

laws which are also binding in international circles, and others which entail responsibility due to their breach of international principles. The cases in which the State undertakes the obligation to establish and maintain special rights differ from the regular functions of the government to provide for the organization of its various branches, or the enactment of laws to adopt certain measures, or preparatory to the exercise of its powers, or the discharge of obligations contracted with the other States. These laws place the State in a better position, anticipating the propriety of its international conduct. The failure to enact these laws, or their repeal after being in force, however, do not involve responsibility. This arises as a rule from the acts of the State, irrespective of whether or not they are due to lack of proper legislation. Also, a municipal law is implicitly essential whenever the obligation imposed upon the State cannot be discharged except in the form of a law,¹ or without the sanction of legal provisions.²

The municipal laws may be contrary to the international law, either because they have been enacted in the face of an obligation not to legislate on the subject, or because such laws contain provisions whereby the organs of the State are compelled to act in violation in international usage. In such cases it is not the municipal law itself which gives rise to the responsibility of the State, but the acts of the State agents. "Municipal laws"—according to the Permanent World Court—"are simply the expressions of

¹"As an exception, it must be admitted that where, by definition, the obligation placed upon the State cannot be executed except through the enactment of a law, then the convention considers it is unnecessary to refer specifically to this point. As all subjective rights and duties cannot be enforced except by a positive enactment, and in the case of modern treaties dealing with the establishment and practice of professions, copyrights, etc., the purpose is to afford proper mutual guaranties to the nationals of the various States by means of public and private laws, the promise to give them such rights usually already carries with it the obligation to enact or maintain the positive law which will establish such rights. Finally, the State is always compelled to enact laws because, under the principles of its own municipal jurisprudence, whenever it has an act to perform or a contract to execute, this cannot be accomplished except by the authorization of a law. When a State, by virtue of an international convention, must issue orders to authorities or individuals, it cannot do so in the immense majority of cases, except by means of a law, and not through an 'administrative act' or a decree." (Rechtsverfügung) Triepel, *Rapports du droit international avec le droit interne*, p. 298.

²"The State enacts the law in this instance, because without same, it would not be, in accordance with its municipal jurisprudence, in a position to fulfil its international duties—as, for instance, the duty to punish—either because without the enactment of a State law an act ordered by the Law of Nations could not be performed, or else because without the State law, an act forbidden by international law could not be omitted. Therefore, it is not the international law which compels the legislature to act, but the municipal jurisprudence itself. When there are rights ordered to be immediately established, the act which the international law requires the State to perform is the enactment of the law creating such right, and thus the State places itself, as regards its own jurisprudence and by reason of such new enactment, in a position to execute an act ordered by international law. Heretofore the failure to legislate or the repeal of laws in force was already in itself contrary to the law; but now the violation consists in the fact that the State has either failed to perform the act that the law requires, or that it has performed an act which the law forbids." (Triepel. *Rapports du droit international avec le droit interne*, p. 299.)