

### III

#### MUNICIPAL LEGISLATION

(a) The cases of responsibility arising out of legislative enactments are probably the most notorious ones, because they relate to the loftiest task of State sovereignty. The powers of the constituted authority and the regular legislative functions of the government are directly derived from the will of the people, and are the genuine expression of the latter's wishes. For quite a long time States have guarded with considerable zeal their freedom in this branch of their sovereignty, and this is precisely the cause of the difficulties being encountered at this time in the organization of the International Community, the existence and development of which are dependent upon the submission of the various governments to its jurisdiction. The fact is, however, that the current juridical mind of the world has come to realize the necessity to limit all the expressions of the State's sovereignty, comprising therewith even the legislative powers. The States, of course, preserve their right to legislate perfectly intact. They have and exercise jurisdiction, in so far as their laws carry full force and effect, and demand the faithful compliance therewith by its organs and by the inhabitants of its territory. The right to legislate may, however, be limited on certain occasions in respect of particular matters by public treaties,<sup>1</sup> or influenced along certain lines on account of some obligation undertaken by the State either to establish or to preserve a special right.<sup>2</sup> At the same time, although the State enjoys the free and full exercise of its jurisdiction over its domain, this might give rise to responsibility on its part whenever the laws enacted are contrary to international obligations. Consequently, there are municipal

<sup>1</sup> In the case of the peace treaties made after the European War, which have limited the legislative powers of certain States.

<sup>2</sup> As an example of this case, the International Convention of September 17, 1878, may be cited. This refers to the campaign waged against phylloxera and obligates the States to complete their legislation, in view of certain results.

The laws enacted by Switzerland pursuant to the Paris Convention of March 20, 1883, for the protection of industrial property, undertook the task of providing legislative regulations for the protection of the rights of foreign inventors, etc. The legislative powers of the Confederacy, however, did not include this matter at that time, and it was necessary to amplify them by an amendment to Article 64 of the Federal Constitution.