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Summary record of the 12th meeting

Topic:
Fundamental rights and duties of States

Extract from the Yearbook of the International Law Commission:-
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12th MEETING

Thursday, 28 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. 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*)

1. The CHAIRMAN proposed to begin by discussing article 5 pending distribution of the redraft of article 4 prepared by the sub-committee set up at the preceding meeting.

ARTICLE 5: THE DUTY OF NON-INTERVENTION

2. The CHAIRMAN said that the proposed wording for article 5 was:

> "Each State has the duty to refrain from intervention in the internal or external affairs of another State."

3. Mr. BRIERLY pointed out that in an article intended to prohibit intervention it was important to be quite clear what was meant by that word. It was not defined with certainty in international legal terminology.

4. He felt that an act of intervention was an act of dictation by one State to another with regard to its internal or external policy backed by the use or threat of force, express or implied. He emphasized that if there was no force or threat or force any action, however improper or unfriendly, could not be qualified as intervention though he realized that opinions might differ on that point.

5. Mr. SANDSTROM suggested that, as proposed by the Greek Government, article 5 and article 8 might be considered together. At all events, article 8 should immediately follow article 5.

6. Mr. YEPES felt that the Commission had not been explicit enough in its definition of intervention; it should adopt the formula included in article 15 of the Bogotá Charter (see A/CN.4/2, p. 63). He proposed that the whole of article 5 should be replaced by that article with the addition of the following paragraph:

> "The measures taken by the international community under the treaties in force in order to ensure peace or guarantee a free exercise of essential rights or fundamental freedoms of the human being shall not constitute intervention within the meaning of this article."

7. It was essential to specify that collective intervention—in which case the word had rather a different meaning—was permissible in certain cases.

8. Sir Benegal RAU emphasized that the Declaration could not be self-contained. Certain exceptions and limitations recognized by international law would have to be mentioned together with certain exceptions under the United Nations Charter. He felt that insertion of a general clause to the effect that the provisions of the Declaration did not affect the provisions of the Charter might simplify the task of drafting the Declaration. If the Commission said that every State had the duty to refrain from intervention, it would have to consider article 8, which recognized a certain kind of intervention. Both articles should be examined together.

9. Mr. ALFARO explained that in article 8 the word "intervention" had a different connotation; it referred to diplomatic interposition by a State in favour of its own nationals. He would eliminate the word "intervention" from article 8 in order to avoid misunderstanding.

10. Sir Benegal RAU drew attention to the phraseology of article 13 and suggested that by analogy the words "except as permitted in international law" might be added in article 5 after the word "refrain".

11. Mr. CORDOVA agreed with Mr. Brierly's definition of intervention but felt that it need not be introduced into article 5. It was unnecessary, as everyone understood the meaning of the term and it was almost impossible to find a satisfactory formula. The same difficulty had been encountered at the San Francisco Conference and he thought that Article 2, paragraph 7, contained the only reference to intervention in the Charter.

12. Article 5 prohibited collective intervention as did all the instruments drawn up by the American States. The actions of the United Nations which derived from the Charter should not be called intervention but punitive action or some similar phrase, as the word intervention had a very restricted and confined connotation.

13. With regard to Mr. Yepes' suggestion to adopt article 15 of the Bogotá Charter, he did not agree with the last phrase "economic and

cultural elements ". If a definition were necessary, the first part of the Bogotá article might be included.

14. Mr. FRANÇOIS felt that Mr. Brierly's interpretation of the word " intervention " was too limited. Intervention could take place without the use or threat of force and the latter term, moreover, was very vague. As used in Article 2, paragraph 7 of the Charter, intervention had a wider significance.

15. With regard to a previous statement by Mr. Scelle that legitimate intervention under international law must be taken into account, he wondered whether that constituted intervention in internal affairs. He personally felt that where international law recognized the legitimacy of the intervention that proved that the matter in question was not one of domestic jurisdiction.

