Document:-
A/CN.4/SR.29

Summary record of the 29th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
1949 , **vol. I**

the same principles as the Sub-Committee's draft, but in a different form. The first principle was only of theoretical interest. It could be implicitly admitted, without being formulated: that had been the procedure at the time of the codification of the laws of war. The second principle was none other than that contained in paragraph 7 of the Sub-Committee's draft, which had the advantage of reproducing very closely the terms of the Charter of the Nürnberg Tribunal. A great part of the idea contained in paragraph 3 of the alternative draft was also contained in the Sub-Committee's draft. The first part of paragraph 4 was a sort of axiom, which there was no need to formulate. The remainder of the paragraph found its counterpart in the Sub-Committee's draft. Paragraph 5, which dealt with the influence of superior orders on responsibility, corresponded to paragraph 8 of the Sub-Committee's draft, which reproduced article 9 of the Nürnberg Charter almost word for word. As for paragraphs 6 and 7, which dealt with international jurisdiction, the ideas which they contained were not recognized in either the Nürnberg Charter or Judgment.

100. On the whole, therefore, Mr. Scelle's draft differed very little from the Sub-Committee's draft, except that it deviated from the terminology adopted by the Nürnberg Charter to which the Sub-Committee had wished to remain faithful. As, however, the new draft presented the formulation of the Nürnberg principles in a new guise, a discussion of it could not fail to be useful for the planning of the Commission's work.

101. Mr. FRANÇOIS urged the Commission to determine first of all the nature and limits of the task which had been entrusted to it by the General Assembly. In his opinion, that task could consist only in the formulation of the principles which were contained in the Charter and Judgment. It was for that reason that he had voted in favour of paragraphs of the draft which he himself had not favoured, simply and solely because the rules which they set forth appeared also in the Charter and Judgment.

102. Mr. KORETSKY, while not finding Mr. Scelle's draft at all satisfactory, thought that the Commission should study it carefully.

The meeting rose at 5.50 p.m.

29th MEETING

Friday, 27 May 1949, at 10.30 a.m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal RAU, Mr. A. E. F. SANDSTRÖM, Professor Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director of the Division for the development and codification of international law, Secretary to the Commission.

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

CONCORDANCE OF TEXTS IN THE THREE WORKING LANGUAGES

1. The CHAIRMAN said that the Commission had to adopt the French and Spanish texts of the draft declaration which should correspond with the English text already adopted. [1]

1. FRENCH TEXT

2. Mr. FRANÇOIS pointed out that the heading of the French text *(Projet de déclaration sur les droits et devoirs des États)* was not identical to that of the English text; it seemed to indicate that the draft declaration related to all the rights and duties of States which was not the case.

3. Professor SCELLE thought it would be difficult to modify the French text; furthermore, he thought the expression *sur les droits et devoirs* meant that all the rights and duties had not been envisaged.

4. Mr. YEPES wondered if, in the second paragraph of the preamble, the word *efficace* in French had the same meaning as the word "effective" in the English text. In the third clause, the French text used the expression *sous l'égide de la charte* whereas the English text said "under the Charter". In his opinion, the French term did not correspond to reality as the new international

[1] At the 25th meeting. See A/CN.4/SR.25, para. 22.

order had been created by the Charter and not simply under its aegis.

5. Mr. AMADO pointed out that in the third paragraph, the last part of the sentence in the French text was not identical with the corresponding part in the English text. The expression *leur désir d'y conformer leur activité* did not seem to be an exact translation of " their desire to live within this order ". Mr. Amado thought that it would be preferable to adopt an expression such as *le désir de conformer leur existence à cet ordre.*

6. Mr. FRANÇOIS wondered whether, in article 1, the term *pression* was equivalent to the English expression " dictation ".

7. The CHAIRMAN pointed out that that question had been discussed at length and the conclusion had been reached that the two words had practically the same meaning.

8. Mr. BRIERLY thought that in article 4 the expression *guerre civile* did not correspond exactly to the term " civil strife ".

9. Mr. YEPES felt that the Commission might use the same term as that employed in the Havana Convention of 1928, namely, " civil strife " and *lutte civile.*

10. The CHAIRMAN asked Professor Scelle to take the remarks of the Commission's members into consideration in order to modify the French text of the draft declaration where necessary.

2. *Spanish text*

11. Mr. CORDOVA proposed that the term *guerras civiles* in article 4 should be replaced by *luchas civiles* which corresponded better to the French expression *lutte civile* and the English term " civil strife ".

