

THIRD SESSION

Friday, April 27, 1962, at 10:00 a.m.

BUSINESS SESSION

The session reconvened at 10:00 o'clock a.m. in the Federal Room of the Statler Hilton Hotel, Washington, D. C., Vice President Hardy C. Dillard presiding.

Judge Edward Dumbauld, Secretary of the Society, read the list of members who had passed away during the year:

In Memoriam

HILDEBRANDO ACCIOLY, Rio de Janeiro, Brazil, member since 1934, died April 5, 1962.

SISTER AGNES BERNARD, Los Angeles, California, member since 1949, died May 10, 1961.

HON. ROBERT WOODS BLISS, Washington, D. C., member since 1914, died April 19, 1962.

GEORGE BRUSSEL, JR., Elmsford, N. Y., member since 1950, died 1961.

FRED W. CATLETT, Seattle, Washington, member since 1958, died March 25, 1961.

HONORABLE J. REUBEN CLARK, JR., Salt Lake City, Utah, member since 1907, died October 6, 1961.

EDWARD F. COLLADAY, Washington, D. C., member since 1922, died November 10, 1961.

MAHLON B. DOING, New York, N. Y., member since 1942, died 1961.

FREDERICK S. DUNN, Princeton, N. J., member since 1923, died March 17, 1962.

E. J. EVANS BAKER, London, England, member since 1940, died March, 1960.

VLADIMIR FABRY, New York, N. Y., member since 1954, died September 18, 1961.

RICHARD W. FLOURNOY, Chevy Chase, Maryland, member since 1907, died December 6, 1961.

CLARENCE B. HEWES, Washington, D. C., member since 1947, died April 21, 1962.

JAMES M. KEEGAN, Washington, D. C., member since 1960, died August 6, 1961.

HARRY C. LAMBERTON, Washington, D. C., member since 1954, died November 25, 1961.

J. HENRY LANDMAN, New York, N. Y., member since 1956, died September, 1961.

MELVILLE E. LOCKER, Washington, D. C., member since 1954, died June, 1961.

DAVID HUNTER MILLER, Washington, D. C., member since 1921, died July 21, 1961.

GEORGES SCELLE, Paris, France, honorary member since 1950, died January 8, 1961.

MRS. AMANDA SCHLESINGER, San Francisco, California, member since 1927, died July 31, 1961.

MRS. BENJAMIN J. TILLAR, Forth Worth, Texas, benefactor, Patron and life member of the Society since 1959, died December 28, 1961.

HARLAN WOOD, Washington, D. C., member since 1956, died June, 1961.

LESTER H. WOOLSEY, Washington, D. C., member since 1907, life member since 1944, died June 20, 1961.

The members rose and observed a moment of silence.

Mr. JOHN MAKTOS presented the following memorial to Richard W. Flournoy:

RICHARD W. FLOURNOY, 1878-1961

If there were an American Academy of Law to honor the faithful service and achievements of our outstanding lawyers and jurists, Richard W. Flournoy would have a right to a niche among the Academy's immortals. He was acknowledged as one of the country's foremost authorities on the law of nationality, immigration law and international law. For several years the writer was privileged to work with him on these subjects in the Solicitor's Office of the Department of State. Occupying the same room, the writer had occasion to observe daily Mr. Flournoy's scientific approach to law, his insistence on the establishment of facts before proceeding to the application of rules, and the devotion to his life's work. To the selfless practice of his profession, Mr. Flournoy brought a keen and sharp mind and a great sense of fairness and justice.

Born in Hampden-Sydney, Virginia, on May 20, 1878, he attended Washington and Lee University and received the degrees of LL.B. and LL.M. from George Washington University. He served his country in a variety of posts. Joining the Department of State in 1903, he retired from it 45 years later, in 1948. Early in his career, he became Chief of the Bureau of Citizenship, and in 1915 he was detailed to assist our diplomatic posts in Europe regarding citizenship matters.

In 1917 he entered the Department's Office of the Legal Adviser, then the Solicitor's Office. At the time of his retirement he was Assistant Legal Adviser for Special Problems. He served as Legal Adviser to the American Delegation in the Tacna-Arica Arbitration in 1926 and as U. S. Delegate at the Hague Conference for the Codification of International Law in 1930. He acted as counsel in the 1930 arbitration in Belize, British Honduras, of the U. S. claim on behalf of Shufeldt against the Government of Guatemala, in which case the writer was associated with him and had another opportunity to witness his brilliant performance as an advocate.

An indication of Mr. Flournoy's breadth of interest was his rôle in the

Harvard Research in International Law as a reporter on the law of nationality. He derived great satisfaction from teaching. From 1923 to 1940 he was professor of international law at the National University Law School.