16. Mr. SCELLE emphasized that in order to constitute intervention, the action must be backed by the use of force or the explicit or implicit threat of force. Article 2, paragraph 7, of the Charter was not relevant to the question under consideration as it only referred to the relationship between Members of the United Nations and the Organization itself. He referred to the " discretionary competence " of a State, namely to those cases in which a State was free to do what it wished because international law had recognized its power to take decisions. That might cover pressure by one State on another. If any real progress was to be made in international law, the idea of legitimate intervention must be given up and replaced by the taking of steps to initiate collective intervention by the international organization concerned. The State which formerly would have intervened should denounce to the competent international organization the failure of another State to comply with its obligations. The idea that a State could make itself the judge of another State should be abandoned and it should be agreed that it would leave the decision to the international organization. If some such formula were not adopted international anarchy would result.

17. Mr. ALFARO stated that the subject of intervention had had many repercussions lately. It was a very important question in inter-American relations. Article 5 was based on the Montevideo Treaty and he did not wish to change the language of that Treaty since the formula had been reached after much discussion. He emphasized that the Latin-American countries had always understood the formula to mean unilateral, arbitrary and unjustified intervention and not collective action by the United Nations to maintain peace and security and promote human rights. The Montevideo clause did not refer to action of the type taken by the United Nations with regard to Franco Spain or with regard to the treatment of Indians in the Union of South Africa. The General Assembly had decided by a two-thirds majority that that was not an act of intervention and not contrary to Article 2, paragraph 7. He drew attention to article 19 of the Bogotá Charter (A/CN.4/2, p. 142), when " existing treaties " referred to the Charter of the United Nations. He was in favour of adding a clause to the effect that collective action by the United Nations in conformity with the Charter did not constitute intervention and he therefore supported Mr. Yepes' proposal.

18. Mr. KORETSKY could not support Mr. Brierly's definition. The concept of intervention was very complex and might be defined in many ways. The principle of non-intervention must be formulated unconditionally since any definition would weaken the article to be included in the Declaration. As matters stood, intervention by a State or group of States was still practised and could always be justified by a legal pretext unless it was unconditionally prohibited. Later it might be necessary to define intervention but no definition was required for the time being.

19. The Declaration could not change but only strengthen and enforce the Charter, Chapter VII of which would remain in force. Intervention was extremely dangerous particularly in current times when blocs were forming and small States were compelled to follow the policy of great States. The action envisaged in Chapter VII of the Charter was not intervention.

20. He did not agree with Mr. Scelle's idea of discretionary competence; USSR experts approached the question from the viewpoint of sovereignty. He supported Mr. Alfaro's text and pointed out that the Montevideo Convention had been drawn up in view of intervention as it had been practised in the South-American Continent. Article 15 of the Bogotá Charter on the other hand did not cover every possible means of intervention. The " whip " was covered by that Charter but not the " sugar pill ". He therefore demanded an unconditional declaration of the principle of non-intervention.

21. Mr. YEPES pointed out that under the Statute of the International Law Commission each member of the Commission represented a different legal system in the world. It was therefore quite natural that the Latin-American countries should have a particular view of intervention, but he felt it was necessary to state the reasons underlying their special criteria.

22. The Latin-American position with regard to intervention was the result of events which had taken place during the nineteenth century and the first three decades of the twentieth century. During that period, the Latin-American countries had been the victims of a series of unilateral and unjustified interventions by a large number of European nations and by the United States. He quoted as an example the intervention by France

and the United Kingdom in Argentina and Uruguay ostensibly for the purpose of protecting their nationals and the peaceful blockade of Venezuela by the United Kingdom in 1902. He also mentioned United States intervention in Mexico in 1836, 1845, 1848 and 1849, which had led to an unjust war during which Mexico had lost some of its richest provinces. That intervention had been carried out in the name of the doctrine of " manifest destiny ". It had been much criticized in the United States. All those events had created very strong opposition to unilateral intervention in Latin America which had consistently affirmed the principle of non-intervention; it was one of the main ideas underlying Latin-American legal thought.