It was thus decided.

Formulation of the Principles recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (*concluded*)

DRAFT SUBMITTED BY PROFESSOR SCELLE (continued)

12. The CHAIRMAN reopened the discussion on Professor Scelle's proposal (A/CN.4/SR.28, para. 88). He thought the Commission should first of all decide whether that proposal should be examined in detail, that is, paragraph by paragraph.

13. Mr. SANDSTROM shared in the opinion expressed by Mr. Spiropoulos at the previous meeting that nearly all the opinions put forward by Professor Scelle could be found in another form in the text which had been provisionally adopted by the Commission. The essential difference between the two texts was one of wording; Professor Scelle was proposing that the draft should be more academic and couched in abstract terms, whereas the Commission, following the example of the Sub-Commission, had adopted a more concrete and realistic draft.

14. Should it be necessary to choose between the two texts, Mr. Sandström would vote for the text which had been provisionally adopted by the Commission, but he wondered whether such a choice was necessary. Everything depended on how the Commission wished to submit the formulation in question to the General Assembly: it could either merely draw up a list of principles or else also attach comments to that list indicating the source of the principles stated. Should the Commission adopt the second alternative, it would no doubt find it useful to take over some elements from Professor Scelle's proposal; for instance, paragraph 7 explained why some of the principles adopted in the Charter of the Nürnberg Tribunal were not altogether satisfactory from the point of view of international law: that conclusion should be set forth when the Commission formulated the principles and not when it prepared the draft code mentioned in item 3 (*b*) of the Agenda.

15. The Commission need not, therefore, examine Professor Scelle's proposal paragraph by paragraph; it could merely incorporate certain elements of that proposal which would usefully complete the draft adopted by the Commission.

16. Mr. HSU agreed with Mr. Sandström that the essential difference between the text provisionally adopted by the Commission and Professor Scelle's proposal lay in the manner of approaching the problem. If the Commission felt that Professor Scelle's academic approach was preferable to the practical approach of the Sub-Commission, his proposal should be examined paragraph by paragraph. Mr. Hsu, for his part, thought that the Commission should examine Professor Scelle's proposal in detail.

17. Mr. SPIROPOULOS inferred from Mr. Sandström's statement that Professor Scelle's proposal could serve as a basis for the report which the Commission would submit to the General Assembly in connexion with the formulation of the Nürnberg principles. The ideas contained in Professor Scelle's text would constitute an excellent introduction to the Commission's report.

18. Mr. SANDSTROM made it clear that if the Commission decided against submitting a mere list of principles, it could adopt certain ideas from Mr. Scelle's proposal and use them in its final formulation of principles.

19. The CHAIRMAN reminded members that the Commission would not be able to complete the discussion on item 3 (*a*) and (*b*) of its agenda during the first session; that item would have to be included again in the agenda of the second session, the more so as an inter-governmental conference was now being held at Geneva to revise the Geneva Convention: it would be in the inter-

est of the Commission to acquaint itself with the report of that conference before drafting the final formulation of the principles of Nürnberg. Consequently it would be enough for the time being to decide what drafts the Commission wished to examine at its second session. The text drawn up on the basis of the Sub-Commission's draft had been adopted only provisionally; the Commission should decide therefore whether it wished to retain—also provisionally—the proposal of Professor Scelle. If so, the text already adopted by the Commission and Professor Scelle's text would be entrusted to a drafting committee, whose task it would be to combine the two drafts and to prepare a working paper for the Commission to study at its second session.

20. Mr. LIANG (Secretary to the Commission) pointed out that the General Assembly did not seem to have requested a formulation of the principles of Nürnberg as a separate task. That was clear from the first resolution the General Assembly had adopted on that subject: resolution 95 (I) directed the Commission to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal. No doubt resolution 177 (II) had drawn a distinction between the formulation of the principles and the preparation of a draft code merely for the purpose of clarity. It would, seem, therefore, that the formulation of the principles should be carried out in relation with the preparation of a draft code. If the Commission regarded the formulation of principles as an independent task, it could hardly be said to be fully discharging its duty to the General Assembly if it merely reproduced the provisions of the Nürnberg Charter.

21. He felt that a comparative study of the two resolutions of the General Assembly showed that the latter had not envisaged the Commission's task as being solely to reproduce the Nürnberg principles. Had it done so, it would not have called on the services of the International Law Commission. He believed that the draft provisionally adopted by the Commission could not be regarded as exhausting the subject; some of the principles set forth by Professor Scelle should certainly be considered.

