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Summary record of the 21st meeting

Topic:
Fundamental rights and duties of States

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the right of asylum until the whole question of that right had been studied for codification.

111. The CHAIRMAN said that such a procedure was unacceptable at the present stage of their Commission's work. He then put Mr. Yepes' proposal to delete article 15 to the vote.

It was decided to delete article 15 by 10 votes to 1.

Article 16

112. Sir Benegal RAU explained that the Drafting Committee had felt that the words "and the sovereignty of the State is subject to the limitations of international law",¹² should be replaced by the words: "and with the principle that the sovereignty of the State is subject to the supremacy of international law", as the word "limitations" is ambiguous and might be interpreted as meaning the imperfections of international law.

113. He pointed out that in addition to the text adopted, two other formulas had been submitted to the committee: (1) "that the sovereignty of the State is limited by international law" and (2) "that the sovereignty of the State is subject to the limitations imposed by international law". It was for the Commission to select the terms it considered most suitable.

114. The CHAIRMAN said he preferred the phrase "that the sovereignty of the State is subject to the limitations imposed by international law", which indicated more clearly the limitations on the sovereignty of the State.

115. Mr. SCELLE said he preferred the version "that the sovereignty of the State is subject to the supremacy of international law" as that indicated that international law governed what was known as the sovereignty of the State, which was in reality only the competence of the Governments of States.

116. The wording preferred by the Chairman weakened the text of article 16, whilst he (Mr. Scelle) wished to strengthen the meaning of the article. He therefore proposed that the last words of article 16 should read: "and according to the principle that the so-called sovereignty of the State is subject to the supremacy of international law".

117. Mr. SPIROPOULOS pointed out that the first part of article 16 would suffice; the second part, which added nothing to the first, might well be dropped.

118. The CHAIRMAN proposed that the expression "the sovereignty of the State" should be replaced by "the sovereignty of each State".

This was agreed to.

119. The CHAIRMAN then put to the vote the proposal to substitute for the last phrase of

article 16 the words "and according to the principle that the sovereignty of the State is subject to the limitations imposed by international law".

The proposal was rejected by 5 votes to 1.

120. The CHAIRMAN then put Mr. Scelle's proposed wording to the vote, viz., "and according to the principle that the so-called sovereignty of the State is subject to the supremacy of international law".

The proposal was rejected by 5 votes to 1.

121. Lastly the CHAIRMAN put to the vote article 16, worded as follows:

"Every State has the duty to conduct its relations with other States in accordance with international law, and with the principle that the sovereignty of each State is subject to the supremacy of international law".

Article 16 was adopted by 11 votes to 1.

The meeting rose at 1.00 p.m.

21st MEETING

Monday, 16 May 1949, at 3 p. m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi Hsu, Mr. Vladimir KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director, Division for the Development and Codification of International Law, Secretary to the Commission.

Draft Declaration on the Rights and Duties of States (*continued*)

SECOND READING (*continued*)

1. The CHAIRMAN observed that, as thirteen articles of the draft Declaration had been tenta-

¹² Article 16 was article 13 of the original draft adopted by the Commission. See A/CN.4/SR.14, para. 22.

tively adopted, there remained only articles 1, 2 and 3, on which he hoped to secure a clearer preponderance of views than had previously been possible (See A/CN.4/SR.19, paras. 22, 44 and 73).

Articles 1 and 2

2. Mr. HSU asked that the first two articles should be considered simultaneously, as they were closely related. In his view, the question of the existence of a State might well be left as an assumption, but a rule was required with regard to recognition. It would be difficult to formulate a text acceptable to all parties because the practice in connexion with the recognition of States varied greatly, as was shown, for example, in the case of the recognition of the thirteen colonies by the French Government, and in the case of the non-admission by the United Nations of Transjordan and Ceylon. He therefore suggested that a new text should be drawn up to contain the essential idea embodied in the two articles. As a guide to the formulation of the draft which he proposed to submit to the Commission, he had taken the question: "What is the effect on a State of non-recognition?" With that question in mind, he had prepared the following text, which he offered as a substitute for articles 1 and 2:

"Every State, being a member of the community of nations, has the right to the protection of international law, irrespective of whether it is recognized."

He believed that some such text would cover the essential rights which articles 1 and 2 were intended to establish.

