations of universal human impulses. Justice and law are basic, and must be given proper recognition in the conduct of world affairs, if civilized society is to be maintained. Such recognition can be given in an adequate and satisfactory manner only if international lawyers throughout the world collaborate diligently in the establishment of the necessary doctrines and institutions.

The functioning of the United Nations and the various related organizations dealing with international trade, food and agriculture; labor human rights, educational and scientific development, and the like, will be

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facilitated if a sound legal basis for those activities is provided. Lawyers in every land and societies such as this must take the lead in developing a structure of international law adequate to the needs of the world.

Moreover, in every nation there are agencies of government whose chief concern is with law--agencies corresponding to the Department of Justice in our Federal Government. These departments should contribute actively to the establishment in the post-war world of justice and law. At present, there is no machinery whereby they may cooperate with this end in view. The Conference experience of the Federal judiciary in this country indicates that much good may come from meetings where common problems of law and its administration may be discussed and improvements considered.

Accordingly, I have been discussing with the Acting Secretary of State-- who I might add is a fellow lawyer--a plan which I have for some time had in mind to invite the attorneys general of the various nations, and kindred officials, to attend a conference held in this country approximately a year from now. The proposal has Mr. Acheson's enthusiastic support. I believe that this opportunity for the heads of the legal departments of the various nations to become personally acquainted and to consult together regarding their common experiences and problems will be of real benefit in establishing a solid foundation for the maintenance of law and justice as an effective force in the development of the post-war world. As the plans for this conference mature, I shall undoubtedly have occasion to call upon the members of this Society for their cooperation. It must be our common endeavor to promote the development of international law in the post-war world. For I am convinced that without justice and law, freedom and peace cannot survive.