His interest in international law and the Society was shown by his joining it immediately as a charter member in 1907. He frequently contributed articles to its JOURNAL and other legal periodicals. With Professor Manley O. Hudson, he co-authored *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* (1929).

In his personal relations he had a grace and dignity of manner and was ever kindly. He had great faith in law as an instrument for achieving justice and world peace. He has left us in his debt.

Dr. CHARLES G. FENWICK presented the following memorial:

HILDEBRANDO ACCIOLY, 1888-1962

During the past year the Society has lost one of its most faithful members in Latin America. Ambassador Accioly was both jurist and diplomat. His treatise on international law appeared first in Portuguese in 1933-35, then in French and Spanish translations, 1940-42, 1945-46, then in an enlarged and practically new edition in Portuguese in three volumes, in 1956-57. His treatise, following classical lines, was marked by clarity of presentation and exhaustive citation of authorities, North American as well as European. As delegate of Brazil, both at the Conference at Buenos Aires in 1936 and at Lima in 1938, he supported the Delegation of the United States in its efforts to promote the system of consultation that has since become the cornerstone of the inter-American regional system. Later, as Representative of Brazil on the Council of the Organization of American States, he showed again and again his lofty conception of the ideals of the inter-American regional system. Brazil will rank him among her leading jurists, and the Organization of American States will be grateful to him for his leadership in the years succeeding the adoption of the Charter in 1948.

The following memorial, prepared by Professor John B. Whitton, was next presented:

GEORGES SCELLE

It is with profound regret that the American Society of International Law notes the passing last year of Professor Georges Scelle, one of its most eminent members, who had devoted most of his eighty-three years to most fruitful labor in the field of international law. As author, professor, consultant, advocate and even administrator (the latter as Secretary General for many years of the Academy of International Law at The Hague), he served with great distinction, leaving in all these realms his special mark of brilliance, originality and vast knowledge in public law as well as international law. His scientific output was enormous: a tentative list of his publications occupies six closely-written pages of the *Revue*

Générale de Droit International Public.¹ Of these, perhaps the best known are the following: one of the first studies of the League of Nations;² his well-known work on the International Labor Office;³ and his *Précis de Droit des Gens*.⁴ His most remarkable contribution was his special doctrine, usually known as the "Realist School," whereby he carried forward and developed further, in the field of international law, the theories of public law originated by Dean Duguit. His professorship began at Dijon as long ago as 1912, and was continued at the University of Paris. His academic career, however, was interrupted by four years of service during World War I, when he won the Croix de Guerre. He also lectured at the *Institut des Hautes Etudes Internationales* in Paris, the Faculty of Law and Rappard School in Geneva, and at the Academy of International Law at The Hague. Professor Scelle took an active part in the work of the Institute of International Law ever since his election in 1929. He was also one of the most eminent members of the International Law Commission of the United Nations, serving in this capacity from the beginning almost to the day of his death. He was president of this commission for some years. He also appeared before the International Court of Justice to plead on several occasions.⁵

While Professor Scelle's passing is a tremendous loss to the cause of international law, his absence will be felt most keenly by that large number of students, many now in positions of authority, who came from all over the world to Paris, Geneva and The Hague to be inspired by his teaching. He will be missed even more by those who were fortunate enough to enjoy his generous friendship, and above all, by the privileged few who experienced the warm hospitality of Professor and Madame Scelle at 32 Rue des Vignes.

Mr. DENYS P. MYERS presented the following memorial:

DAVID HUNTER MILLER, 1875-1961

David Hunter Miller was born January 2, 1875, and died July 21, 1961. In the half of his life when I knew him, he impressed me as an ideal lawyer in public office, for he thoroughly commanded the resources of the law and knew how to apply his knowledge to practical ends. He came to the law only at age 35, seven years later became counsel to Edward M. House in the Inquiry set up to prepare for the Paris Peace Conference. He was legal adviser to Woodrow Wilson on the Commission on the League of Nations which worked from the Hurst-Miller draft, a revision of Wilson

¹ 65th year, 3d series, Vol. 32, pp. 14-19.

² *Le Pacte des Nations et sa Liaison avec les Traités de Paix* (Paris: Recueil Sirey, 1920).

³ *L'Organisation Internationale du Travail et le B.I.T.* (Paris: Marcel Rivière, 1930).

⁴ *Précis de Droit des Gens (Principes et Systématique)*, Vol. I: *Introduction, le Milieu intersocial* (Paris: Recueil Sirey, 1933); Vol. II: *Droit constitutionnel international* (Paris: Recueil Sirey, 1934).

