Document:-
A/CN.4/SR.11

Summary record of the 11th meeting

Topic:
Fundamental rights and duties of States

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

article 2. Moreover, most authorities on international law did not consider that a State had a legal right to have its existence recognized.

78. The present tendency, however, seemed to be in favour of the right of a State to have its existence recognized. Thus, the Institute of International Law, at its 1921 session in Rome, had recognized that right, though subject to the fulfilment of certain conditions by the State.

79. Pointing out that the United Kingdom Government favoured express recognition of that right (A/CN.4/2, p. 53), he thought that a number of other Governments might be of a similar view. If the Commission were to decide in favour of the provisions contained in the Panamian draft, it should also bear in mind the fact that the right to be recognized was subject to limitations derived from other principles of international law, such as the establishment of a State through a third Power's intervention by force, as in the case of Manchukuo. Such limitations, however, might be omitted from the present article in view of the fact that they were covered by the provisions of other articles of the Declaration.

80. Mr. BRIERLY agreed with the speakers who had stressed the importance of the article and had favoured retention of some provision on that subject. He thought the second part of the article was unnecessary and could be deleted in view of the subsequent provisions of article 3, which provided all the essential elements for a clear understanding of the question of recognition.

81. As regards the last sentence, he thought that it might be omitted and the important United Kingdom comment (A/CN.4/2, p. 53), that recognition of an entity as a State in no way required the entry into diplomatic, or any other particular relations with, the State so recognized, be substituted for it.

82. The CHAIRMAN thought that it seemed from the discussion that the article was considered as applying to new States only. Pointing out that the article did not make clear whether *de jure* or *de facto* recognition was involved, he suggested that it should be deleted.

83. Mr. SANDSTROM also thought that the wording of the article was inadequate and that it seemed to anticipate the provisions of article 3. In his opinion article 2 applied to *de facto* recognition only.

84. Mr. CORDOVA felt that the article did not draw the necessary distinction between recognition of newly formed and existing States. While all States were obliged to recognize existing States, different questions arose in the case of new States.

The meeting rose at 6 p.m.

11th MEETING

Wednesday, 27 April 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, Division for the Development and Codification of International Law, Secretary to the Commission.

Draft Declaration on the Rights and Duties of States (A/CN.4/2,A/CN.4/2/Add.1) (*continued*)

ARTICLE 2: RECOGNITION OF THE EXISTENCE OF THE STATE (continued)

1. The CHAIRMAN reviewed the amendments to article 2 which had been presented during the previous meeting.[1] He noticed that the second sentence of article 2 did not provide for any specific procedure and recalled that Mr. Brierly wanted to omit the second sentence.

2. Mr. SANDSTROM thought it could be taken for granted that the first sentence of article 2 referred to *de jure* recognition. Since that would not be contrary to common practice in international law, inasmuch as it allowed every State to decide for itself whether or not it wished to recognize the existence of another State, he could accept the first sentence of the draft. He could not accept the second sentence, which was a definition and should not be included in the draft Declaration, nor could he agree to the third sentence, which was a secondary provision and had no place in the draft Declaration.

3. Mr. YEPES proposed the following amendment to the amendment he had submitted the

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[1] See A/CN.4/SR.10, paras. 67 and 70.

previous day: " Any new State admitted as such in the international community has a right to be recognized ".

4. The CHAIRMAN pointed out that in article 1 the Commission had tentatively accepted the statement that every State had a right to exist. How then could it in the following article allow other States to deny that right? The Commission was presupposing that the subject was a State. He wondered whether it could go further and say that that entity had a right to recognition.

5. Mr. ALFARO would favour retaining two articles on existence and recognition. He thought that article 1 stated the right of a State to exist and to develop even without recognition. Article 2 should be included because it stated the right of every State to have its existence recognized and the duty of every other State not to deny that existence. In that connexion he considered the comments of the United Kingdom (A/CN.4/2, p. 53) illuminating. It was clear that a State had the duty to recognize the existence of other States. Whether that State fulfilled the conditions of statehood as understood in international law was a political question and did not concern article 2.