3. The CHAIRMAN pointed out that the phrase "being a member of the community of nations" would not be necessary, as the proposed preamble was to contain the statement that every State was a member of the community of States. He suggested that the phrase should be omitted and that the last phrase should read "irrespective of its recognition". He added that such a phrase would mean that a State would have the right to the protection of international law, even when recognized by no other State.

4. Mr. HSU accepted the proposed changes.

5. In reply to a question by Mr. CORDOVA, Mr. HSU said that "the protection of international law" would mean protection by the appropriate organs, which would be the United Nations organs only when international law placed such an obligation on the United Nations.

6. Mr. ALFARO accepted the general idea of Mr. Hsu's draft, but considered that the meaning of the expression "the protection of international law" was not sufficiently clear for it to be used in the Declaration.

7. At the suggestion of the CHAIRMAN, Mr. HSU agreed that the last phrase should read "irrespective of its recognition by other States".

8. Mr. SCALLE accepted the first part of the proposed article, but objected to the inclusion of the last phrase. Although the topic of recognition had been reserved for codification, he could agree to the tentative draft of article 2 as it stood in document A/CN.4/W.7, but he felt that a State not recognized as such by any other State should not be entitled to the protection of international law, as it had no status under that law.

9. The CHAIRMAN considered that the ideas in Mr. Hsu's draft were already adequately covered by other articles of the Declaration, e.g. article 16.

10. Mr. ALFARO suggested omitting the idea of recognition and redrafting the composite article in the following form:

"Every State has the right to maintain its existence and to enjoy the benefits of international law within the community of States".

11. In reply to a question by Mr. FRANÇOIS, Mr. ALFARO observed that "benefits" referred to both rights and duties.

12. Mr. HSU did not accept Mr. Alfaro's amendment.

13. The CHAIRMAN put Mr. Alfaro's amendment to Mr. Hsu's draft to the vote.

The amendment was rejected by 4 votes to 3.

14. The CHAIRMAN put Mr. Hsu's composite draft of articles 1 and 2 to the vote.

The draft was rejected by 6 votes to 2.

15. In response to a suggestion by Mr. YEPES, the CHAIRMAN asked the Commission to vote on the question whether the phrase "and to provide for the well-being of its people" should be omitted from article 1, as proposed by the Sub-Committee.¹

It was decided, by 7 votes to 2, that the phrase should be deleted.

After a short discussion, it was decided by 9 votes to 1 that the phrase: "to maintain its existence" should read: "to preserve its existence".

16. The CHAIRMAN then put to the vote article 1 of the Sub-Committee's draft as amended.

The result of the voting was 6 votes in favour and 5 against.

17. Mr. SPIROPOULOS explained that he had abstained from voting because he considered that the article had no meaning.

18. The CHAIRMAN said that article 1 would be reserved for the time, as there was still no clear preponderance of votes. He asked for a vote on the question whether article 2 should be maintained in principle.²

The result of the voting was 4 in favour and 4 against.

¹ See A/CN.4/SR.19, footnote 2.

² *Ibid.*

19. Mr. SCELLE requested that the vote should be taken again, as he had decided not to abstain.

The result of the second vote was 6 in favour of retaining article 2 and 5 against.

20. In reply to a request by Mr. AMADO that those opposing the inclusion of article 2 should explain their reasons, the CHAIRMAN said that he considered the proposed text to be an oversimplification of a complicated subject, which could not adequately be dealt with in less than some twenty articles.

21. Mr. BRIERLY endorsed the Chairman's view, and added that not only was recognition a vast subject, which had been reserved for codification, but it was a very controversial one.

22. Mr. ALFARO urged that article 2 should not be considered insignificant because of its brevity. In his view it contained an important point and one vital to the remainder of the Declaration. He suggested that the following combination of articles 1 and 2 might be more generally acceptable:

"Every State has the right to preserve its existence and to have its existence recognized by other States."

23. The CHAIRMAN asked for a vote on Mr. Hsu's proposal that both articles 1 and 2 should be omitted, prior to voting on the proposal that one article should be substituted for both.

It was decided by 8 votes to 4 that articles 1 and 2 should not be omitted.

24. Sir Benegal RAU expressed the opinion that article 2 should be omitted. As applied to long-established States, such as France, it was superfluous, and as applied to those emerging to statehood, it was not true to say that such an entity was entitled to have its statehood recognized.

25. Mr. YEPES urged that article 2 should be adopted without prejudice to the codification of the topic of recognition. The Declaration would contain the broad principle and the codification would give the substantial rules working out the principle.