⁵ Notably, Conditions of Admission of a State to Membership in the United Nations, and Asylum Case.

and Lord Robert Cecil drafts. His *Drafting of the Covenant* is a definitive record of its origins, in which the quality of Miller's mind is revealed. At Paris he kept a "lawyer's diary" which he printed in 20 volumes for limited distribution to American centers of study. In 1929 the Malloy treaty volumes were reported out of print and the third volume printed by the Senate nearly exhausted. Senator Borah, Chairman of the Committee on Foreign Relations, was told that a new edition should be done by the Department of State, which should produce an historical edition comparable with the great European treaty sets. Borah informed the Department that the Committee would support such a project and Hunter Miller was appointed by Secretary Stimson editor of treaties on October 1, 1929. Before he retired in 1944 he had produced eight volumes of *Treaties and Other International Acts of the United States of America*, treating 240 instruments concluded between 1778 and July, 1863. Miller's notes to the treaties—many of which he raised from oblivion—are models of accuracy, comprehensive coverage and replete detail with respect to procedural and negotiating processes. The monographic "notes" on such treaties as the Webster-Ashburton, Guadalupe Hidalgo, and the San Juan Island occupation are first-class diplomatic history. His eighth volume was published by the Department three years after his retirement, and the series was not continued because staff was diverted to current work in the classified documents. In one of my last visits with him he expressed the hope that the series would be resumed, and surprisingly said he thought only the Treaty of Washington (1871) warranted the full treatment he had given so many earlier ones.

The Honorable WILLIAM S. CULBERTSON presented the following memorial:

LESTER H. WOOLSEY

The death in Providence, Rhode Island, on June 20, 1961, of Lester Woolsey, marked the passing from the ranks of the distinguished members of this Society of a scholar, a Christian gentleman, and a lawyer, who served his neighbor, his Government, and this Society with fidelity and high ability. He was Assistant Solicitor and Solicitor in the Department of State during the first World War, taking an important part in the formulation of United States policy during those crucial years. After the war he practiced international law in partnership with Robert Lansing, representing governments and private claimants before international commissions. He attended the International Fur Seal Conference of 1911 as Secretary in behalf of the United States, and later attended the Paris Peace Conference of 1919 as a technical delegate of the United States. At the Washington Conference of 1922 on Limitation of Armament, Mr. Woolsey was international law expert for the Chinese Government. He was Counsel for the Government of Chile in the Tacna-Arica Arbitration of 1925, and Special Counsel for the United States before the U.S.-Mexican General Claims Commission in 1936.

Lester Woolsey joined the Society in 1907 and served as its Treasurer from 1925 to 1946, and as a member of the Board of Editors of the *American Journal of International Law* from 1925 onwards, becoming an honorary editor in 1944. He not only made a continuous contribution over a period of fifty years to the intellectual activities of the Society at its annual meetings and through its *Journal*, but for over twenty years guided the financial affairs of the Society. He had an abiding interest in the welfare of the Society and, after his retirement from active service as Treasurer, continued to give his valuable time and advice in the transaction of its affairs. His election to the Presidency of the Society in 1956 was a fitting recognition of his ability and many services to this Society. His presidential address in April, 1957, which proved to be his valedictory to the Society, was a penetrating commentary on the subject of "Peace with Justice," setting forth his basic ideas on law and justice among nations, to which he had devoted most of his life. His passing leaves an unfillable void in the Society and the international legal profession.

Professor CHARLES E. MARTIN read the following memorial prepared by Henry F. Butler:

GENEVIEVE E. TILLAR

It is with sorrow that the members of the Society have learned of the death, on December 28, 1961, of our benefactress, Genevieve Eagon Tillar. Mrs. Tillar was present at the dedication on April 28, 1961, of Tillar House as the Society's new headquarters, took part graciously in the ceremonies, was our guest at the annual dinner, and clearly derived great satisfaction from seeing this memorial to her late husband, Benjamin Johnston Tillar, come to fruition. From Washington she returned to her home in Fort Worth, Texas, then went to visit a niece in California, where she died.

Mrs. Tillar was genuinely interested in the activities and future plans of the Society, and felt great satisfaction in the conversion of her former home in Washington into its headquarters. Her generosity made possible the establishment of such headquarters which, in turn made possible the recent great growth in the Society's activities and usefulness. We are all happy that in speaking of Tillar House we memorialize not only the name of her husband but the name of the gracious and generous lady who was his wife. Her deeds in a very real and direct way have contributed to the development and strengthening of international law.