6. He would accept Mr. Yepes' original amendment to add " by other States ", but could not agree to the insertion of the word " new " before the word " State " since recognition might finally be granted to a State long after it had come into being and was consequently no longer a " new " State. With regard to the second sentence of article 2, Mr. Alfaro agreed that if it was included in a chapter on the codification of recognition it could be eliminated from the draft Declaration.

7. With regard to the third sentence he pointed out that it appeared in article 6 of the Montevideo Convention of 1933 on recognition. It was further supported by the opinion of the eminent jurist John Bassett Moore (A/CN.4/2, p. 193). The question was a controversial one, however, and if the Commission agreed to insert it in a chapter on codification of recognition he would agree to delete it from article 2.

8. The CHAIRMAN pointed out that the position of the United Kingdom to which Mr. Alfaro had referred was not very helpful since it would allow a country to declare that it did not feel that a particular entity constituted a State and was not therefore bound under article 2 to recognize it as such.

9. Mr. BRIERLY pointed out that that would imply an intent on the part of the State not to observe its legal duty. If a Government was convinced that a State's claim to statehood was legitimate it would, of course, recognize it. He could not accept Mr. Yepes' amendment: " Any new State admitted as such in the international community " because that would imply that old States were not entitled to recognition and, he felt, would lead to chaos in international law. He would prefer Mr. Yepes' original wording: " Every State. . . ".

10. Mr. YEPES wished to remind Mr. Alfaro that the reference in the Montevideo Convention of 1933 to unconditional and irrevocable recognition had been deleted from the Bogotá Charter because experience had shown that provision to be defective. By his amendment " any new State. . . " he had not meant to imply that old States were not entitled to recognition or the right to exist. He thought it was futile to say that existing States had the right to exist, since they obviously already enjoyed that right. His amendment had been intended to provide for the case of States newly formed, such as Israel. In that connexion he would state that while the Commission should recognize the right of secession it should not encourage it. It should require new States to fulfil the conditions of statehood under existing international law.

11. Since the Commission had decided not to define the term " State " he thought it would be advisable to explain in that article to what kind of State its provisions applied. For that reason he had suggested the wording " any new State admitted into the international community ".

12. Mr. CORDOVA thought that if in the first article the Commission stated that every State had a right to exist, it was redundant to re-state the same thing in other words in article 2. The text of article 2 should be rephrased to indicate that it was the duty of States to recognize new States and he would therefore propose the following wording: " All States have a duty to recognize as a State any political entity which fulfils the requirements of statehood under international law ".

13. Mr. SPIROPOULOS did not consider that the duty of recognition had been implied in article 1, which did not mention relations between States. That was a social problem. Article 2 was drafted to deal with the legal problem of the recognition of a State. Under existing international law, a State, in his opinion, had no right to claim recognition and he did not believe that such a claim would be upheld by any court. He thought, however, that he would agree with Mr. Alfaro in that question. The Commission should accept the right of a State to be recognized. In so doing it would have advanced significantly the science of international law. In its report, however, the Commission could explain the reasons for its decision to adopt that principle.

14. With regard to the wording of article 2, Mr. Spiropoulos would accept " Every State has the right to have its existence recognized " but he would prefer to delete the rest of the article.

15. Mr. AMADO pointed out that his position as he had outlined it the previous day was the same as that of Mr. Spiropoulos. The right to

be recognized, however, should be subject to certain limitations. The *lex lata* does not provide for a State any right to have its existence recognized. From the moral point of view it was not lawful for a State to withhold recognition from another State complying with the conditions of statehood as established under international law. The act of recognition could not be left to the discretion of each individual State. It should not be declarative.