23. He referred to Mr. Koretsky's previous criticism of the Monroe Doctrine. Mr. Koretsky seemed to have misinterpreted that doctrine which, viewed in its true light, constituted a formidable barrier to European intervention in the New World and safeguarded the independence of Latin America. Mr. Yepes read the theory of non-intervention as defined by President Monroe in his Doctrine. The principle of non-intervention had been accepted for the first time by the United States at the Second International Conference of American Legal Experts in 1927 but it had not been included in a convention until the Montevideo Treaty of 1933, the adoption of which constituted a legal and political victory for Latin America, as well as for President Roosevelt.

24. He emphasized once more that the Latin-American conception of intervention only referred to unilateral intervention when the State constituted itself as a judge to impose its views on another State by force, propaganda or any other means. In the eyes of the Latin-American countries such intervention was worse than war itself since the State initiating it expected to obtain the advantages of a victorious war without its risks. It was hypocrisy to condem war and not to condemn intervention which often led to war. Collective intervention was not condemned in the Latin-American countries. It was quite a different type of action directed against a State which had infringed international law, or action intended to ensure human rights or fundamental freedoms.

25. Mr. SPIROPOULOS noted that some members favoured the provisions of the Bogotá Charter, while others had referred to " collective intervention ". Collective intervention, however, was understood to refer to action taken under the United Nations Charter to enforce its provisions. The task of the Commission was not to redraft the Charter, but to codify international law. Consequently, the term " collective intervention " should not be used in the article under discussion.

26. As regards article 15 of the Bogotá Charter, Mr. Spiropoulos was opposed to its vague, inadequate formulation; its contained certain notions outside the field of international law. Concerning the suggestions made with reference to article 19 of the Bogotá text, he felt that there was no need for reference to the United Nations Charter in a document dealing with international law in general.

27. Looking at the legal situation apart from the terms of the article under discussion, he felt that intervention in the widest sense, namely, by threat of force only and without attack upon the integrity of a State, theoretically did not constitute a violation of positive international law as currently applied by States. If State A told State B to sign a certain treaty or not to sign a treaty it contemplated concluding with State C, that would not be intervention under existing international law; it would be a matter of power.

28. In view of those considerations, he felt that the Commission should decide whether it wanted to restate the existing law or to take a step forward and, adopting Mr. Brierly's definition of intervention which included use or threat of force, prohibit such intervention; or omit any mention of the subject in view of the difficulties it presented. As regards the second alternative, while the Commission was competent to adopt such a new definition, Mr. Spiropoulos appreciated Mr. Koretsky's objections that specific prohibition of one kind of intervention would make all other types of intervention appear permissible.

29. Consequently Mr. Spiropoulos felt that the original article 5, though it might raise questions of interpretation—which, after all, might happen in the case of most of the articles—presented, subject to minor drafting changes, the most satisfactory solution by approaching the matter both as a legal principle and a political postulate.

30. Mr. AMADO said he was prepared to vote in favour of retaining the article in its present form. Mr. Brierly's definition was not sufficient as intervention could involve not only the threat or use of force, but also other forms of pressure. While he was prepared to go so far as to support Sir Benegal's original draft of the article, Mr. Amado stated that if the Commission favoured the Bogotá draft, he would support its decision, provided the last few unnecessary words were deleted.

31. In reply to a question by Mr. CORDOVA, the CHAIRMAN stated that the Commission had now before it the original draft of article 5 to which a number of amendments had been presented by Mr. Yepes, Sir Benegal Rau, Mr. Scelle and Mr. Brierly.

32. On the suggestion of Mr. CORDOVA that a drafting sub-committee should be appointed to work out a composite text, Mr. SPIROPOULOS proposed that the Commission should give some

guidance to such a sub-committee by putting the different proposals to a preliminary vote.