22. Mr. KORETSKY thought that before proceeding to the examination of Professor Scelle's proposal paragraph by paragraph, the Commission should decide what its attitude must be towards that proposal as a whole. Mr. Liang had pointed out that the General Assembly had entrusted the Commission with two tasks, which could not be viewed independently. That was true, but it should not be forgotten that the main task was to formulate the principles of Nürnberg: that would make it possible to prepare the draft code, since the principles which would be formulated were decisive and would form the basis of the code.

23. Mr. Koretsky believed that the Commission had remained within its terms of reference as far as the formulation of the principles of Nürnberg was concerned. Subject to drafting changes, that formulation could be submitted to the General Assembly, according to the procedure provided by the Statute of the Commission. He associated himself with those members of the Commission who had had occasion to remark that Professor Scelle was an eminent jurist, whose ideas had always been of undeniable interest. It seemed, however, that in the present case Professor Scelle had tried above all to put forward certain ideas which he had defended throughout his career, but which were out of place in the formulation of the principles of Nürnberg.

24. Professor Scelle's proposal contained principles which could be classified in two categories: principles identical with those already adopted by the Commission, and new principles. As far as the first category was concerned, Professor Scelle's proposal consisted simply in replacing the terms of the Statute of the Nürnberg Tribunal by a general text: that was the purport of paragraphs 2 and 3. The criticism that could be made of those paragraphs was that it might seem to public opinion that the change in drafting was designed to change the actual meaning of the principles enunciated. To avoid such an interpretation, it was preferable to abide by the text of the Nürnberg Charter.

25. The new principles enunciated by Professor Scelle formed the subject of paragraphs 1 and 4 of his proposal. Mr. Koretsky felt that it could not be affirmed that " the individual is subject to international law, including international penal law ". That conclusion could not be drawn automatically from the fact that certain criminals had been judged and condemned by an international tribunal created, not on the basis of international law, but because the four Powers represented on it had assumed sovereignty over the territory of the State of which the criminals were nationals. The idea that the individual was subject to international law was not generally accepted; there could not therefore be any question of proclaiming it as a principle. According to the large majority of legal theories, the State alone was subject to international law.

26. It did not seem possible to say that " international law, including international penal law, has precedence over municipal law ". It was true that the idea was expressed in the provisions of article 14 of the draft declaration on the rights and duties of States which the Commission had just adopted, but Mr. Koretsky maintained that the precedence of international law over national

law had never been recognized and the Charter of the Nürnberg Tribunal was no argument in favour of that concept. It was the precedence of national law—in other words, national sovereignty—which enabled nations to govern themselves as they wished: the concept upheld by Professor Scelle would never be accepted by the majority of States. As regards the question of an " international jurisdiction ", it should not be forgotten that the General Assembly had asked for a study to be made of that matter: the decision which would be taken should not, therefore, be prejudged.

27. In conclusion, Mr. Koretsky said that Professor Scelle's proposal should not be retained by the Commission for the following reasons: either it was only a transposition of the Charter of the Nürnberg Tribunal, or it set forth concepts which were not generally accepted. It need not therefore be examined paragraph by paragraph.

28. Professor SCELLE did not wish to reply in detail to the criticisms of his proposal made by Mr. Koretsky, as he felt that the preliminary question to be settled before a decision was taken on the proposal was how the Commission interpreted the terms of reference given to it by the General Assembly. According to resolution 177 (II), the Commission should (*a*) formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal, and (*b*) prepare a draft code of offences against the peace and security of mankind, i.e., undertake the codification of international penal law. For that reason, in submitting his draft to the Commission, Professor Scelle had first of all expressed the general principles forming the basis of the Charter and the judgment of the Nürnberg Tribunal and then set forth the main elements for codification contained in those two texts.

29. The Chairman had remarked that it would be impossible, at the present session, to conclude the work entrusted to the Commission under resolution 177 (II). The Commission should, however, decide immediately whether, in formulating the principles recognized by the Charter and the judgment of Nürnberg, it should simply define those principles, or whether it should examine the manner in which the Tribunal had applied them.

30. Mr. SANDSTROM proposed that the Commission should examine Professor Scelle's proposal paragraph by paragraph, and decide whether it wished to incorporate some of the ideas contained therein in the draft submitted by the Sub-Commission.