16. Mr. SCELLE agreed with Mr. Córdova. He thought that the right to exist entailed the right to be recognized. Since there was no superior authority to decide when a particular entity had become a State, the individual State would have to decide in each case whether or not it thought that a particular legal entity constituted a State. Should it decide in the affirmative, it was automatically obliged to recognize that State. He would support Mr. Córdova's suggestion that article 2 should be worded to indicate that recognition was a duty.

17. Sir Benegal RAU would support Mr. Córdova's suggestion. He further wished to point out that the term " State " would be used in every article of the draft Declaration. Therefore the Commission should begin by saying that the word " State " in the draft Declaration was used to refer to a community which fulfilled the conditions required by international law for its existence as a State. In the absence of such a definition, as the Chairman had pointed out, the recognition of a State would be left to the discretion of every other State and in that way the first three articles of the draft Declaration could easily be circumvented. He thought that if article 9 were adopted there might be no need to include the whole text of article 2.

18. The CHAIRMAN pointed out that a definition such as Sir Benegal had proposed and Mr. Córdova's suggestion would both raise the very controversial question of what were the requirements of statehood in international law. He would agree with the opinion of the United Kingdom that there was bound to be considerable scope for political judgment in deciding whether an entity fulfilled the conditions for recognition as a State. For that reason it would be difficult to specify the requirements for statehood. He noted further that the discussion had concerned the recognition of a State, whereas article 2 referred to recognition of the existence of the State. He wondered whether the Commission intended the two phrases to mean the same.

19. From the point of view of drafting he thought that every paragraph in the Declaration should begin by a statement of a right or a duty. In that particular case the Commission might wish to declare a correlative duty of recognition dependent upon article 1, which was an acknowledgement of the right to existence.

20. Sir Benegal RAU hoped that a chapter on the State could be included in the codification. He hoped, too, that the Commission might be able to suggest a super-authority which could decide doubtful cases of statehood.

21. The CHAIRMAN proposed the following text for the Commission's consideration:

> " The admission of a State to membership in the United Nations constitutes its recognition as a State by all the Members of the United Nations."

22. Mr. KORETSKY wondered whether it was necessary to set down the requirements for statehood, since until that time the declarative method in conjunction with diplomatic recognition had sufficed. He thought that the new proposal offered by the Chairman would be a check on the legitimacy of the birth of new States, recognition authorizing existence. It was not based on the fundamental principle which in his opinion should guide the Commission, namely, the principle of self-determination. By that proposal the Commission would introduce a new criterion transferring to the international community a power which rightfully belonged to the people. That super-authority would be substituted for the principles of international law and he could not support that suggestion. Only the sovereign people created the State; therefore he felt that the people's sense of sovereignty would object to that proposal, since it overlooked their fundamental right to choose in complete freedom the government they desired.

23. Mr. SPIROPOULOS did not feel that Mr. Córdova's proposal could be retained. Only States that were recognized as such by international law could be recognized. In international law no specific requirement was laid down for statehood. While Article 4 of the Charter referred to " peace-loving nations ", that could not really be considered a requirement for statehood. He did not feel, moreover, that any specific requirements could be added to article 2.

24. Mr. ALFARO said that, although there was a great deal of merit in Mr. Córdova's proposal, it might give rise to certain difficulties. The draft Declaration referred to rights and duties of States and, if Mr. Córdova's proposal were adopted, it would mean that the draft Declaration could provide for entities in the process of formation. In that connexion, Mr. Alfaro referred to the statements made by Fiore and Lapradelle memorandum (A/CN.4/2, p. 55). He agreed with Sir Benegal Rau's suggestion that a document, to complement the draft Declaration, should be drawn up regarding the formation, existence and attributes of a State.

25. Mr. Alfaro suggested that the word " political " in Mr. Córdova's text should be deleted, as it should be borne in mind that the Vatican State was purely spiritual and disclaimed

any political purpose. He also proposed that the words " in its own judgment " should be inserted in Mr. Córdova's text after the words " which fulfils ". He agreed that the question of recognition should be stated as a duty and not as a right.