33. The CHAIRMAN then put to the vote Mr. Yepes' proposal for substituting article 15 of the Bogotá text together with an additional paragraph, for the existing text of article 5.

34. Mr. ALFARO, speaking on Mr. Yepes' proposal, stated that he found the Bogotá text unsatisfactory for a number of reasons. First of all, the expression " group of states " was ambiguous and could be misunderstood to mean such bodies as the United Nations and the Organization of American States. Secondly, the words " directly and indirectly " were inappropriate in view of the form of intervention permitted under the United Nations Charter. And thirdly, the rest of the text contained a confusing number of elements. How, for instance, could " cultural intervention " be determined? Mr. Alfaro recalled, in that connexion, the difficulties experienced by the Sixth Committee of the General Assembly in connexion with the concept of cultural genocide, and its final decision to abandon it. He therefore preferred the terse and adequate Montevideo Convention on which the original text of article 5 was based.

35. Mr. CORDOVA would not object to adopting the beginning of the second sentence of article 15 of the Bogotá Charter if a definition of the concept of intervention was necessary. That text embodied the same principle as the one contained in the existing article 5, providing, moreover, a definition of a State's obligation not to intervene either by force, threat of force, or other methods, in the affairs of another State. On the other hand, however, that text did not cover all possible aspects of intervention, and Mr. Córdova thought that if the Bogotá text was rejected the original text of article 5 might be retained and the other suggestions considered.

36. The CHAIRMAN put to the vote Mr. Yepes' proposal for substituting the text of article 15 of the Bogotá Charter for article 5 of the declaration.

Mr. Yepes' proposal was rejected by 9 votes to 1.

37. The CHAIRMAN then took up Sir Benegal Rau's proposal to insert in article 5 the words: " except as permitted in international law ".

38. Sir Benegal RAU, illustrating his proposal, pointed to the possibility of one State permitting its territory to be used by a second State as a base of operations against a third State. The third State then, by using force against the first State in order to dissuade it from opening its territory to the second State, would be committing an act of intervention in the narrow sense, although its object would be prevention of aggression. Such intervention was not prohibited by the United Nations Charter or the present declaration. It was with such cases in mind, that Sir Benegal had proposed his addition in order to limit the scope of the otherwise too sweeping provision of article 5.

39. Mr. CORDOVA thought that in the example given by Mr. Rau, the first State would actually be participating in the aggression against the third State, and the action of the latter would be self-defence, not intervention.

40. Mr. SPIROPOULOS thought to go into details was dangerous, and the duty of non-intervention should be adopted in principle without any additional qualifications.

41. The CHAIRMAN was against making sweeping exceptions under international law in a document which was supposed to define international law on the subject. He then put to the vote Sir Benegal's proposal.

Sir Benegal Rau's proposal was rejected by 12 votes to 1.

42. The CHAIRMAN put to the vote Mr. Scelle's proposal to insert a clause saving the possibility of collective action by the United Nations.

Mr. Scelle's proposal was rejected by 8 votes to 3.

43. The CHAIRMAN then turned to the original text of article 5 as redrafted at the beginning of the meeting.

44. Mr. SPIROPOULOS suggested the deletion of the words " external and internal ".

45. Mr. AMADO remarked that " intervention in internal and external affairs " was a customary expression in international law.

46. The CHAIRMAN put Mr. Spiropoulos' proposal to the vote.

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

47. The CHAIRMAN put to the vote the tentative retention of article 5 as it stood.

Article 5 was tentatively retained by 10 votes to 2.

Article 4: The right to independence
(resumed and concluded)

48. The CHAIRMAN read the sub-committee's composite draft of article 4:

> " Every State has the right to independence, including the right to choose its own form of government, to provide for its own well-being and, in general, to exercise freely all its legal powers, without being subjected to the dictates of any other State or States. "

49. He wished to raise a number of questions in respect of that draft. First, did the text refer to the right of a State to provide for its own well-being or for that of its people? Secondly, the words " in general " seemed superfluous. Thirdly, what was the meaning of the words " legal powers "? Did they mean powers under the State's Constitution or under international law?