26. The CHAIRMAN put to the vote the draft combining articles 1 and 2 as proposed by Mr. Alfaro.

The result of the voting was 7 in favour and 3 against.

27. Following an appeal from the CHAIRMAN to all members of the Commission to vote on Mr. Alfaro's proposal, the vote was taken again.

The result of the voting was 8 in favour and 3 against.

28. The CHAIRMAN concluded that Mr. Alfaro's draft would be retained as article 1, although he thought minor drafting changes might be required.

29. Mr. KORETSKY expressed the view that the text finally adopted by the Commission was still less satisfactory than the two articles proposed

by the Sub-Committee. The two articles should not be combined, as they would apply in entirely different circumstances.

30. Article 1 declared the right of a State, already in existence, to maintain its existence, and in view of the attempts by Nazi Germany to eradicate certain States, it was clear that such an article was required. It was necessary to the life of States in the same way as the article in the Universal Declaration on Human Rights, establishing the right of every human being to existence, was necessary to the life of man.

31. Article 2 referred to new States only and implied that every people was entitled to set up a State, thus guaranteeing to national liberation movements international recognition of their right to statehood. Thus, while the great Powers had little interest in articles 1 and 2, the smaller nations had a vital interest in them in connexion with two separate historical circumstances, namely, in time of threatened suppression of a State and at the time of emergence as a State.

32. He was therefore strongly of the view that articles 1 and 2 should not be merged and not be substantially changed from the text proposed by the Sub-Committee, although he would reserve his position on the precise drafting.

33. The CHAIRMAN asked Mr. Alfaro whether he would agree to split his draft into two articles again.

34. Mr. ALFARO agreed.

35. The CHAIRMAN read the following proposed texts for articles 1 and 2:

"Article 1: Every State has the right to preserve its existence.

"Article 2: Every State has the right to have its existence recognized by other States."

He then took another vote on the question whether articles 1 and 2 should be combined.

It was decided, by 7 votes to 2, that articles 1 and 2 should not be combined.

36. The CHAIRMAN put article 1, as above, to the vote.

Article 1, as above, was adopted by 6 votes to 3.

37. The CHAIRMAN put article 2, as above, to the vote.

Article 2, as above, was adopted by 6 votes to 4.

Article 3

38. The CHAIRMAN recalled that while the first sentence had received considerable support,³ the Commission had been evenly divided with regard to the second.⁴ He called attention to article 16, which had been retained.⁵

³ See A/CN.4/SR.19, para. 52.

⁴ *Ibid.*, para. 65.

⁵ See A/CN.4/SR.20, para. 121.

The second sentence of article 3 was rejected by 7 votes to 5.

39. Mr. KORETSKY, explaining his vote in favour of rejection, observed that the introduction of such a formula was incorrect and contrary to *opinio doctorum* on the question. By adopting it the Commission would be trying to set down as law a theoretical definition with which he and his people were not in agreement. It was most important that the sovereignty of States should be protected; that was particularly true of small States and those that fought for their freedom. The article as drafted undermined the very foundations of the concept of the sovereignty of States; it was theoretically incorrect and politically dangerous.

Proposed new articles

40. The CHAIRMAN said that there were two proposed new articles before the Commission. The first, submitted by Mr. Yepes, was as follows:

“In the case of conflict between the articles of the present Declaration and the principles laid down in the Charter of the United Nations, the latter shall prevail.”

The second, submitted by Sir Benegal Rau, was as follows:

“Nothing contained in this Declaration shall derogate from the rights and duties of States expressed or implied in the Charter of the United Nations.”

41. In his opinion, whichever of those articles was adopted should appear in the preamble rather than in the text of the Declaration.

42. Mr. YEPES would have been prepared to accept Sir Benegal Rau's text and withdraw his own, but he considered that the article should form part of the Declaration itself. The statement to the effect that the principles of the Charter were paramount would be more impressive to the public at large if it were contained in the Declaration than if it were a mere phrase in the preamble.

43. Sir Benegal RAU remarked that more importance was usually attached to the body of any legislative text than to what was contained in a preamble.

44. Mr. BRIERLY, supported by Mr. Córdova, observed that in international practice a preamble was considered to be just as much part of an instrument as any of its articles. In any event there was no possibility of conflict between the Declaration and the Charter. The Commission had had the Charter continually in mind when drafting the Declaration.