MR. H. C. L. MERILLAT, Executive Director of the Society, read the following memorial prepared by Professor Percy E. Corbett:

FREDERICK SHERWOOD DUNN

Frederick Sherwood Dunn, Milbank Professor of International Law and Practice, Emeritus, of Princeton, and long a distinguished member of the American Society of International Law, died on March 17, 1962. Less than a year ago he had retired as Director of the Princeton Center of

International Studies, which he had organized in 1951 after eleven years as head of a similar group at Yale. It is probably his work in these posts that he regarded as his principal contribution to international law and politics; and certainly there is in this and other countries a numerous academic family in those fields that will not soon forget his critical stimulation and steady friendship. They and hosts of others know his books, from the classic *Protection of Nationals* of 1932 to *War and the Minds of Men*, 1950. His last book, a legal and political study of the making of peace with Japan, was in the press when he died. But for years he sacrificed his own writing to promote that of others.

As he was not one to talk about himself or his achievements, many of those who benefited by his discriminating counsel and support knew little of his varied current activities or past experience. Having graduated from Princeton and taken a law degree at New York University, he served in France as an officer in the A.E.F., then joined the State Department as Assistant Solicitor. Legal work with the British-U. S. and U. S.-Mexican claims tribunals preceded his return to academic life at Johns Hopkins University, where he received the Ph.D. degree in 1928 and wrote his books on international conferences and the protection of nationals abroad. It was in 1935 that he became Professor of International Law at Yale, but his work there and later at Princeton was varied by membership in the United States Delegation to UNESCO Conferences at Beirut and Paris, and by service as trustee of the Carnegie Endowment for International Peace and the Institute of International Education, and as Consultant of the Rand Corporation. In 1949, Princeton awarded him the degree of LL.D. *honoris causa*.

Quietly but persistently "Ted" Dunn's life was devoted to promoting the rational conduct of international relations. He will be remembered as a leader of the contemporary school of jurists who hold that the development of an effective law of nations must be firmly grounded in the scientific study of man and society.

Secretary DUMBAULD read the following memorial submitted by Mr. William C. Dennis:

J. REUBEN CLARK, JR.

Joshua Reuben Clark, Jr., was one of the founders of our Society. I have known him intimately since we were Assistant Solicitors of the State Department together in 1906 until the time of his death. His work in international law, in the State Department, under Mr. Root, in connection with the Citizenship Act of 1906 and the Russian extradition cases; under Secretary Knox, as Solicitor for the Department and representative of the United States in the *Alsop* Case, in which the King of England was "amiable compositeur," and in which Clark won a million-dollar award; in Mexico, as adviser of Ambassador Morrow in the settlement of the oil controversy; as Ambassador to Mexico, as Under Secretary of State, and, in private practice, was outstanding.

In his second life work in the Mormon Church, he became an apostle and was, for many years and at his death, the First Counselor of the First Presidency, the second ranking office in the Mormon Church; beloved by all who knew him.

I have worked subordinately, but intimately, with such men as Secretaries Root, Knox, Hughes and Kellogg, with Chief Justice Edward Douglass White and General Pershing, and in my judgment Reuben Clark was one of the ablest, most hard-working, most unselfish, and wisest men I ever knew.

The following memorial was submitted by Mr. Oscar Schachter:

VLADIMIR FABRY

Vladimir Fabry, a member of this Society for a number of years, lost his life on September 18, 1961, in the air crash near Ndola in which Dag Hammarskjöld and other United Nations officials perished.

Dr. Fabry was one of the new breed of international lawyers who practice their profession in the dangerous trouble spots of the globe as international officials dedicated to the service of the community of states. He served in Indonesia with the Security Council Committee of Good Offices, in the trust territory of Togoland for the United Nations plebiscite, at the Suez Canal in connection with the clearance operations, in Gaza as Legal Adviser to the United Nations Emergency Force and, finally, in the Congo as the Legal Adviser to the United Nations Force in that troubled land. In all these posts he distinguished himself for unusual devotion, competence and industry in performing duties in conditions of tension and crisis. His contributions extended beyond the field of Mission assignments: he was a major participant in the United Nations Secretariat projects on international commercial arbitration, restrictive business practices, and the legal problems relating to the development and control of natural resources. The members of this Society acquainted with these projects can attest to the high quality of Dr. Fabry's juridical skill and understanding and the valuable rôle he played in these fields.

Dr. Fabry was only 42 years old at the time of his death. He was born in Czechoslovakia, received his Doctorate in Law and Political Science, and completed graduate studies in economics at the University of Bratislava, and then served briefly after the war in the Czechoslovak Government. He became a United States citizen in August, 1959.

On the personal side, Dr. Fabry had broad and diverse interests. He was an accomplished mountain climber and skier, widely read in literature and history, and a charming and generous friend. His death was a cruel blow to his mother and sister, to whom he was extraordinarily devoted, and a great loss to the United Nations and to the cause of international law which he so actively served.

Secretary DUMBAULD gave a message of greeting from Miss Bessie Randolph, a long-time member of the Society, who was prevented by illness from attending the meeting.