50. On Mr. BRIERLY's replying that " legal powers " referred to powers under international

law, the CHAIRMAN stated that the words were not clear and should be deleted together with the words " in general".

51. Mr. ALFARO, referring to a statement by Mr. Scelle at a previous meeting, pointed out that deletion of the words " in general " would place exercise of legal powers in the same category as the rights mentioned before which were only given as outstanding examples of the right to independence. The substance of the right to independence, however, lay in the free exercise of legal powers.

52. Mr. SPIROPOULOS thought that the composite text was obviously the result of compromise, which in the case of a legal document was undesirable. He was opposed to that draft as it was not clear whether the word " including " implied other rights in addition to that of independence, or whether it denoted rights forming part of the general " right to independence ".

53. Furthermore, the words " provide for its own well-being " were inappropriate in a legal text. As regards the words " exercise its legal powers ", their meaning was implied in the right to independence. In view of these considerations, Mr. Spiropoulos would prefer the following clear and concise text: " Every State has the right to independence and to its integrity. "

54. Mr. KORETSKY objected that in developing the concept of independence of States, the drafters had not included the concepts of sovereignty and self-determination, the important principles laid down in the Atlantic Charter. He was surprised that Mr. Alfaro did not mention them. As regards the article's last provision, it was already covered by article 5. In view of those considerations, he thought that the redraft, which was not based on the proper principles, was unsatisfactory and should be redrafted to include the concepts of independence, sovereignty, self-determination and right to choose a form of government.

55. Mr. SANDSTROM, pointing out that the sequence of ideas in the text was illogical, suggested the following re-arrangement:

> " Every State has the right to independence and thus to exercise freely, without being subjected to the dictates of any other State or States, all its legal powers, including the right to choose its own form of Government, and to provide for its own well-being. "

56. On the CHAIRMAN asking if he wanted any addition Mr. KORETSKY replied that the wording should be changed, but he did not want to suggest any draft. Actually the text was narrowing the ideas of the Atlantic Charter when they had to be broader.

57. Mr. FRANÇOIS suggested that the words " legal powers " should be replaced by the words " legal rights ".

58. The CHAIRMAN stated that he was opposed to the words " legal powers " as long as there was no clear indication of what they meant. He then put to the vote Mr. Sandström's re-arrangement of the text.

Mr. Sandström's re-arrangement was adopted by 8 votes to 1.

It was agreed to delete the words " or States ".

59. The CHAIRMAN then moved his own proposal that the word " legal " should be deleted.

60. Mr. BRIERLY objected to the Chairman's proposal. The word " power " meant the ability to do something. By deleting the word " legal ", States would be given the right to exercise any power, such as military power, which would be contrary to the purpose of the Declaration. He therefore suggested the phrase " all powers accorded to it by international law ".

61. Sir Benegal RAU repeated his opinion that the Commission could not make the draft Declaration self-contained and would find it necessary to include some kind of limitation in nearly all the articles. If the Commission was proceeding on the assumption that it would later codify various generalities, he saw no objection to including the phrase " legal powers " on the understanding that it would be defined elsewhere.

62. The CHAIRMAN thought the reference to " legal powers " could be deleted thus stressing the provisions on the right to choose a form of government and provide for the well-being of the State.

63. Mr. SPIROPOULOS agreed with that point of view.

64. Mr. SCELLE was strongly opposed to deletion of the phrase " legal powers ". The most important attribute of independence was the power of a State to exercise its competence in conformity with international law, a juridical expression which he understood in the same terms as Mr. Brierly. If that qualification of the State's powers were deleted, he would feel that the rest of the article had little place in the Declaration and would abstain from voting on it.