45. Mr. KERNO (Assistant Secretary-General) pointed out that, although according to the International Court of Justice and the San Francisco Conference, a preamble had the same binding force as any article, there was a difference in the

eyes of the public. He thought the statement should be contained in the Declaration itself.

The Commission decided, by 8 votes to 4, not to include such an article in the Declaration itself.

46. Mr. HSU suggested that article 13 (b) should be slightly modified.⁶ As it was now a separate article no longer connected with menaces to international peace and order, there was no longer an objection to the addition of the words “without distinction as to race, sex, language or religion”. Secondly, Mr. Hsu proposed the substitution of the term “all persons under its jurisdiction” for “its population”.

The first proposal was adopted by 9 votes to 2.

The second proposal was adopted by 10 votes to 1.

Preamble

(As proposed by the Sub-Committee on the draft Declaration)⁷

47. Mr. YEPES appreciated that in drafting the preamble the Sub-Committee had recognized the existence of a universal juridical community made up of all the peoples of the world. The statement that “the community of States is universal and participation in its constitutional organization should be . . . obligatory” was a juridical and moral truth. Universality was, or should be, the principle of the United Nations. It was essential to state in the Declaration that the Commission's efforts had been in the direction of a universal community of all States under the aegis of the United Nations. The time should not be far off when all the States in the world would be Members. In the four years that had elapsed since the Charter had been signed by forty nine States, ten new Members had been added. Approximately twenty States, however, remained outside the organization. Only when they had been admitted could the organization be said to have achieved the aim of its founders.

48. Hence it was right that the Declaration should proclaim the existence of that universal community without which one of the essential bases of world peace would be lacking. By saying that participation in the Organization should be universal and obligatory, the General Assembly would be expressing the hope that no State would remain outside the United Nations. That was the ideal to aim at. At the time of the signature of the Charter it had not been possible to make the membership of all States obligatory, but the statement in Article 4 that membership was open to all peace-loving States implicitly affirmed the ecumenical character of the organization. Furthermore, there was no article in the Charter authorizing Member States to withdraw. Member-

⁶ See A/CN.4/SR.20, para. 93.

⁷ See A/CN.4/SR.19, footnote 2.

ship might thus be considered as permanent and obligatory for those who already belonged to the Organization.

49. In view of the above it was natural and logical that the preamble should express the aspiration towards universality and the obligatory nature of the institution, which was the foundation of the whole edifice. He was therefore unable to agree to the omission of paragraph 3 of the Sub-Committee's draft preamble, as in the draft submitted by the Chairman. With reference to paragraphs 4 and 5 of the Sub-Committee's draft, he felt that they stated an incomplete thesis. "The maintenance of international peace and security" could not in itself constitute the principal aim of the international community. Peace and security must be conditioned by justice—peace at any price was not true peace. A phrase should be added to the paragraphs in question to the effect that peace should be in conformity with the principles of justice—a conception which was to be found in Articles 1 (1) and 2 (3) of the Charter. He recalled that at San Francisco, the Latin-American republics and other small nations had had to wage a veritable battle for the acceptance of that principle. It had not formed part of the original drafts drawn up the great Powers at Dumbarton Oaks.

50. Too much was said on the subject of force and power politics. The United Nations was looking to the International Law Commission for an ideal, not only legal but also moral. Mere legal formulas would not have the power to draw the peoples of the world together under the banner of the Charter.

51. He proposed the following amendments to the preamble:

1. The deletion of the word "the" from the title, which should read simply: "Declaration on Rights and Duties of States"; or use of a specifying adjective, such as "the basic rights";

2. In the first paragraph, the addition of the word "all" between "Whereas" and "the";

3. The retention of paragraph 3 of the Sub-Committee's text with reference to the universal and obligatory character of the community of States;

4. The addition of the word "justice" in paragraph 4 before "international peace and security";

5. The insertion in paragraph 5 of the words "and justice" after "law" in the first line, and of the word "order", before "peace" in the second line.

52. He also proposed the addition of a new paragraph expressly mentioning Article 103 of the Charter, in order to emphasize the Commission's decision to remain within the framework of the United Nations Charter. That paragraph read as follows:

"Having in mind that in conformity with Article 103 of the United Nations Charter, the obligations under the Charter shall prevail over all obligations contracted by the States Members under any other international agreement."