31. Mr. BRIERLY supported that proposal. He thought that some of the ideas expressed in Professor Scelle's proposal already appeared in certain paragraphs of the Sub-Commission's draft provisionally adopted by the Commission, while others had no place in the formulation of principles recognized by the Charter and the judgment of the Nürnberg Tribunal. He thought, however, that the Commission would gain time if it took a decision on each of those ideas and, if, in the event that it should decide to retain some of them, it instructed the Sub-Commission to incorporate them in the provisionally adopted text.

The Commission decided by 7 votes to 2 to examine Professor Scelle's proposal pragraph by paragraph.

Paragraph 1

32. Mr. BRIERLY remarked that the idea expressed in that paragraph was contained in the paragraph 1 provisionally adopted by the Commission. He added that, in its present form, paragraph 1 of Professor Scelle's proposal did not, properly speaking, set forth a principle of international law.

33. Mr. SPIROPOULOS supported Mr. Brierly's remarks. Apart from the fact that the principle contained in paragraph 1 of Professor Scelle's draft was not a principle of international law, it should be noted that it had been recognized neither by the Charter nor by the judgment of the Nürnberg Tribunal. Quoting from the judgment, Mr. Spiropoulos said it would seem that the Tribunal had considered that the provisions of international law were applicable to individuals, in other words, that an individual was responsible at international law, but it could not be said that he was subject to international law.

34. Sir Benegal RAU said that by rejecting the theory that international law was concerned only with the actions of sovereign States and did not provide for the punishment of guilty persons, as well as the theory that where the act charged was an act of State, those who carried it out were not personally responsible, but were protected by the doctrine of the sovereignty of the State, [2] the Nürnberg Tribunal would appear to support Professor Scelle's view.

35. Professor SCELLE said that, strictly speaking, the Charter and judgment of the Nürnberg Tribunal did not contain principles of international law; but in view of the General Assembly resolution 177 (II), the Commission should consider whether it should restrict itself to defining the principles laid down in the Charter, or whether it should go further and analyse the judgment to find out what principles had been applied by the Tribunal and in what manner.

36. It would not be quite true to say that the substance of paragraph 1 of his draft was contained in the paragraph 1 which the Commission had

[2] " Nazi Conspiracy and Aggression—Opinion and Judgment ". Office of the United States Chief of Council for Prosecution of Axis Criminals—United States Government Printing Office—Washington 1947, p. 52.

provisionally adopted. Paragraph 1 of his draft laid down a principle while the paragraph provisionally adopted stated a consequence of that principle. It was essential, therefore, to know what exactly was the task of the Commission. He urged that, instead of immediately taking a vote on each of the paragraphs of his draft, the Chairman should first ask the Commission to state how it interpreted its task.

37. Mr. FRANÇOIS thought the question to decide was whether the Commission should restrict itself to formulating the principles recognized by the Charter and the Judgment of the Nürnberg Tribunal, or whether it should go further and examine and state its views on the general principles underlying the Charter and Judgment.

38. Mr. SPIROPOULOS found the question quite simple. The Commission's task was very clearly defined in paragraph (*a*) of the General Assembly resolution 177 (II): it had merely to formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of that Tribunal. Professor Scelle's document dealt with the matter too academically.

39. Mr. BRIERLY agreed with Mr. Spiropoulos.

40. Mr. KORETSKY thought it would be useless to consult the Commission on Mr. François' and Professor Scelle's question. The Commission's terms of reference were perfectly clear and no distinction could be made between the principles recognized by the Charter and Judgment of the Nürnberg Tribunal and the principles underlying those two documents. The only question which the Commission was called upon to answer was whether it accepted certain of the ideas contained in Professor Scelle's draft.

41. The CHAIRMAN asked the Commission whether it wished to vote on the question put by Mr. François and Professor Scelle.

The Commission decided by 5 votes to 3 to take a vote on the question put by Mr. François and Professor Scelle.

42. Mr. KORETSKY suggested that the wording of the proposal should be amended to read: " The Commission's task was to formulate " instead of " The Commission's task was limited to formulating ".

Mr. Koretsky's amendment was rejected by 3 votes to one, with one abstention.

43. The CHAIRMAN having invited the Commission to vote on the question put by Mr. François and Professor Scelle, stated that there was an equal vote. In the circumstances he decided to abide by the earlier decision to examine Professor Scelle's draft paragraph by paragraph, and he called on the Commission to proceed with the examination of paragraph 1 of the draft.