26. Mr. CORDOVA, referring to Sir Benegal Rau's proposal, said that when he had made his suggestion he had had in mind that there might be difficulties in ascertaining the requirements of international law for a political entity to become a State, and pointed out that the Commission had agreed that the draft Declaration should not give a definition of what was meant by " State ".

27. The formula read by the Chairman referred only to collective recognition by Member States of the United Nations. Such a formula could not be applied in general, because there were many States recognized as such which were not Members of the United Nations.

28. Mr. HSU supported Mr. Córdova's remarks regarding the Chairman's proposal. He felt that the draft Declaration should contain an article on the recognition of the existence of the State, and he agreed with Mr. Córdova's amendment, although he felt it might be put in a more simple form. The remainder of article 2 should be deleted, and a statement inserted such as that contained in the commentary of the United Kingdom Government (A/CN.4/2, p. 53) and which stated that " the recognition of an entity as a State in no way required the entry into diplomatic, or any other particular relations with, the entity so recognized ".

29. Mr. SANDSTROM said that as article 1 on the right to national existence had been tentatively approved, he felt that as a corollary the Commission should take up the question of the recognition of the existence of the State. He suggested, however, that those two subjects should be dealt with in one article. He agreed that the word " right " should be replaced by the word " duty ".

The Commission decided by 10 votes to none that the draft Declaration should contain an article on the recognition of the existence of the State.

The Commission decided by 9 votes that a statement along the lines of the first sentence of article 2 should appear in the draft Declaration.

The Commission decided by 6 votes to 5 that the word " duty " should replace the word " right ".

30. The CHAIRMAN put to the vote Mr. Córdova's proposal that the first sentence of article 2 should read as follows:

" All States have a duty to recognize as a State any political entity which fulfils the requirements of Statehood according to international law."

The proposal was rejected by 6 votes to 5.

31. The CHAIRMAN then pointed out that Mr. Yepes' proposal that the words " by other States " should be inserted at the end of the first sentence would not apply as it had been decided that the word " duty " should be replaced by the word " right ".

32. After several drafting amendments had been suggested, the Chairman put to the vote the following text for the first sentence of article 2:

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

The amended sentence was tentatively approved by 6 votes to 1.

The Commission decided by 6 votes that it would not deal with the subject matter of the second sentence.

The Commission also decided that the third sentence should be deleted.

33. Mr. BRIERLY suggested that a statement on the lines of the sentence in the United Kingdom Government's comments (A/CN.4/2, p. 53), beginning with the words " It should be made clear that recognition of an entity . . ." should be inserted in the Declaration.

34. Mr. CORDOVA could not support Mr. Brierly's proposal, as article 2 dealt with the recognition of States and not with the recognition of Governments.

35. Mr. SANDSTROM suggested that a statement such as that proposed by Mr. Brierly should appear in the Commission's report.

36. Mr. BRIERLY agreed with Mr. Sandström's suggestion and withdrew his proposal that an extract from the United Kingdom Government's comments should appear in the draft Declaration.

Article 3: The right to existence, independent of recognition

37. The CHAIRMAN said that the consideration of article 3 would be influenced by the tentative retention of the equivalent of the first sentence of article 2. He felt that the Commission should not deal with the subject matter of article 3.

38. Mr. ALFARO said the idea of article 3 was to assert the fact that a State had a right to exist and develop itself even if it had not been recognized by all States. He cited, in that connexion, the case of Outer Mongolia which, although it had been recognized only by the Union of Soviet Socialist Republics and five or six other States, and not by the great majority of States, still had the right to exist and develop its personality.

39. Article 3 was based on the Montevideo Convention on Rights and Duties of States, and many other documents which recognized that the political existence of a State was independent of its recognition by other States.