53. Mr. SPIROPOULOS was unable to regard the preamble as an appropriate introduction to the Declaration. The ideas it contained were admirable, but in his view it could equally well be a preamble to a text on a different subject, except for the fifth paragraph. He analysed the preamble paragraph by paragraph.

Paragraph 1: the organization of the community of States had nothing to do with the Declaration.

Paragraph 2 was a very good text, but it had no connexion with the rights and duties of States.

Paragraph 3 also had no connexion with the rights and duties of States. It merely expressed a hope that the community of States would become universal.

Paragraph 4: the establishment of the organs and procedures of the United Nations was irrelevant.

Paragraph 5: while the idea contained in that paragraph was perhaps not expressed in the best possible way, nevertheless it did have some bearing on the Declaration and could be used as a preamble to it.

54. In drafting a new text he had endeavoured to find and express, so to speak, the *leit-motiv* of the Declaration. He proposed the following wording:

"Whereas the States of the world form a community governed by rules of law;

"Whereas the historical events of our century have given birth to new principles of international law (which constitute a landmark in the evolution of the international rules of conduct);

"Whereas these principles, consecrated by the Charter of the United Nations, constitute the common law of nations of today;

"Whereas it is of importance to set forth in a Declaration on rights and duties of States the basic principles of modern international law;

"Whereas it is in the interest of the maintenance of international peace and security and the reign of justice that all Governments observe these principles in good faith in international intercourse;

"The General Assembly (subject to the provisions of the Charter of the United Nations) adopts. . ."

The Commission unanimously agreed to Mr. Yepes' proposal to delete the word "the" from the title.

55. The CHAIRMAN felt much sympathy for Mr. Spiropoulos' proposal with regard to paragraph 1. He asked the Commission to consider

the substance and to leave the drafting until later.

56. Mr. AMADO also supported Mr. Spiropoulos' proposal.

57. Mr. ALFARO would not object to Mr. Spiropoulos' text being used as a basis of discussion, on the understanding that the Sub-Committee's draft and those submitted by the Chairman and Mr. Yepes should be considered at the same time.

58. Mr. SCELLE pointed out that there were great differences of drafting between the various texts submitted. While accepting many of the fundamental ideas contained in the Sub-Committee's text, Mr. Spiropoulos had rejected the reference to the technical organization of the United Nations, but he accepted the view that the new international law was that of the United Nations.

59. In reply to a question by the CHAIRMAN, Mr. SPIROPOULOS agreed to alter his proposed paragraph 1 to read "... governed by international law."

60. Mr. ALFARO would be prepared to accept Mr. Spiropoulos' proposed text amended to read: "Whereas the States of the world form a community governed by law."

61. Mr. SANDSTROM noted that the Sub-Committee text of the preamble, explaining the *raison d'être* of the community of States and its need for a Declaration on the rights of duties of States, differed from Mr. Spiropoulos' proposal, which referred to new principles of international law as the reason for the drafting of the Declaration. In Mr. Sandström's view, the latter text seemed to exaggerate the volume of new principles of international law.

62. The CHAIRMAN thought that it might be unwise to leave out the Sub-Committee's references to the need for organization and to the organization actually effected. He also suggested inclusion of the phrase he had proposed to the effect that the United Nations had established a new international order which most non-member States were also willing to accept.

63. Mr. CORDOVA saw no connexion between the idea of the existence of the community of States and the drafting of a Declaration on the rights and duties of States. Moreover, a number of provisions of the Charter might be amended in the future, as there was a need of constant change; so it would be inadvisable to establish too close a connexion between the international order under the United Nations Charter and the Declaration.

64. Mr. SCELLE remarked that Mr. Spiropoulos' text stressed the innovations in international law, of which, in Mr. Scelle's view, the idea of international organization in order to make international law effective was the most important. While there had been no possibility of enforcement

under classic international law, new international law could be enforced by organs created for that purpose, thus making possible the eventual establishment of a supranational authority. That was also the idea contained in article 16 of the Declaration which would live forever, and which the world was striving to implement.

65. He accordingly agreed that the principle of organization should be stressed as also, the right of States to exercise their competence subject to the supreme authority of the international organization. He would therefore accept Mr. Spiropoulos' text provided it included the principle of organization set forth in the Sub-Committee's text.

66. Mr. ALFARO pointed out that the ideas mentioned by Mr. Scelle were contained in paragraphs 2 and 4 of the Sub-Committee's text. He thought that the Commission might retain the first part of the Sub-Committee's draft of paragraph 1 and substitute Mr. Spiropoulos' text for the second part.