44. Mr. AMADO said that the paragraph 1 which the Commission had provisionally adopted set forth the broadest general principle which could be admitted in the matter. The responsibility of the individual was recognized in international law. It was impossible to go even further and state that the individual was subject to international law.

45. Mr. YEPES thought that the paragraph 1 provisionally adopted by the Commission had been drafted on a purely empirical and pragmatic basis, whereas Professor Scelle's approach to his paragraph had been academic. The Commission should formulate general principles. Since the conclusion contained in the text provisionally adopted by the Commission was an empirical one and, Professor Scelle's text clearly stated the principle upon which that conclusion was based, the two texts might perhaps be combined into a single one comprising both the principle and the practical consequence of that principle.

The first paragraph of Professor Scelle's proposal was rejected by 6 votes to 4.

46. Mr. SANDSTROM said that he had voted against that paragraph as he thought the principle could be mentioned in the comment accompanying the draft.

Paragraph 2

47. The CHAIRMAN said that that paragraph corresponded to paragraph 3 of the text provisionally adopted by the Commission, according to which the official position of a head of State, or responsible civil servant, did not confer any immunity in penal matters nor mitigate responsibility.

Paragraph 2 was rejected by 6 votes to 2.

Paragraph 3

48. The CHAIRMAN said that paragraph 3 did not correspond to any of the paragraphs provisionally adopted by the Commission.

49. Mr. SPIROPOULOS added that that principle had not been envisaged either in the Charter or in the Judgment of the Nürnberg Tribunal.

50. Mr. CORDOVA thought that the paragraph went too far. The Charter and Judgment of the Nürnberg Tribunal had admitted, besides the responsibility of the State, the subsidiary responsibility of the individual. That had been a new departure. But it could not be said that the responsibility of the State was subsidiary to the responsibility of the individual.

51. Mr. BRIERLY was in agreement with the preceding speakers and in addition failed to see what meaning was to be attached to the word " objective ".

Paragraph 3 was rejected by 6 votes to one.

Paragraph 4

52. Sir Benegal RAU drew the attention of the members of the Commission to a passage in the

Judgment of the Nürnberg Tribunal [3] which contained an idea corresponding to that expressed in the first sentence of paragraph 4.

53. Mr. BRIERLY failed to see what the first sentence of paragraph 4 would add to paragraphs 2 and 3 of the text the Commission had already provisionally adopted. The second sentence of the text proposed by Professor Scelle did not introduce any new element either. On the other hand, the third sentence raised the question of omission, which had not been dealt with in either the Charter or the Judgment.

54. Mr. SPIROPOULOS agreed with Mr. Brierly.

55. Mr. KORETSKY agreed with the preceding speakers with regard to the first sentence of the text proposed by Professor Scelle. The notion of the precedence of international law over municipal law was even less acceptable in the penal field. He wondered what international significance the judicial functions exercised by an international military tribunal would have.

56. He drew the attention of the members of the Commission to the opinion expressed in the Judgment of the Nürnberg Tribunal: the establishment of the Charter had affirmed the sovereign legislative rights of the States to which the German State had surrendered, thereby losing its own sovereignty, i.e., the laws of the four Great Powers, and not international law. Each of those Powers had been able to prosecute war crimes in its own country and in its zone of occupied Germany.

57. It must not be forgotten that international law was exercised and applied by each State and that it could not exist independently of States. Consequently, there was no point in invoking the false and abstract notion of the prededence of international law over municipal law. In its historical wisdom, British law affirmed that international law was a part of internal law and thus rejected the theory of the precedence of international law. In any conflict, the principle whereby a special law departed from the general law was applied. Generally speaking, it was obvious that each State itself applied international law so that municipal law was the supreme law. Regarding the rest of paragraph 4, he proposed to retain the text already provisionally adopted by the Commission.

58. Professor SCELLE noted that the Commission had decided not to formulate the principles underlying the Nürnberg Charter and Judgment. It was impossible for him to withdraw his proposal at that stage, but he continued to believe that the Commission was not doing what the Assembly had invited it to do; as a result, he dissociated himself entirely from the fate of the subsequent articles of his proposal.

Paragraph 4 was rejected by 6 votes to one.

[3] *Ibid.*, p. 53.

59. Sir Benegal RAU said that he had abstained from voting. If the wording had been the same as in the Judgment, he would have voted for that paragraph.