40. Mr. HSU suggested that the subject matter covered by article 3 should be placed in the Commission's report.

41. Mr. SCELLE felt that article 3 should be deleted, since the Commission was not called upon to deal with matters affecting a State which had not been recognized as such. It would be very interesting to deal with *de facto* governments but that was not the place. Entities which were not yet States, which might or might not become States could not be considered in a Declaration of Rights and Duties of States, namely, of existing States, of entities which had become States.

42. Mr. SPIROPOULOS shared the Chairman's opinion that article 3 should be deleted. The first sentence of that article was a repetition of what was said in article 1, and the remaining part of the article should not appear in a legal document.

43. Mr. CORDOVA felt that article 3 was not entirely superfluous, although it was true that the first sentence repeated what was said in article 1. However, the existence of a State was entirely independent of the obligation of other States to recognize it as such.

44. Mr. BRIERLY felt that the first sentence only of article 3 should be retained. That sentence made it clear that a State did not come into existence when was recognized and by virtue of such recognition. An important point which should be emphasized was that the Commission did not accept the constitutive view of recognition but supported the declaratory view. The second sentence was unnecessary, as the draft Declaration stated that a State had the right to exist, and it therefore had the right also to do everything which was enumerated in that sentence. It would be dangerous to include such a sentence.

45. The CHAIRMAN put to the vote the proposal that the Commission should not deal with the subject matter of article 3.

The proposal was rejected by 6 votes to 5.

46. Mr. FRANÇOIS suggested that the word " political " in the first sentence of article 3 should be deleted.

47. The CHAIRMAN, supported by Mr. ALFARO, agreed. The latter pointed out, however, that the wording of the first sentence had been taken from the Montevideo Convention.

48. The CHAIRMAN suggested also that the words " is not dependent on " should replace the words " is independent of ", and that the first sentence should be reworded as follows:

> " The existence of a State is not dependent on the recognition of its existence by other States. "

49. He pointed out, however, that according to Mr. Alfaro's remarks it seemed that that sentence should read: " The existence of a State is not dependent on the recognition of its existence by *all* other States. " If that was what was meant, it was very different from the explanation given by Mr. Alfaro. In that connexion, he saw a very logical objection to stating in article 2 that every State had a *right* to have its existence recognized. To do so would be to attempt to assess the consequences of other States failing to live up to the duty which was correlative to the right declared in article 2. He did not see any practical reason for dealing with that point, which should be dealt with in a treatise on recognition of a State. The second sentence of article 3 should be deleted.

50. Mr. AMADO felt that article 3 should be retained.

51. Mr. ALFARO explained that the word " all " referred to the community of States in general. The second sentence of article 3 meant that from the moment a State became an entity it had the right to develop its own national and international personality independent of its being recognized as a State by other States. He felt that that sentence should be retained.

52. The CHAIRMAN pointed out that if the second sentence of article 3 was retained the first sentence should be deleted.

53. Mr. ALFARO emphasized that the second sentence enumerated the rights of a State. He could not accept the wording suggested for the first sentence of article 3.

54. Mr. SPIROPOULOS pointed out that the first sentence had nothing to do with a declaration on the rights and duties of States.

55. The CHAIRMAN announced that he would put to the vote the retention of the following wording:

> " The existence of a State is not dependent on the recognition of its existence by any other State."

There were 6 votes in favour and 6 against.

56. After a short discussion on the interpretation of the vote, and an intervention by Mr. KORETSKY, who reminded the Commission that the vote was only a way to crystallize the opinion of the members, the CHAIRMAN announced that he would not apply rule 122 of the rules of procedure; the report would record that the vote had been equally divided.

Second sentence of article 3

57. The CHAIRMAN felt that the words " even before its *existence* has been recognized " should be substituted for the opening words of the second sentence and that it should continue " the State has the right to preserve its existence " in order to make that sentence conform to article 1.

58. Mr. ALFARO suggested the formula " to provide for its preservation and prosperity " but pointed out that in the meantime the Commission had to decide whether to retain the substance of the sentence.

The substance of the sentence was rejected by 7 votes to 4.