67. Mr. KORETSKY thought that it would greatly facilitate the discussions if proposals were submitted twenty-four hours in advance. He was prepared, however, to consider Mr. Spiropoulos' text if the Commission so desired.

68. As regards Mr. Scelle's remarks, concerning the first paragraph of the preamble, they referred to matters not directly mentioned in Mr. Spiropoulos' text. The Commission's task was not to discuss theoretical concepts divorced from reality, but to work out a declaration which could be accepted by Governments. A community of States governed by law would only be possible if there were an organization or super-State over them. No Government, however, would submit to such authority. The United Nations, in accordance with Article 1, paragraph 4 of the Charter, was but a centre for harmonizing the actions of nations; under Article 2, paragraph 7, it was prohibited from intervening in domestic matters of States; and Article 13 clearly showed that it did not have legislative functions.

69. Mr. Koretsky therefore felt that it would be contrary to historical realism to think of a super-State which would destroy the very principle of the United Nations. International law would die, if the sovereignty of States were abolished.

70. Sir Benegal RAU thought that, while the Declaration applied to States in general, some of which were not Members of the United Nations, it should be made clear that it had been drawn up within the framework of the Charter. The second paragraph of the Sub-Committee's draft, as appropriately amended by the Chairman, met that purpose and should therefore be retained. In view of the fact, however, that paragraph 1 of Mr. Spiropoulos' draft did not seem to form a good introduction to the second paragraph of the Sub-Committee's text, he suggested that

something from the Sub-Committee's text should be added to it.

71. The CHAIRMAN, taking up Mr. Alfaro's proposal to delete the second part of the first paragraph of the Sub-Committee's text and to substitute Mr. Spiropoulos' draft for it, suggested that the words "and governed by law" might be inserted after the word "community", and that the rest of the Sub-Committee's paragraph, which provided the necessary transition to the second paragraph of the Sub-Committee's text, should be retained.

72. Mr. SANDSTROM was against the phrase "governed by law" in view of the existing deficiencies in international law and its enforcement. The United Nations had been set up to remedy those deficiencies.

73. Mr. SPIROPOULOS, in reply to the objections raised to his proposal, said that the phrase "governed by law" was merely intended as a much-needed reference to international law. If another wording was found, he would be prepared to support it. The purpose of the United Nations was to maintain peace, and reference to that Organization was not sufficient in a preamble to a declaration setting forth principles of international law. He therefore felt that the phrase "governed by law" or some similar expression should be adopted.

74. In reply to Sir Benegal Rau's objection, he pointed out that in his proposal the second paragraph was consequential on the first, whereas the first paragraph of the Sub-Committee's text was not relevant to the Declaration.

75. The CHAIRMAN thought that the irrelevant words "protection and advancement of the common interests of their peoples" in the first paragraph of the Sub-Committee's draft should be deleted. Noting that the great weakness of international law in the past had been the lack of international organization, he suggested that the words "and the efficacy of that law depends upon the adequate organization of the community of States" should be added after the words "governed by law" so that the text would read: "Whereas the States of the world form a community governed by law, and the efficacy of that law depends upon adequate organization of the community of States;"

76. Mr. SPIROPOULOS agreed with the Chairman's suggestion.

There being no objection, the Chairman's proposal for the first paragraph was tentatively adopted.

77. The CHAIRMAN then turned to the second paragraph of the Sub-Committee's draft, which, he thought, might be shortened by deleting the words "are organized as a legally constituted community and . . ." In general he preferred the Sub-Committee's text, with his own amendment, which appropriately stressed the willing-

ness of most countries to accept the new international order, to Mr. Spiropoulos' draft dealing with new principles of international law.

78. Mr. SPIROPOULOS pointed out that not all of the new international law was created by the United Nations, citing as an example the Briand-Kellogg Pact. The Second World War had brought forth another set of rules of international law as, for instance, the principles of the Nürnberg trials. All of those principles, which were embodied in the Declaration and on which the United Nations was built, constituted the common international law of the time, independently of the willingness of other States to accept that order.