Paragraph 5

60. The CHAIRMAN recalled that paragraph 5 corresponded to paragraph 8 of the text provisionally adopted by the Commission, whereby the fact that an individual had acted pursuant to an order of his government or of a superior did not free him from responsibility; it could however be considered in mitigation of punishment, if justice so required.

Paragraph 5 was rejected by 6 votes to none.

Paragraph 6

61. The CHAIRMAN recalled that paragraph 6 was related to the question on the Commission's agenda regarding the establishment of a court of international jurisdiction.

Paragraph 6 was rejected.

Paragraph 7

62. The CHAIRMAN noted that paragraph 7 presupposed the preparation and drafting of an international penal code.

Paragraph 7 was rejected.

Paragraph 8

Paragraph 8 was rejected.

63. Mr. YEPES proposed that the following sentence should be added to paragraph 4 of the text adopted by the Commission: " Consequently, individuals have international duties which transcend the national obligations of obedience imposed on them by a given State ".

64. Sir Benegal RAU proposed the following formula, which was closer to the text of the Judgment of the Nürnberg Tribunal: " Consequently, individuals have international duties which transcend the national obligations of obedience imposed on them by the laws of their own States "; that formula would precede the paragraph 2 provisionally adopted by the Commission.

65. Mr. KORETSKY was opposed to the insertion of that text. It was one of the grounds of the Judgment of the Nürnberg Tribunal which was perfectly justifiable in its context. But if it was taken out of its context and given an abstract and general bearing, it would become one of the principles at the basis of a system of world government. Thus, without adding anything to what the Commission had already decided, they would be going very far beyond the opinion of the judges of the Nürnberg tribunal. The adoption of such

a text would signify that the Commission wished to subject individuals to an abstract rule.

66. Mr. SPIROPOULOS agreed with Mr. Koretsky. The idea reformulated by Sir Benegal Rau was not clearly expressed in the Charter of the Nürnberg tribunal and was not a principle of international law.

67. Mr. BRIERLY thought that the text proposed by Sir Benegal Rau would express the idea contained in paragraph 2 of the text adopted by the Commission more clearly. He would vote in favour of its adoption.

The text proposed by Sir Benegal Rau was not adopted, 4 votes being cast in favour and 4 against.

68. The CHAIRMAN proposed to refer the texts of the provisionally adopted paragraphs to the Sub-Committee.

It was so decided.

69. Mr. SPIROPOULOS said that while he had voted against Professor Scelle's proposal, he thought that most of the ideas expressed in it should be summarized in the introduction.

Preparation of a Draft Code of Offences against the Peace and Security of Mankind

70. Mr. KORETSKY proposed that the consideration of that question should be postponed to the Commission's next session and that, in the meantime, the Secretariat should prepare the working documents.

71. Mr. SPIROPOULOS thought it would be better to devote one meeting of the Commission at the most to a general discussion of that topic and then to appoint a Rapporteur to draft the working documents which would be submitted to the Commission at its next session.

72. Mr. CORDOVA and Mr. AMADO supported Mr. Spiropoulos' suggestion.

Mr. Spiropoulos' proposal was adopted by 10 votes to 1.

The meeting rose at 1 p.m.

30th MEETING

Tuesday, 31 May 1949, at 3 p.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. 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 of the Division for the development and codification of International Law, Secretary to the Commission.

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

PROPOSED NEW ARTICLE FOR INSERTION IN THE DRAFT DECLARATION

1. The CHAIRMAN announced that Mr. Hsu had that day submitted to the Commission the text of a new article to be inserted in the draft Declaration on Rights and Duties of States. The Commission had already completed its discussion of the draft declaration and had adopted a text for submission to the General Assembly. He considered, therefore, that Mr. Hsu's text had been submitted too late for discussion, and felt that members of the Commission would agree with that ruling.

2. Mr. HSU appealed against the ruling of the Chairman, and said that the Commission should not for purely procedural reasons refuse to take up any question which in its opinion was essential for the Declaration on Rights and Duties of States.

3. Mr. KORETSKY agreed with the Chairman's ruling, but not with the reason given for that decision, namely that Mr. Hsu had submitted his proposal too late. He felt that that proposal was linked with the problem of the codification of the laws of war which the Commission had decided not to study, and was therefore out of order.

4. Mr. YEPES, although not opposed to the ruling of the chair, considered that the decision made was too severe.

5. Mr. CORDOVA could not support Mr. Hsu's proposal, but felt that he should be given an opportunity to defend his text.

6. The CHAIRMAN, referring to rule 102 of the rules of procedure of the General Assembly,