59. Mr. ALFARO pointed out that as the first

sentence stood after the deletion of the second sentence, it did not state any right or duty; it was simply a rule of law, which had no place in the Declaration. He therefore wished to recall his vote in favour of the first sentence, as a result of the vote on the second sentence.

60. The CHAIRMAN asked the Commission whether it wished to retain the first sentence in view of the fact that the second sentence had been rejected.

The first sentence was rejected by 10 votes.

The whole of article 3 was therefore rejected.

ARTICLE 4: THE RIGHT TO INDEPENDENCE

61. Mr. ALFARO stated that the basis for article 4 was article 2 of the Declaration by the American Institute of International Law, with some drafting modifications. That Declaration was contained on page 157 of the document.

62. Since the second part of article 1 had been rejected as being covered by articles 9 and 10, article 4 should be considered with the deletion of the last phrase beginning with the words " provided always that. . . ". The American Institute of International Law had been impressed by the facts which had given rise to the First World War, for example the German theory of national necessity. Since the situation had changed and since a similar qualifying phrase had been removed from article 1, it should also be removed from article 4.

It was so agreed.

63. Mr. YEPES proposed a new draft to read as follows: "Every State has the right to have its own political independence and territorial integrity respected by other States ". As the article stood, it restricted independence to the fact of a State being free to provide for its own well-being and he felt that such a restriction was not in place.

64. Mr. SANDSTROM felt that it would be preferable to draft the article in the form of a duty to other States.

65. The CHAIRMAN wondered whether article 4 added anything to article 5, which referred to the duty of non-intervention.

66. Mr. ALFARO pointed out that there were several concepts which were very closely linked, such as sovereignty, non-intervention, jurisdiction and independence. He felt that the concept of independence should be treated separately and in detail. Whereas non-intervention was a negative concept, independence was a positive one; it was one of the greatest of all State rights. A separate article on independence was essential in order to bring to the mind of the layman a clearer concept of that subject. Duty, however, was covered by article 7 and the proposal to include it in article 4 was therefore superfluous.

67. He referred to Mr. Koretsky's earlier statement[2] with regard to the Atlantic Charter and emphasized that it was desirable that article 4 should specifically mention the right of peoples to choose their own government. He therefore suggested that the words " one of the manifestations of independence is the right of a State to choose its own form of government and to govern itself " should be added to article 4.

68. Mr. FRANÇOIS wondered whether that formula took into account semi-sovereign States such as protectorates. He also felt that the words " its own " were not very clear and that the word " independence " would be sufficient. The word " spiritually " was an inadmissible personification of the State which did not lead a spiritual life; it should therefore be deleted.

69. Mr. SCELLE remarked that the idea of independence was not similar to that of sovereignty. An entity was either sovereign or subject of law. Once it had received a competence, that could be exercised with entire freedom. He referred to the International Court of Justice's pronouncement with regard to the Austrian *Anschluss*, which contained a precise definition of independence as opposed to sovereignty. Independence was the right of a government to use its international competence freely without being subject to the influence of any other government. That was precisely the idea contained in article 4. It was a very important principle in international law and should therefore be included in a declaration of that type.

70. Mr. SPIROPOULOS stated that article 4 was quite inadmissible, for the following reasons: first, it was not suitable for that type of declaration; secondly, it was full of unconnected ideas; thirdly, some of those ideas were already covered by other articles, article 10 for example. He could accept the first phrase; with regard to the second phrase he pointed out that independence and well-being were not the same. He had never before read any similar definition of independence.

71. The fact that the existing wording was not admissible did not mean that there should be no article on independence. He would support Mr. Yepes' suggestion in principle as he felt that some statement of that sort would have to be included in the Declaration, which must to some extent have a political character.