79. Mr. KORETSKY, speaking on the second paragraph of Mr. Spiropoulos' proposal, questioned the appropriateness of the expression "new principles of international law" in view of the basic principles of international law mentioned in the Declaration, some of which, such as the principle of non-intervention, had originated at the beginning of the nineteenth century. As Lenin stated it "we do not reject democratic slogans. Rather it is we who put into practice more fully, more consistently and more resolutely whatever is democratic in them." The Declaration contained no principle that could be called "new"; no provision was made for the effective implementation for such principles as disarmament, for example.

80. The expression "new principles of international law" implied a super-State according to Mr. Scelle and Mr. Spiropoulos, while the peoples of the world wanted reference to their sovereignty and independence. The democratic heritage was the basis of international law, but the super-State was the ideal of those who wanted to dominate other peoples.

81. Mr. ALFARO was opposed to the seemingly controversial and ambiguous text of the second paragraph of Mr. Spiropoulos' draft. While it was true that historical events gave rise to new principles, the existing order of international law consisted of both old and new concepts. Moreover, while the phrase "consecrated by the Charter of the United Nations" in the third paragraph of Mr. Spiropoulos' text seemed to refer to new principles only, it was well known that the Charter embodied both new and old principles of international law, such as the abolition of war and the sovereign equality of States.

82. With reference to the fourth paragraph of Mr. Spiropoulos' draft, he wished to know the exact meaning of the expression "modern international law". The purpose of the Declaration was to harmonize the old and the new principles of international law. In view of those considerations, he thought that the Chairman's proposal for the second paragraph was more desirable and less controversial than Mr. Spiropoulos' text.

83. Mr. CORDOVA agreed with Mr. Spiropoulos

as regards the need of relationship between the preamble and the text of the Declaration. However, neither the second paragraph of the Sub-Committee's text, nor that of Mr. Spiropoulos, showed any necessity of drawing up a Declaration on the rights and duties of States.

84. Mr. SPIROPOULOS believed that there must have been some misunderstanding with regard to the intention of his proposal. The word "modern" in the fourth paragraph of his draft did not imply new international law exclusively, but covered all existing principles of international law, international law as it was at that time. As regards the second paragraph of his text, the existence of new principles which should be codified could not be denied.

85. His only purpose in drafting his proposal had been to establish a much-needed connexion between the body of the Declaration and its preamble. He would be prepared to support any other proposal to that effect which might be deemed preferable.

The meeting rose at p.m.

22nd MEETING

Tuesday, 17 May 1949, at 3 p.m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo ALFARO, Mr. JAMES L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director, Division for the Development and Codification of International Law, Secretary to the Commission.

Draft Declaration on the Rights and Duties of States (*continued*)

SECOND READING (*concluded*)

Preamble (continued)

1. Resuming consideration of the preamble to the draft Declaration, the CHAIRMAN presented

the following draft, in which he had endeavoured to combine the essential points contained in the two drafts submitted by the Sub-Committee and by Mr. Spiropoulos respectively:

"Whereas the States of the world form a community which is governed by international law;

"Whereas the progressive development of international law requires effective organization of the community of States;

"Whereas a great majority of the States of the world have established a new international order under the Charter of the United Nations, and most of the other States of the world have expressed their willingness to accept this new order;

"Whereas the primary purposes of the United Nations are to maintain international peace and security and to bring about the settlement of disputes by peaceful means and in conformity with the principles of justice and international law;

"Whereas the reign of law is essential to the realization of these purposes;

"Whereas it is desirable to formulate certain basic rights and duties of States in the light of modern international law;

"Having in mind . . ."

2. He explained that the first two paragraphs represented the first paragraph of the Sub-Committee's draft, adapted to the language used by Mr. Spiropoulos, and that the third paragraph reflected the idea contained in the second paragraph of the Sub-Committee's draft.¹

3. Mr. YEPES, while approving the substance of the first paragraph, suggested that the sentence might be lightened by the omission of the words "which is".

It was so decided.

4. The CHAIRMAN put the first paragraph as amended to the vote.

The first paragraph was adopted by 12 votes to none.

5. Turning to the second paragraph of the preamble, Mr. YEPES suggested that the expression "requires effective organization . . ." implied either that the United Nations was not the organization referred to or, if it was, that it was not effective.

6. The CHAIRMAN suggested that the following text might meet that objection:

"Whereas a great many of the States of the world have established an effective organization, which is the United Nations."

7. Mr. SANDSTROM preferred the Chairman's previous draft, and suggested that Mr. Yepes'

¹ See A/CN.4/SR.19, footnote 2.