65. With regard to Mr. Koretsky's remarks, he would agree that the concept of sovereignty should be included but he felt that independence was synonymous with sovereignty. In the material and anti-juridical sense sovereignty was the power to decide one's competence, *Kompetenz-Kompetenz* as German authors called it.

66. However, the conception that a State could do as it wished without concerning itself with the rights of other States, must be rejected. A State was not sovereign in the absolute sense. Were the Commission to declare that a State had the right to exercise the powers conferred on it by international law, it would have done something useful. Subject in law the State formed in the rule of law the source of all its powers without being submitted to any other State. Every State has a right to exercise freely all its legal powers

without being subjected to any other State. This was already stated in other words in article 15, paragraph 8 of the Covenant of the League of Nations. In his opinion it would be advisable to add a clause: " It is in this sense that States are sovereign."

67. In his view the only justification for the article was the inclusion of the phrase " to exercise freely all its legal powers " which he thought derived solely from international law. Mr. Scelle could not accept the Chairman's suggestion to replace the phrase in question by: " and thus to exercise its sovereignty freely ", because he wished to stress the word " independence " as meaning the same thing as " sovereignty ".

68. Mr. AMADO pointed out that the right of independence was a correlative of the right of existence.

69. Mr. ALFARO had been convinced by Mr. Scelle's arguments in favour of retaining the phrase " legal powers ". He always had in mind the powers of the State under international law.

70. In his intervention Mr. Koretsky had seemed to imply the need of an article on sovereignty. Many rights were included in the term " sovereignty ". The draft Declaration was composed of a series of articles explaining how those fundamental rights of States were to be exercised and he felt that the Declaration as a whole was therefore concerned directly with sovereignty. For that reason he would oppose the idea of including a special article on that concept. In article 13 there was a reference to the sovereignty of the State as subject to the limitations of international law. If the Commission desired, he would agree to an enlargement of the concept of sovereignty in that article. On page 59 of the Secretary-General's memorandum (A/CN.4/2) a reference was made to the only paragraph of the Atlantic Charter which he considered applicable to the draft. It used the term " sovereign rights " which were really legal rights or rights under international law. In that paragraph the term " self-government " had been used in the sense of " independence ". He would point out in that connexion that the draft Declaration was concerned with constituted States and not entities which were aspiring to self-government. He would however welcome any specific proposals from Mr. Koretsky on the question of sovereignty, self-government or self-determination.

71. Mr. KORETSKY noted that the Commission had expressed two points of view on sovereignty. According to one interpretation, every State derived its rights from international law. He did not feel, however, that that approach was in accordance with the facts. The supremacy of international law was a concept invented in an attempt to set up a supreme authority and should be rejected. For that reason he could not accept the amendment proposed by Sir Benegal Rau.

72. He saw no reason for introducing the concept of absolute sovereignty. In the twentieth century the doctrine of unlimited sovereignty created in France in the times of the absolute monarchy had no place. The concept of sovereignty should be considered in the light of the current historical circumstances in which the nations of the world were directly concerned. He could not agree that the terms " sovereignty " and " independence " were synonymous. Mr. Alfaro's statement that independence was the essence of sovereignty did not open up the full field of that concept. The Commission should indicate that sovereignty was a broader term than self-government, just as sovereign rights were broader than legal rights. Those terms could not be equalized. In view of the fact that some States were subordinate to others, he thought that " independence " could not replace " sovereignty ". The draft Declaration should say that all States, including semi-sovereign States were entitled to full sovereignty. It was the task of the Commission to emphasize the right of every State to full enjoyment of all its rights.

73. If the Commission accepted the principle of sovereignty, there would be no need to include a condition such as that incorporated in the text of article 4 proposed by Mr. Alfaro, Mr. Brierly, Mr. Scelle and Mr. Yepes: " without being subjected to the dictates of any other State ".