72. In reply to Mr. Spiropoulos, Mr. AMADO drew attention to paragraph II of the Declaration of the American Institute of International Law, (A/CN.4/2, p. 157). He particularly liked the phrase " pursuit of happiness ". Mr. Spiropoulos had stated that, together with the Montevideo Treaty of 1933, that Declaration was of merely historical interest. Its legal content, however, was sufficient to warrant its inclusion in the

[2] See A/CN.4/SR.9, para. 20.

Declaration under consideration. He reserved his right to speak again on the subject later.

73. Mr. BRIERLY felt that neither the Commission nor the General Assembly would accept a declaration which did not contain an article on independence; it was absolutely essential. He did not like the definition given in Mr. Alfaro's text, particularly the words " spiritual well-being ", which were not appropriate to a State. He preferred Mr. Scelle's suggestion and hoped he would draft something on those lines.

It was decided by 9 votes to retain an article on independence.

74. The CHAIRMAN explained that the Commission had before it three draft texts: Mr. Yepes', Mr. Scelle's and Mr. Alfaro's.

75. Mr. YEPES pointed out that his text was based on paragraph 4 of Article 2 of the Charter, which he quoted.

76. Mr. SCELLE agreed with Mr. Yepes but pointed out that there was another form of independence. His provisional draft would read as follows: " The government of a State, when it has been recognized as such, has the right to exercise the powers to which it is entitled under international law without pressure from any other State. " Pressure was not quite the same as intervention and was not as emphatic as a threat. Political influence, too, could prevent free action.

77. He suggested that he and Mr. Brierly should discuss together the drafting of a definition of independence based on the pronouncement of the International Court of Justice on the Austrian case. The Court had avoided any confusion of competences.

78. Mr. ALFARO wished to explain the word " spiritually ". It had been inserted to cover one State which was purely spiritual, namely, the Vatican City. If it was subject to misinterpretation, however, he would withdraw it. He proposed that the final text should read:

> " Every State has the right to its own independence in the sense that it is free to choose its own form of government, to govern itself, to provide for its own well-being and, in general, to exercise all its powers without being subjected to the domination of any other States."

79. After a short discussion on the word " domination ", Mr. BRIERLY pointed out that the various proposals before the Commission required mature consideration. He would like to see Mr. Scelle's draft. The decision should be postponed until the following meeting.

80. Mr. SPIROPOULOS agreed and suggested that a sub-committee consisting of Mr. Alfaro, Mr. Brierly, Mr. Scelle, Mr. Yepes and one of the Vice-Chairmen should meet to draw up a precise text.

It was so agreed.

Article 5: The duty of non-intervention

81. The CHAIRMAN felt that in view of the nature of the Declaration and of the heading of article 5, that article should be redrafted in terms of duty.

82. Mr. ALFARO agreed and suggested the formula: " Every State has the duty to refrain from interfering . . . ".

83. Mr. BRIERLY felt that " interfering " was too vague; he would prefer " intervening " and Mr. RAU cited principle 3 of the principles of International Law, contained on page 161, in support of that proposal.

84. The CHAIRMAN stated that the phrase " intervention in internal affairs . . . " was sanctioned by American usage but he could not quite understand the significance of the phrase " intervention in external affairs ".

85. Mr. CORDOVA and Mr. ALFARO cited pressure by an outside party not directly concerned as an example of intervention in external affairs.

86. Mr. SPIROPOULOS said that an article on non-intervention was essential but that the text proposed was not in conformity with international law under which intervention was not prohibited.

87. Mr. SCELLE emphasized the difference between an intervention by one State and a collective intervention by an international organization. The right of intervention by one State was a negation of independence and as such should be excluded. If, however, all intervention were excluded, the result would be anarchy. In an international community it was impossible to let one State go beyond its own rights and violate international law. Every State must be able to denounce before the competent international organization the illegal acts of other States. The principle of intervention by an international organization was extremely important to the organization of international government. Article 5 neglected that most important aspect of the question. A State should have the right to ask the United Nations to consider the opportunity of a collective intervention in a given case. That was the purpose of international organizations.

The meeting rose at 6 p. m.