74. To declare that a State had the right to choose its own form of government was not the same as saying that it had the right to self-government since in some cases a State might choose to be governed by another State. Unless the Commission in the draft Declaration set forth in unequivocal terms the right of every State to sovereignty, self-government and self-determination, it would be limiting and weakening the other rights it proclaimed in the Declaration.

75. Mr. CORDOVA thought that it was necessary to include a limitation on powers and would favour the retention of the word " legal ". In that connexion, a parallelism between the concept of freedom in national law and the concept of sovereignty in international law had often occured to him since neither was absolute, both needed limitations. He proposed that the article might be amended to read: " to exercise freely all its legal powers, its sovereignty, etc."

76. Mr. SPIROPOULOS proposed the following wording for article 4: " Every State has the right to independence, and thus the right to exercise freely all its legal powers, including the right to choose its own government."

77. Mr. SCELLE thought it necessary to include in Mr. Spiropoulos' text the phrase " without being subjected to the dictates of any other State ".

78. Mr. AMADO suggested the term: " all acts of its juridical competence ". If that were not

accepted, he would favour the retention of the qualifying term " legal " for the reasons put forth by the authors of the new draft of article 4.

79. The CHAIRMAN'S objection to the word " legal " was based on the fact that he did not believe every power of the State to be derived from international law.

80. Mr. AMADO proposed the deletion of the phrase " to provide for its own well-being ".

By 8 votes to 1, the Commission agreed to delete that phrase.

81. The CHAIRMAN then put to the vote Mr. Sandström's re-arranged text, reading as follows: " Every State has the right to independence and thus to exercise freely, without being subjected to the dictates of any other State, all its legal powers including the choice of its own form of Government ".

That proposal was adopted by 12 votes.

82. Mr. SCELLE proposed the addition of the following sentence to article 4: " It is in this sense that States are sovereign."

83. Mr. ALFARO thought that the addition of such a sentence might lead to confusion if the concept of sovereignty were linked only to independence and not mentioned in other articles of the draft Declaration.

84. Mr. SCELLE did not agree with Mr. Alfaro because he considered independence to be the very notion of sovereignty itself. The other articles concerned the exercise of that independence or sovereignty.

85. Mr. YEPES agreed with Mr. Scelle. He considered that the Commission would be rendering great service to the science of international law if it could in some way clarify the rather vague term of sovereignty.

86. Mr. CORDOVA proposed to insert after " all its legal powers " the words: " its sovereignty ", between two commas.

87. Mr. AMADO pointed out that the Commission was drafting a Declaration on Rights and Duties of States and should not try to deal with definitions.

88. The CHAIRMAN proposed the wording: " It is in this sense that the State has the right of sovereignty."

89. Mr. SCELLE could not accept that text because sovereignty was also a duty.

90. Mr. SANDSTROM thought that if the Commission adopted Mr. Scelle's proposal it would be violating the principle it had established of not including definitions in its draft Declaration. If it preferred to amend the article he would support Mr. Córdova's proposal.

91. Mr. SCELLE pointed out that if the Commission had until that time excluded definitions from its draft Declaration, it was because it had been unable to reach agreement on the definitions of certain concepts. In the case under discussion, however, he felt that there was an almost general agreement on article 4 which would become more substantial than the preceding articles by the incorporation of his amendment.

Mr. Scelle's proposal was adopted by 8 votes to 3.

Article 6: Legal equality

92. Mr. ALFARO explained that article 6 on " legal equality " was based on an article in a Declaration drafted by the American Institute of International Law (A/CN.4/2, p. 68). He had not used the term " sovereign equality " because of a statement from the General Assembly to the effect that that term should be understood to mean " legal equality ".

93. The CHAIRMAN pointed out that the Governments of Greece and India would prefer to end the article at the words " the community of States ", while the Mexican Government felt it would be preferable to omit any allusion to philosophical ideas and consequently any reference to natural law. He proposed that the Commission should take up consideration of the first part of the text reading: " Every State is, in law and before the law, equal to all the others which make up the community of States."

94. Mr. BRIERLY objected to the term: " in law and before the law " and thought it sufficient to state: " Every State is equal before the law " or " Every State is in law equal to all others."

95. The CHAIRMAN pointed out that in its present form the article declared neither a right nor a duty. If the Commission decided to retain only the first part of the article it should be recast as follows: " Every State has the right to equality in law with every other State." With Sir Benegal Rau he questioned the advisability of introducing the term " community of States ".

96. Mr. ALFARO objected that it was inaccurate to say: " Every State has a right to equality " since he considered that right to be inherent in the State. He would support Jefferson's philosophy that equality was acquired at birth. For that reason he would prefer to retain the article in its original wording.

97. The CHAIRMAN wondered in that connexion whether it could not then be argued that the right to exist was also inherent. If the second part of the article were omitted, the first part would require redrafting. He pointed out that the term " Powers " had been in use in the nineteenth century but he would prefer in the draft Declaration to use the term " State ". He suggested that article 6 should read: " Every State has the right to claim and assume a position of equality in law ". If the Commission desired, the phrase " and assume a position " could be deleted.

98. Mr. SPIROPOULOS could support the Chairman's first proposal but not the second.

99. The CHAIRMAN then put to the vote the following text: " Every State has the right to equality in law with every other State."

That text was tentatively adopted by 9 votes.

The meeting rose at 6.05 p.m.

13th MEETING

Monday, 2 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 (A/CN.4/2, A/CN.4/2/Add.1) (*continued*)

ARTICLE 6: LEGAL EQUALITY (concluded)

1. The CHAIRMAN recalled that at the previous meeting there had been an inclination to reduce the text of article 6 to one sentence indicating that every State had the right to equality in law with every other member of the community of States.

2. Mr. ALFARO noted that a certain number of Governments had expressed the opinion that the text of article 6 should be limited to the first part of the article. The same opinion was to be found in the drafts prepared by various intergovernmental and non-governmental organizations.

3. It was the desire of the Commission, however, that each article of the draft declaration should state a right or a duty. If article 6 were to be deprived of its final part it would contain no more than a postulate of international law, for the inclusion of which in a declaration of the rights and duties of States there would be no justification. The true aim of article 6 was to show that every State exercised its rights and fulfilled its obligations on an equal footing with other States. In view of that fact and of the comments of various members of the Commission, he suggested that the Commission might adopt some such formula as the following, which seemed to him to eliminate most of the objections: " Every State has the right to legal equality in the sense that its rights, its duties and its capacity in law are equal to those of all the other members of the community of States. "

4. Mr. SPIROPOULOS pointed out that that text might be understood to mean that all States enjoyed identical rights, which was obviously not the case, since certain States had more rights than others. It would be well to specify that the equality of rights referred only to rights held under international law.

5. Mr. CORDOVA thought that the addition of the word " fundamental " before the words " rights and duties " would have the effect of excluding those rights and duties which were assumed voluntarily by the State, and would thus avoid any confusion.

6. Mr. BRIERLY thought that once it was admitted that two rights were not identical, it could no longer be claimed that they were equal. Even if one State exercised a right in a certain domain and another State exercised an identical right in a different domain, could those rights be compared, and could there be any question of equality where they were concerned? Moreover, the same right, as for example that of a member of the Security Council, would differ according to whether it were exercised by a permanent or non-permanent member. It was therefore extremely difficult to define the idea of " equal rights ".

7. Mr. SANDSTROM shared that opinion, and pointed out that although certain rights might, in the final analysis, be termed fundamental, it would be extremely difficult to define exactly what was meant by fundamental rights.

8. The CHAIRMAN stated that it would be necessary to specify in the preamble what were fundamental rights and duties and what were not. In order to avoid that new difficulty, he proposed that the very general wording which had been adopted provisionally at the previous meeting